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## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

### 7 CFR Part 275

**[FNS–2011–0060]**

**RIN 0584–AE24**

## Supplemental Nutrition Assistance Program: Quality Control Error Tolerance Threshold

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Direct final rule.

**SUMMARY:** This direct final rule is amending the Quality Control (QC) review error threshold in our regulations from $25.00 to $50.00. The purpose for raising the QC error threshold is to make permanent the temporary threshold change that was required by the American Recovery and Reinvestment Act of 2008. This change does not have an impact on the public. The QC system measures the accuracy of the eligibility system for the Supplemental Nutrition Assistance Program (SNAP).

**DATES:** This rule will become effective on January 3, 2012 unless the Department receives written significant adverse comments on or before December 1, 2011. If significant adverse comments that are relevant within the scope of the rulemaking are received within the specified comment period, the Department will publish timely notification of withdrawal of this rule in the **Federal Register**. This rule shall apply to all FY 2012 QC reviews.

**ADDRESSES:** The Food and Nutrition Service (FNS) invites interested persons to submit comments on this direct final rule. Comments may be submitted by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* Submit comments by facsimile transmission to: (703) 605–0795.
- *Mail:* Send comments to Francis Heil, Branch Chief, Quality Control Branch, SNAP, FNS, 3101 Park Center Drive, #822, Alexandria, VA 22302, (703) 305–2442.
- *E-mail:* Send comments to *SNAPHQ-Web@fns.usda.gov.* Include Docket ID Number FNS–2011–0060, Supplemental Nutrition Assistance Program: Quality Control Error Tolerance Threshold Direct Rule, in the subject line of the message.
- *Hand Delivery or Courier:* Deliver comments to Francis Heil, Branch Chief, Quality Control Branch, SNAP, FNS, 3101 Park Center Drive, Alexandria, VA 22302, Room #822.

All comments submitted in response to this direct final rule will be included in the record and will be made available to the public. Please be advised that the substance of the comments and the identity of the individuals or entities submitting the comments will be subject to public disclosure. FNS will make the comments publicly available on the Internet via *http://www.regulations.gov*.

**FOR FURTHER INFORMATION CONTACT:** Francis Heil, FNS, 3101 Park Center Drive, #822, Alexandria, VA 22302, (703) 305–2442.

**SUPPLEMENTARY INFORMATION:**

### I. Background

The current regulations at § 275.12(f)(2) state, ''If the reviewer determines that food stamp allotments were either overissued or underissued to eligible households in the sample month, in an amount exceeding $25.00, the occurrence and the amount of the error shall be coded and reported.'' In practice, when conducting both State and Federal QC reviews any overissuances or underissuances found in the amount of $25.00 or less are not included as an error in the calculation of that fiscal year's (FY) error rates. This $25.00 or less error is also known as the error tolerance threshold (the threshold). This $25.00 threshold, however, does not excuse any State from their responsibility for following procedures found at § 275.16(c) regarding corrective action for all errors found in QC cases.

On February 17, 2009, the President signed Public Law 111–5, the American Recovery and Reinvestment Act of 2009 (ARRA). Title I, Section 101(b)(5) of Public Law 111–5, indicated the Agriculture Secretary shall, ''set the tolerance level for excluding small errors for the purposes of section 16(c) of the Food and Nutrition Act of 2008 (7 U.S.C. 2025(c)) at $50.00 through September 30, 2009.'' This temporary threshold increase was tied to the increase in the benefit amount also provided by ARRA. In short, this meant there was a temporary threshold increase from $25.00 to $50.00 for QC errors from April 2009 through September 2009. According to FNS's calculations, we estimate that the ARRA's provision excluding any errors between $25.00 and $50.00 from the calculation decreased the 2009 combined Payment Error Rate (PER) by 15 percent. The total combined Payment Error Rate (PER) decreased from FY 2008's 5.01 percent to 4.36 percent.

The ARRA provision concerning the QC threshold expired September 30, 2009. The threshold for the FY 2010 QC review period reverted to $25.00. The increased benefit allotment, however, remains in place. The Department believes that the State agencies should continue to benefit from the increased threshold amount of $50.00 to offset the increased benefit amounts. Therefore, in this rulemaking, the Department is raising the QC tolerance threshold of $25.00 to $50.00 to make the temporary ARRA change permanent.

Prior experience with the provisions of this rule under the ARRA demonstrates that they contribute to a significant reduction in the rate of improper payments in SNAP. SNAP is identified by the Office of Management and Budget (OMB) as a high risk program for improper payments. Reducing the payment error rate is a priority for both USDA and OMB. To improve business efficiency, agencies must prioritize those areas that have the most potential to improve payment accuracy and reduce improper payments. This rulemaking supports that goal by focusing on errors that are the most economically efficient to correct. The provisions of this rule will improve the data available at the Federal level allowing for further analysis of the root causes of payment errors. The Department's payment accuracy team will be better able to focus on the largest and most

problematic errors and then work with States on additional cost efficient ways to improve the Administration's goals to reduce improper payments.

The Department is also requiring all error amounts found shall be coded and reported by the State Agencies on FNS 380–1, OMB 0584–0299, Review Schedule for SNAP QC Reviews, or as directed by FNS. Currently, State Agencies do not have to code and report QC errors for cases with overissuances or underissuances of $25.00 or below since they are not counted as QC errors when FNS calculates the National QC Error Rates at the end of each review year. However, during the temporary ARRA change from $25.00 to $50.00, States were required to code and report all errors between $25.00 and $50.00, which became valuable in conducting State corrective action as well as determining the impact of the threshold on the State and National QC error rates. The Department has determined that it would be valuable to know this information for all variances under $50.00, even though such variances are not included in the PER calculation. The information will be used to assist in corrective action. Therefore, the Department is making a change to current coding and reporting procedures for the FNS 380–1 to require the coding and reporting of any variances that directly contribute to the error determination, even those below the $50.00 threshold. This coding and reporting requirement will not affect the method of calculation for the underissuance error rate, overissuance error rate, and the combined PER, since the calculation will continue to exclude all errors equal to or below the proposed threshold change of $50.00.

State Agencies will continue to be responsible for taking corrective action for all errors found in QC cases, in accordance with the provisions of § 275.16(c).

## II. Procedural Matters

### *Issuance of a Direct Final Rule and Date of Effectiveness*

FNS has determined that this rule is appropriate for direct final rulemaking because we believe this amendment to be noncontroversial and we anticipate no significant adverse comments. We believe this rule to be noncontroversial as the State agencies which administer SNAP have already expressed their unequivocal support for the policy implemented by this rule. The amendment contained in this rule was previously in effect under the ARRA for a six month period in fiscal year 2009. As such, the State agencies have significant experience with the operational implications of this amendment. We anticipate no significant adverse comments to be submitted as public comments to this rule as FNS did not, in the past, receive adverse comments as a result of the previous amendment to the threshold when it was raised from $5.00 to $25.00. In addition, State agencies have repeatedly expressed desire for the ARRA QC provisions to be reinstated on a permanent basis both individually and through their representative association, the American Public Human Services Association (APHSA). This direct final rulemaking is consistent with the State agencies' requests.

This rule is effective January 3, 2012 unless the Department receives written significant adverse comments on or before December 1, 2011. FNS invites public comment on this direct final rule. If significant adverse comments within the scope of the rulemaking are received, the Department will publish timely notification of withdrawal of this rule in the **Federal Register**. A significant adverse comment is defined as one where the comment explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change.

Although the rule is not effective until January 3, 2012, State agencies are required to apply the raised threshold for the entire FY 2012 QC review period.

### *Executive Orders 12866 and 13563*

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.

This rule has been designated not significant under section 3(f) of Executive Order 12866.

### *Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires Agencies to analyze the impact of rulemaking on small entities and consider alternatives that would minimize any significant impacts on a substantial number of small entities. Pursuant to that review, Audrey Rowe, FNS Administrator, has certified that this rule would not have a significant impact on a substantial number of small entities.

### *Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under section 202 of the UMRA, the Department generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local or tribal governments, in the aggregate, or the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, Section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the most cost effective or least burdensome alternative that achieves the objectives of the rule.

This rule does not contain Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local and tribal governments or the private sector of $100 million or more in any one year. Thus, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

### *Executive Order 12372*

The Supplemental Nutrition Assistance Program (SNAP) is listed in the Catalog of Federal Domestic Assistance Programs under 10.561. For the reasons set forth in the final rule in 7 CFR part 3015, subpart V, and related Notice (48 FR 29115, June 24, 1983), this program is included in the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

### *Executive Order 13175*

USDA will undertake, within 6 months after this rule becomes effective, a series of Tribal consultation sessions to gain input by elected Tribal officials or their designees concerning the impact of this rule on Tribal governments, communities and individuals. These sessions will establish a baseline of consultation for future actions, should any be necessary, regarding this rule. Reports from these sessions for consultation will be made part of the USDA annual reporting on Tribal Consultation and Collaboration. USDA will respond in a timely and meaningful manner to all Tribal government requests for consultation concerning this rule and will provide additional venues, such as webinars and

teleconferences, to periodically host collaborative conversations with Tribal leaders and their representatives concerning ways to improve this rule in Indian country.

The policies contained in this rule would not have Tribal implications that preempt Tribal law since State welfare agencies will be the most affected to the extent that they administer the SNAP.

*Federalism Summary Impact Statement*

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under Section (6)(b)(2)(B) of Executive Order 13121. FNS has considered this rule's impact on State and local agencies and has determined that it does not have Federalism implications under E.O. 13132.

*Executive Order 12988*

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full and timely implementation. State agencies are required to apply the raised threshold in this rule to all cases reviewed as part of the FY 2012. Prior to any judicial challenge to the provisions of the final rule, all applicable administrative procedures must be exhausted.

*Civil Rights Impact Analysis*

FNS has reviewed this rule in accordance with the Department Regulation 4300–4, ''Civil Rights Impact Analysis,'' to identify and address any major civil rights impacts the rule might have on minorities, women, and persons with disabilities. After a careful review of the rule's intent and provisions, FNS has determined that this rule will not in any way limit or reduce the ability of protected classes of individuals to participate in SNAP. This regulation does not apply to the certification determinations made on the intended beneficiaries of the SNAP. Quality Control procedures are designed to evaluate the accuracy of the application of SNAP certification policy and therefore, the evaluation procedures do not impact protected classes or individuals.

*Paperwork Reduction Act*

Information collections associated with this rule have been approved under following OMB control numbers: 0584–0074, Worksheet for SNAP Quality Control Reviews (expiration date April 30, 2013), and 0584–0299 Form FNS–380–1, Quality Control Review Schedule, Form FNS–380–1 (March 31, 2013).

*E-Government Act Compliance*

FNS is committed to complying with the E-Government Act, 2002, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

**List of Subjects in 7 CFR Part 275**

Administrative practice and procedure, Supplemental Nutrition Assistance Program, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 275 is amended as follows:

## PART 275—PERFORMANCE REPORTING SYSTEM

■ 1. The authority citation for part 275 continues to read as follows:

**Authority:** 7 U.S.C. 2011–2036.

■ 2. In § 275.12, paragraph (f)(2) is revised to read as follows:

**§ 275.12 Review of active cases.**

* * * * *

(f) * * *

(2) *Basis of issuance of errors.* If the reviewer determines that SNAP allotments were either overissued or underissued to eligible households in the sample month, the State agency shall code and report any variances that directly contributed to the error determination that were discovered and verified during the course of the review. Only variances that exceed $50.00 (the threshold) shall be included in the calculation of the underissuance error rate, overissuance error rate, and payment error. If the State agency has chosen to report information on all variances in elements of eligibility and basis of issuance, the reviewer shall code and report any other such variances that were discovered and verified during the course of the review.

* * * * *

Dated: October 25, 2011.

**Jeffrey J. Tribiano,**

*Acting Administrator, Food and Nutrition Service.*

[FR Doc. 2011–28230 Filed 10–31–11; 8:45 am]

BILLING CODE 3410–30–P

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 958

**[Doc. No. AMS–FV–11–0025; FV11–958–1 FR]**

## Onions Grown in Certain Designated Counties in Idaho, and Malheur County, OR; Modification of Handling Regulations

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

**ACTION:** Final rule.

**SUMMARY:** This rule revises the handling regulation for onions handled under the Idaho-Eastern Oregon onion marketing order. The marketing order regulates the handling of onions grown in designated counties in Idaho, and Malheur County, Oregon, and is administered locally by the Idaho-Eastern Oregon Onion Committee (Committee). This rule revises the marketing order's handling regulation to allow special purpose shipments of onions for experimentation. The revision will allow the Idaho-Eastern Oregon onion industry to identify and develop new market niches and is expected to benefit producers, handlers, and consumers of onions.

**DATES:** *Effective Date:* November 2, 2011.

**FOR FURTHER INFORMATION CONTACT:** Barry Broadbent or Gary D. Olson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 805 SW. Broadway, suite 930, Portland, OR 97205; *Telephone:* (503) 326–2724, *Fax:* (503) 326–7440, or *Email: Barry.Broadbent@ams.usda.gov* or *GaryD.Olson@ams.usda.gov.*

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

**SUPPLEMENTARY INFORMATION:** This final rule is issued under Marketing Agreement No. 130 and Marketing

Order No. 958, both as amended (7 CFR part 958), regulating the handling of onions grown in certain designated counties in Idaho, and Malheur County, Oregon, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

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

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

This final rule revises the handling regulation for onions handled under the order. Specifically, this rule revises the handling regulation to allow special purpose shipments of onions for the purpose of experimentation without regard to the minimum grade, size, maturity, pack, and inspection requirements of the order. The revision will give the Idaho-Eastern Oregon onion industry the opportunity to identify and develop new markets. The changes are expected to benefit producers, handlers, and consumers of onions. This rule was unanimously recommended by the Committee at a meeting on January 20, 2011.

Sections 958.42, 958.51, 958.52, and 958.60 of the order provide authority for assessment, mandatory inspection, and establishment of grade, size, quality, maturity, and pack regulations applicable to the handling of onions. Section 958.53 of the order provides authority for the issuance of special regulations, or the modification, suspension, or termination of requirements in effect pursuant to §§ 958.42, 958.52, 958.60, or any combination thereof, in order to facilitate the handling of onions for certain specified purposes.

Section 958.328 establishes minimum requirements for onions handled subject to the order. Currently, no person shall handle any lot of onions unless such onions are inspected, are at least ''moderately cured'', and meet the grade, size, maturity, and pack requirements of paragraphs (a), (b), and (c). Paragraph (e) delineates specific types of special purpose shipments that are exempt from the requirements of the order. Paragraph (f) outlines the safeguards for such special purpose shipments.

The Committee recommended this revision to the handling regulations to respond to the industry's desire to have greater flexibility in indentifying and pursuing unique marketing opportunities for onions that do not conform to the requirements of the order. The concern from the onion industry is that onion producers and handlers within the order's production area are at a competitive disadvantage, relative to other onion producing regions, with respect to their ability to identify and develop new markets for non-standard onions. Adding authority to allow experimental onion shipments under the order provides handlers access to markets not previously available to them.

An example that demonstrates how the industry benefits from this final rule would be a scenario in which a handler wants to produce and ship a unique, irregularly shaped small onion (*e.g.* a heart or a square shape) in order to target a newly developed niche market. Since irregular shape is a physical characteristic that does not conform to the order's grade requirements, previously such onions could not have been handled under the marketing order. However, with this exemption for experimentation the Committee can now allow the shipment of those specific type onions while still maintaining the integrity of the order. If the market for such onions increases significantly, the Committee could then incorporate changes into the handling regulations to accommodate their handling without the continued need for an exemption.

The potential for marketing opportunities like the example described above motivated the Committee to recommend modifying the handling regulation to add ''experimentation'' to the already established list of special purpose shipments allowed under the order. Onion shipments for experimental purposes will thus be exempt from the grade, size, maturity, pack, and inspection requirements of the handling regulation. Shipments made under the experimental exemption continue to be subject to the assessment requirement of the order, however. With this special purpose shipment provision for experimentation, handlers have greater flexibility in pursuing various types of unique marketing opportunities that were previously not available under the handling regulation.

The Committee will require handlers to request pre-approval for such experimental exemptions. Through the approval process, the Committee will be able to regulate the quantity and timing of such shipments. It is the goal of the Committee that any experimental shipments of onions will be temporary in nature. At the point that emerging experimental markets reach a sufficient volume or continue for such a length of time as to be deemed sustainable by the Committee, the Committee could then recommend changes to the handling regulation requirements to accommodate the marketing of such onions on a permanent basis.

**Final Regulatory Flexibility Analysis**

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

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

There are approximately 35 handlers of Idaho-Eastern Oregon onions who are subject to regulation under the order and approximately 250 onion producers in the regulated area. Small agricultural service firms, which include onion handlers and receivers, are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $7,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000.

The National Agricultural Statistics Service (NASS) reported in the ''Vegetables 2010 Summary'', published in January 2011, that the total F.O.B. value of onions in the regulated production area for 2010 was $133,041,000. Based on an industry

estimate of 35 handlers, the average value of onions handled per handler is $3,801,000, well below the SBA threshold for defining small agricultural service firms. In addition, based on an industry estimate of 250 producers, the average F.O.B. value of onions produced in the industry is $532,164 per producer. Since the F.O.B. value is usually significantly higher than the farm gate value that the producers actually receive, most onion producers within the order's production area could be considered small agricultural producers under the SBA definition. Therefore, it can be concluded that the majority of handlers and producers of Idaho-Eastern Oregon onions may be classified as small entities as defined by the SBA.

This final rule revises § 958.328(e) of the order's handling regulation to allow special purpose shipments of onions for the purpose of experimentation without regard to the minimum grade, size, maturity, pack, and inspection requirements currently prescribed under paragraphs (a), (b), and (c) of § 958.328. The revision will allow the Idaho-Eastern Oregon onion industry to identify and develop new markets for non-standard onions that have not been previously available. The changes are expected to benefit producers, handlers, and consumers of onions.

At a meeting on January 20, 2011, the Committee discussed the impact of the recommended changes on handlers and producers in terms of increased costs. The Committee believes that, since this change exempts certain shipments of onions from regulation, this action will not add any additional requirements or costs relative to the existing regulation. Since the utilization of the special purpose shipment provision is voluntary in nature, any additional regulatory burden placed on a handler as a result of this final rule will be by their choice. The changes may, however, create opportunities for producers and handlers to develop new markets and to enhance revenues. The Committee believes that the potential benefit associated with this action outweighs any potential increase in administrative cost or regulatory burden incurred by the handler.

The Committee discussed various alternatives to adding experimental shipments to the list of special purpose shipment exemptions contained in the order's handling regulation. Some members suggested that the provision was too broad in scope and needed greater restrictions. After deliberation, the Committee concluded that it would be impossible to anticipate what might be ''experimental'' in the future and that affording the greatest latitude to the provision, while maintaining strict Committee oversight, was in the best interest of the industry. The Committee also considered taking no action with regard to adding an experimental shipment provision, citing the potential for abuse. After deliberation, the Committee agreed that the experimental shipment provision is needed to respond to changes in the industry and that there would be sufficient safeguards to protect the integrity of the order.

This final rule imposes additional reporting burdens on handlers who make special purpose shipments of experimental onions. This action requires the modification of two existing Committee forms and an increase in burden hours for three existing forms. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

**Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0241, ''Onions Grown in Certain Designated Counties in Idaho, and Malheur County, Oregon, M.O. No. 958.'' However, as a result of this action changes in those requirements are necessary and have been submitted to OMB for review.

As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

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

In addition, the Committee's meeting was widely publicized throughout the onion industry, and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the January 20, 2011, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue.

A proposed rule concerning this action was published in the **Federal Register** on June 21, 2011 (76 FR 35997). Copies of the rule were made available to all Committee members and onion handlers. Finally, the rule was made available through the Internet by USDA and the Office of the Federal Register. A 60-day comment period ending August 22, 2011, was provided to allow interested persons to respond to the proposal. No comments were received. Accordingly, no changes will be made to the rule as proposed.

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

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

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because handlers are already shipping onions from the 2011–2012 crop and handlers want to take advantage of the revision as soon as possible. Further, handlers are aware of this rule, which was unanimously recommended by the committee at a public meeting. Also, a 60-day comment period was provided for in the proposed rule.

**List of Subjects in 7 CFR Part 958**

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 958 is amended as follows:

## PART 958—ONIONS GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO, AND MALHEUR COUNTY, OREGON

■ 1. The authority citation for 7 CFR part 958 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

■ 2. In § 958.328, revise paragraph (e) and the introductory sentence of paragraph (f) to read as follows:

**§ 958.328 Handling regulation.**

* * * * *

(e) *Special purpose shipments.* (1) The minimum grade, size, maturity, pack, assessment, and inspection requirements of this section shall not be applicable to shipments of onions for any of the following purposes:

(i) Planting,
(ii) Livestock feed,
(iii) Charity,
(iv) Dehydration,
(v) Canning,
(vi) Freezing,
(vii) Extraction,
(viii) Pickling, and
(ix) Disposal.

(2) Shipments of onions for the purpose of experimentation, as approved by the Committee, may be made without regard to the minimum grade, size, maturity, pack, and inspection requirements of this section. Assessment requirements shall be applicable to such shipments.

(3) The minimum grade, size, and maturity requirements set forth in paragraph (a) of this section shall not be applicable to shipments of pearl onions, but the maximum size requirement in paragraph (h) of this section and the assessment and inspection requirements shall be applicable to shipments of pearl onions.

(f) *Safeguards.* Each handler making shipments of onions outside the production area for dehydration, canning, freezing, extraction, pickling, or experimentation pursuant to paragraph (e) of this section shall:

* * * * *

Dated: October 26, 2011.

**Ellen King,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 2011–28197 Filed 10–31–11; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 984

**[Doc. No. AMS–FV–11–0062; FV11–984–1 FR]**

### Walnuts Grown in California; Increased Assessment Rate

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

**ACTION:** Final rule.

**SUMMARY:** This rule increases the assessment rate established for the California Walnut Board (Board) for the 2011–12 and subsequent marketing years from $0.0174 to $0.0175 per kernelweight pound of assessable walnuts. The Board locally administers the marketing order which regulates the handling of walnuts grown in California. Assessments upon walnut handlers are used by the Board to fund reasonable and necessary expenses of the program. The marketing year began September 1 and ends August 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** *Effective Date:* November 2, 2011.

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

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

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Order No. 984, as amended (7 CFR part 984), regulating the handling of walnuts grown in California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California walnut handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable walnuts beginning on September 1, 2011, and continue until amended, suspended, or terminated.

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

This rule increases the assessment rate established for the Board for the 2011–12 and subsequent marketing years from $0.0174 to $0.0175 per kernelweight pound of assessable walnuts.

The California walnut marketing order provides authority for the Board, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Board are growers and handlers of California walnuts. They are familiar with the Board's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2010–11 and subsequent marketing years, the Board recommended, and USDA approved, an assessment rate of $0.0174 per kernelweight pound of assessable walnuts that would continue in effect from year to year unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Board or other information available to USDA.

The Board met on June 9, 2011, and unanimously recommended 2011–12 expenditures of $7,402,450 and an assessment rate of $0.0175 per kernelweight pound of assessable walnuts. In comparison, last year's budgeted expenditures were $6,812,000. The assessment rate of $0.0175 is $0.0001 per pound higher than the rate currently in effect. The quantity of assessable walnuts for the 2011–12 marketing year is estimated at 470,000 tons (inshell), which is 35,000 tons more than the 435,000 during the 2010–11 marketing year. At the recommended higher assessment rate of $0.0175 per kernelweight pound, the Board should collect approximately $7,402,500 in assessment income, which would be adequate to cover its 2011–12 budgeted expenses of $7,402,450.

The following table compares major budget expenditures recommended by the Board for the 2010–11 and 2011–12 marketing years:

| Budget expense categories | 2010–11 | 2011–12 |
|---|---|---|
| Employee Expenses | $577,500 | $693,500 |
| Travel/Board Expenses/Annual Audit | 208,000 | 218,000 |
| Office Expenses | 118,850 | 117,750 |
| Program Expenses Including Research: | | |
| Controlled Purchases | 20,000 | 20,000 |
| Crop Acreage Survey | 95,000 | 95,000 |
| Crop Estimate | 105,000 | 115,000 |
| Production Research Director | 88,500 | 88,500 |
| Production Research | 1,042,000 | 1,036,000 |
| Sustainability Project | 0 | 25,000 |
| Grades and Standards Research | 125,000 | 150,000 |
| Block Grant Research | 0 | 200,00 |
| Domestic Market Development | 4,400,000 | 4,635,000 |
| Reserve for Contingency | 32,250 | 8,700 |

The assessment rate recommended by the Board was derived by dividing anticipated expenses by expected shipments of California walnuts certified as merchantable. The 470,000 ton (inshell) estimate for merchantable shipments is an average of the two prior year's shipments. The Board met on June 9, 2011, and unanimously approved using a two prior years' average to formulate the 2011–12 estimate. Pursuant to § 984.51(b) of the order, this figure is converted to a merchantable kernelweight basis using a factor of 0.45 (470,000 tons × 2,000 pounds per ton × 0.45), which yields 423,000,000 kernelweight pounds. At $0.0175 per pound, the new assessment rate should generate $7,402,500 in assessment income and allow the Board to cover its expenses.

Section 984.69 of the order authorizes the Board to maintain a financial reserve of not more than two years' budgeted expenses. Excess assessment funds may be retained in the reserve or may be used temporarily to defray expenses of the subsequent marketing year, but if so used, must be made available to the handlers from whom they were collected within five months after the end of the marketing year.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Board or other available information.

Although this assessment rate will be in effect for an indefinite period, the Board will continue to meet prior to or during each marketing year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Board meetings are available from the Board or USDA. Board meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Board recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Board's 2011–12 budget and those for subsequent marketing years would be reviewed and, as appropriate, approved by USDA.

**Final Regulatory Flexibility Analysis**

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

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

There are approximately 4,500 growers of California walnuts in the production area and approximately 74 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those having annual receipts of less than $7,000,000.

According to the 2007 Census of Agriculture, approximately 89 percent of California's walnut farms were smaller than 100 acres.

USDA's National Agricultural Statistics Service (NASS) reports that the average yield for the 2010–11 crop was 2.22 tons per acre. NASS also reported the average price received for the 2010–11 crop was $2,110 per ton.

A 100-acre farm with an average yield of 2.22 tons per acre would therefore have been expected to produce about 222 tons of walnuts during 2010–11. At $2,110 per ton, that farm's production would have had an approximate value of $468,420. Assuming that the majority of California's walnut farms are smaller than 100 acres, it could be concluded that the majority of the growers had receipts of less than $468,420 in 2010–11, which is well below the SBA threshold of $750,000. Thus, the majority of California's walnut growers would be considered small growers according to SBA's definition.

According to information supplied by the industry, approximately two-thirds of California's walnut handlers shipped merchantable walnuts valued under $7,000,000 during the 2010–11 marketing year and would therefore be considered small handlers according to the SBA definition.

This rule increases the assessment rate established for the Board and collected from handlers for the 2011–12 and subsequent marketing years from $0.0174 to $0.0175 per kernelweight pound of assessable walnuts. The Board unanimously recommended 2011–12 expenditures of $7,402,450 and an assessment rate of $0.0175 per kernelweight pound of assessable walnuts. The assessment rate of $0.0175 is $0.0001 higher than the 2010–11 rate. The quantity of assessable walnuts for the 2011–12 marketing year is estimated at 470,000 tons inshell weight, or 423,000,000 pounds kernelweight. Thus, the $0.0175 rate should provide $7,402,500 in assessment income and be adequate to meet this year's expenses. The increased assessment rate is primarily due to increased budget expenditures.

The following table compares major budget expenditures recommended by the Board for the 2010–11 and 2011–12 marketing years:

| Budget expense categories | 2010–11 | 2011–12 |
|---|---|---|
| Employee Expenses | $577,500 | $693,500 |
| Travel/Board Expenses/Annual Audit | 208,000 | 218,000 |
| Office Expenses | 118,850 | 117,750 |
| Program Expenses Including Research: | | |
| Controlled Purchases | 20,000 | 20,000 |
| Crop Acreage Survey | 95,000 | 95,000 |
| Crop Estimate | 105,000 | 115,000 |
| Production Research Director | 88,500 | 88,500 |
| Production Research | 1,042,000 | 1,036,000 |
| Sustainability Project | 0 | 25,000 |
| Grades and Standards Research | 125,000 | 150,000 |
| Block Grant Research | 0 | 200,000 |
| Domestic Market Development | 4,400,000 | 4,635,000 |
| Reserve for Contingency | 32,250 | 8,700 |

The Board reviewed and unanimously recommended 2011–12 expenditures of $7,402,450. Prior to arriving at this budget, the Board considered alternative expenditure levels but ultimately decided that the recommended levels were reasonable to properly administer the order. The assessment rate of $0.0175 per kernelweight pound of assessable walnuts was derived by dividing anticipated expenses of $7,402,450 by expected shipments of California walnuts certified as merchantable. Merchantable shipments for the year are estimated at 423,000,000 pounds, which should provide $7,402,500 in assessment income and allow the Board to cover its expenses. Unexpended funds may be retained in a financial reserve, provided that funds in the financial reserve do not exceed approximately two years' budgeted expenses. If not retained in a financial reserve, unexpended funds may be used temporarily to defray expenses of the subsequent marketing year, but must be made available to the handlers from whom collected within 5 months after the end of the year, according to § 984.69 of the order.

According to NASS, the season average grower prices for the years 2009 and 2010 were $1,710 and $2,110 per ton, respectively. These prices provide a range within which the 2011–12 season average price could fall. Dividing these average grower prices by 2,000 pounds per ton provides an inshell price per pound range of $0.86 to $1.06. Dividing these inshell prices per pound by the 0.45 conversion factor (inshell to kernelweight) established in the order yields a 2011–12 price range estimate of $1.91 to $2.36 per kernelweight pound of assessable walnuts.

To calculate the percentage of grower revenue represented by the assessment rate, the assessment rate of $0.0175 per kernelweight pound is divided by the low and high estimates of the price range. The estimated assessment revenue for the 2011–12 marketing year as a percentage of total grower revenue will thus likely range between .74 and .92 percent.

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to growers. However, these costs are offset by the benefits derived by the operation of the marketing order. In addition, the Board's meeting was widely publicized throughout the California walnut industry, and all interested persons were invited to attend the meeting and participate in Board deliberations on all issues. Like all Board meetings, the June 9, 2011, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0178 (Walnuts Grown in California). No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This final rule imposes no additional reporting or recordkeeping requirements on either small or large California walnut handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule.

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

A proposed rule concerning this action was published in the **Federal Register** on August 16, 2011 (75 FR 50703). Copies of the proposed rule were also mailed or sent via facsimile to all walnut handlers. Finally, the proposal was made available through the Internet by USDA and the Office of the Federal Register. A 30-day comment period ending on September 15, 2011, was provided for interested persons to respond to the proposal. No comments were received.

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

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

Pursuant to 5 U.S.C. 553, it also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because the 2011–12 marketing year began on September 1, 2011. Further, the marketing order requires that the rate of assessment for each marketing year apply to all assessable walnuts handled during the year; the Board needs to have sufficient funds to meet its expenses which are incurred on a continuous basis; and handlers are aware of this rule which was unanimously recommended at a public meeting. Also, a 30-day comment period was provided for in the proposed rule.

**List of Subjects in 7 CFR Part 984**

Marketing agreements, Nuts, Reporting and recordkeeping requirements, Walnuts.

For the reasons set forth in the preamble, 7 CFR part 984 is amended as follows:

## PART 984—WALNUTS GROWN IN CALIFORNIA

■ 1. The authority citation for 7 CFR part 984 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

■ 2. Section 984.347 is revised to read as follows:

**§ 984.347 Assessment rate.**

On and after September 1, 2011, an assessment rate of $0.0175 per kernelweight pound is established for California merchantable walnuts.

Dated: October 26, 2011.

**David R. Shipman,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 2011–28198 Filed 10–31–11; 8:45 am]

BILLING CODE 3410–02–P

## FEDERAL RESERVE SYSTEM

## 12 CFR Part 243

**[Regulation QQ; Docket No. R–1414]**

**RIN 7100–AD73**

## FEDERAL DEPOSIT INSURANCE CORPORATION

## 12 CFR Part 381

**RIN 3064 AD 77**

## Resolution Plans Required

**AGENCY:** Board of Governors of the Federal Reserve System (Board) and Federal Deposit Insurance Corporation (Corporation).

**ACTION:** Final rule.

**SUMMARY:** The Board and the Corporation (together the ''Agencies'') are adopting this final rule to implement the requirement in a section of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the ''Dodd-Frank Act'') regarding resolution plans. The Dodd-Frank Act section requires each nonbank financial company designated by the Financial Stability Oversight Council (the ''Council'') for enhanced supervision by the Board and each bank holding company with assets of $50 billion or more to report periodically to the Board, the Corporation, and the Council the plan of such company for rapid and orderly resolution in the event of material financial distress or failure.

**DATES:** The rule is effective November 30, 2011.

**FOR FURTHER INFORMATION CONTACT:**

*Board:* Barbara J. Bouchard, Senior Associate Director, (202) 452–3072, Michael D. Solomon, Associate Director, (202) 452–3502, or Avery I. Belka, Counsel, (202) 736–5691, Division of Banking Regulation and Supervision; or Ann E. Misback, Associate General Counsel, (202) 452–3788, Dominic A. Labitzky, Senior Attorney, (202) 452–3428, or Bao Nguyen, Attorney, (202) 736–5599, Legal Division; Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551. Users of Telecommunication Device for Deaf (TDD) only, call (202) 263–4869.

*Corporation:* Joseph Fellerman, Senior Program Analyst, (202) 898–6591, Office of Complex Financial Institutions, Richard T. Aboussie, Associate General Counsel, (703) 562–2452, David N. Wall, Assistant General Counsel, (703) 562–2440, Mark A. Thompson, Counsel, (703) 562–2529, or Mark G. Flanigan, Counsel, (202) 898–7426, Legal Division.

**SUPPLEMENTARY INFORMATION:**

### I. Background

To promote financial stability, section 165(d) of the Dodd-Frank Act requires each nonbank financial company supervised by the Board and each bank holding company with total consolidated assets of $50 billion or more (each a ''covered company'') to periodically submit to the Board, the Corporation, and the Council a plan for such company's rapid and orderly resolution in the event of material financial distress or failure. That section also requires each covered company to report on the nature and extent of credit exposures of such covered company to significant bank holding companies and significant nonbank financial companies and the nature and extent of credit exposures of significant bank holding companies and significant nonbank financial companies to such covered company.[1] This final rule implements the resolution plan requirement set forth in section 165(d)(1) of the Dodd-Frank Act.

Plans filed under section 165(d)(1) will assist covered companies and regulators in conducting advance resolution planning for a covered company. As demonstrated by the Corporation's experience in failed bank resolutions, as well as the Board's and the Corporation's experience in the recent crisis, advance planning improves the efficient resolution of a covered company. Advance planning has long been a component of resiliency and recovery planning by financial companies. The resolution plan required of covered companies under this final rule will support the Corporation's planning for the exercise of its resolution authority under the Dodd-Frank Act and the Federal Deposit Insurance Act (''FDI Act'') by providing the Corporation with an understanding of the covered companies' structure and complexity as well as their resolution strategies and processes. The resolution plan required of covered companies under this final rule will also assist the Board in its supervisory efforts to ensure that covered companies operate in a manner that is both safe and sound and that does not pose risks to financial stability generally. In addition, these plans will enhance the Agencies' understanding of the U.S. operations of foreign banks and improve efforts to develop a comprehensive and coordinated resolution strategy for a cross-border firm.

The final rule requires each covered company to produce a resolution plan, or ''living will,'' that includes information regarding the manner and extent to which any insured depository institution affiliated with the company is adequately protected from risks arising from the activities of nonbank subsidiaries of the company; detailed descriptions of the ownership structure, assets, liabilities, and contractual obligations of the company; identification of the cross-guarantees tied to different securities; identification of major counterparties; a process for determining to whom the collateral of the company is pledged; and other information that the Board and the Corporation jointly require by rule or order.[2] The final rule requires a strategic analysis by the covered company of how it can be resolved under Title 11 of the U.S. Code (the ''Bankruptcy Code'') in a way that would not pose systemic risk to the financial system. In doing so, the company must map its core business lines and critical operations to material legal entities and provide integrated analyses of its corporate structure; credit and other exposures; funding, capital, and cash flows; the domestic and foreign jurisdictions in which it operates; and its supporting information systems for core business lines and critical operations.

[1] *See generally* 12 U.S.C. 5365(d).

[2] *See* 12 U.S.C. 5365(d)(1).

**II. Notice of Proposed Rulemaking: Summary of Comments**

On April 22, 2011, the Board and the Corporation invited public comment on a Notice of Proposed Rulemaking: Resolution Plans and Credit Exposure Reports Required (the ''proposed rule'' or ''proposal'').[3] The comment period ended on June 10, 2011. The Board and the Corporation collectively received 22 comment letters from a range of individuals and banking organizations, as well as industry and trade groups representing banking, insurance, and the broader financial services industry. In addition, the Board and the Corporation met with industry representatives to discuss issues relating to the proposed rule.

While the commenters generally expressed support for the broader goals of the proposed rule to require covered companies to plan for their orderly liquidation or restructuring in bankruptcy during times of material financial distress, many commenters also expressed concerns about various aspects of the proposed rule. The comments the Board and the Corporation received fit into four broad categories: comments that focused on the resolution planning requirement, including the required informational content, of the proposed rule; comments that addressed the credit exposure reporting requirement; comments regarding the application of the proposed rule to foreign-banking organizations (''FBOs''); and comments concerned with the confidential treatment of information provided as part of a resolution plan or credit exposure report. These comments are summarized below.

*i. Substantive Resolution Plan Requirements*

With respect to the resolution plan requirement, some commenters suggested that the resolution plan requirement adopt a ''principle-based'' approach with the specific content of each plan developed through the iterative supervisory process, and that the Agencies' review of each plan be tied to the scope and planning decided on between individual firms and the Agencies as part of that process. In contrast, another commenter suggested that the plans be very specific and operationally oriented; further suggesting that such plans should include, among other things, practice exercises to test readiness and detailed descriptions of actions to be taken to facilitate rapid and orderly resolution. Similarly, another commenter suggested that the final rule should provide detailed guidance regarding the strategic analysis, facilitate the creation of a structured data source for requested data, and adopt a submission framework to be used in the creation and review of the resolution plan. Commenters also suggested that the final rule draw a clear distinction between the limited resolution plan required by the Dodd-Frank Act and the broader resolution planning process that may be required as a prudential matter.

A number of commenters argued that insurance companies and other entities that are not subject to the Bankruptcy Code should be exempted from the resolution plan requirement, be allowed to file streamlined plans, or, where such companies are a part of a covered company, be excluded from such covered company's resolution plan. Others questioned how a resolution plan should address such entities. One commenter suggested that managers of money market funds should be excluded from the requirements of the proposed rule. Some commenters specifically requested that (i) The final resolution plan requirement reflect and conform to section 203(e) of the Dodd-Frank Act, which provides that any insurance company that is a covered financial company or a subsidiary thereof will be liquidated or rehabilitated under applicable state law; and (ii) the Agencies accept as a credible resolution plan an insurance company's statement of its intent to submit itself, or its insurance subsidiaries, to applicable state liquidation or rehabilitation regimes.

One commenter suggested that the scope of the final rule should go beyond bankruptcy and should explicitly address questions of legal jurisdiction and conflicting laws. This commenter argued that a resolution plan should be supported by a legal opinion addressing which law would apply to each of the covered company's material entities in the case of the covered company's resolution. On the other hand, another commenter requested that the final rule provide only that the resolution plan analyze how the continuing operations of a covered company's insured depository institutions can be adequately protected in connection with the resolution of the company under the Bankruptcy Code. Still another commenter suggested that resolution under the Bankruptcy Code was inconsistent with the requirement that a covered company's resolution plan adequately protect the company's insured depository institution from the risks arising from the activities of the company's nonbanks because the covered company cannot provide any assurances of what will happen in a bankruptcy proceeding and cannot provide special protection for a particular subsidiary in the bankruptcy process.

A number of comments expressed concern about the timing of the initial submission of a resolution plan. Commenters argued that the requirement to submit initial plans 180 days from the effective date of the final rule is too short. Instead, these commenters suggested that covered companies should have at least 270 days, 360 days, or 18 months after the effective date of the final rule to make their initial submissions. Commenters suggested that submissions of the resolution plan be phased in or staggered to allow firms sufficient time to prepare and collect the extensive information required as part of the plan. Another commenter suggested a pilot program that would apply first to the largest, most complex firms, rolling out the entire process on a staggered basis after experience is gained with the largest firms.

Commenters also criticized the proposed rule for not adjusting the complexity of the reporting requirements to match the differences among bank holding companies subject to the proposed rule. These commenters noted that covered banking organizations range from large, complex, highly interconnected organizations that have substantial nonbank and foreign operations to smaller, less complex organizations that are predominantly composed of one or more insured depository institutions, have few foreign operations, and fewer interconnections with other financial institutions. These commenters suggested that the final rule provide for a tailored resolution plan regime for smaller, less complex domestic bank holding companies.

Several commenters suggested that, given the lack of supervisory and market experience with resolution planning, the final rule should communicate the Board's and the Corporation's expectations for ''first generation'' resolution plans and should provide for meaningful feedback by the Agencies within the 60 day period the Agencies have to review an initial resolution plan. Commenters also noted that annual updates to the plan should not be due at the end of the first calendar quarter when firms have to meet other important reporting requirements. Commenters suggested that the timing of the annual update should be determined by agreement among the

[3] 76 FR 22,648 (April 22, 2011).

Board, the Corporation, and the covered company.

The proposed rule required interim updates to a resolution plan shortly after any material acquisition or similar event. One commenter argued that the requirement was not supported by the Dodd-Frank Act and should be excluded from the final rule. Other commenters suggested that, if the final rule required interim updates, such updates should be triggered by a ''fundamental change'' standard instead of the material change standard described in the proposed rule. Some commenters suggested that the size of events that trigger the update requirement be raised and the time period for filing the update be extended.

The proposal required that, within a reasonable amount of time after submitting its initial resolution plan, a firm demonstrate its capacity to promptly produce the data underlying the key aspects of its resolution plan. Commenters objected to this requirement indicating that it would be better addressed as part of the Board's and Corporation's ongoing review of the resolution-planning process conducted by individual firms, rather than as a regulatory requirement. Similarly, commenters suggested that any requirement related to data production capabilities be omitted from the final rule because such a requirement is better addressed as part of the Agencies' ongoing review of resolution planning by specific companies. Commenters also recommended that data required to be collected through various Dodd-Frank Act initiatives be coordinated to minimize redundant data collections. Other commenters recommended that covered companies' information technology systems be able to integrate and distribute essential structural and operational information on short notice to facilitate such companies' resolutions.

Some commenters objected to the requirement that multiple stress scenarios be addressed as part of the plan as burdensome and unworkable. The commenters suggested that the number of financial distress scenarios to be addressed in a covered company's resolution plan should be limited, with the specific number of scenarios to be agreed to between the covered company and the Agencies prior to the initial submission. Commenters also expressed concern about having to address a systemic stress scenario, which commenters considered more appropriately related to the Orderly Liquidation Authority in Title II of the Dodd-Frank Act.

Some commenters criticized the corporate governance requirement of the proposed rule. These commenters suggested that a covered company's corporate governance with regard to resolution planning, unless determined to be substantially defective in one or more respects, should be deemed to facilitate orderly resolution, as well as to be informationally complete and credible. Another commenter suggested that the corporate governance requirement should include requirements for consistently maintaining accurate asset valuations.

Commenters also noted the burdens nonbank financial companies will face. Where such firms have established an intermediate holding company (''IHC''), commenters asked that the resolution plan requirement apply only to the IHC. These commenters also suggested that nonbank financial firms be permitted to complete any restructuring involved in the establishment of their IHC before commencing resolution planning. Commenters also asserted that the requirement to provide an unconsolidated balance sheet and consolidating schedules was unduly burdensome, costly, and impracticable.

A number of commenters expressed concern about how the Board and the Corporation will determine whether a plan is not credible or deficient and the possible ramifications of such a determination. Some commenters requested clarification of the standards relevant to such a determination, and others suggested that these standards should be developed over time. Several commenters sought clarification of whether a covered company's board of directors (or its delegee in the case of a foreign-based covered company) is required to certify or confirm all the factual information contained in the company's resolution plan. One commenter asked whether an interim update involves the submission of an entire resolution plan or merely involves additional information describing the event triggering the update, any effects the event has on the plan, and the firm's actions to address such effects.

The Board and the Corporation were also asked to clarify the relationship that insolvency regimes other than bankruptcy bear on the preparation and assessment of a resolution plan. Commenters also asked the Agencies to confirm that the rule is not intended to restrain the covered companies from expanding through mergers, acquisitions, or diversification of their business; that the resolution plan is not meant to impose on firms the need to have duplicative capacity; and that the Agencies will take into account the companies' own cost-benefit analysis in connection with whether financial and human resources should be devoted to providing duplicative capacity.

Additionally, commenters noted that some key terms were not defined in the proposed rule. Several commenters suggested that the Agencies should develop the meaning of key terms in the final rule over time and through the supervisory process by issuing guidance, supervisory letters, or revised regulations. Other commenters specifically recommended definitions for certain key terms, including ''credible plan,'' ''rapid and orderly resolution,'' and ''material financial distress.'' Several commenters requested clarification of the term ''extraordinary support,'' and suggested that Federal Reserve Bank advances, Federal Home Loan Bank advances, and the use of the Deposit Insurance Fund not be considered extraordinary support under the regulation.

*ii. Substantive Credit Exposure Report Requirements*

Several commenters suggested that the provisions requiring credit exposure reports be postponed or re-proposed as part of the Board's forthcoming proposal to implement the single counterparty credit exposure limits established under section 165(e) of the Dodd-Frank Act. Other commenters suggested that the credit exposure reporting requirement be phased-in over a period of time. Commenters raised a variety of questions about the definitions proposed as part of the credit exposure report and about the timing, scope, and detail required by the proposal.

Some commenters noted that most of the information contained in the credit exposure report requirement is currently reported by insurance companies to state insurance commissioners on an annual basis, and suggested that the Board and the Corporation rely on these annual reports instead of requiring a separate credit exposure report from insurance companies.

One commenter indicated that the final rule should require covered companies to be able to report on their supply of liquidity to other firms and their dependence on other firms for liquidity, to estimate and report on the likely effect of their sales on the prices of major classes of assets, and to produce these reports within 24 hours notice, whether as part of the credit exposure report or separately.

*iii. Foreign Banking Organizations*

With respect to foreign based covered companies, some commenters suggested that the applicability of the resolution plan requirement be determined by

reference to U.S. assets of the foreign firm and not with respect to the consolidated worldwide assets of the foreign firm. Alternatively, these commenters suggested that a foreign banking organization (''FBO'') with less than $50 billion in U.S. total consolidated assets be subject to reduced or streamlined reporting, and that the rule should be tailored to take account of the risk posed by an FBO to U.S. financial stability by focusing on the FBO's U.S. structure and complexity, the size of its U.S. operations, and the extent of its interconnectedness in U.S. financial markets. Commenters requested that the submission deadline be extended for FBOs to allow more time for these organizations to complete a resolution plan.

Commenters suggested that the resolution plan requirement be aligned with other ongoing cross-border initiatives so as to avoid overlapping or inconsistent requirements for internationally active firms. Commenters also advocated for international cooperation in developing information-sharing arrangements, including coordination with or reliance on home-country resolution plans. One comment specifically asked for clarification concerning information sharing with foreign regulators and recommended consultation with a firm's appropriate home-country authority prior to making a credibility determination regarding the resolution plan or imposing sanctions pursuant to the rule. A commenter suggested that, for those firms with an established crisis management group, the resolution plans developed through that process be allowed to satisfy the section 165(d) resolution plan requirement.

Commenters asked the Agencies to clarify that any restrictions or requirements imposed pursuant to the rule would apply only to an FBO's U.S. activities, assets, and operations. In a banking organization with multiple covered companies, commenters sought clarification on whether the organization could submit one resolution plan or whether each covered company within such an organization had to submit a separate individualized resolution plan.

*iv. Confidentiality*

A frequent comment related to the confidentiality of resolution plans and credit exposure reports. Commenters argued that the information required to be included in resolution plans represented sensitive, confidential business information not otherwise available to the public, and the disclosure of which would significantly harm the competitiveness of reporting firms. Commenters expressed concern that the proposed rule did not provide a sufficient level of assurance that resolution plans and credit exposure reports submitted would be kept confidential, particularly in light of the disclosure requirements of the Freedom of Information Act (''FOIA'').[4] The commenters suggested the proposed rule acknowledge the applicability of certain FOIA exemptions. In particular, commenters expressed the view that information submitted in connection with the resolution plan and credit exposure report requirements should be treated as confidential supervisory information. Moreover, commenters suggested that the Board and the Corporation put in place procedures (either as part of the final rule or in guidance) to minimize the risk of leaks or inadvertent disclosures when information contained in the resolution plan and credit exposure report was shared among the covered company's regulators, including home-country supervisors.

The Board and the Corporation have carefully considered the comments and made appropriate revisions to the final rule as described below.

**III. Description of Final Rule**

The final rule applies to any bank holding company that has $50 billion or more in total consolidated assets, as determined based on the average of the company's four most recent Consolidated Financial Statements for Bank Holding Companies as reported on the Board's Form FR Y–9C. It also applies to any foreign bank or company that is, or is treated as, a bank holding company under section 8(a) of the International Banking Act of 1978[5] and that has $50 billion or more in total consolidated assets, as determined based on the average of the foreign bank's or company's four most recent quarterly Capital and Asset Reports for Foreign Banking Organizations as reported on the Board's Form FR Y–7Q (or, if applicable, its most recent annual Form Y–7Q). A bank holding company that becomes a ''covered company'' remains a ''covered company'' unless and until it has less than $45 billion in total consolidated assets, as determined based on the most recent annual or, as applicable, the average of the four most recent quarterly reports made to the Board. A covered company that has reduced its total consolidated assets to below $45 billion, as described above, would again become a covered company if it has total consolidated assets of $50 billion or more at a later date, as determined based on the relevant reports. A firm may fall in or out of the definition of a ''covered company'' because of fluctuations in its asset size. This situation necessarily disrupts the continuity of resolution planning and increases regulatory uncertainty and burden for many covered companies. The $45 billion threshold was added to facilitate continuity in resolution planning for covered companies and thereby reduce regulatory uncertainty and its associated cost. In a multi-tiered bank holding company structure, covered company means the top-tier legal entity of the multi-tiered holding company only.

In determining applicability of the final rule to foreign banks, the final rule considers a firm's world-wide consolidated assets, rather than only its U.S. assets. However, as described in more detail below, covered companies (including foreign banks) with relatively small nonbanking operations in the U.S. are permitted to file tailored reports with reduced information requirements. Given the foregoing, the resolution plan of a foreign-based company that has limited assets or operations in the United States would be significantly limited in its scope and complexity. Moreover, the nature and extent of the home country's related crisis management and resolution planning requirements for the foreign-based company also will be considered as part of the Agencies' resolution plan review process.[6]

In addition, the final rule applies to any nonbank financial company that the Council has determined under section 113 of the Dodd-Frank Act[7] must be supervised by the Board and for which such determination is in effect.

Under the proposal, a firm would also have been required to submit a quarterly report on its credit exposure to other ''significant'' bank holding companies and financial firms, as well as their credit exposure to the firm. As noted above, commenters expressed significant concerns about the clarity of key definitions and the scope of the bi-directional and intraday reporting

[4] 5 U.S.C. 552(b).

[5] 12 U.S.C. 3106(a).

[6] The Dodd-Frank Act requires that, in applying the requirements of section 165(d) to any foreign nonbank financial company supervised by the Board or any foreign-based company, the Board give due regard to the principle of national treatment and equality of competitive opportunity, and take into account the extent to which the foreign-based financial company is subject on a consolidated basis to home country standards that are comparable to those applied to financial companies in the United States. 12 U.S.C. 5365(b)(2).

[7] 12 U.S.C. 5323.

requirement of the proposal and suggested that the credit exposure report requirement be considered in conjunction with the proposal to implement the Dodd-Frank Act's single counterparty credit exposure limit.

The Board and the Corporation believe that robust reporting of a covered company's credit exposures to other significant bank holding companies and financial companies is critical to ongoing risk management by covered companies, as well as to the Board's ongoing supervision of covered companies and the Corporation's responsibility to resolve covered companies, as appropriate. However, the Agencies also recognize that these reports would be most useful and complete if developed in conjunction with the Dodd-Frank Act's single counterparty credit exposure limits. Accordingly, the Board and Corporation are not at this time finalizing the credit exposure reporting requirement and will coordinate development of these reports with the single counterparty credit exposure limits.

*Section-by-Section Analysis*

*Definitions.* Section ____.2 of the final rule defines certain terms, including ''rapid and orderly resolution,'' ''material financial distress,'' ''core business lines,'' ''critical operations,'' and ''material entities,'' which are key definitions in the final rule.

''Rapid and orderly resolution'' means a reorganization or liquidation of the covered company (or, in the case of a covered company that is incorporated or organized in a jurisdiction other than the United States, the subsidiaries and operations of such foreign company that are domiciled in the United States) under the Bankruptcy Code that can be accomplished within a reasonable period of time and in a manner that substantially mitigates the risk that the failure of the covered company would have serious adverse effects on financial stability in the United States.[8] Under the final rule, each resolution plan submitted should provide for the rapid and orderly resolution of the covered company. The final rule does not specifically define or limit this time period in recognition that a reasonable period for resolution will depend on the size, complexity, and structure of the firm.

''Material financial distress'' with regard to a covered company means that: (i) The covered company has incurred, or is likely to incur, losses that will deplete all or substantially all of its capital, and there is no reasonable prospect for the company to avoid such depletion; (ii) the assets of the covered company are, or are likely to be, less than its obligations to creditors and others; or (iii) the covered company is, or is likely to be, unable to pay its obligations (other than those subject to a bona fide dispute) in the normal course of business. Under the final rule, each resolution plan should provide for the rapid and orderly resolution of the covered company in the event of material financial distress or failure of the covered company.

''Core business lines'' means those business lines, including associated operations, services, functions and support that, in the firm's view, upon failure would result in a material loss of revenue, profit, or franchise value. The resolution plan should address how the resolution of the covered company will affect the core business lines.

''Critical operations'' are those operations, including associated services, functions and support the failure or discontinuance of which, in the view of the covered company or as jointly directed by the Board and the Corporation, would pose a threat to the financial stability of the United States. This definition is revised from the proposal to provide greater clarity as to which of a firm's operations would be deemed a ''critical operation.'' Initially defined as operations that, upon failure or discontinuance, ''would likely result in a disruption to the U.S. economy or financial markets,'' the Board and the Corporation revised this definition to more closely reflect the purpose of section 165 of the Dodd-Frank Act, *i.e.,* ''to prevent or mitigate risks to the financial stability of the United States.''[9] The revised definition clarifies that the threshold of significance for a disruption to U.S. financial stability resulting from the failure or discontinuance of a critical operation must be severe enough to pose a threat to the financial stability of the United States. For example, a critical operation of a covered company would include an operation, such as a clearing, payment, or settlement system, which plays a role in the financial markets for which other firms lack the expertise or capacity to provide a ready substitute. The resolution plan should address and provide for the continuation and funding of critical operations.

''Material entity'' means a subsidiary or foreign office of the covered company that is significant to the activities of a critical operation or core business line.

*Informational content of a resolution plan.* Section ____.4 of the final rule sets forth the general informational content requirements of a resolution plan. A covered company that is domiciled in the United States is required to provide information with regard to both its U.S. operations and its foreign operations. A foreign-based covered company is required to provide information regarding its U.S. operations, an explanation of how resolution planning for its U.S. operations is integrated into the foreign-based covered company's overall contingency planning process, and information regarding the interconnections and interdependencies among its U.S. operations and its foreign-based operations.

Under the final rule, a resolution plan is required to contain an executive summary, a strategic analysis of the plan's components, a description of the covered company's corporate governance structure for resolution planning, information regarding the covered company's overall organizational structure, information regarding the covered company's management information systems, a description of interconnections and interdependencies among the covered company and its material entities, and supervisory and regulatory information.

The executive summary must summarize the key elements of the covered company's strategic plan, material changes from the most recently filed plan, and any actions taken by the covered company to improve the effectiveness of the resolution plan or remediate, or otherwise mitigate, any material weaknesses or impediments to the effective and timely execution of the plan.

Under the final rule, each resolution plan submitted must also describe the firm's strategy for the rapid and orderly resolution of the covered company in the event of material financial distress or failure of the covered company. This strategic analysis should detail how, in practice, the covered company could be resolved under the Bankruptcy Code. The strategic analysis should also include the analytical support for the plan and its key assumptions, including any assumptions made concerning the economic or financial conditions that would be present at the time the covered company sought to implement such plan.

The Board and Corporation recognize the burden associated with developing an initial resolution plan as well as establishing the processes, procedures, and systems necessary to annually, or as otherwise appropriate, update a resolution plan. While an organization's

[8] If a covered company is subject to an insolvency regime other than the Bankruptcy Code, the analysis should be in reference to that regime.

[9] *See* 12 U.S.C. 5365(a)(1).

initial resolution plan must include all informational elements required under this final rule, the Board and Corporation (as noted above) expect the process of submission and review of the initial resolution plan iterations to include an ongoing dialogue with firms. In developing their initial resolution plans, covered companies should therefore focus on the key elements of a resolution plan, including identifying critical and core operations, developing a robust strategic analysis, and identifying and describing the interconnections and interdependencies among material entities. To the extent practicable, covered companies should—with respect to the initial resolution plan—try to leverage off of and incorporate information already reported to the Board or Corporation or already publicly-disclosed, *e.g.,* in securities or other similar filings.

The final rule specifies the minimum content of a resolution plan. The Board and the Corporation recognize that plans will vary by company and, in their evaluation of plans, will take into account variances among companies in their core business lines, critical operations, foreign operations, capital structure, risk, complexity, financial activities (including the financial activities of their subsidiaries), size, and other relevant factors. The resolution plans of more complex covered companies will be more complex and require information that may not be relevant for smaller, less complex covered companies. For example, a less complex covered company that does not engage in a material number or value amount of trades will not be required to address that component of the resolution plan, while a more complex covered company may require an extensive discussion of systems in which it conducts trading operations and how those systems map to material entities, critical operations and core business lines. To the extent an informational element is not applicable or the covered company does not engage in the activity relevant to such informational element to a material extent, then a covered company should indicate such in its resolution plan and is not required to provide other information with regard to that informational element.

Several commenters requested clarification of a provision in the proposal that required that the firm's resolution plan not rely on the provision of extraordinary support of the United States or any other government to the covered company or its subsidiaries to prevent the failure of the covered company. The provision is intended to prohibit the covered company from assuming in its resolution plan that the United States or any other government will provide the covered company funding or capital other than in the ordinary course of business.

A resolution plan must be sensitive to the economic conditions at the time the plan is triggered. To assist in establishing the assumptions for the economic conditions triggering a resolution plan, the Agencies propose referencing conditions developed pursuant to Section 165(i)(1) of the Dodd-Frank Act.[10] Under that section, the Board, in coordination with the appropriate primary financial regulatory agencies and the Federal Insurance Office, will conduct annual stress tests of covered companies. As part of that exercise, the Board expects to provide covered companies with different sets of economic conditions under which the evaluation will be conducted: Baseline, adverse, and severely adverse economic conditions. For its initial resolution plan, a covered company may assume that failure would occur under the baseline economic scenario, or, if a baseline scenario is not then available, a reasonable substitute developed by the covered company. Subsequent iterations of a covered company's resolution plan should assume that the failure of the covered company will occur under the same economic conditions consistent with the Board's final rule implementing Section 165(i)(1).

The strategic analysis should include detailed information as to how, in the event of material financial distress or failure of the covered company, a reorganization or liquidation of the covered company (or, in the case of a covered company that is incorporated or organized in a jurisdiction other than the United States, the subsidiaries and operations of such foreign company that are domiciled in the United States) under the Bankruptcy Code could be accomplished within a reasonable period of time and in a manner that substantially mitigates the risk that the failure of the covered company would have serious adverse effects on financial stability in the United States. The strategic analysis of the covered company's resolution plan must also identify the range of options and specific actions to be taken by the covered company to facilitate a rapid and orderly resolution of the covered company, its material entities, critical operations, and core business lines in the event of its material financial distress or failure.

Funding, liquidity, support functions, and other resources, including capital resources, should be identified and mapped to the covered company's material entities, critical operations, and core business lines. The covered company's strategy for maintaining and funding the material entities, critical operations, and core business lines in an environment of material financial distress and in the implementation and execution of its resolution plan should be provided and mapped to its material entities. The covered company's strategic analysis should demonstrate how such resources would be utilized to facilitate an orderly resolution in an environment of material financial distress. The covered company should also provide its strategy in the event of a failure or discontinuation of a material entity, critical operation, or core business line and the actions that will be taken by the covered company to prevent or mitigate any adverse effects of such failure or discontinuation on the financial stability of the company and the United States.

The final rule designates a subsidiary that conducts core business lines or critical operations of the covered company as a ''material entity.'' When the covered company utilizes a material entity and that material entity is subject to the Bankruptcy Code, then a resolution plan should assume the failure or discontinuation of such material entity and provide both the covered company's and the material entity's strategy, and the actions that will be taken by the covered company to prevent or mitigate any adverse effects of such failure or discontinuation on the financial stability of the United States.

A number of commenters asked how this discussion of strategy was to be applied when a major subsidiary was not subject to the Bankruptcy Code, but rather to another specialized insolvency regime, such as the FDI Act, state liquidation regimes for state-licensed uninsured branches and agencies of foreign banks, the International Banking Act of 1978 for federally licensed branches and agencies, foreign insolvency regimes, state insolvency regimes for insurance companies, or the Securities Investor Protection Act applicable to broker-dealers. Recognizing many of the challenges that may be posed by such a requirement if a material entity is subject to an insolvency regime other than the Bankruptcy Code, the final rule provides that a covered company may limit its strategic analysis with respect to a material entity that is subject to an insolvency regime other than the

[10] 12 U.S.C. 5365(i).

Bankruptcy Code to a material entity that either has $50 billion or more in total assets or conducts a critical operation. Any such analysis should be in reference to that applicable regime. Thus, for example, if a covered company owns a national bank with $50 billion or more in total consolidated assets, the resolution plan of the covered company should assume the resolution of the bank under the FDI Act and the actions that will be taken by the covered company to prevent or mitigate any adverse effects of such failure or discontinuation on the financial stability of the United States.

Under a separate rulemaking, the Corporation is requiring insured depository institutions with total assets of $50 billion or more to develop their own strategies to facilitate a resolution under the FDI Act.[11] The Corporation's rulemaking is intended to complement the final rule and, together with the final rule, provide for comprehensive and coordinated resolution planning for both the insured depository institution and its parent holding company and affiliates in the event that an orderly liquidation is required.

The resolution plan must also describe the covered company's strategy for ensuring that its insured depository institution subsidiary will be adequately protected from risks arising from the activities of any nonbank subsidiaries of the covered company (other than those that are subsidiaries of an insured depository institution). This requirement is a specific statutory requirement and is applicable only to insured depository institutions and is not applicable to other types of regulated subsidiaries.[12]

Under the final rule, the description of the covered company's corporate governance structure for resolution planning should include information regarding how resolution planning is integrated into the corporate governance structure and processes of the covered company. It must also identify the senior management official who is primarily responsible for overseeing the development, maintenance, implementation, and filing of the resolution plan and for the covered company's compliance with the final rule. The requirements in the final rule are minimums and the corporate governance structure is expected to vary based upon the size and complexity of the covered company. For the largest and most complex companies, it may be necessary to establish a central planning function that is headed by a senior management official. Such official could report to the Chief Risk Officer or Chief Executive Officer and periodically report on resolution planning to the covered company's board of directors.

The information regarding the covered company's overall organizational structure and related information should include a hierarchical list of all material entities, with jurisdictional and ownership information. This information should be mapped to core business lines and critical operations. The proposal would have required each covered company to provide its unconsolidated balance sheet and a consolidating schedule for all entities that are subject to consolidation by the covered company. However, in response to commenters' concerns, the Board and Corporation revised the final rule to require only an unconsolidated balance sheet for the covered company, together with a consolidating schedule for all material entities that are subject to consolidation. Amounts attributed to entities that are not material entities may be aggregated on the consolidating schedule.

Under the final rule, the resolution plan should include information regarding material assets, liabilities, derivatives, hedges, capital and funding sources, and major counterparties. Material assets and liabilities should be mapped to material entities along with location information. An analysis of whether the bankruptcy of a major counterparty would likely have an adverse effect on and result in the material financial distress or failure of the covered company should also be included. Trading, payment, clearing, and settlement systems utilized by the covered company should be identified. The covered company would not need to identify trading, payment, clearing, and settlement systems that are immaterial in resolution planning, such as a local check clearing house.

For a U.S.-based covered company with foreign operations, the plan should identify the extent of the risks to the U.S. operations of the firm related to its foreign operations and the covered company's strategy for addressing such risks. These elements of the resolution plan should take into consideration the complications created by differing national laws, regulations, and policies. This analysis should include a mapping of core business lines and critical operations to legal entities operating in or with assets, liabilities, operations, or service providers in foreign jurisdictions. The continued ability to maintain core business lines and critical operations in these foreign jurisdictions during material financial distress and insolvency proceedings should be evaluated and steps identified to address weaknesses or vulnerabilities.

The final rule requires the covered company to provide information regarding the management information systems supporting its core business lines and critical operations, including information regarding the legal ownership of such systems as well as associated software, licenses, or other associated intellectual property. The analysis and practical steps that are identified by the covered company should address the continued availability of the key management information systems that support core business lines and critical operations both within the United States and in foreign jurisdictions.

The final rule requires the resolution plan to include a description of the capabilities of the covered company's management information systems to collect, maintain, and report, in a timely manner to management of the covered company and to the Board, the information and other data underlying the resolution plan. Moreover, the resolution plan must also identify the deficiencies, gaps, or weaknesses in those capabilities of the covered company's management information systems and describe the actions the covered company plans to undertake, including the associated timelines for implementation, to promptly address such deficiencies, gaps, or weaknesses. The Board will use its examination authority to review the demonstrated capabilities of each covered company to satisfy these requirements, and will share with the Corporation information regarding the capabilities of the covered company to collect, maintain, and report in a timely manner information and data underlying the resolution plan.

The final rule also requires the covered company to provide a description of the interconnections and interdependencies among the covered company and its material entities and affiliates, and among the critical operations and core business lines of the covered company that, if disrupted, would materially affect the funding or operations of the covered company, its material entities, its critical operations, or core business lines. As noted above, the continued availability of key services and supporting business operations to core business lines and critical operations in an environment of

[11] *See* Special Reporting, Analysis and Contingent Resolution Plans at Certain Large Insured Depository Institutions, 75 FR 27,464 (May 17, 2010) (to be codified at 12 CFR part 360). On September 13, 2011, the Corporation approved an interim final rule to implement this requirement. The Corporation's rule is available at: *http://fdic.gov/news/news/press/2011/pr11150.html.*

[12] 12 U.S.C. 5365(d)(1)(A).

material financial distress and after insolvency should be a focus of resolution planning. Steps to ensure that service level agreements for such services, whether provided by internal or external service providers, survive insolvency should be demonstrated in the resolution plan.

The plan should identify the covered company's supervisory authorities and regulators, including information identifying any foreign agency or authority with significant supervisory authority over material foreign-based subsidiaries or operations.

Section 165(d) applies to a number of companies that operate predominately through one or more insured depository institutions. As discussed above, several commenters argued that the rule should make allowances for the significant differences in complexity and structure among the various bank holding companies subject to the rule. Commenters recommended that the Board and Corporation modify the final rule to provide for a tailored resolution plan regime for smaller, less complex bank holding companies and foreign banking organizations.

In response to these comments, the Board and Corporation have tailored the resolution plan requirement applicable to smaller, less complex bank holding companies and foreign banking organizations in order to focus the content and analysis of such an organization's resolution plan on the nonbanking operations of the organization, and the interconnections between the nonbanking operations and the insured depository institution operations of the covered company.

For covered companies with less than $100 billion in total nonbank assets that predominately operate through one or more insured depository institutions, *i.e.,* the company's insured depository institution subsidiaries comprise at least 85 percent of its total consolidated assets (or, in the case of a foreign-based covered company, the assets of the U.S. depository institution operations, branches, and agencies of which comprise 85 percent or more of the company's U.S. total consolidated assets), the Board and Corporation have tailored the resolution plan requirements to focus on the nonbank operations of the covered company. Specifically, a firm meeting the above criteria, and not otherwise excluded or directed by the Board and Corporation to submit a standard resolution plan, shall in its resolution plan identify and describe interconnections and interdependencies pursuant to § [—].4(g) and provide the contact information required under § [—].4(i) with respect to the entire organization. Such resolution plan must also include the remaining resolution plan elements, *i.e.,* the strategic analysis, organizational structure, description of management information systems, and the other content specified in § [—].4(c) through § [—].4(f) and § [—].4(h), only with respect to the covered company's nonbanking operations. Importantly, with respect to the information concerning interconnections and interdependencies, the resolution plan must describe in detail, and map to legal entity the interconnections and interdependencies among the nonbanking operations as well as between the nonbanking operations and the insured depository institution operations of the covered company.

Covered companies with more than $100 billion in nonbank assets are not eligible to submit the type of plan described above, regardless of whether their operations satisfy the 85 percent criterion described above. Under the final rule, the Board and Corporation may determine that a firm that would otherwise meet the prerequisites for submitting a tailored plan must nonetheless submit the full resolution plan.

*Resolution plans required.* Section ____.3 of the proposed rule required each covered company to submit a resolution plan within 180 days of the effective date of the final rule, or within 180 days of such later date as the company becomes a covered company. Several commenters suggested that, given the limited resources of the Board and the Corporation to review resolution plans and the industry's desire for additional time to prepare resolution plans, the timing for submission of plans should be staggered.

Under the final rule, firms will be required to file resolution plans in three groups with a staggered schedule. The first group comprises the largest, most complex covered companies, *i.e.,* any covered company that has $250 billion or more in total nonbank assets (or, in the case of a foreign-based covered company, $250 billion or more in total U.S. nonbank assets). Covered companies in this first group must submit their initial resolution plans no later than July 1, 2012.

Firms in the second group of covered companies must submit their initial resolution plans no later than July 1, 2013. This second group consists of covered companies with $100 billion or more in nonbank assets (or, in the case of a foreign-based covered company, $100 billion or more in total U.S. nonbank assets).

The third and final group consists of the remaining covered companies, *i.e.,* covered companies with less than $100 billion in nonbank assets (or, in the case of a foreign-based covered company, in total U.S. nonbank assets). Covered companies in this third group are required to file their initial resolution plans on or before December 31, 2013. The above phase-in schedule generally applies to any company that is a covered company as of the effective date.

A company that becomes a covered company after the effective date of this final rule, *e.g.,* a company the Council has designated for supervision by the Board or a bank holding company that grows, organically or by merger or acquisition, over the $50 billion threshold, must submit its resolution plan by the next July 1 following the date the company becomes a covered company, provided such date is at least 270 days after the date the company becomes a covered company. The final rule permits the Board and Corporation to jointly determine that a covered company must submit its initial resolution plan earlier or later than provided for in the final rule.

The Agencies have also revised the requirements for updating the resolution plan. After the initial resolution plan is submitted, each covered company is required to submit an updated resolution plan annually on or before the anniversary date of the date for submission of its initial plan.

This annual filing provides a regular opportunity for firms to update their resolution plans to reflect structural changes, acquisitions, and sales. Moreover, the Agencies expect that firms will integrate resolution planning into their business operations. Accordingly, the final rule no longer requires that a resolution plan be updated automatically upon the occurrence of a restructuring, acquisition, or sale. Instead, the final rule requires that a firm update its next annual resolution plan after the occurrence of a material event, such as a restructuring, acquisition, or sale. The final rule also requires the firm to file a simple notice with the Board and the Corporation that such an event has occurred. That notice must be provided within a time period specified by the Board and the Corporation, but no later than 45 days after any event, occurrence, change in conditions or circumstances or other change that results in, or could reasonably be foreseen to have, a material effect on the resolution plan of the covered company. The final rule requires such notice to summarize why the event, occurrence,

or change may require changes to the resolution plan.

The Board and the Corporation jointly may waive a requirement that a covered company file a notice following a material event. The Board and the Corporation jointly may also require an update for any other reason, more frequent submissions or updates, and may extend the time period that a covered company has to submit its resolution plan or notice following a material event.

Like the proposal, the final rule requires that a covered company provide the Board and the Corporation information and access to its personnel necessary for the Board and Corporation to assess the resolution plan during the period for reviewing the resolution plan as provided for under the final rule. The Board and the Corporation must rely to the fullest extent possible on examinations conducted by or on behalf of the appropriate Federal banking agency for the relevant company.

The involvement of a firm's board of directors is critical to adequate resolution planning. Under both the proposed and final rules, the board of directors of the covered company is required to approve the initial resolution plans and each annual resolution plan. In the case of a foreign-based covered company, a delegee of the board of the directors of such organization may approve the initial resolution plan and any updates to a resolution plan. For a U.S. domiciled company, the board of directors must approve the resolution plan in accordance with the procedures applicable to other documents of strategic importance. The rule does not require the board of directors to make an attestation regarding the resolution plan.

*Review of resolution plans; resubmission of deficient resolutions plans.* Several commenters requested changes in the process and procedures for reviewing resolution plans set forth in the proposed rule. The Board and the Corporation will work closely with covered companies and, as applicable, other authorities, in the development of a firm's resolution plan and are dedicating staff for that purpose. The Board and the Corporation expect the review process to evolve as covered companies gain more experience in preparing their resolution plans. The Board and the Corporation recognize that resolution plans will vary by company and, in their evaluation of plans, will take into account variances among companies in their core business lines, critical operations, domestic and foreign operations, capital structure, risk, complexity, financial activities (including the financial activities of their subsidiaries), size, and other relevant factors. Because each resolution plan is expected to be unique, the Board and the Corporation encourage covered companies to ask questions and, if so desired, to arrange a meeting with the Board and the Corporation. There is no expectation by the Board and the Corporation that the initial resolution plan iterations submitted after this rule takes effect will be found to be deficient, but rather the initial resolution plans will provide the foundation for developing more robust annual resolution plans over the next few years following that initial period.

Section ____ .5 of the final rule sets forth procedures regarding the review of resolution plans. When a covered company submits a resolution plan, the Board and Corporation will preliminarily review a resolution plan for informational completeness within 60 days. If the Board and the Corporation determine that a resolution plan is informationally incomplete or that substantial additional information is necessary to facilitate further review, the Board and the Corporation will inform the covered company in writing of the area(s) in which the resolution plan is informationally incomplete or with respect to which additional information is required. The covered company will be required to resubmit an informationally complete resolution plan, or such additional information as jointly requested to facilitate review of the resolution plan, no later than 30 days after receiving such notice or such other time period as the Board and Corporation may jointly determine.

The Board and Corporation will review each resolution plan for its compliance with the requirements of the final rule. If, following such review, the Board and the Corporation jointly determine that the resolution plan of a covered company submitted under this part is not credible or would not facilitate an orderly resolution of the covered company under the Bankruptcy Code, the Board and Corporation will jointly notify the covered company in writing of such determination. Such notice will identify the aspects of the resolution plan that the Board and Corporation jointly determined to be deficient and request the resubmission of a resolution plan that remedies the deficiencies of the resolution plan.

Within 90 days of receiving such notice of deficiencies, or such shorter or longer period as the Board and Corporation may jointly determine, a covered company will be required to submit a revised resolution plan to the Board and Corporation that addresses the deficiencies jointly identified by the Board and Corporation. The revised resolution plan will be required to discuss in detail: (i) The revisions made by the covered company to address the deficiencies jointly identified by the Board and the Corporation; (ii) any changes to the covered company's business operations and corporate structure that the covered company proposes to undertake to facilitate implementation of the revised resolution plan (including a timeline for the execution of such planned changes); and (iii) why the covered company believes that the revised resolution plan is credible and would result in an orderly resolution of the covered company under the Bankruptcy Code.

Upon their own initiative or a written request by a covered company, the Board and Corporation may jointly extend any time for review and submission established hereunder. Any extension request should be supported by a written statement of the company describing the basis and justification for the request.

*Failure to cure deficiencies on resubmission of a resolution plan.* Section ____ .6 of the final rule provides that, if the covered company fails to submit a revised resolution plan or the Board and the Corporation jointly determine that a revised resolution plan submitted does not adequately remedy the deficiencies identified by the Board and the Corporation, then the Board and Corporation may jointly subject a covered company or any subsidiary of a covered company to more stringent capital, leverage, or liquidity requirements or restrictions on growth, activities, or operations. Any such requirements or restrictions would apply to the covered company or subsidiary, respectively, until the Board and the Corporation jointly determine the covered company has submitted a revised resolution plan that adequately remedies the deficiencies identified. In addition, if the covered company fails, within the two-year period beginning on the date on which the determination to impose such requirements or restrictions was made, to submit a revised resolution plan that adequately remedies the deficiencies jointly identified by the Board and the Corporation, then the Board and Corporation, in consultation with the Council, may jointly, by order, direct the covered company to divest such assets or operations as the Board and Corporation jointly determine necessary to facilitate an orderly resolution of the covered company under the Bankruptcy Code in the event the company were to fail.

*Consultation.* Section ____ .7 of the final rule provides that, prior to issuing any notice of deficiencies, determining to impose requirements or restrictions on a covered company, or issuing a divestiture order with respect to a covered company that is likely to have a significant effect on a functionally regulated subsidiary or a depository institution subsidiary of the covered company, the Board shall consult with each Council member that primarily supervises any such subsidiary and may consult with any other federal, state, or foreign supervisor as the Board considers appropriate.

*No limiting effect or private right of action; confidentiality of resolution plans.* Section ____ .8 of the final rule provides that a resolution plan submitted shall not have any binding effect on: (i) A court or trustee in a proceeding commenced under the Bankruptcy Code; (ii) a receiver appointed under Title II of the Dodd-Frank Act (12 U.S.C. 5381 *et seq.*); (iii) a bridge financial company chartered pursuant to 12 U.S.C. 5390(h); or (iv) any other authority that is authorized or required to resolve a covered company (including any subsidiary or affiliate thereof) under any other provision of federal, state, or foreign law.

The final rule further provides that nothing in the rule would create or is intended to create a private right of action based on a resolution plan prepared or submitted under this part or based on any action taken by the Board or the Corporation with respect to any resolution plan submitted under this part.

Most commenters requested that the resolution plans be treated as exempt from disclosure under FOIA. The Board and the Corporation are aware of and sensitive to the significant concerns regarding confidentiality of resolution plans. The regulation contemplates and requires the submission of highly detailed, internal proprietary information of covered companies. This is the type of information that covered companies would not customarily make available to the public and that an agency typically would have access to and could review as part of the supervisory process in assessing, for example, the safety and soundness of a regulated institution. Moreover, release of this information would impede the quality and extent of information provided by covered companies and could significantly impact the efforts of the Board and the Corporation to encourage effective and orderly unwinding of the covered companies in a crisis.

Under section 112(d)(5)(A) of the Dodd-Frank Act, the Board and the Corporation ''shall maintain the confidentiality of any data, information, and reports submitted under'' Title I (which includes section 165(d), the authority this regulation is promulgated under) of the Dodd-Frank Act. The Board and the Corporation will assess the confidentiality of resolution plans and related material in accordance with applicable exemptions under FOIA and the Board's and the Corporation's implementing regulations (12 CFR part 261 (Board); 12 CFR part 309 (Corporation)). The Board and the Corporation certainly expect that large portions of the submissions will contain or consist of ''trade secrets and commercial or financial information obtained from a person and privileged or confidential'' and information that is ''contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions.'' This information is subject to withholding under exemptions 4 and 8 of the FOIA, 5 U.S.C. 552(b)(4) and 552(b)(8).

The Board and the Corporation also recognize, however, that the regulation calls for the submission of details regarding covered companies that are publicly available or otherwise are not sensitive and should be made public.

In order to address this, the regulation requires resolution plans to be divided into two portions: a public section and a confidential section. The public section of the resolution plan should consist of an executive summary of the resolution plan that describes the business of the covered company and includes, to the extent material to an understanding of the covered company: (i) The names of material entities; (ii) a description of core business lines; (iii) consolidated or segment financial information regarding assets, liabilities, capital and major funding sources; (iv) a description of derivative activities and hedging activities; (v) a list of memberships in material payment, clearing, and settlement systems; (vi) a description of foreign operations; (vii) the identities of material supervisory authorities; (viii) the identities of the principal officers; (ix) a description of the corporate governance structure and processes related to resolution planning; (x) a description of material management information systems; and (xi) a description, at a high level, of the covered company's resolution strategy, covering such items as the range of potential purchasers of the covered company, its material entities and core business lines. While the information in the public section of a resolution plan should be sufficiently detailed to allow the public to understand the business of the covered company, such information can be high level in nature and based on publicly available information.

The public section will be made available to the public in accordance with the Board's Rules Regarding Availability of Information (12 CFR part 261) and the Corporation's Disclosure of Information Rules (12 CFR part 309).

A covered company should submit a properly substantiated request for confidential treatment of any details in the confidential section that it believes are subject to withholding under exemption 4 of the FOIA. In addition, the Board and the Corporation will make formal exemption and segregability determinations if and when a plan is requested under the FOIA.

*Enforcement.* Section ____ .9 of the final rule provides that the Board and Corporation may jointly enforce an order jointly issued under section ____ .6(a) or ____ .6(c) of the final rule. Furthermore, the Board, in consultation with the Corporation, may address any violation of the rule by a covered company under section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818).

## V. Administrative Law Matters

### *A. Paperwork Reduction Act Analysis*

In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Board may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (''OMB'') control number. The Board reviewed the final rule under the authority delegated to the Board by OMB. The OMB control number for these information collections will be assigned.

Two commenters expressed concern about the Paperwork Reduction Act analysis published as part of the proposed rule, and noted that the Board and Corporation omitted nonbank financial companies designated by the Council for enhanced supervision by the Board from that analysis. While the final rule applies to any nonbank financial company supervised by the Board, no such covered company exists because the Council has, to date, not designated any such company for enhanced supervision by the Board. However, the Board expects that the amount of burden the final rule would impose on a nonbank financial company designated by the Council to be similar

to the amount of burden estimated for other covered companies.

One commenter stated that the cost-benefit analysis of the proposed rule significantly underestimated the time, effort, and expense associated with compliance. The Board notes that several of the changes described in the Supplementary Information reduce the burden associated with the final rule, particularly for smaller, less complex covered companies. Specifically, the final rule streamlines the resolution plan requirement applicable to covered companies that operate predominately through one or more insured depository institutions (or, in the case of foreign banking organizations subject to the rule, U.S. insured depository institutions, branches, and agencies). The information required under a tailored plan is generally limited to information regarding the nonbanking operations of the company and the interconnections between the bank and nonbank operations of the company, rather than its entire operations.

*Title of Information Collection:* Resolution Plans Required.

*Frequency of Response:* Varied—annually, semiannually, and event-generated.

*Affected Public:* The final rule applies to bank holding companies and foreign banking organizations with total consolidated assets of $50 billion or more, and nonbank financial companies designated by the Council for enhanced supervision by the Board.

*Abstract:* The information collection requirements of the final rule are found in sections [—].3, [—].4, and [—].5 of the final rule. Specifically, as explained in the Supplemental Information, section [—].3 sets forth a staggered schedule for submission of initial resolution plans by covered companies, and requires covered companies to annually submit an updated resolution plan on the anniversary of the initial submission date. Section [—].3 of the final rule establishes a requirement that a covered company provide notice to the Board and Corporation of material events that have the potential to impact its resolution plan.

Section [—].4 of the final rule describes the required informational content of both a full resolution plan and the tailored resolution plan available to smaller, less complex covered companies. In providing organizational structure information required in section [—].4, a covered company may rely on the information it previously reported to the Board (FR Y–6, Annual Report of Bank Holding Companies; FR Y–7, Annual Report of Foreign Banking Organizations; and FR Y–10, Report of Changes in Organizational Structure; OMB No. 7100–0297).

Under section [—].5 of the final rule, a covered company is required to resubmit an informationally complete resolution plan or additional information as jointly requested by the Board and Corporation to facilitative review of the covered company's resolution plan within 30 days of receiving notice that its resolution plan is deemed incomplete. Section [—].5 of the final rule also requires that, if the Board and Corporation jointly determine that a resolution plan of a covered company is not credible, a covered company must resubmit a revised plan within 90 days of receiving notice that its resolution plan is deemed deficient. A covered company may also submit a written request for an extension of time to resubmit additional information or a revised resolution plan. As noted in the Supplemental Information, the Board and the Corporation will, in a manner consistent with the Dodd-Frank Act, assess the confidentiality of resolution plans and related material in accordance with applicable exemptions under FOIA and the Board's and the Corporation's implementing regulations (12 CFR part 261 (Board); 12 CFR part 309 (Corporation)).

These requirements would implement the resolution plan requirement set forth in section 165(d)(1) of the Dodd-Frank Act. Since the Board supervises all of the respondents, the Board will take the entire paperwork burden associated with this information collection.

Estimated Burden

The burden associated with this collection of information may be summarized as follows:

*Number of Respondents:* Resolution Plan (Tailored Reporters): 104; Resolution Plan (Full Reporters): 20; Notice of Material Change: 3; Additional Information and Extension Requests: 24.

*Estimated Average Hours per Response (Initial Implementation):* Resolution Plan (Tailored Reporters): 4,500 hours; Resolution Plan (Full Reporters): 9,200 hours; Additional Information Requests: 1,000 hours.

*Estimated Average Hours per Response (Ongoing):* Resolution Plan (Tailored Reporters): 1,000 hours; Resolution Plan (Full Reporters): 2,561 hours; Notice of Material Change: 20 hours; Extension Requests: 1 hour.

*Total Estimated Annual Burden:* 700,000 hours for initial implementation and 155,304 hours on an ongoing basis.

The Agencies have a continuing interest in the public's opinions of collections of information. At any time, comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, may be sent to: Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551; and to the Office of Management and Budget, Paperwork Reduction Project (7100–NEW), Washington, DC 20503.

*B. Regulatory Flexibility Act Analysis*

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (''RFA''), requires each Federal agency to prepare a final regulatory flexibility analysis in connection with the promulgation of a final rule, or certify that the final rule will not have a significant economic impact on a substantial number of small entities.[13] Based on the analysis and for the reasons stated below, the Corporation certifies that this final rule will not have a significant economic impact on a substantial number of small entities. The Board believes that the final rule will not have a significant economic impact on a substantial number of small entities, but nonetheless is conducting the Regulatory Flexibility Act Analysis for this final rule.

In accordance with section 165(d) of the Dodd-Frank Act, the Board is adopting the final rule as Regulation QQ and is proposing to add new Part 243 (12 CFR part 243) and the Corporation is proposing to add new Part 381 (12 CFR part 381) to establish the requirements that a covered company periodically submit a resolution plan to the Board and Corporation.[14] The final rule would also establish the procedures joint review of a resolution plan by the Board and Corporation. The reasons and justification for the final rule are described in the Supplementary Information. As further discussed in the Supplementary Information, the procedure, standards, and definitions that would be established by the final rule are relevant to the joint authority of the Board and Corporation to implement the resolution plan.

Under regulations issued by the Small Business Administration (''SBA''), a ''small entity'' includes those firms within the ''Finance and Insurance'' sector with asset sizes that vary from $7 million or less in assets to $175 million

[13] *See* 5 U.S.C. 603, 604 and 605.

[14] *See* 12 U.S.C. 5365(d).

or less in assets.[15] The Board believes that the Finance and Insurance sector constitutes a reasonable universe of firms for these purposes because such firms generally engage in actives that are financial in nature. Consequently, bank holding companies or nonbank financial companies with assets sizes of $175 million or less are small entities for purposes of the RFA.

As discussed in the Supplementary Information, the final rule applies to a ''covered company,'' which includes only bank holding companies and foreign banks that are or are treated as a bank holding company (''foreign banking organization'') with $50 billion or more in total consolidated assets, and nonbank financial companies that the Council has determined under section 113 of the Dodd-Frank Act must be supervised by the Board and for which such determination is in effect. Bank holding companies and foreign banking organizations that are subject to the final rule therefore substantially exceed the $175 million asset threshold at which a banking entity is considered a ''small entity'' under SBA regulations.[16] The final rule would apply to a nonbank financial company supervised by the Board regardless of such a company's asset size. Although the asset size of nonbank financial companies may not be the determinative factor of whether such companies may pose systemic risks and would be designated by the Council for supervision by the Board, it is an important consideration.[17] It is therefore unlikely that a financial firm that is at or below the $175 million asset threshold would be designated by the Council under section 113 of the Dodd-Frank Act because material financial distress at such firms, or the nature, scope, size, scale, concentration, interconnectedness, or mix of it activities, are not likely to pose a threat to the financial stability of the United States.

As noted above, because the final rule is not likely to apply to any company with assets of $175 million or less, the final rule is not expected to apply to any small entity for purposes of the RFA. Moreover, as discussed in the Supplementary Information, the Dodd-Frank Act requires the Board and the Corporation jointly to adopt rules implementing the provisions of section 165(d) of the Dodd-Frank Act. The Board does not believe that the final rule would have a significant economic impact on a substantial number of small entities or that the final rule duplicates, overlaps, or conflicts with any other Federal rules.

*C. Use of Plain Language*

Section 722 of the Gramm-Leach-Bliley Act requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The Board and Corporation invited comment on whether the proposed rule was written plainly and clearly, or whether there were ways the Board and Corporation could make the rule easier to understand. The Board and Corporation received no comments on these matters and believe that the final rule is written plainly and clearly.

**Text of the Common Rules**

**(All Agencies)**

## PART [ ]—RESOLUTION PLANS

Sec.

____.1 Authority and scope.
____.2 Definitions.
____.3 Resolution plan required.
____.4 Informational content of a resolution plan.
____.5 Review of resolution plans; resubmission of deficient resolution plans.
____.6 Failure to cure deficiencies on resubmission of a resolution plan.
____.7 Consultation.
____.8 No limiting effect or private right of action; confidentiality of resolution plans.
____.9 Enforcement.

### § ____.1 Authority and scope.

(a) *Authority.* This part is issued pursuant to section 165(d)(8) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the *Dodd-Frank Act*) (Pub. L. 111–203, 124 Stat. 1376, 1426–1427), 12 U.S.C. 5365(d)(8), which requires the Board of Governors of the Federal Reserve System (*Board*) and the Federal Deposit Insurance Corporation (*Corporation*) to jointly issue rules implementing the provisions of section 165(d) of the Dodd-Frank Act.

(b) *Scope.* This part applies to each covered company and establishes rules and requirements regarding the submission and content of a resolution plan, as well as procedures for review by the Board and Corporation of a resolution plan.

### § ____.2 Definitions.

For purposes of this part:

(a) *Bankruptcy Code* means Title 11 of the United States Code.

(b) *Company* means a corporation, partnership, limited liability company, depository institution, business trust, special purpose entity, association, or similar organization, but does not include any organization, the majority of the voting securities of which are owned by the United States.

(c) *Control.* A company controls another company when the first company, directly or indirectly, owns, or holds with power to vote, 25 percent or more of any class of the second company's outstanding voting securities.

(d) *Core business lines* means those business lines of the covered company, including associated operations, services, functions and support, that, in the view of the covered company, upon failure would result in a material loss of revenue, profit, or franchise value.

(e) *Council* means the Financial Stability Oversight Council established by section 111 of the Dodd-Frank Act (12 U.S.C. 5321).

(f) *Covered company.* (1) *In general.* A ''covered company'' means:

(i) Any nonbank financial company supervised by the Board;

(ii) Any bank holding company, as that term is defined in section 2 of the Bank Holding Company Act, as amended (12 U.S.C. 1841), and the Board's Regulation Y (12 CFR part 225), that has $50 billion or more in total consolidated assets, as determined based on the average of the company's four most recent Consolidated Financial Statements for Bank Holding Companies as reported on the Federal Reserve's Form FR Y–9C (''FR Y–9C''); and

(iii) Any foreign bank or company that is a bank holding company or is treated as a bank holding company under section 8(a) of the International Banking Act of 1978 (12 U.S.C. 3106(a)), and that has $50 billion or more in total consolidated assets, as determined based on the foreign bank's or company's most recent annual or, as applicable, the average of the four most recent quarterly Capital and Asset Reports for Foreign Banking Organizations as reported on the Federal Reserve's Form FR Y–7Q (''FR Y–7Q'').

(2) Once a covered company meets the requirements described in paragraph (f)(1)(ii) or (iii) of this section, the company shall remain a covered company for purposes of this part unless and until the company has less than $45 billion in total consolidated assets, as determined based on the—

(i) Average total consolidated assets as reported on the company's four most recent FR Y–9Cs, in the case of a covered company described in paragraph (f)(1)(ii) of this section; or

[15] 13 CFR 121.201.

[16] The Dodd-Frank Act provides that the Board may, on the recommendation of the Council, increase the $50 billion asset threshold for the application of the resolution plan and credit exposure report requirements. *See* 12 U.S.C. 5365(a)(2)(B). However, neither the Board nor the Council has the authority to lower such threshold.

[17] *See* 76 FR 4555 (January 26, 2011).

(ii) Total consolidated assets as reported on the company's most recent annual FR Y–7Q, or, as applicable, average total consolidated assets as reported on the company's four most recent quarterly FR Y–7Qs, in the case of a covered company described in paragraph (f)(1)(iii) of this section.

Nothing in this paragraph (f)(2) shall preclude a company from becoming a covered company pursuant to paragraph (f)(1) of this section.

(3) *Multi-tiered holding company.* In a multi-tiered holding company structure, covered company means the top-tier of the multi-tiered holding company only.

(4) *Asset threshold for bank holding companies and foreign banking organizations.* The Board may, pursuant to a recommendation of the Council, raise any asset threshold specified in paragraph (f)(1)(ii) or (iii) of this section.

(5) *Exclusion.* A bridge financial company chartered pursuant to 12 U.S.C. 5390(h) shall not be deemed to be a covered company hereunder.

(g) *Critical operations* means those operations of the covered company, including associated services, functions and support, the failure or discontinuance of which, in the view of the covered company or as jointly directed by the Board and the Corporation, would pose a threat to the financial stability of the United States.

(h) *Depository institution* has the same meaning as in section 3(c)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)(1)) and includes a state-licensed uninsured branch, agency, or commercial lending subsidiary of a foreign bank.

(i) *Foreign banking organization* means—

(1) A foreign bank, as defined in section 1(b)(7) of the International Banking Act of 1978 (12 U.S.C. 3101(7)), that:

(i) Operates a branch, agency, or commercial lending company subsidiary in the United States;

(ii) Controls a bank in the United States; or

(iii) Controls an Edge corporation acquired after March 5, 1987; and

(2) Any company of which the foreign bank is a subsidiary.

(j) *Foreign-based company* means any covered company that is not incorporated or organized under the laws of the United States.

(k) *Functionally regulated subsidiary* has the same meaning as in section 5(c)(5) of the Bank Holding Company Act, as amended (12 U.S.C. 1844(c)(5)).

(l) *Material entity* means a subsidiary or foreign office of the covered company that is significant to the activities of a critical operation or core business line (as defined in this part).

(m) *Material financial distress* with regard to a covered company means that:

(1) The covered company has incurred, or is likely to incur, losses that will deplete all or substantially all of its capital, and there is no reasonable prospect for the company to avoid such depletion;

(2) The assets of the covered company are, or are likely to be, less than its obligations to creditors and others; or

(3) The covered company is, or is likely to be, unable to pay its obligations (other than those subject to a bona fide dispute) in the normal course of business.

(n) *Nonbank financial company supervised by the Board* means a nonbank financial company or other company that the Council has determined under section 113 of the Dodd-Frank Act (12 U.S.C. 5323) shall be supervised by the Board and for which such determination is still in effect.

(o) *Rapid and orderly resolution* means a reorganization or liquidation of the covered company (or, in the case of a covered company that is incorporated or organized in a jurisdiction other than the United States, the subsidiaries and operations of such foreign company that are domiciled in the United States) under the Bankruptcy Code that can be accomplished within a reasonable period of time and in a manner that substantially mitigates the risk that the failure of the covered company would have serious adverse effects on financial stability in the United States.

(p) *Subsidiary* means a company that is controlled by another company, and an indirect subsidiary is a company that is controlled by a subsidiary of a company.

(q) *United States* means the United States and includes any state of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, and the Virgin Islands.

**§ ____.3 Resolution plan required.**

(a) *Initial and annual resolution plans required.*—(1) Each covered company shall submit its initial resolution plan to the Board and the Corporation on or before the date set forth below (''Initial Submission Date''):

(i) July 1, 2012, with respect to any covered company that, as of the effective date of this part, had $250 billion or more in total nonbank assets (or, in the case of a covered company that is a foreign-based company, in total U.S. nonbank assets);

(ii) July 1, 2013, with respect to any covered company that is not described in paragraph (a)(1)(i) of this section, and that, as of the effective date of this part had $100 billion or more in total nonbank assets (or, in the case of a covered company that is a foreign-based company, in total U.S. nonbank assets); and

(iii) December 31, 2013, with respect to any other covered company that is a covered company as of the effective date of this part but that is not described in paragraph (a)(1)(i) or (ii) of this section.

(2) A company that becomes a covered company after the effective date of this part shall submit its initial resolution plan no later than the next July 1 following the date the company becomes a covered company, provided such date occurs no earlier than 270 days after the date on which the company became a covered company.

(3) After filing its initial resolution plan pursuant to paragraph (a)(1) or (2) of this section, each covered company shall annually submit a resolution plan to the Board and the Corporation on or before each anniversary date of its Initial Submission Date.

(4) Notwithstanding anything to the contrary in this paragraph (a), the Board and Corporation may jointly determine that a covered company shall file its initial or annual resolution plan by a date other than as provided in this paragraph (a). The Board and the Corporation shall provide a covered company with written notice of a determination under this paragraph (a)(4) no later than 180 days prior to the date on which the Board and Corporation jointly determined to require the covered company to submit its resolution plan.

(b) *Authority to require interim updates and notice of material events.*—(1) *In general.* The Board and the Corporation may jointly require that a covered company file an update to a resolution plan submitted under paragraph (a) of this section, within a reasonable amount of time, as jointly determined by the Board and Corporation. The Board and the Corporation shall make a request pursuant to this paragraph (b)(1) in writing, and shall specify the portions or aspects of the resolution plan the covered company shall update.

(2) *Notice of material events.* Each covered company shall provide the Board and the Corporation with a notice no later than 45 days after any event, occurrence, change in conditions or circumstances, or other change that results in, or could reasonably be foreseen to have, a material effect on the resolution plan of the covered company.

Such notice should describe the event, occurrence or change and explain why the event, occurrence or change may require changes to the resolution plan. The covered company shall address any event, occurrence or change with respect to which it has provided notice pursuant to this paragraph (b)(2) in the following resolution plan submitted by the covered company.

(3) *Exception.* A covered company shall not be required to file a notice under paragraph (b)(2) of this section if the date on which the covered company would be required to submit the notice under paragraph (b)(2) would be within 90 days prior to the date on which the covered company is required to file an annual resolution plan under paragraph (a) of this section.

(c) *Authority to require more frequent submissions or extend time period.*—The Board and Corporation may jointly:

(1) Require that a covered company submit a resolution plan more frequently than required pursuant to paragraph (a) of this section; and

(2) Extend the time period that a covered company has to submit a resolution plan or a notice following material events under paragraphs (a) and (b) of this section.

(d) *Access to information.*—In order to allow evaluation of the resolution plan, each covered company must provide the Board and the Corporation such information and access to personnel of the covered company as the Board and the Corporation jointly determine during the period for reviewing the resolution plan is necessary to assess the credibility of the resolution plan and the ability of the covered company to implement the resolution plan. The Board and the Corporation will rely to the fullest extent possible on examinations conducted by or on behalf of the appropriate Federal banking agency for the relevant company.

(e) *Board of directors approval of resolution plan.*—Prior to submission of a resolution plan under paragraph (a) of this section, the resolution plan of a covered company shall be approved by:

(1) The board of directors of the covered company and noted in the minutes; or

(2) In the case of a foreign-based covered company only, a delegee acting under the express authority of the board of directors of the covered company to approve the resolution plan.

(f) *Resolution plans provided to the Council.*—The Board shall make the resolution plans and updates submitted by the covered company pursuant to this section available to the Council upon request.

**§ ____.4 Informational content of a resolution plan.**

(a) *In general.*—(1) *Domestic covered companies.* Except as otherwise provided in paragraph (a)(3) of this section, the resolution plan of a covered company that is organized or incorporated in the United States shall include the information specified in paragraphs (b) through (i) of this section with respect to the subsidiaries and operations that are domiciled in the United States as well as the foreign subsidiaries, offices, and operations of the covered company.

(2) *Foreign-based covered companies.*—Except as otherwise provided in paragraph (a)(3) of the section, the resolution plan of a covered company that is organized or incorporated in a jurisdiction other than the United States (other than a bank holding company) or that is a foreign banking organization shall include:

(i) The information specified in paragraphs (b) through (i) of this section with respect to the subsidiaries, branches and agencies, and critical operations and core business lines, as applicable, that are domiciled in the United States or conducted in whole or material part in the United States. With respect to the information specified in paragraph (g) of this section, the resolution plan of a foreign-based covered company shall also identify, describe in detail, and map to legal entity the interconnections and interdependencies among the U.S. subsidiaries, branches and agencies, and critical operations and core business lines of the foreign-based covered company and any foreign-based affiliate; and

(ii) A detailed explanation of how resolution planning for the subsidiaries, branches and agencies, and critical operations and core business lines of the foreign-based covered company that are domiciled in the United States or conducted in whole or material part in the United States is integrated into the foreign-based covered company's overall resolution or other contingency planning process.

(3) *Tailored resolution plan.* (i) *Eligible covered company.*—Paragraph (a)(3)(ii) of this section applies to any covered company that as of December 31 of the calendar year prior to the date its resolution plan is required to be submitted under this part—

(A) Has less than $100 billion in total nonbank assets (or, in the case of a covered company that is a foreign-based company, in total U.S. nonbank assets); and

(B) The total insured depository institution assets of which comprise 85 percent or more of the covered company's total consolidated assets (or, in the case of a covered company that is a foreign-based company, the assets of the U.S. insured depository institution operations, branches, and agencies of which comprise 85 percent or more of such covered company's U.S. total consolidated assets).

(ii) *Tailored resolution plan elements.* A covered company described in paragraph (a)(3)(i) of this section may file a resolution plan that is limited to the following items—

(A) An executive summary, as specified in paragraph (b) of this section;

(B) The information specified in paragraphs (c) through (f) and paragraph (h) of this section, but only with respect to the covered company and its nonbanking material entities and operations;

(C) The information specified in paragraphs (g) and (i) of this section with respect to the covered company and all of its insured depository institutions (or, in the case of a covered company that is a foreign-based company, the U.S. insured depository institutions, branches, and agencies) and nonbank material entities and operations. The interconnections and interdependencies identified pursuant to (g) of this section shall be included in the analysis provided pursuant to paragraph (c) of this section.

(iii) *Notice.*—A covered company that meets the requirements of paragraph (a)(3)(i) of this section and that intends to submit a resolution plan pursuant to this paragraph (a)(3), shall provide the Board and Corporation with written notice of such intent and its eligibility under paragraph (a)(3)(i) no later than 270 days prior to the date on which the covered company is required to submit its resolution plan. Within 90 of receiving such notice, the Board and Corporation may jointly determine that the covered company must submit a resolution plan that meets some or all of the requirements as set forth in paragraph (a)(1) or (2) of this section, as applicable.

(4) *Required and prohibited assumptions.*—In preparing its plan for rapid and orderly resolution in the event of material financial distress or failure required by this part, a covered company shall:

(i) Take into account that such material financial distress or failure of the covered company may occur under the baseline, adverse and severely adverse economic conditions provided to the covered company by the Board pursuant to 12 U.S.C. 5365(i)(1)(B); provided, however, a covered company

may submit its initial resolution plan assuming the baseline conditions only, or, if a baseline scenario is not then available, a reasonable substitute developed by the covered company; and

(ii) Not rely on the provision of extraordinary support by the United States or any other government to the covered company or its subsidiaries to prevent the failure of the covered company.

(b) *Executive summary.*—Each resolution plan of a covered company shall include an executive summary describing:

(1) The key elements of the covered company's strategic plan for rapid and orderly resolution in the event of material financial distress at or failure of the covered company.

(2) Material changes to the covered company's resolution plan from the company's most recently filed resolution plan (including any notices following a material event or updates to the resolution plan).

(3) Any actions taken by the covered company since filing of the previous resolution plan to improve the effectiveness of the covered company's resolution plan or remediate or otherwise mitigate any material weaknesses or impediments to effective and timely execution of the resolution plan.

(c) *Strategic analysis.*—Each resolution plan shall include a strategic analysis describing the covered company's plan for rapid and orderly resolution in the event of material financial distress or failure of the covered company. Such analysis shall—

(1) Include detailed descriptions of the—

(i) Key assumptions and supporting analysis underlying the covered company's resolution plan, including any assumptions made concerning the economic or financial conditions that would be present at the time the covered company sought to implement such plan;

(ii) Range of specific actions to be taken by the covered company to facilitate a rapid and orderly resolution of the covered company, its material entities, and its critical operations and core business lines in the event of material financial distress or failure of the covered company;

(iii) Funding, liquidity and capital needs of, and resources available to, the covered company and its material entities, which shall be mapped to its critical operations and core business lines, in the ordinary course of business and in the event of material financial distress at or failure of the covered company;

(iv) Covered company's strategy for maintaining operations of, and funding for, the covered company and its material entities, which shall be mapped to its critical operations and core business lines;

(v) Covered company's strategy in the event of a failure or discontinuation of a material entity, core business line or critical operation, and the actions that will be taken by the covered company to prevent or mitigate any adverse effects of such failure or discontinuation on the financial stability of the United States; provided, however, if any such material entity is subject to an insolvency regime other than the Bankruptcy Code, a covered company may exclude that entity from its strategic analysis unless that entity either has $50 billion or more in total assets or conducts a critical operation; and

(vi) Covered company's strategy for ensuring that any insured depository institution subsidiary of the covered company will be adequately protected from risks arising from the activities of any nonbank subsidiaries of the covered company (other than those that are subsidiaries of an insured depository institution);

(2) Identify the time period(s) the covered company expects would be needed for the covered company to successfully execute each material aspect and step of the covered company's plan;

(3) Identify and describe any potential material weaknesses or impediments to effective and timely execution of the covered company's plan;

(4) Discuss the actions and steps the covered company has taken or proposes to take to remediate or otherwise mitigate the weaknesses or impediments identified by the covered company, including a timeline for the remedial or other mitigatory action; and

(5) Provide a detailed description of the processes the covered company employs for:

(i) Determining the current market values and marketability of the core business lines, critical operations, and material asset holdings of the covered company;

(ii) Assessing the feasibility of the covered company's plans (including timeframes) for executing any sales, divestitures, restructurings, recapitalizations, or other similar actions contemplated in the covered company's resolution plan; and

(iii) Assessing the impact of any sales, divestitures, restructurings, recapitalizations, or other similar actions on the value, funding, and operations of the covered company, its material entities, critical operations and core business lines.

(d) *Corporate governance relating to resolution planning.*—Each resolution plan shall:

(1) Include a detailed description of:

(i) How resolution planning is integrated into the corporate governance structure and processes of the covered company;

(ii) The covered company's policies, procedures, and internal controls governing preparation and approval of the covered company's resolution plan;

(iii) The identity and position of the senior management official(s) of the covered company that is primarily responsible for overseeing the development, maintenance, implementation, and filing of the covered company's resolution plan and for the covered company's compliance with this part; and

(iv) The nature, extent, and frequency of reporting to senior executive officers and the board of directors of the covered company regarding the development, maintenance, and implementation of the covered company's resolution plan;

(2) Describe the nature, extent, and results of any contingency planning or similar exercise conducted by the covered company since the date of the covered company's most recently filed resolution plan to assess the viability of or improve the resolution plan of the covered company; and

(3) Identify and describe the relevant risk measures used by the covered company to report credit risk exposures both internally to its senior management and board of directors, as well as any relevant risk measures reported externally to investors or to the covered company's appropriate Federal regulator.

(e) *Organizational structure and related information.*—Each resolution plan shall—

(1) Provide a detailed description of the covered company's organizational structure, including:

(i) A hierarchical list of all material entities within the covered company's organization (including legal entities that directly or indirectly hold such material entities) that:

(A) Identifies the direct holder and the percentage of voting and nonvoting equity of each legal entity and foreign office listed; and

(B) The location, jurisdiction of incorporation, licensing, and key management associated with each material legal entity and foreign office identified;

(ii) A mapping of the covered company's critical operations and core business lines, including material asset

holdings and liabilities related to such critical operations and core business lines, to material entities;

(2) Provide an unconsolidated balance sheet for the covered company and a consolidating schedule for all material entities that are subject to consolidation by the covered company;

(3) Include a description of the material components of the liabilities of the covered company, its material entities, critical operations and core business lines that, at a minimum, separately identifies types and amounts of the short-term and long-term liabilities, the secured and unsecured liabilities, and subordinated liabilities;

(4) Identify and describe the processes used by the covered company to:

(i) Determine to whom the covered company has pledged collateral;

(ii) Identify the person or entity that holds such collateral; and

(iii) Identify the jurisdiction in which the collateral is located, and, if different, the jurisdiction in which the security interest in the collateral is enforceable against the covered company;

(5) Describe any material off-balance sheet exposures (including guarantees and contractual obligations) of the covered company and its material entities, including a mapping to its critical operations and core business lines;

(6) Describe the practices of the covered company, its material entities and its core business lines related to the booking of trading and derivatives activities;

(7) Identify material hedges of the covered company, its material entities, and its core business lines related to trading and derivative activities, including a mapping to legal entity;

(8) Describe the hedging strategies of the covered company;

(9) Describe the process undertaken by the covered company to establish exposure limits;

(10) Identify the major counterparties of the covered company and describe the interconnections, interdependencies and relationships with such major counterparties;

(11) Analyze whether the failure of each major counterparty would likely have an adverse impact on or result in the material financial distress or failure of the covered company; and

(12) Identify each trading, payment, clearing, or settlement system of which the covered company, directly or indirectly, is a member and on which the covered company conducts a material number or value amount of trades or transactions. Map membership in each such system to the covered company's material entities, critical operations and core business lines.

(f) *Management information systems.*—(1) Each resolution plan shall include—

(i) A detailed inventory and description of the key management information systems and applications, including systems and applications for risk management, accounting, and financial and regulatory reporting, used by the covered company and its material entities. The description of each system or application provided shall identify the legal owner or licensor, the use or function of the system or application, service level agreements related thereto, any software and system licenses, and any intellectual property associated therewith;

(ii) A mapping of the key management information systems and applications to the material entities, critical operations and core business lines of the covered company that use or rely on such systems and applications;

(iii) An identification of the scope, content, and frequency of the key internal reports that senior management of the covered company, its material entities, critical operations and core business lines use to monitor the financial health, risks, and operation of the covered company, its material entities, critical operations and core business lines; and

(iv) A description of the process for the appropriate supervisory or regulatory agencies to access the management information systems and applications identified in paragraph (f) of this section; and

(v) A description and analysis of—

(A) The capabilities of the covered company's management information systems to collect, maintain, and report, in a timely manner to management of the covered company, and to the Board, the information and data underlying the resolution plan; and

(B) Any deficiencies, gaps or weaknesses in such capabilities, and a description of the actions the covered company intends to take to promptly address such deficiencies, gaps, or weaknesses, and the time frame for implementing such actions.

(2) The Board will use its examination authority to review the demonstrated capabilities of each covered company to satisfy the requirements of paragraph (f)(1)(v) of this section. The Board will share with the Corporation information regarding the capabilities of the covered company to collect, maintain, and report in a timely manner information and data underlying the resolution plan.

(g) *Interconnections and interdependencies.* To the extent not elsewhere provided, identify and map to the material entities the interconnections and interdependencies among the covered company and its material entities, and among the critical operations and core business lines of the covered company that, if disrupted, would materially affect the funding or operations of the covered company, its material entities, or its critical operations or core business lines. Such interconnections and interdependencies may include:

(1) Common or shared personnel, facilities, or systems (including information technology platforms, management information systems, risk management systems, and accounting and recordkeeping systems);

(2) Capital, funding, or liquidity arrangements;

(3) Existing or contingent credit exposures;

(4) Cross-guarantee arrangements, cross-collateral arrangements, cross-default provisions, and cross-affiliate netting agreements;

(5) Risk transfers; and

(6) Service level agreements.

(h) *Supervisory and regulatory information.* Each resolution plan shall—

(1) Identify any:

(i) Federal, state, or foreign agency or authority (other than a Federal banking agency) with supervisory authority or responsibility for ensuring the safety and soundness of the covered company, its material entities, critical operations and core business lines; and

(ii) Other Federal, state, or foreign agency or authority (other than a Federal banking agency) with significant supervisory or regulatory authority over the covered company, and its material entities and critical operations and core business lines.

(2) Identify any foreign agency or authority responsible for resolving a foreign-based material entity and critical operations or core business lines of the covered company; and

(3) Include contact information for each agency identified in paragraphs (h)(1) and (2) of this section.

(i) *Contact information.* Each resolution plan shall identify a senior management official at the covered company responsible for serving as a point of contact regarding the resolution plan of the covered company, and include contact information (including phone number, email address, and physical address) for a senior management official of the material entities of the covered company.

(j) *Inclusion of previously submitted resolution plan informational elements by reference.* An annual submission of

or update to a resolution plan submitted by a covered company may include by reference informational elements (but not strategic analysis or executive summary elements) from a resolution plan previously submitted by the covered company to the Board and the Corporation, provided that:

(1) The resolution plan seeking to include informational elements by reference clearly indicates:

(i) The informational element the covered company is including by reference; and

(ii) Which of the covered company's previously submitted resolution plan(s) originally contained the information the covered company is including by reference; and

(2) The covered company certifies that the information the covered company is including by reference remains accurate.

(k) *Exemptions.* The Board and the Corporation may jointly exempt a covered company from one or more of the requirements of this section.

**§ ____.5 Review of resolution plans; resubmission of deficient resolution plans.**

(a) *Acceptance of submission and review.* (1) The Board and Corporation shall review a resolution plan submitted under section this subpart within 60 days.

(2) If the Board and Corporation jointly determine within the time described in paragraph (a)(1) of this section that a resolution plan is informationally incomplete or that substantial additional information is necessary to facilitate review of the resolution plan:

(i) The Board and Corporation shall jointly inform the covered company in writing of the area(s) in which the resolution plan is informationally incomplete or with respect to which additional information is required; and

(ii) The covered company shall resubmit an informationally complete resolution plan or such additional information as jointly requested to facilitate review of the resolution plan no later than 30 days after receiving the notice described in paragraph (a)(2)(i) of this section, or such other time period as the Board and Corporation may jointly determine.

(b) *Joint determination regarding deficient resolution plans.* If the Board and Corporation jointly determine that the resolution plan of a covered company submitted under § ____.3(a) is not credible or would not facilitate an orderly resolution of the covered company under the Bankruptcy Code, the Board and Corporation shall jointly notify the covered company in writing of such determination. Any joint notice provided under this paragraph shall identify the aspects of the resolution plan that the Board and Corporation jointly determined to be deficient.

(c) *Resubmission of a resolution plan.* Within 90 days of receiving a notice of deficiencies issued pursuant to paragraph (b) of this section, or such shorter or longer period as the Board and Corporation may jointly determine, a covered company shall submit a revised resolution plan to the Board and Corporation that addresses the deficiencies jointly identified by the Board and Corporation, and that discusses in detail:

(1) The revisions made by the covered company to address the deficiencies jointly identified by the Board and the Corporation;

(2) Any changes to the covered company's business operations and corporate structure that the covered company proposes to undertake to facilitate implementation of the revised resolution plan (including a timeline for the execution of such planned changes); and

(3) Why the covered company believes that the revised resolution plan is credible and would result in an orderly resolution of the covered company under the Bankruptcy Code.

(d) *Extensions of time.* Upon their own initiative or a written request by a covered company, the Board and Corporation may jointly extend any time period under this section. Each extension request shall be supported by a written statement of the covered company describing the basis and justification for the request.

**§ ____.6 Failure to cure deficiencies on resubmission of a resolution plan.**

(a) *In general.* The Board and Corporation may jointly determine that a covered company or any subsidiary of a covered company shall be subject to more stringent capital, leverage, or liquidity requirements, or restrictions on the growth, activities, or operations of the covered company or the subsidiary if:

(1) The covered company fails to submit a revised resolution plan under § ____.5(c) within the required time period; or

(2) The Board and the Corporation jointly determine that a revised resolution plan submitted under § ____.5(c) does not adequately remedy the deficiencies jointly identified by the Board and the Corporation under § ____.5(b).

(b) *Duration of requirements or restrictions.*—Any requirements or restrictions imposed on a covered company or a subsidiary thereof pursuant to paragraph (a) of this section shall cease to apply to the covered company or subsidiary, respectively, on the date that the Board and the Corporation jointly determine the covered company has submitted a revised resolution plan that adequately remedies the deficiencies jointly identified by the Board and the Corporation under § ____.5(b).

(c) *Divestiture.* The Board and Corporation, in consultation with the Council, may jointly, by order, direct the covered company to divest such assets or operations as are jointly identified by the Board and Corporation if:

(1) The Board and Corporation have jointly determined that the covered company or a subsidiary thereof shall be subject to requirements or restrictions pursuant to paragraph (a) of this section; and

(2) The covered company has failed, within the 2-year period beginning on the date on which the determination to impose such requirements or restrictions under paragraph (a) of this section was made, to submit a revised resolution plan that adequately remedies the deficiencies jointly identified by the Board and the Corporation under § ____.5(b); and

(3) The Board and Corporation jointly determine that the divestiture of such assets or operations is necessary to facilitate an orderly resolution of the covered company under the Bankruptcy Code in the event the company was to fail.

**§ ____.7 Consultation.**

Prior to issuing any notice of deficiencies under § ____.5(b), determining to impose requirements or restrictions under § ____.6(a), or issuing a divestiture order pursuant to § ____.6(c) with respect to a covered company that is likely to have a significant impact on a functionally regulated subsidiary or a depository institution subsidiary of the covered company, the Board—

(a) Shall consult with each Council member that primarily supervises any such subsidiary; and

(b) May consult with any other Federal, state, or foreign supervisor as the Board considers appropriate.

**§ ____.8 No limiting effect or private right of action; confidentiality of resolution plans.**

(a) *No limiting effect on bankruptcy or other resolution proceedings.*—A resolution plan submitted pursuant to this part shall not have any binding effect on:

(1) A court or trustee in a proceeding commenced under the Bankruptcy Code;

(2) A receiver appointed under Title II of the Dodd-Frank Act (12 U.S.C. 5381 *et seq.*);

(3) A bridge financial company chartered pursuant to 12 U.S.C. 5390(h); or

(4) Any other authority that is authorized or required to resolve a covered company (including any subsidiary or affiliate thereof) under any other provision of Federal, state, or foreign law.

(b) *No private right of action.*—Nothing in this part creates or is intended to create a private right of action based on a resolution plan prepared or submitted under this part or based on any action taken by the Board or the Corporation with respect to any resolution plan submitted under this part.

(c) *Form of resolution plans.* Each resolution plan of a covered company shall be divided into a public section and a confidential section. Each covered company shall segregate and separately identify the public section from the confidential section. The public section shall consist of an executive summary of the resolution plan that describes the business of the covered company and includes, to the extent material to an understanding of the covered company:

(1) The names of material entities;

(2) A description of core business lines;

(3) Consolidated or segment financial information regarding assets, liabilities, capital and major funding sources;

(4) A description of derivative activities and hedging activities;

(5) A list of memberships in material payment, clearing and settlement systems;

(6) A description of foreign operations;

(7) The identities of material supervisory authorities;

(8) The identities of the principal officers;

(9) A description of the corporate governance structure and processes related to resolution planning;

(10) A description of material management information systems; and

(11) A description, at a high level, of the covered company's resolution strategy, covering such items as the range of potential purchasers of the covered company, its material entities and core business lines.

(d) *Confidential treatment of resolution plans.* (1) The confidentiality of resolution plans and related materials shall be determined in accordance with applicable exemptions under the Freedom of Information Act (5 U.S.C. 552(b)) and the Board's Rules Regarding Availability of Information (12 CFR part 261), and the Corporation's Disclosure of Information Rules (12 CFR part 309).

(2) Any covered company submitting a resolution plan or related materials pursuant to this part that desires confidential treatment of the information under 5 U.S.C. 552(b)(4), the Board's Rules Regarding Availability of Information (12 CFR part 261), and the Corporation's Disclosure of Information Rules (12 CFR part 309) may file a request for confidential treatment in accordance with those rules.

(3) To the extent permitted by law, information comprising the Confidential Section of a resolution plan will be treated as confidential.

(4) To the extent permitted by law, the submission of any nonpublic data or information under this part shall not constitute a waiver of, or otherwise affect, any privilege arising under Federal or state law (including the rules of any Federal or state court) to which the data or information is otherwise subject. Privileges that apply to resolution plans and related materials are protected pursuant to Section 18(x) of the FDI Act, 12 U.S.C. 1828(x).

**§ ____.9 Enforcement.**

The Board and Corporation may jointly enforce an order jointly issued by the Board and Corporation under § ____.6(a) or ____.6(c) of this part. The Board, in consultation with the Corporation, may take any action to address any violation of this part by a covered company under section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818).

**[End of Common Text]**

**List of Subjects**

*12 CFR Part 243*

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

*12 CFR Part 381*

Administrative practice and procedure, Banks, Banking, Holding companies, Reporting and recordkeeping requirements, Resolution plans and credit exposure reports.

**Adoption of Common Rule**

The adoption of the common rules by the agencies, as modified by agency-specific text, is set forth below:

**BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM**

**12 CFR Chapter II**

**Authority and Issuance**

For the reasons stated in the Supplementary Information, the Board of Governors of the Federal Reserve System adds the text of the common rule, as set forth at the end of the Supplementary Information, as Part 243 to Chapter II of Title 12, modified as follows:

## PART 243—RESOLUTION PLANS (REGULATION QQ)

■ 1. The authority citation for part 243 reads as follows:

**Authority:** 12 U.S.C. 5365.

**FEDERAL DEPOSIT INSURANCE CORPORATION**

**12 CFR Chapter III**

**Authority and Issuance**

For the reasons set forth in the Supplementary Information, the Federal Deposit Insurance Corporation to adds the text of the common rule, as set forth at the end of the Supplementary Information, as Part 381 to Chapter III of Title 12, Code of Federal Regulations, modified as follows:

## PART 381—RESOLUTION PLANS

■ 1. The authority citation for part 381 reads as follows:

**Authority:** 12 U.S.C. 5365(d).

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

**Jennifer J. Johnson,**

*Secretary of the Board.*

Dated at Washington, DC, this 13th day of September 2011.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

[FR Doc. 2011–27377 Filed 10–31–11; 8:45 am]

BILLING CODE 6210–01–P

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. FAA–2011–0868; Directorate Identifier 2011–CE–027–AD; Amendment 39–16854; AD 2011–23–03]**

**RIN 2120–AA64**

## Airworthiness Directives; SOCATA Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for certain SOCATA Model TBM 700 airplanes. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

A TBM700 operator reported an occurrence where, as a result of handling the standby compass lighting bulb cover in flight, both essential bus bars (ESS BUS 1 and ESS BUS 2) failed, leading to loss of a number of instruments and navigation systems.

The technical investigations carried out by SOCATA have shown that the cause of this occurrence was that the electrical protection of some TBM 700 aeroplanes is insufficient to allow in-flight handling of the standby compass lighting cover when energized.

This condition, if not corrected, may compromise the ability of the pilot to safely operate the aeroplane under certain flight conditions due to the increase of workload.

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

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

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of December 6, 2011.

**ADDRESSES:** You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

For service information identified in this AD, contact SOCATA—Direction des Services, 65921 Tarbes Cedex 9, France; *telephone:* +33 (0)5 62 41 73 00; *fax:* +33 (0)5 62 41 7654; or in the United States contact SOCATA North America, Inc., North Perry Airport, 7501 South Airport Road, Pembroke Pines, Florida 33023; *telephone:* (954) 893–1400; *fax:* (954) 964–4141; *Internet: http://www.socatanorthamerica.com.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

**FOR FURTHER INFORMATION CONTACT:** Albert Mercado, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; *telephone:* (816) 329–4119; *fax:* (816) 329–4090; *email: albert.mercado@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on August 16, 2011 (75 FR 50706). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

A TBM700 operator reported an occurrence where, as a result of handling the standby compass lighting bulb cover in flight, both essential bus bars (ESS BUS 1 and ESS BUS 2) failed, leading to loss of a number of instruments and navigation systems.

The technical investigations carried out by SOCATA have shown that the cause of this occurrence was that the electrical protection of some TBM 700 aeroplanes is insufficient to allow in-flight handling of the standby compass lighting cover when energized.

This condition, if not corrected, may compromise the ability of the pilot to safely operate the aeroplane under certain flight conditions due to the increase of workload.

To address this unsafe condition, SOCATA have developed a modification which consists of installing a protection fuse on the wire at the standby compass connector, introduced by SOCATA Service Bulletin (SB) 70–192–34.

For the reasons described above, this AD requires installation of a protection of the electrical wire at the standby compass connector.

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

### Comments

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

### Request To Correct Fax Number

Jeanne Da Costa of DAHER SOCATA stated that there is a typographical error in the fax number for the SOCATA office located in France. Currently, the fax number listed under the **ADDRESSES** section and in the Related Information section is +33 (0)5 62 41 7–54. The commenter states that the correct fax number is +33 (0)5 62 41 7654 and requests the correction be made in the final rule AD action.

We agree with the commenter and have revised the final rule AD action to incorporate the correct fax number.

### Conclusion

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

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

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

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

### Costs of Compliance

We estimate that this AD will affect 124 products of U.S. registry. We also estimate that it will take about 1 work-hour per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $350 per product.

Based on these figures, we estimate the cost of this AD on U.S. operators to be $53,940 or $435 per product.

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

### Authority for This Rulemaking

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

detail the scope of the Agency's authority.

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

## Regulatory Findings

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

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

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

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

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

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

## Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM (75 FR 50706, August 16, 2011), the regulatory evaluation, any comments received and other information. The street address for the Docket Office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

## List of Subjects in 14 CFR Part 39

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

## Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**2011–23–03 SOCATA:** Amendment 39–16854; Docket No. FAA–2011–0868; Directorate Identifier 2011–CE–027–AD.

**(a) Effective Date**

This airworthiness directive (AD) becomes effective December 6, 2011.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to SOCATA Model TBM 700 airplanes, serial numbers 148, 434 through 572, 574, and 576, certificated in any category.

**(d) Subject**

Air Transport Association of America (ATA) Code 34: Navigation.

**(e) Reason**

The mandatory continuing airworthiness information (MCAI) states:

A TBM700 operator reported an occurrence where, as a result of handling the standby compass lighting bulb cover in flight, both essential bus bars (ESS BUS 1 and ESS BUS 2) failed, leading to loss of a number of instruments and navigation systems.

The technical investigations carried out by SOCATA have shown that the cause of this occurrence was that the electrical protection of some TBM 700 aeroplanes is insufficient to allow in-flight handling of the standby compass lighting cover when energized.

This condition, if not corrected, may compromise the ability of the pilot to safely operate the aeroplane under certain flight conditions due to the increase of workload.

To address this unsafe condition, SOCATA have developed a modification which consists of installing a protection fuse on the wire at the standby compass connector, introduced by SOCATA Service Bulletin (SB) 70–192–34.

For the reasons described above, this AD requires installation of a protection of the electrical wire at the standby compass connector.

**(f) Actions and Compliance**

Unless already done, within 6 months after December 6, 2011 (the effective date of this AD), install a protection fuse on the wire at the standby compass connector following the Accomplishment Instructions in DAHER–SOCATA TBM Aircraft Mandatory Service Bulletin SB 70–192–34, dated April 2011.

**(g) FAA AD Differences**

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

**(h) Other FAA AD Provisions**

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Albert Mercado, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4119; fax: (816) 329–4090; email: *albert.mercado@faa.gov.* Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

**(i) Related Information**

Refer to MCAI European Aviation Safety Agency (EASA) AD No. 2011–0130, dated July 8, 2011; and DAHER–SOCATA TBM Aircraft Mandatory Service Bulletin SB 70–192–34, dated April 2011, for related information.

**(j) Material Incorporated by Reference**

(1) You must use DAHER–SOCATA TBM Aircraft Mandatory Service Bulletin SB 70–192–34, dated April 2011, to do the actions required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference (IBR) under 5 U.S.C. 552(a) and 1 CFR part 51 on December 6, 2011.

(2) For service information identified in this AD, contact SOCATA—Direction des

Services, 65921 Tarbes Cedex 9, France; telephone: +33 (0)5 62 41 73 00; fax: +33 (0)5 62 41 7654; or in the United States contact SOCATA North America, Inc., North Perry Airport, 7501 South Airport Road, Pembroke Pines, Florida 33023; *telephone:* (954) 893–1400; *fax:* (954) 964–4141; *Internet: http://www.socatanorthamerica.com.*

(3) You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

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

Issued in Kansas City, Missouri, on October 24, 2011.

**Earl Lawrence,**

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

[FR Doc. 2011–27949 Filed 10–31–11; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2011–1162; Directorate Identifier 2011–NM–186–AD; Amendment 39–16856; AD 2011–23–05]**

**RIN 2120–AA64**

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

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

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

**SUMMARY:** We are superseding an existing airworthiness directive (AD) for certain Model 737–300, –400, and –500 series airplanes. That AD currently requires repetitive inspections for cracking of the 1.04-inch nominal diameter wire penetration hole, and applicable related investigative and corrective actions. This AD reduces the compliance times for those actions. This AD was prompted by reports of cracking in the frame, or in the frame and frame reinforcement, common to the 1.04-inch nominal diameter wire penetration hole intended for wire routing; and recent reports of multiple adjacent frame cracking found before the compliance time required by the existing AD. Such cracking could reduce the structural capability of the frames to sustain limit loads, and result in cracking in the fuselage skin and subsequent rapid depressurization of the airplane. We are issuing this AD to correct the unsafe condition on these products.

**DATES:** This AD is effective November 16, 2011.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of November 16, 2011.

We must receive any comments on this AD by December 16, 2011.

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

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

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

### Examining the AD Docket

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

**FOR FURTHER INFORMATION CONTACT:** Wayne Lockett, Aerospace Engineer, Airframe Branch, ANM–120S, Seattle Aircraft Certification Office (ACO), FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; *phone:* (425) 917–6447; *fax:* (425) 917–6590; *email: wayne.lockett@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Discussion

On August 26, 2009, we issued AD 2009–02–06 R1, Amendment 39–16015 (74 FR 45979, September 8, 2009), for certain Model 737–300, –400, and –500 series airplanes. That AD requires repetitive inspections for cracking of the 1.04-inch nominal diameter wire penetration hole in the frame and in the frame reinforcement, between stringers S–20 and S–21, on both the left and right sides of the airplane, and applicable related investigative and corrective actions. That AD resulted from reports of cracking in the frame, or in the frame and frame reinforcement, common to the 1.04-inch nominal diameter wire penetration hole intended for wire routing. We issued that AD to detect and correct cracking in the fuselage frames and frame reinforcements, which could reduce the structural capability of the frames to sustain limit loads, and result in cracking in the fuselage skin and subsequent rapid depressurization of the airplane.

### Actions Since AD Was Issued

Since we issued AD 2009–02–06 R1, Amendment 39–16015 (74 FR 45979, September 8, 2009), we received a report of four adjacent cracked frames at body station (BS) 500B, BS 500C, BS 500D, and BS 520 in the forward cargo compartment between S–20L and S–21L on a Model 737–300 series airplane. The cracks at BS 500B and BS 500C were completely through the frame and fail-safe chord. The BS 500B frame was also cracked on the right-hand side. The cracks were discovered when the airplane had accumulated 44,535 total flight cycles and 44,876 total flight hours—before the compliance time required by AD 2009–02–06 R1.

### Relevant Service Information

AD 2009–02–06 R1, Amendment 39–16015 (74 FR 45979, September 8, 2009), referred to Boeing Alert Service Bulletin 737–53A1279, dated December 18, 2007, as the appropriate source of service information for the required actions. Boeing has since revised this service bulletin. We reviewed Boeing Alert Service Bulletin 737–53A1279, Revision 1, dated September 2, 2011, which shortens the compliance time to 30,000 total flight cycles, with a grace period of 30 or 90 days, and reduces the repetitive interval from 14,000 to 4,500 flight cycles. The procedures are unchanged from those specified in

Boeing Alert Service Bulletin 737–53A1279, dated December 18, 2007.

**FAA's Determination**

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

**AD Requirements**

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

**Differences Between the AD and the Service Information**

Boeing Alert Service Bulletin 737–53A1279, Revision 1, dated September 2, 2011, specifies to contact the manufacturer for instructions on how to repair certain conditions, but this proposed AD would require repairing those conditions in one of the following ways:

- In accordance with a method that we approve; or
- Using data that meet the certification basis of the airplane, and that have been approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) whom we have authorized to make those findings.

Boeing Alert Service Bulletin 737–53A1279, Revision 1, dated September 2, 2011, specifies compliance with the Part 4 inspection by the later of 4,500 flight cycles or 90 days—both after the date on this service bulletin. In some cases, this compliance time might occur before the Part 2 inspection. This AD (in paragraph (h)) therefore requires the Part 4 inspection within 4,500 flight cycles after accomplishment of the most recent Part 2 or Part 4 inspection, with a grace period of 90 days. We have coordinated this difference with Boeing.

For certain airplanes that have accumulated 40,000 or more total flight cycles, Boeing Alert Service Bulletin 737–53A1279, Revision 1, dated September 2, 2011, specifies a 30-day compliance time for the Part 2 inspection. Paragraph (k)(2) of this AD extends that compliance time to 90 days for those airplanes, if the original chem.-milled fuselage skins have been replaced with solid skins. This difference has been coordinated with Boeing.

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

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because cracking in multiple adjacent fuselage frames and frame reinforcements reduces the structural capability of the frames to sustain limit loads, and result in cracking in the fuselage skin and subsequent rapid depressurization of the airplane. 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 we did not provide you with notice and an opportunity to provide your comments before it becomes effective. 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 No. FAA–2011–1162 and directorate identifier 2011–NM–186–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 605 airplanes of U.S. registry. We estimate the following costs to comply with this AD:

ESTIMATED COSTS

| Action | Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|---|---|---|---|---|
| Inspection | 16 work-hours × $85 per hour = $1,360 per inspection cycle. | None | $1,360 per inspection cycle | $822,800 per inspection cycle. |

We estimate the following costs to do any necessary related investigative actions that would be required based on the results of the HFEC inspections. We have no way of determining the number of aircraft that might need this inspection:

ON-CONDITION COSTS

| Action | Labor cost | Parts cost | Cost per product |
|---|---|---|---|
| On-condition inspection | 2 work-hours × $85 per hour = $170 | None | $170 |

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

**Authority for This Rulemaking**

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

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in

air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

## Regulatory Findings

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

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

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

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

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

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

## List of Subjects in 14 CFR Part 39

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

## Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2009–02–06 R1, Amendment 39–16015 (74 FR 45979, September 8, 2009), and adding the following new AD:

**2011–23–05 The Boeing Company:** Amendment 39–16856; Docket No. FAA–2011–1162; Directorate Identifier 2011–NM–186–AD.

**(a) Effective Date**

This AD is effective November 16, 2011.

**(b) Affected ADs**

This AD supersedes AD 2009–02–06 R1, Amendment 39–16015 (74 FR 45979, September 8, 2009).

**(c) Applicability**

This AD applies to The Boeing Company Model 737–300, –400, –500 series airplanes, certificated in any category; as identified in Boeing Alert Service Bulletin 737–53A1279, Revision 1, dated September 2, 2011.

**(d) Subject**

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

**(e) Unsafe Condition**

This AD was prompted by reports of four cracked frames at certain body stations (BS) in the forward cargo compartment. We are issuing this AD to detect and correct cracking in the fuselage frames and frame reinforcements, which could reduce the structural capability of the frames to sustain limit loads, and result in cracking in the fuselage skin and subsequent rapid depressurization of the airplane.

**(f) Compliance**

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

**(g) Inspection**

At the applicable time specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1279, Revision 1, dated September 2, 2011, except as required by paragraphs (k)(1), (k)(2), and (k)(4) of this AD: Do a high frequency eddy current (HFEC) surface or HFEC hole/edge inspection for any cracking of the 1.04-inch nominal diameter wire penetration hole in the frame and frame reinforcement between stringer S–20 and S–21, in accordance with Part 2 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1279, Revision 1, dated September 2, 2011.

**(h) Repetitive Inspection**

Within 4,500 flight cycles after accomplishment of the most recent inspection specified in Part 2 or Part 4 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1279, Revision 1, dated September 2, 2011, or within 90 days after the effective date of this AD, whichever occurs later: Do an HFEC hole/edge inspection for cracking of the 1.04-inch nominal diameter wire penetration hole in the frame and frame reinforcement between S–20 and S–21, in accordance with Part 4 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1279, Revision 1, dated September 2, 2011. Repeat the inspection thereafter at intervals not to exceed 4,500 flight cycles.

**(i) Repair**

If any cracking is found during any inspection required by paragraph (g) or (h) of this AD: Before further flight, repair the crack including doing all related investigative and applicable corrective actions, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1279, Revision 1, dated September 2, 2011, except as required by paragraph (k)(3) of this AD. All related investigative and applicable corrective actions must be done before further flight. Accomplishment of the requirements of this paragraph terminates the repetitive inspection requirements of paragraph (h) of this AD for the repaired location of that frame.

**(j) Optional Terminating Action**

Accomplishment of the preventive modification, including doing all related investigative and applicable corrective actions, specified in Part 5 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1279, Revision 1, dated September 2, 2011, except as required by paragraph (k)(3) of this AD, terminates the repetitive inspection requirements of paragraph (h) of this AD for the modified location of that frame, provided the modification is done before further flight after an inspection required by paragraph (g) or (h) of this AD has been done, and no cracking was found on that frame location during that inspection.

**(k) Exceptions to Service Bulletin Specifications**

The following exceptions apply in this AD.

(1) Where paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1279, Revision 1, dated September 2, 2011, refers to a compliance time ''from date on Revision 1 of this service bulletin,'' this AD requires compliance within the specified compliance time after the effective date of this AD.

(2) For airplanes meeting all of the criteria specified in paragraphs (k)(2)(i), (k)(2)(ii), and (k)(2)(iii) of this AD: The compliance time for the initial inspection specified in Part 2 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1279, Revision 1, dated September 2, 2011, and required by paragraph (g) of this AD, may be extended to 90 days after the effective date of this AD.

(i) Model 737–300 series airplanes in Group 1, line numbers 1001 through 2565 inclusive;

(ii) Airplanes that have accumulated 40,000 or more total flight cycles as of the effective date of this AD; and

(iii) Airplanes on which the modification specified in Boeing Service Bulletin 737–53–1273, dated September 20, 2006; Revision 1, dated December 21, 2006; Revision 2, dated June 4, 2007; Revision 3, dated December 7, 2009; or Revision 4, dated July 23, 2010; has been done, including any configuration or deviation that has been approved as an AMOC during accomplishment of these service bulletins, by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle Aircraft Certification Office (ACO) to make those findings.

(3) Where Boeing Alert Service Bulletin 737–53A1279, Revision 1, dated September 2, 2011 specifies to contact Boeing for appropriate repair instructions: Before further flight, repair the crack using a method approved in accordance with the procedures specified in paragraph (m) of this AD.

(4) The ''Condition'' column of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1279, Revision 1, dated September 2, 2011, refers to total flight cycles, ''at the date of/on this service bulletin.'' However, this AD applies to the airplanes with the specified total flight cycles as of the effective date of this AD.

**(l) Credit for Actions Accomplished in Accordance With Previous Service Information**

Actions done in accordance with Boeing Alert Service Bulletin 737–53A1279, dated December 18, 2007, before the effective date of this AD are acceptable for compliance with the corresponding actions required by paragraphs (g), (h), (i), and (j) of this AD.

**(m) Alternative Methods of Compliance (AMOCs)**

(1) The Manager, Seattle ACO, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov*.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

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

(4) AMOCs approved for paragraphs (h) and (i) of AD 2009–02–06 R1, Amendment 39–16015 (74 FR 45979, September 8, 2009), are approved as AMOCs for the corresponding provisions of paragraphs (g), (h), and (i) of this AD.

**(n) Related Information**

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

**(o) Material Incorporated by Reference**

(1) You must use the following service information to do the actions required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference (IBR) under 5 U.S.C. 552(a) and 1 CFR part 51 of the following service information on the date specified:

(i) Boeing Alert Service Bulletin 737–53A1279, Revision 1, dated September 2, 2011, approved for IBR November 16, 2011.

(2) If you accomplish the optional actions specified by this AD, you must use the following service information to perform those actions, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference (IBR) of the following service information on the date specified:

(i) Boeing Alert Service Bulletin 737–53A1279, Revision 1, dated September 2, 2011, approved for IBR November 16, 2011.

(3) For service information identified in this AD, contact Boeing Commercial Airplanes, *Attention:* Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone (206) 544–5000, extension 1; fax (206) 766–5680; e-mail *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com*.

(4) You may review copies of the service information at the FAA, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call (425) 227–1221.

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

Issued in Renton, Washington, on October 20, 2011.

**Kalene C. Yanamura,**

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

[FR Doc. 2011–28053 Filed 10–31–11; 8:45 am]

**BILLING CODE 4910–13–P**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2011–1161; Directorate Identifier 2011–CE–036–AD; Amendment 39–16850; AD 2011–21–51]**

**RIN 2120–AA64**

## Airworthiness Directives; Cessna Aircraft Company Airplanes

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

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

**SUMMARY:** We are adopting a new airworthiness directive (AD) for certain Cessna Aircraft Company (Cessna) Model 525C airplanes. This emergency AD was sent previously to all known U.S. owners and operators of these airplanes. This AD requires replacing certain lithium-ion batteries installed as the main aircraft battery with either a Ni-Cad or a lead acid battery. This AD was prompted by a report of a battery fire that resulted after an energized ground power unit was connected to one of the affected airplanes equipped with a lithium-ion battery as the main aircraft battery. We are issuing this AD to correct the unsafe condition on these products.

**DATES:** This AD is effective November 1, 2011 to all persons except those persons to whom it was made immediately effective by Emergency AD 2011–21–51, issued on October 6, 2011, which contained the requirements of this amendment.

The Director of the Federal Register approved the incorporation by reference of a certain publication identified in the AD as of November 1, 2011.

We must receive comments on this AD by December 16, 2011.

**ADDRESSES:** You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

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

For service information identified in this AD, contact Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, KS 67277; *telephone:* (316) 517–6000; *fax:* (316) 517–8500; *email: Customercare@cessna.textron.com; Internet: http://www.cessna.com.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

**Examining the AD Docket**

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket 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 (phone: (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Richard Rejniak, Aerospace Engineer,

Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; *phone:* (316) 946–4128; *fax:* (316) 946–4107; *email: richard.rejniak@faa.gov*.

**SUPPLEMENTARY INFORMATION:**

## Discussion

On October 6, 2011, we issued Emergency AD 2011–21–51, which requires replacing the lithium-ion main aircraft battery, Cessna part number (P/N) 9914788–1, with a Ni-Cad or a lead acid battery. This emergency AD was sent previously to all known U.S. owners and operators of these airplanes. This action was prompted by a report of a battery fire that resulted after an energized ground power unit was connected to a Cessna Model 525C airplane equipped with a lithium-ion battery, Cessna P/N 9914788–1, as the main aircraft battery. This condition, if not corrected, could result in an aircraft fire.

## Relevant Service Information

We reviewed Cessna Citation Service Bulletin SB525C–24–05, dated September 29, 2011. The service information describes procedures for replacing lithium-ion main aircraft batteries, Cessna P/N 9914788–1, with Ni-Cad or lead acid batteries.

## FAA's Determination

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

## AD Requirements

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

## FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because of a battery fire that resulted after an energized ground power unit was connected to one of the affected airplanes equipped with a certain lithium-ion battery as the main aircraft battery. If not corrected, this condition could lead to an aircraft fire. 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–2011–1161 and Directorate Identifier 2011–CE–036–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 43 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

| Action | Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|---|---|---|---|---|
| Replace the lithium-ion main aircraft battery with a Ni-Cad or a lead acid battery. | 2.5 work-hours × $85 per hour = $212.50. | From $4,314 to $7,076. | From $4,526.50 to $7,288.50. | From $194,639.50 to $313,405.50. |

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

## Authority for This Rulemaking

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

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

## Regulatory Findings

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

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

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

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

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

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

## List of Subjects in 14 CFR Part 39

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

## Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**2011–21–51 Cessna Aircraft Company:** Amendment 39–16850; Docket No. FAA–2011–1161; Directorate Identifier 2011–CE–036–AD.

**(a) Effective Date**

This AD is effective November 1, 2011 to all persons except those persons to whom it was made immediately effective by Emergency AD 2011–21–51, issued on October 6, 2011, which contained the requirements of this amendment.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to Cessna Aircraft Company (Cessna) Model 525C airplanes, serial numbers 0001 through 0052, that:

(1) Have a lithium-ion battery, Cessna part number (P/N) 9914788–1, installed as the main aircraft battery; and

(2) are certificated in any category.

**(d) Subject**

Joint Aircraft System Component (JASC)/ Air Transport Association (ATA) of America Code 2432; Battery/Charger.

**(e) Unsafe Condition**

This AD was prompted by a report of a battery fire that resulted after an energized ground power unit was connected to one of the affected airplanes equipped with a lithium-ion battery as the main aircraft battery. We are issuing this AD to prevent a potential battery fault that could lead to an aircraft fire.

**(f) Compliance**

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

**(g) Replace the Lithium-Ion Main Aircraft Battery, Cessna P/N 9914788–1**

(1) Within the next 10 hours time-in-service after November 1, 2011 (the effective date of this AD) or within the next 7 days after November 1, 2011 (the effective date of this AD), whichever occurs first, replace the lithium-ion main aircraft battery, Cessna P/N 9914788–1, following Cessna Citation Service Bulletin SB525C–24–05, dated September 29, 2011.

(2) As of November 1, 2011 (the effective date of this AD), do not install a lithium-ion battery, Cessna P/N 9914788–1, on any of the affected airplanes.

**(h) Special Flight Permits**

Special flight permits under 14 CFR 39.23 are allowed with the following limitation: ''Single and non-revenue flights only.''

**(i) Alternative Methods of Compliance (AMOCs)**

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

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/ certificate holding district office.

**(j) Related Information**

For further information about this AD, contact: Richard Rejniak, Aerospace Engineer, Wichita ACO, FAA, 1801 Airport Road, Room 100, Wichita, Kansas 67209; *phone:* (316) 946–4128; *fax:* (316) 946–4107; *email: richard.rejniak@faa.gov.*

**(k) Material Incorporated by Reference**

(1) You must use Cessna Citation Service Bulletin SB525C–24–05, dated September 29, 2011, to do the actions required by this AD, unless the AD specifies otherwise. The Director of the **Federal Register** approved the incorporation by reference (IBR) under 5 U.S.C. 552(a) and 1 CFR part 51 on November 1, 2011.

(2) For service information identified in this AD, contact Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, KS 67277; *telephone:* (316) 517–6000; *fax:* (316) 517–8500; *email: Customercare@cessna.textron.com; Internet: http://www.cessna.com.*

(3) You may review copies of the service information at the FAA, FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

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

Issued in Kansas City, Missouri, on October 19, 2011.

**James E. Jackson,**

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

[FR Doc. 2011–27596 Filed 10–31–11; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 15 CFR Part 922

**[Docket No. 100827401–1597–02]**

**RIN 0648–BA20**

## Olympic Coast National Marine Sanctuary Regulations Revisions

**AGENCY:** Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

**ACTION:** Final rule.

**SUMMARY:** Pursuant to the National Marine Sanctuaries Act (NMSA), the National Oceanic and Atmospheric Administration (NOAA) has conducted a review of the management plan and regulations for Olympic Coast National Marine Sanctuary (OCNMS or sanctuary), located off the outer coast of the Olympic Peninsula in the State of Washington. As a result of the review, NOAA determined that it was necessary to revise the sanctuary's management plan and implementing regulations. NOAA is revising the OCNMS regulations to: Prohibit wastewater discharges from cruise ships; clarify the language referring to consideration of the objectives of the governing bodies of Indian tribes when issuing permits; correct the size of the sanctuary based on new area estimates (without revising the sanctuary's actual boundaries); update of definitions; and update information such as office location. NOAA also makes additional changes to the grammar and wording of several sections of the regulations to ensure clarity and consistency with the NMSA and other sanctuaries in the National Marine Sanctuary System.

**DATES:** *Effective date:* December 1, 2011.

**ADDRESSES:** Copies of the final management plan (FMP) and environmental assessment (EA) described in this rule and the Finding of No Significant Impact (FONSI) are available upon request to Olympic Coast National Marine Sanctuary, 115 East Railroad Avenue, Suite 301, Port Angeles, WA 98362, *Attn:* George Galasso. The FMP and EA can also be viewed on the Web and downloaded at *http://olympiccoast.noaa.gov.*

**FOR FURTHER INFORMATION CONTACT:** George Galasso at (360) 457–6622, extension 12.

**SUPPLEMENTARY INFORMATION:**

## I. Introduction

### *A. Olympic Coast National Marine Sanctuary*

Designated in 1994, OCNMS is a place of regional, national and global significance. Connected to both the Juan de Fuca Eddy Ecosystem and the California Current Large Marine Ecosystem, OCNMS is home to one of North America's most productive marine ecosystems and to spectacular, undeveloped shorelines. OCNMS's mission is to protect the Olympic Coast's natural and cultural resources through responsible stewardship, to conduct and apply research to preserve the area's ecological integrity and maritime heritage, and to promote understanding through public outreach and education.

The sanctuary encompasses 2,408 square nautical miles of marine waters off Washington State's rugged Olympic Peninsula. OCNMS is a highly productive ocean and coastal environment important to the continued survival of many ecologically valuable species of fish, seabirds and marine mammals and commercially valuable fisheries. Abundant and diverse biological communities are supported by several types of habitat that comprise the sanctuary, including: Offshore islands; dense, sheltering kelp beds; numerous and diverse intertidal pools; rocky headlands; seastacks and arches; exposed sand and cobble beaches; submarine canyons and ridges; and the continental shelf. The sanctuary adjoins significant historical resources including American Indian village sites, ancient canoe runs, petroglyphs, American Indian artifacts and numerous shipwrecks. In addition, OCNMS is encompassed by the usual and accustomed fishing grounds of four American Indian tribes who exercise treaty reserved rights, and are co-managers of their treaty-protected resources, within the sanctuary.

### *B. Need for Action*

Section 304(e) of the NMSA requires NOAA to review the management plan of each national marine sanctuary at regular intervals. NOAA has conducted a review of the OCNMS management plan and determined that it was necessary to revise the management plan and regulations for the sanctuary. Therefore, NOAA is now publishing final regulations, as well as a final management plan (FMP) and environmental assessment (EA).

The final management plan for the sanctuary contains a series of action plans outlining activities to better achieve resource protection, research, education, operations, and evaluation objectives for the next five to ten years. The action plans are designed to address specific issues facing the sanctuary and, in doing so, to achieve the NMSA's primary objective of resource protection (16 U.S.C. 1431(b)(6)) and fulfill the sanctuary's terms of designation (59 FR 24586, May 11, 1994). The final management plan can be downloaded at: *http://olympiccoast.noaa.gov/protection/mpr/welcome.html*.

### *C. Background on This Action and Public Involvement*

This final rule revises the OCNMS regulations as described below in Section II: ''Summary of the Regulatory Amendments.'' The environmental effects of these final revisions are analyzed in the EA. NOAA first provided notice of this action when it announced the beginning of the OCNMS management plan review process (73 FR 53161; September 15, 2008). The public was invited to comment on the proposed rule, draft EA, which includes the draft management plan, from late January to late March 2011 (76 FR 2611 and 76 FR 6368). Comments were received electronically, by fax, by mail and at public hearings held in Port Angeles and in Forks, Washington. More than thirty comments were received on the draft management plan and proposed rule from individuals, non-governmental conservation organizations, government agencies, and special interest groups. All comments received are part of the public record and are posted at *http://www.regulations.gov*. NOAA's responses to the public comments received during that period are included below.

## II. Summary of the Regulatory Amendments

This section describes the changes to the OCNMS regulations.

### *A. Clarify Size of the Sanctuary*

The size of the sanctuary has been recalculated using improved area estimation techniques and technology, resulting in a new estimate of the size of the sanctuary. There is no change to the boundaries of the sanctuary. This change does not affect physical, biological, or socioeconomic resources because it does not alter the sanctuary's original size or boundaries.

The original OCNMS regulations estimated the sanctuary's area as approximately 2,500 square nautical miles (59 FR 24586; May 11, 1994). However, current techniques allow for more accurate area calculations. Without altering the sanctuary's existing boundaries (as defined in the OCNMS terms of designation), NOAA recalculated the area within sanctuary boundaries and found it to be 2,408 square nautical miles (approximately 8,259 square kilometers). This change is solely the result of the improved accuracy of area measurement techniques since the sanctuary's size was first estimated in 1994.

### *B. Clarify and Update the Use of the Term ''Submerged Lands''*

This final rule replaces the term ''seabed'' with the term ''submerged lands'' that was used in the original regulatory language prohibiting ''drilling into, dredging or otherwise altering the seabed of the sanctuary'' (59 FR 24586; May 11, 1994). The previous definition of the sanctuary boundary in the OCNMS terms of designation (59 FR 24586; May 11, 1994) recognizes submerged lands as part of the sanctuary. This rule change makes the regulations, which previously used the term ''seabed,'' consistent with the description of the sanctuary in the terms of designation. This change also makes the regulations consistent with language used in the NMSA (16 U.S.C. 1432(3)). Additionally, using the term ''submerged lands'' uniformly among the NMSA, OCNMS terms of designation, and OCNMS regulations improves consistency with the regulatory language for the other national marine sanctuaries, which all use the term ''submerged lands.'' The use of the term ''submerged lands'' will not alter NOAA's current jurisdiction in OCNMS in any way. This regulatory change does not affect physical, biological, or socioeconomic resources because it does not alter the original boundaries or designation of the sanctuary.

### *C. Substitute the Term ''Traditional Fishing'' With ''Lawful Fishing''*

OCNMS regulations previously provided an exception for ''traditional fishing'' operations to three of the regulatory prohibitions. The term ''traditional fishing'' was defined as ''using a fishing method that has been used in the sanctuary before the effective date of sanctuary designation (July 22, 1994), including the retrieval of fishing gear'' (59 FR 24586; May 11, 1994). This OCNMS regulation allowed fishing operations that existed before sanctuary designation to discharge certain fishing-related materials, disturb historical resources, and disturb the seabed. The precise language of these three exceptions from the original OCNMS regulations is as follows (emphasis added):

• ''Discharging or depositing, from within the boundary of the Sanctuary, any material or other matter except * * * fish, fish parts, chumming materials or bait used in or resulting from *traditional fishing* operations in the Sanctuary;'' (15 CFR 922.152(2)(i))

• ''Moving, removing or injuring, or attempting to move, remove or injure, a Sanctuary historical resource. This prohibition does not apply to moving, removing or injury resulting incidentally from *traditional fishing operations.''* (15 CFR 922.152(3))

• ''Drilling into, dredging or otherwise altering the seabed of the Sanctuary; or constructing, placing or abandoning any structure, material or other matter on the seabed of the Sanctuary, except as an incidental result of * * * *Traditional fishing* operations.'' (15 CFR 922.152(4)(ii))

In addition to replacing ''seabed'' with ''submerged lands,'' as described earlier, NOAA replaces the term ''traditional fishing'' with the term ''lawful fishing'' in these three places to: (1) Use a term that is more clearly understood; and (2) ensure that there is no distinction between current and future fishing operations. ''Lawful fishing'' is defined as follows: ''Lawful fishing means fishing authorized by a tribal, state or federal entity with jurisdiction over the activity.''

Despite the definition provided in the regulation, and because of its varied connotation, the term ''traditional'' in OCNMS regulations may have been incorrectly interpreted (*e.g.,* equating traditional fishing with Native American fishing techniques). By replacing the word ''traditional'' with ''lawful'' NOAA unambiguously recognizes fishing activities authorized by fisheries management authorities. This change is also consistent with terms used in the regulations for other national marine sanctuaries on the West Coast.

In addition to being more widely understood and consistent, this change makes clear that fishing activities authorized by regulations lawfully adopted by fishery management agencies are not subject to the prohibitions in the OCNMS regulations. Since the time of sanctuary designation, NOAA has refrained from directly regulating fishing through the OCNMS regulations, and the adoption of the ''lawful fishing'' terminology will not alter this approach. (See, generally, Final Environmental Impact Statement (NOAA 1993) and the final rule adopting regulations for OCNMS, 59 FR 24597 (May 11, 1994)), which can be viewed on the Web and downloaded at *http://olympiccoast.noaa.gov*.

*D. Revise Regulations on Discharge/Deposit*

This rule modifies the regulations prohibiting discharging or depositing any material or other matter as follows:

1. Prohibit Discharges/Deposits of Treated and Untreated Sewage and Graywater From Cruise Ships

These revisions address NOAA's concerns about possible impacts from large volumes of sewage and graywater discharges in the sanctuary, whether treated or not, from cruise ships. Currently, legal discharges from vessels, including cruise ships, transiting or engaging in activities in OCMNS have the potential to negatively impact water quality, as well as pose health risks to humans who use the area. The discharges of highest concern in OCNMS based on volume and potential contaminant loading are sewage, graywater, and bilge water. These modifications to OCNMS regulations will also make OCNMS discharge/deposit prohibitions consistent with the prohibitions for cruise ship discharge/deposit already in effect within the other four West Coast national marine sanctuaries.

Analysis of the actual time cruise ships transited OCNMS in 2009 and estimated wastewater generation rates provides a range of potential annual discharge volumes from 0.2 to 1.3 million gallons of treated sewage and from 1.5 to 5.0 million gallons of graywater. Evaluation of potential environmental impacts of these discharges is complicated. The nutrient and chemical concentrations in wastewater discharges varies depending on both the type of wastewater treatment system being used as well as the ongoing functional performance of individual systems. Also, the volume of wastewater actually discharged from cruise ships in the sanctuary is uncertain. While industry representatives have stated that cruise ships currently avoid all discharges in the sanctuary, this has not been verified. Thus, it is difficult to quantify specific reductions in individual nutrients or chemicals that would be achieved under this final rule.

Additional analysis of the potential impacts to biological, physical and socioeconomic resources from sewage, graywater, and bilge water discharges/deposits are provided in Section 8 of the EA.

*Sewage*

Sewage, also referred to as blackwater, is defined as human body wastes and the wastes from toilets and other receptacles intended to receive or retain body wastes (40 CFR 140.1). Sewage from vessels is generally more concentrated than sewage from land-based sources, as it is diluted with less water when flushed (*e.g.,* 0.75 versus 1.5–5 gallons), and on many vessels sewage is not further diluted with graywater. Sewage generated on vessels is usually directed to a marine sanitation device (MSD).

The CWA requires that any vessel with installed toilet facilities must have an operable MSD. Three general types of MSDs are available and in use. Type I MSDs rely on maceration and chemical disinfection for treatment of the waste prior to its discharge into the water, and are only legal in vessels under 65 feet in length. Type II MSDs utilize aeration and aerobic bacteria in addition to maceration for the breakdown of solids. As with Type I MSDs, the waste is chemically disinfected, typically with chlorine, ammonia or formaldehyde, prior to discharge. Type II MSDs are legal in any size class of vessel, and there are a variety of different types. Type III MSDs are storage tanks, may contain deodorizers and other chemicals, predominantly chlorine, and are used to retain waste until it can be disposed of at an appropriate pump-out facility or at sea. Most MSDs do not have the same nutrient removal capability as land-based treatment plants. Thus, even treated vessel wastewater can have elevated nutrient concentrations.

Advanced wastewater treatment systems (AWTS) are a complex form of Type II MSD that meet a higher standards and testing regime as set out in Federal law, and utilize techniques such as reverse osmosis, ultrafiltration and ultra violet (UV) sterilization to provide more effective treatment. AWTS have been installed on more than half (9 of 15) larger passenger vessels that will transit the sanctuary in 2011 and on these vessels blackwater and graywater are combined. Some of the remaining 6 vessels may have installed AWTS; however, due to equipment and operating challenges, they are not functioning properly and are not being used. These vessels are therefore currently using traditional (Type II) MSDs. The treatment capabilities of AWTS for certain constituents (*e.g.* nutrients and metals) vary by design and manufacturer, but overall, the performance of these units far surpasses the performance of traditional (Type II) MSDs. For example, suspended solids, residual chlorine, and fecal coliform concentrations in AWTS effluent are typically zero.

Discharges from AWTS may introduce disease-causing microorganisms (pathogens), such as bacteria, protozoans, and viruses, into the marine environment. In addition, sewage discharges from ships, particularly those not using AWTS, contain nutrients that create biological and chemical oxygen demand and could contribute to algae blooms that, in turn, could intensify low dissolved oxygen levels known to occur in the sanctuary. Pathogens from sewage have the potential to contaminate commercial or recreational shellfish beds (a human health risk) and to harm wildlife and humans directly. They may also yield unpleasant esthetic impacts to the sanctuary (diminishing sanctuary resources and its ecological, conservation, esthetic, recreational and other qualities).

*Graywater*

Like sewage, graywater discharges also have the potential to degrade water quality. Graywater can contain a variety of substances including (but not limited to) detergents, oil and grease, pesticides, and food wastes. Graywater discharges from cruise ships can have constituent levels in a range similar to that of untreated domestic waste water, and levels for nutrients, biological oxygen demand, fecal coliforms, and food pulper wastes may be many times higher than typical domestic graywater. Nutrients in graywater could negatively impact water quality in the same manner and in combination with discharges of treated sewage from cruise ships. At least three of the cruise ships that transit the sanctuary have no graywater treatment system. These ships constitute over 30% of transits in 2010 and 25% of the transits scheduled for 2011. Fecal coliform concentrations in graywater often exceed the 200 fecal coliforms/100 ml performance standard for MSDs.

*Bilge Water*

Bilgewater is the mixture of fresh water and seawater, oily fluids, lubricants, cleaning fluids and other wastes that accumulate in the bilge, or lowest part of a vessel hull, from a variety of sources including leaks, engines and other parts of the propulsion system, and other mechanical and operational sources found throughout the vessel. All vessels accumulate bilgewater through their normal operation, but the generation rates depend on a variety of factors including hull integrity, vessel size, engine room design, preventative maintenance, and the age of the vessel. In addition to oil and grease, bilgewater may also contain a variety of other solid and liquid contaminants, such as rags, metal shavings, soaps, detergents, dispersants, and degreasers. Estimates of bilgewater discharges to the sanctuary are not available for most classes of vessels. Data for bilgewater generation from cruise ships were available, with an estimated volume of 25,000 gallons produced per week (3,500 gallons per day) on vessels with 3000 passenger/crew capacity (EPA 2008b).

Several national and international regulations govern allowable discharges of bilgewater in an effort to reduce oil contamination of the oceans. These regulations require that ships have operational oil-water separating equipment and that discharges may not exceed 15 parts per million oil. An EPA Vessel General Permit (VGP) prohibits discharge of treated or untreated bilgewater from vessels 400 gross tons or more within 3 mi of shore in a national marine sanctuary. OCNMS regulations prohibit all discharge of oily waste from bilge pumping. Because sanctuary regulations do not specify a limit, this has been interpreted by ONMS as prohibiting any detectable amount of oil as evidenced by a visible sheen. Under current OCNMS regulations discharge of bilgewater that does not leave a visible sheen is allowed.

Discharge of bilge water from cruise ships has the potential to introduce oils, detergents, degreasers, solvents, and other harmful chemicals into the marine environment that can harm water quality and generate oxygen demand.

2. Adopt a Definition of ''Cruise Ship''

A definition of ''cruise ship'' is added to OCNMS regulations as follows: ''Cruise ship means a vessel with 250 or more passenger berths for hire.'' This definition is consistent with the vessel discharge regulations governing the other four national marine sanctuaries on the West Coast. This definition includes cruise ships where berths are offered for sale or are marketed as condominiums.

3. Adopt a Definition of ''Clean''

The definition of ''clean'' is added to OCNMS regulations as follows: ''*Clean* means not containing detectable levels of harmful matter.'' This definition is consistent with the vessel discharge regulations governing the other four national marine sanctuaries on the West Coast.

4. Adopt a Definition of ''Harmful Matter''

The definition of ''harmful matter'' is added to OCNMS regulations as follows: ''*Harmful matter* means any substance, or combination of substances, that because of its quantity, concentration, or physical, chemical, or infectious characteristics may pose a present or potential threat to Sanctuary resources or qualities. Such substance or combination of substances include but are not limited to: Fishing nets, fishing line, hooks, fuel, oil, and those contaminants (regardless of quantity) listed pursuant to 42 U.S.C. 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act at 40 CFR 302.4.'' This definition is consistent with the vessel discharge regulations governing the other four national marine sanctuaries on the West Coast.

*E. Revise Permit Regulations in Relation to Tribal Welfare*

Under the previous regulations, ONMS could issue a permit to conduct an activity otherwise prohibited if it found that the activity qualifies for one of the approved purposes listed in the regulations. One of the purposes listed for permit issuance for OCNMS was to ''promote the welfare of any Indian tribe adjacent to the sanctuary.'' This provision was ambiguous and could be interpreted as allowing an entity not affiliated with a tribe to apply for a permit that it alleges could promote the welfare of an American Indian tribe adjacent to the sanctuary without the explicit agreement or participation of the American Indian tribe. The concept of ''promote the welfare of any Indian tribe'' was not defined or explained further in the original regulations, the terms of sanctuary designation, or the 1993 Final EIS. As a result, it could be difficult to evaluate permits relative to this purpose.

NOAA modifies the regulation to clarify that a permit under this provision is available only to American Indian tribes adjacent to the sanctuary (*i.e.,* Hoh, Makah, and Quileute Tribes and the Quinault Indian Nation) or its designee. To this end, NOAA replaces the phrase ''or promote the welfare of any Indian tribe adjacent to the Sanctuary'' with a more descriptive basis for permit issuance. NOAA intends to consider permit applications made by an adjacent American Indian Tribe, or its designee as certified by the governing body of the tribe, ''to promote or enhance tribal self-determination, tribal government functions, the exercise of treaty rights, the economic development of the tribe, subsistence, ceremonial and spiritual activities, or the education or training of tribal members.''

*F. Make Other Minor Changes to Regulatory Text*

1. NOAA deletes the definition for the term ''Federal project''. The original OCNMS regulations used this term to refer to ''Federal projects in existence on July 22, 1994.'' However, there is only one project that fits this definition: The Quillayute River Navigation Project. For clarity, NOAA revises the OCNMS regulations to reference the Quillayute River project specifically. The definition for ''Federal Project'' is deleted because the term will no longer be used in the regulations. The term ''Quillayute River Navigation Project'' is used in § 922.152(a)(1)(E) and § 922.152(h).

2. The mailing address for permit applications in § 922.153 is updated to reflect the current OCNMS office location.

**III. Classification**

*National Environmental Policy Act*

NOAA has prepared a final environmental assessment to evaluate the environmental effects of this rulemaking. Copies are available at the address and Web site listed in the **ADDRESSES** section of this final rule. Responses to comments received on the proposed rule are published in the final environmental assessment and preamble to this final rule.

*Coastal Zone Management Act*

Section 307 of the Coastal Zone Management Act (CZMA; 16 U.S.C. 1456) requires Federal agencies to consult with an affected state's coastal program on potential Federal regulations having an effect on state waters. Because the sanctuary encompasses a portion of the Washington State waters, NOAA submitted a copy of the proposed rule and supporting documents to the State of Washington Coastal Zone Management Program for evaluation of Federal consistency under the CZMA. Washington State agreed with NOAA's determination that the draft management plan, draft environmental assessment and the proposed rule were consistent to the maximum extent practicable with the applicable enforceable policies of Washington's Coastal Zone Management Program and will not result in any significant impacts to the State's coastal resources.

*Executive Order 12866: Regulatory Impact*

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

*Executive Order 13132: Federalism Assessment*

NOAA has concluded that this regulatory action does not have federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 13132. Members of the OCNMS Advisory Council, Olympic Coast Intergovernmental Policy Council, the Washington Department of Ecology, the Washington Department of Fish and Wildlife, the Washington Department of Natural Resources, the Washington State Ocean Caucus, and Pacific Fishery Management Council have been closely involved with the development of the final management plan for OCNMS and this rule. In addition, OCNMS staff has consulted with staff from all of the previously mentioned state agencies, along with the Washington State Historic Preservation Office, on development of the EA that supports the final rule. The State of Washington Governor's Office, as a member of the Olympic Coast Intergovernmental Policy Council, has also been involved in developing the final management plan, EA, and the final rule.

*Executive Order 13175: Tribal Consultation and Collaboration*

This final rule was developed after consultation and collaboration with representatives from the Makah, Hoh, and Quileute Tribes and the Quinault Indian Nation through their membership on the Olympic Coast Intergovernmental Policy Council (IPC) and the OCNMS Advisory Council. In addition to discussions with the IPC, NOAA sought direct government to government consultations with the Hoh, Makah, and Quileute Tribes and the Quinault Indian Nation. NOAA and the Makah Tribe consulted on a government to government basis to respond to the Makah Tribe's concerns related to the proposed rule. This final rule takes that consultation into consideration.

*Regulatory Flexibility Act*

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* the Chief Counsel for Regulation at the Department of Commerce certified to the Chief Counsel for Advocacy, Small Business Administration that this action will not have a significant economic impact on a substantial number of small entities. The factual basis for this certification was published with the proposed rule and is not repeated here. No comments were received regarding the economic impact of this rule. As a result, a final regulatory flexibility analysis is not required and none was prepared.

*Paperwork Reduction Act*

This rule does not contain any new information collection requirements or revisions to the existing information collection requirement that was approved by OMB (OMB Control Number 0648–0141) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB control number.

**IV. Changes From the Proposed Rule**

The following changes have been made to the regulatory changes proposed in the proposed rule (76 FR 2611; January 14, 2011) as a response to public comments received during the public comment period and a government to government consultation with the Makah Tribe.

*(1) Improve the Description of the Purpose and Procedures for the Tribal Welfare Permit*

The proposed rule identified a need to improve the specificity for the issuance of a permit to ''promote the welfare of a tribe.'' The proposed rule explained the purpose of the permit as follows: ''To promote or enhance tribal self-determination, tribal governmental functions, the exercise of treaty rights or the economic development'' of an American Indian tribe adjacent to the sanctuary.

Comments received from the Makah Indian Tribe, and elaborated upon by the Tribe during government-to-government consultation, identified three important concerns with the proposal. First, the language of the proposed rule and its accompanying explanation suggest that a tribe must be the sole applicant for this type of permit. Second, that issuance of a permit to a tribe is inappropriate given the tribe's status as a co-equal sovereign. Third, the list of eligible activities which are substituted for ''welfare of a tribe'' in the proposed rule is too limiting and additional language was suggested by the Makah Tribe.

NOAA has carefully considered each of these concerns, and related recommendations from the Makah Tribe and finds that the final rule should be modified to reflect some of the improvements proposed by the Tribe.

First, to clarify the ambiguity created by language in the proposed rule, NOAA has modified the final rule to make clear that either a Coastal Treaty Tribe (*i.e.* Hoh, Makah, and Quileute Indian Tribes and the Quinault Indian Nation) or its designee may apply for or be a co-applicant for a permit to promote or enhance tribal self-determination. The final rule language further clarifies that the governing body of the tribe must certify the tribal designee as applicant or co-applicant for a permit, but the tribe need not itself be the applicant or co-applicant. It is not the intent of this language to limit the persons or entities who may apply for a permit under this provision or to require an agency relationship between a tribe and its designee. Rather, it is the intent of this language to create a procedure for NOAA to be assured that at least one person or entity among the co-applicants, or the applicant itself, has been formally designated by the tribe to apply for the permit as a means to advance the interests of the tribe. This language also allows for less direct involvement by the tribe in the permitting process as long as either an applicant or co-applicant is formally designated by the governing body of the tribe. In addition, any issues regarding the interests of a tribe in a project or permit application or the tribe's designee as the permit applicant or co-applicant may be a topic of government to government consultation between NOAA and the tribe.

Certification from the governing body of the tribe that the person or entity, whether an applicant or co-applicant, has been formally designated by the tribe to apply for the permit could be provided in various forms, the most obvious of which is a resolution adopted by the governing body of the tribe. There may be other forms of providing the official position of the tribal government depending upon the practices of each tribe.

The final rule incorporates the Makah Tribe's suggestion of additional tribal self-determination activities. NOAA did not, however, include the ''but not limited to'' language because it believes that nearly all activities eligible for a permit to promote tribal self-determination are either specifically described in the rule language or would be so closely related to one of the enumerated activities that they would be eligible for the permit even though not specifically described. NOAA's intent in substituting for the ''welfare'' language of the original rule is not to limit the broad range of activities eligible for a permit, but rather to describe common ways in which activities in the sanctuary may promote the well-being of the Coastal Treaty Tribes and their members.

*(2) Adding a Definition for ''Harmful Matter'' in the Context of Vessel Discharges*

The proposed changes to the OCNMS regulations (76 FR 2611)included a new definition of ''clean'', a term that appears in the prohibition on vessel discharges in § 922.152(a)(3). This definition of ''clean'' was adopted in an effort to increase consistency for regulations among national marine sanctuaries on the West Coast. The definition for ''clean'' includes the term ''harmful matter,'' which was not explicitly defined in the proposed rule. One of the comments NOAA received during the public comment period mentioned that the definition of ''clean'' was not meaningful or enforceable because of the ambiguity of the term ''harmful matter'' contained within it. NOAA agrees with that opinion, and in fact the regulations for the other national marine sanctuaries on the West Coast include a definition for ''harmful matter'' to complement the definition for ''clean.'' The omission of a definition for ''harmful matter'' was unintentional. Therefore, NOAA is adding the definition of ''harmful matter'' to the final rule, consistent with the regulations for the other national marine sanctuaries on the West Coast. This change between the proposed and final rule does not change the intent of the regulation and only serves to clarify the new definition of ''clean'' presented in the proposed rule.

*(3) Remove an Obsolete Reference to Authorizations for Discharging Primary-Treated Sewage in the Sanctuary in Section 922.152(h)*

The regulations in § 922.152(h) describe instances of activities prohibited in the sanctuary for which the Director may not issue a National Marine Sanctuary permit. One of those instances is the discharge of primary-treated sewage in the sanctuary. The previously effective regulatory text mentioned an exception to this prohibition if there was a ''certification, pursuant to § 922.47, of valid authorizations in existence on July 22, 1994 and issued by other authorities of competent jurisdiction (15 CFR 922.152(h)).'' However, the exception is unnecessary since no such certification has ever been pursued and no primary-treated sewage is currently being discharged in the sanctuary. NOAA did not realize until after the publication of the proposed rule that this exception could be removed to simplify the regulatory text. Since no activity, past or current, matches the description in the exception, the deletion of this text has no substantive impact on users of the sanctuary.

## V. Response to Comments

The National Oceanic and Atmospheric Administration (NOAA) conducted 2 public hearings to gather input on the Olympic Coast National Marine Sanctuary (OCNMS) draft management plan/environmental assessment and proposed rule during the public comment period from January 14 through March 25, 2011. All written and verbal comments received during the public comment period were compiled and grouped into twelve general topics. Similar comments from multiple submissions have been treated as one comment for purposes of response. NOAA considered all of these comments and, where appropriate, made changes to the final management plan (FMP) and environmental assessment (EA) in response to the comments. Editorial comments on the FMP/EA were also taken under consideration by NOAA and, where appropriate, applied to the EA or FMP. These comments are not included in the list below due to their editorial nature. Substantive comments received are summarized below, followed by NOAA's response.

*General Comments*

*Comment:* The collaborative nature of the OCNMS management plan review (MPR) process is appreciated. The 20 action plans in the management plan and the regulatory actions presented as Alternative B in the environmental assessment appropriately and thoroughly represent the highest priorities for OCNMS.

*Response:* NOAA appreciates the support it received from the OCNMS Advisory Council (SAC), Olympic Coast Intergovernmental Policy Council (IPC), interested groups, organizations and individuals in developing the DMP, and in particular the 20 action plans. NOAA also appreciates the support for Alternative B and has selected it as the basis for the final management plan.

*Comment:* NOAA should prioritize particular action plans, strategies, or activities and develop appropriate staffing strategies to implement the final management plan (FMP).

*Response:* The action plans in the FMP comprise an ambitious body of work. For that reason, prioritization of action plans and strategies in the FMP is essential. NOAA worked with the SAC and the IPC in order to develop the implementation strategy provided in

Table 5 in the FMP. This implementation table categorizes strategies as high, medium and low priorities for OCNMS under three different, hypothetical budget scenarios. NOAA will use the implementation table to consider priorities for operations on an annual basis. Future organizational structure and staffing decisions will be based on this prioritization of the strategies in the FMP, as well as the skills needed to implement the FMP. Because there is uncertainty about how future funding levels will influence prioritization, NOAA did not include a specific organizational structure or staffing plan in the FMP.

*Comment:* The final management plan should clarify and specify that the highest priority management goal of the Olympic Coast National Marine Sanctuary continues to be, ''the protection of the marine environment and resources and qualities of the Sanctuary.''

*Response:* Resource protection is the primary objective identified in the National Marine Sanctuaries Act (NMSA) and is, therefore, the highest priority for OCNMS. The six priority management needs and the goals and objectives for OCNMS outlined in the FMP were developed collaboratively through a public process with the SAC and the IPC. The OCNMS goals and objectives are not presented in an explicitly prioritized order; they are all considered important to OCNMS in the context of resource protection.

*Comment:* To avoid confusion among members of the public, NOAA should make clear that there are other, ongoing NOAA regulatory actions separate from the OCNMS management plan review process.

*Response:* At any given time, NOAA may have a number of regulatory actions in progress, some of which may affect OCNMS. For example, the ONMS has recently proposed a rule addressing disturbances of wildlife by aircraft flying over national marine sanctuaries (75 FR 76319). Other NOAA regulatory actions include fishery management actions under the Magnuson-Stevens Conservation and Management Act, authorizations under the Marine Mammal Protection Act, or permits under the Endangered Species Act.

*Comment:* NOAA's regulatory reach in managing OCNMS has expanded beyond the original goal of providing greater protection to tribal treaty fisheries and subsistence resources from the harmful effects of offshore oil development and oils spills.

*Response:* The 1994 terms of designation for OCNMS states that the sanctuary was established for the purposes of protecting and managing the conservation, ecological, recreational, research, educational, historical and aesthetic resources and qualities of the area. The scope of regulations, as defined in the OCNMS terms of designation, and the regulations for OCNMS have not changed since 1994. The few changes to OCNMS regulations identified in this rule are within the scope of regulations defined in the OCNMS terms of designation.

*Comment:* NOAA should release an annual report to the public summarizing the progress made with implementation of the OCNMS management plan.

*Response:* NOAA agrees and plans to produce such a report.

*Comment:* NOAA should continue its efforts to build and strengthen its relationships with communities on the outer coast of the Olympic Peninsula, as well as collaborate with the Lake Ozette Sockeye Committee (LOSC) to assist in reducing risk factors for sockeye salmon survival. Since collaboration among groups can at times be contentious or volatile, NOAA should enlist the assistance of a professional facilitator at meetings to strengthen collaboration among key partners.

*Response:* NOAA agrees and intends to continue efforts in this area, as identified in multiple strategies and activities in the Community Involvement in Sanctuary Management and Community Outreach action plans included in the FMP. While not an active participant, OCNMS staff have been monitoring the work of the LOSC. The Lake Ozette Sockeye Recovery Plan is focused on terrestrial and freshwater management options. Improved understanding of marine habitat use by sockeye salmon, particularly juveniles, is important to effective management and, perhaps, recovery of this ESA listed species, and NOAA supports collaboration on related research within the boundaries of the sanctuary. Several strategies in the FMP provide flexibility to consider such collaborations over the 5–10 year implementation period for the FMP. In addition, NOAA utilizes professional facilitators on occasion, when appropriate. It is not possible, nor necessary, to use professional facilitation at all meetings.

*Comment:* Electronic submission should not be the primary method used for the public to submit comments on these documents because many people living on the West end of the Olympic Peninsula do not have internet access. In addition, the products and actions of the IPC and the SAC are not sufficiently transparent to the public.

*Response:* NOAA accepted comments by several means, including: In writing, orally at public hearings, electronic submissions, and by fax. All OCNMS SAC meetings are open to the public, as were all the SAC working group meetings and workshops that resulted in preliminary draft action plans. These meetings and workshops were announced on the OCNMS Web site and periodically advertised to the email listserve developed for OCNMS MPR. One of the reasons Sanctuary Advisory Councils are an integral part of the management plan review process for all sites within the National Marine Sanctuary System is to ensure that management plans are reviewed and revised in a public forum. While the IPC meetings themselves are not required to be public, in all cases where the IPC provided recommendations for the draft management plan, these recommendations were discussed at SAC meetings, which are open to the public. Each step of the OCNMS MPR process, including meeting notes of all the SAC meetings, has been documented and is publically available on the OCNMS Web site.

*Comment:* The Environmental Assessment frequently confuses Endangered Species Act (ESA), Marine Mammal Protection Act (MMPA), and National Environmental Policy Act (NEPA) ''effects'' language and conclusions.

*Response:* The OCNMS EA is written in conformance with the National Environmental Policy Act (NEPA) (42 U.S.C. 4332) and NEPA regulations (40 CFR part 1500) and does not contradict or conflict with language pertaining to adverse impacts or effects contained in either the Endangered Species Act or Marine Mammal Protection Act. Phrasing similar to threshold language of the ESA and MMPA was used in the EA but was not used in the context of characterizing impacts.

*Comment:* The Desired Outcome stated at the beginning of each sub-plan in the OCNMS management plan should be more specifically tailored to a five- or ten-year goal statement where one could measure progress or success, and direct efforts for OCNMS, as well as for partners and collaborators, as future funding becomes available.

*Response:* The Desired Outcome statements are intended to be a broader characterization of the end result that OCNMS hopes to achieve with each action plan. The desired outcomes are intended to tie each action plan to the goals and objectives outlined at the beginning of the management plan. The performance measures identified in the

FMP are intended to be the specific measures of progress or success.

*Comment:* NOAA should pursue inter-governmental agreements or memoranda of agreement (MOAs) to declassify appropriate U.S. Navy maps and bathymetric data.

*Response:* NOAA agrees and has edited two strategies to address the issue of U.S. Navy bathymetric data acquisition: Collaborative and Coordinated Sanctuary Management Action Plan Strategy, Strategy CCM7: United States Navy, Activity B; and Habitat Mapping and Classification Action Plan, Strategy MAP1: Regional Coordination, Activity C.

*Oil Spill Planning and Prevention*

*Comment:* NOAA should develop a marine nearshore assessment to determine if sockeye populate the region, and improve the regional Geographic Response Plans that direct initial response to oil spills.

*Response:* While conducting a nearshore assessment of sockeye salmon populations is beyond its current capacity, NOAA is interested in participating in a collaborative effort to conduct such a study. The Spills Prevention, Preparedness, Response and Restoration Action Plan, Strategy SPILL3: Regional Planning and Training Exercises, Activity E has been modified to seek improvements to geographic response plans in the area of threatened and endangered species protection.

*Comment:* NOAA should remove the activity in the management plan that requests that U.S. Coast Guard (USCG) conduct a vessel traffic risk study of the western Strait of Juan de Fuca. USCG has reviewed this issue and found aids to navigation adequate in this area.

*Response:* The recommendation for NOAA to encourage the USCG to conduct a vessel traffic study was made by consensus by the Spills Prevention, Preparedness, Response and Restoration Working Group. NOAA considers the review of maritime safety within and adjacent to sanctuary boundaries to be an ongoing priority. The frequency at which specific reviews and studies should be undertaken will be a subject of ongoing discussions between NOAA and USCG.

*Comment:* NOAA should/should not make the Area to be Avoided (ATBA) mandatory.

*Response:* The ATBA is currently a voluntary vessel traffic measure with a high compliance rate (98.9% compliance in 2009) that is routinely monitored by NOAA. Based on the high level of compliance, NOAA elected to not support the alternative in the EA (alternative C) that would pursue a mandatory ATBA. If compliance rates were to decrease significantly, NOAA would revisit this issue after consulting with the USCG and other partners. NOAA supports alternative B, which would maintain the voluntary status of the ATBA based on high compliance rates.

*Sanctuary Science*

*Comment:* NOAA should archive regularly collected satellite data on sea surface temperature and primary productivity.

*Response:* The collection and archiving of satellite data is the responsibility of NOAA's National Environmental Satellite, Data, and Information Service (NESDIS). Satellite data products including SST and primary productivity indicators (chlorophyll a) are currently archived at NESDIS. Most archival data are found in the CLASS system. (Comprehensive Large Array-data Stewardship System) at *http://www.class.ncdc.noaa.gov/saa/products/welcome.*

*Comment:* NOAA should utilize backpackers to help with monitoring efforts in the sanctuary (*e.g.,* pass out marine mammal stranding cards, where backpackers could report information).

*Response:* NOAA believes in the value of citizen science and is a partner in the Coastal Observation and Seabird Survey Team (COASST), through which volunteers survey designated segments of the coast on a monthly basis. COASST volunteers receive training in the monitoring methods to ensure the accuracy and utility of data to resource managers and scientists. NOAA does work with Olympic National Park (ONP) staff to provide information at trail heads that provides information on how to report marine mammal strandings. NOAA is a partner in the Northwest Marine Mammal Stranding Network, which documents and coordinates response to marine mammal strandings. NOAA participates in stranding network trainings that are provided to ONP's coastal rangers and are open to all interested parties.

*Comment:* NOAA should include a representative from the Northwest Fishery Science Center in the efforts to develop a list of indicator species for OCNMS.

*Response:* NOAA agrees. In strategy ECO9: Ecosystem Processes in the FMP, Northwest Fisheries Science Center is identified as a key partner in efforts to identify indicator species for the sanctuary area.

*Natural Resource Management*

*Comment:* The management plan should focus less on collection of more data and should contain more explanation of how NOAA will implement ecosystem based management in OCNMS in the context of the Coastal and Marine Spatial Planning.

*Response:* During development of the management plan, NOAA determined that data collection is a priority to support EBM implementation because data on natural resources in the sanctuary is still scarce. The FMP directs NOAA to work with its partners over the coming years to determine how to implement EBM in the sanctuary region. Collection and analysis of data on sanctuary resources are important steps in that direction. Implementation of EBM needs to occur on a scale larger than the sanctuary and will require collaboration between NOAA, the Coastal Treaty Tribes, the State of Washington, and other partners. Coastal and marine spatial planning (CMSP), as discussed in the FMP, is being implemented on a statewide and regional scale. CMSP is a data-dependent process that will be improved by more comprehensive characterization of natural resource distribution, condition, and use.

*Comment:* NOAA should consider measures such as time/area closures, take limits on prey species, and restrictions on fishing activities specifically during the EFH groundfish 5-year review.

*Response:* In the FMP, NOAA does recognize the ecological importance, sensitivity to disturbance, and slow recovery potential of biogenic habitats, such as deep sea corals and sponges, and is committed to their protection. The Habitat Mapping and Classification Action Plan in the FMP supports seafloor habitat mapping, including identifying where biogenic habitats occur and sharing these data with other natural resource managers. The Habitat Protection Action Plan in the FMP supports OCNMS staff participation in the Pacific Fishery Management Council (PFMC) process to identify and review essential fish habitat (EFH) and habitat areas of particular concern (HAPC) for Pacific Coast groundfish. This action plan also supports collaborative development and evaluation of recommendations for HAPC sites and EFH conservation areas.

*Comment:* NOAA should define essential fish habitat. Where is it for each species and what are the limitations of use within it?

*Response:* Essential fish habitat (EFH) is defined in the Magnuson-Stevens Fishery Conservation and Management Act as 'those waters and substrate necessary to fish for spawning,

breeding, feeding or growth to maturity' (16 U.S.C. 1802(10)). This Act requires NMFS to assist the regional fishery management councils in the implementation of EFH in their respective fishery management plans. This Act also requires Federal agencies to consult with NMFS on any federal action that may have an adverse effect on EFH. A designated groundfish EFH area in OCNMS, named Olympic 2, is identified in the FMP, and non-tribal bottom trawlers are prohibited from fishing within Olympic 2. The water column in the sanctuary is also designated EFH for Chinook, Coho, and Pink salmon and some coastal pelagic species (anchovies, sardines, squid, and mackerel). There are no specific fishery management limitations associated with these water column EFH designations.

*Comment:* Conservation issues, including any national ONMS initiatives, that may require modification of fisheries regulations should be referred to the Pacific Fishery Management Council for appropriate action.

*Response:* In the event modification to Federal fishery regulations is necessary, NOAA will bring the issue to the PFMC's attention through established processes. At this time, there are no national initiatives by the ONMS that would impact Pacific Fisheries Management Council-managed species.

*Comment:* NOAA should address in the management plan how the access to fishing and shellfishing (in this case, the intertidal zone that was deeded to the Federal government) might be regulated to adhere to state of Washington requirements.

*Response:* NOAA is not proposing to alter fisheries management through this FMP, therefore this issue is beyond the scope of this rulemaking.

*Comment:* OCNMS's goals of protecting, conserving, and enhancing sanctuary resources should include the seascape, lightscape and soundscape of OCNMS for this and future generations as it relates to the overall recreational hiking experience along that portion of the Washington Coast Trail adjacent to the sanctuary.

*Response:* As part of the original OCNMS designation in 1994, NOAA described the characteristics of the sanctuary that made it an area of special national significance. One such characteristic was ''its rugged and undeveloped coastline''. In addition, the National Marine Sanctuaries Act identifies both recreational and esthetic qualities as important characteristics of national marine sanctuaries. NOAA will consider impacts on these characteristics in its review of permit applications for activities in OCNMS. The coastal wilderness of Olympic National Park and the Washington Islands National Wildlife Refuges are additional federal designations that recognize and protect the Olympic Coast as a special and unique area in the continental United States.

*Visitation and Recreation*

*Comment:* NOAA should increase public awareness of the Sanctuary resources by making use of the natural beauty found above and below the water in a newsletter or a Web site.

*Response:* The desired outcomes of the Visitor Services Action Plan are to improve awareness of the sanctuary and ocean issues, and to provide an enriched and extended coastal travel experience. This action plan supports an update of the OCNMS Web site and use of additional appropriate technologies, such as social networking, webcasts, and smartphone applications.

*Comment:* NOAA should develop a southern information center in Aberdeen.

*Response:* The Visitor Services Action Plan outlines efforts to assess locations for additional visitor information centers. Planning efforts proposed under this action plan will include market feasibility, assessment of potential visitor traffic, and a survey of education and interpretation thematic opportunities.

*Military Activities in the Sanctuary*

*Comment:* The U.S. Navy is committed to considering the use of biodegradable components for military expendable materials during training and RDT&E activities to the extent that such materials are available, will meet mission requirements, and are practicable.

*Response:* NOAA appreciates the U.S. Navy's efforts in this area. NOAA has agreed to participate in a U.S. Navy-led initiative to develop biodegradable alternatives for expendable materials used in marine environments.

*Comment:* No summary of Navy research, development, testing and evaluation, and fleet training activities is provided in the document, and NOAA does not set out any position on the activities of the U.S. Navy.

*Response:* The Navy EISs for the Northwest Training Range Complex and the Keyport Range Complex Extension were under development simultaneously with the OCNMS DMP/DEA. Both Navy EIS documents were finalized in 2010 and they provide the most detailed information publicly available on Navy activities and their impacts on resources in the sanctuary. NOAA does not have additional information on Navy activities in the sanctuary beyond what has been presented to the public in these documents. The characterization of Navy activities in the sanctuary was expanded in the OCNMS FMP/EA, and references were updated. In addition, the issues that NOAA raised with the Navy, primarily focused on potential impacts to biogenic seafloor habitats and discharge of expendable materials, were noted in the FMP/EA. NOAA supports the mission of the U.S. Navy and understands the importance of their research and training activities. NOAA believes that, when possible, it is preferable that these activities take place outside of national marine sanctuaries. In cases where this is not feasible, NOAA seeks to work with the Navy to ensure that their activities are carried out in a manner that avoids to the maximum extent practicable any adverse impacts on sanctuary resources and qualities.

*Comment:* Section 6.4.5 of the EA should explain that the proposed action evaluated in the EIS for the Northwest Training Range Complex (NWTRC) did not trigger the consultation requirements of Section 304(d) of the National Marine Sanctuaries Act.

*Response:* NOAA recognizes that the Navy prepared a detailed Environmental Impact Statement (EIS) addressing its activities within the NWTRC, and during the process to develop this EIS, the Navy responded to written comments submitted by NOAA.

Section 304(d) of the National Marine Sanctuaries Act (NMSA) requires federal agencies whose actions are ''likely to destroy, cause the loss of, or injure a sanctuary resource'' to consult with NOAA before taking action. NOAA found that the Navy's proposed activities within the NWTRC increased in scope and intensity the activities previously undertaken by the Navy and represented increased adverse impacts to sanctuary resources. NOAA recognizes that despite differing opinions of the applicability of section 304(d), the Navy has been willing to meet with NOAA to discuss the effects of Navy activities on sanctuary resources, and has responded in writing to reasonable and prudent alternatives recommended by NOAA.

*Comment:* NOAA should express concern regarding the significant expansion of activities of the U.S. Navy in the sanctuary in order to fulfill its public trust responsibilities.

*Response:* Both the Navy and NOAA have public trust duties to public resources. NOAA commented on the Navy EISs through interagency

consultation. Throughout development of the Navy's documents NOAA worked with the Navy to ensure the protection of sanctuary resources. NOAA recognizes the Navy's cooperation during consultation with NOAA pursuant to section 304(d) of the NMSA on the Navy's proposed expansion of the Keyport Range Complex.

*Comment:* The rule should be amended to reflect the fact that authorized Navy activities occur in all of the areas described in the Navy's comment letter as authorized by 15 CFR 922.152(d).

*Response:* 15 CFR 922.152(d) references geographically specific areas and identifies a suite of Department of Defense activities that are exempt from sanctuary regulations. These exceptions do not apply to the entire sanctuary. If the Department of Defense has a need to extend the geographic extent of these exceptions or wishes to add new activities to the identified list in the regulations, NOAA would consider such changes per the provisions in 15 CFR 922.152(d)(1)(ii).

*Acoustics*

*Comment:* The EA's conclusion that there would be a very low likelihood of adverse effects to marine life from use of the common echo sounder does not reflect the best available science.

*Response:* NOAA reassessed its analysis, corrected inaccuracies, and provided additional information in the FMP/EA and still stands by its initial conclusions. Whereas sound produced by hydrographic survey equipment is detectable by some marine mammals, NOAA concluded there is very low likelihood of adverse effects to marine life from use of this equipment based on the low intensity level and rapid attenuation of the sounds, limited area of sonification, and use of frequencies that are beyond peak hearing ranges for most marine mammals.

*Comment:* The EA, in particular Table 17, which does not identify its source of data, does not agree with the best scientific data available in Southall *et al.* 2007.

*Response:* NOAA reassessed its analysis, corrected inaccuracies, and provided additional information in the FMP/EA and stands by its initial conclusions. Southall *et al.* (2007) does not provide hearing range limits for individual species but combines cetaceans into three functional hearing groups: Low-frequency, mid-frequency, and high-frequency cetaceans. The revised EA incorporates analysis based on functional hearing groups identified in Southall *et al.* (2007) and does not include Table 17 or statements on the hearing ranges of individual species.

*Overflight Regulation*

*Comment:* Any mandate or requirement on overflights must be enacted by the FAA following the standard rulemaking process.

*Response:* The existing overflight regulation for OCNMS has been in place since the sanctuary's creation in 1994. NOAA is not making any changes to the overflight regulation in the rulemaking associated with the OCNMS FMP/EA. The purpose of the overflight restriction zone is to minimize disturbance to wildlife from low flying aircraft. Conservation of wildlife populations is within the authorities of the NMSA. This regulation is consistent with the FAA Advisory that applies to Department of the Interior lands on the outer coast of Washington, but it is not redundant with any FAA regulation. There is a separate rulemaking associated with West Coast sanctuaries overflight regulations (75 FR 76319) that was developed by NOAA in collaboration with the FAA. NOAA has worked with the FAA to ensure that the West Coast sanctuaries regulations are consistent with FAA regulations and can be included on FAA aeronautical charts. FAA has supported this effort.

*Comment:* The Olympic National Park (ONP) should be afforded the same exemption to the overflight regulation that is afforded to local Indian tribes.

*Response:* The current exception in 15 CFR 922.152(a)(6) was placed in the original 1994 OCNMS regulations at the request of the Indian Tribes adjacent to the sanctuary to ensure that the Indian Tribes have access to reservation lands. The overflight regulation does not prevent staff of the Olympic National Park to access park land; therefore, NOAA does not believe that an exception for the ONP is necessary. It is important to note that the OCNMS overflight restriction zone does not apply to activities necessary to respond to emergencies threatening life, property or the environment (15 CFR 922.152(b)) or to activities necessary for valid law enforcement purposes (15 CFR 922.152(c)).

*Vessel Discharge Regulation*

*Comment:* Cruise ship discharges should be banned in OCNMS, as proposed under alternative B.

*Response:* NOAA has selected alternative B as the preferred alternative, which includes a ban on cruise ship discharges, but has modified its analysis in the FMP/EA based upon comments received.

*Comment:* The proposed regulation unfairly targets cruise ships and not other large vessels.

*Response:* Cruise ships are a unique class of vessels that generate wastewater effluents in very large volumes and types that are unique in the maritime industry. There is widespread precedent for discharge regulation of cruise ships as a distinct vessel class on the West Coast of the U.S. (*i.e.,* states of California, Washington, and Alaska) and nationally (*i.e.,* in the Environmental Protection Agency Vessel General Permit).

*Comment:* NOAA should select the vessel discharge regulation proposed under alternative C, which extended the discharge ban to all large vessels traveling through OCNMS.

*Response:* Alternative C considered a broader prohibition of discharges from additional vessel classes. While a discharge ban on all large vessels would reduce the volume of wastewater discharged to the sanctuary and would avoid singling out one industry (*i.e.,* cruise ships) for regulation, alternative C was not selected as the preferred alternative for addressing vessel discharges because vessels other than cruise ships generate a significantly smaller effluent discharge volume in comparison to cruise ships. Cruise ships carry numerous passengers, whereas most other large vessels traversing or working in the sanctuary have few passengers, if any, and small crews. Additionally, there are specific, non-regulatory actions proposed in the action plans that would address discharges from other types of vessels. NOAA plans to continue to assess potential impacts of vessel discharges and will reevaluate OCNMS regulations during the next review of its management plan and regulations, or sooner if significant issues associated with vessel discharges are identified.

*Comment:* The analysis of effects of cruise ship discharge on the sanctuary environment that is provided in the draft EA and proposed rule is inadequate, inaccurate and overlooks several major issues related to dilution, the use of Advanced Wastewater Treatment Systems (AWTS), and the level of current research available on the environmental impacts of cruise ship discharges.

*Response:* NOAA corrected inaccuracies and revised the analysis of cruise ship discharges to incorporate additional information and research findings in the EA. Changes were also incorporated into the preamble to the final rule but NOAA has retained the cruise ship discharge prohibition in the final rule. NOAA agrees that properly

functioning AWTS produce effluent with lower contaminant loads than effluent from traditional marine sanitation devices (MSDs). NOAA's analysis revealed, however, that AWTS are not always functioning properly and are not consistently used on cruise ships where they are installed. NOAA contends that the most effective protection for water quality in the sanctuary is achieved through the cruise ship discharge prohibition included in the proposed rule. Analysis in the EA indicates that this prohibition has a negligible effect on the industry, given the average transit time of 1.2 hours through the sanctuary and current industry practice to avoid discharges into sanctuary waters.

*Comment:* The proposed rule is inconsistent with Executive Order 13563 because the cost/benefit analysis of the proposed cruise ship discharge regulation is inadequate.

*Response:* In the FMP/EA, NOAA modified the analysis of environmental and socioeconomic impacts and costs of the proposed ban on cruise ship discharges in OCNMS and has complied with applicable cost-benefit analysis requirements. There is essentially no operational cost to the industry from the implementation of this regulation. The regulation generates the benefits of regulatory clarity, regulatory consistency among marine sanctuaries on the west coast, and a more precautionary management approach to a marine protected area of national significance. The regulation is consistent with Executive Order 13563.

*Comment:* The qualifier ''clean'' as defined in section 922.151 effectively establishes an unattainable ''non-detect limit'' for any constituent discharged by a cruise ship.

*Response:* NOAA agrees that the term ''clean'' needs to be better explained and has therefore added a definition of ''harmful matter'' in the final rule. The definition of ''harmful matter'' is consistent with the definitions used at other national marine sanctuaries. NOAA believes that this additional clarification addresses the concern regarding the feasibility of the proposed regulation.

*Comment:* NOAA should consider an approach that provides for black water and gray water discharges that are treated to levels that are scientifically acceptable.

*Response:* Establishment of performance standards for cruise ship discharges in OCNMS would create an impractical level of regulatory enforcement complexity applying to a minor portion of the vessels' operating area. For example, performance standards, in the form of effluent limitations, have been established by the state of Alaska. Alaska regulations allow discharge only from AWTS, not traditional MSDs, and include differing limits (maximum values for a variety of effluent parameters) based on the type (manufacturer) of AWTS and operation of the vessel (in transit > knots or not). These regulations also define differing sampling/analysis frequencies for various parameters. Because cruise ships have an average transit time of 1.2 hours in OCNMS, performance standards for discharges to sanctuary waters are not warranted. The EPA and the state of Washington set water quality standards that apply to sanctuary waters within the state's waters. However, there are currently no standards that apply to sanctuary waters beyond 3 miles which are federal waters.

*Comment:* NOAA should make sure that this regulation, including the definition of cruise ship, is consistent with other regulations, including the EPA's Vessel General Permit.

*Response:* National marine sanctuaries are marine protected areas of national significance and often have regulations that are more restrictive than other areas. This is consistent with the mandate of the NMSA. The FMP/EA identifies a complex set of international, federal, and state vessel discharge regulations with inconsistent requirements that differ based on various factors, including country of registration, wastewater stream, treatment systems used, monitoring implemented, operation of the vessel, and location of the discharge. Various definitions for cruise ship are used in federal and state regulations. The EPA in the Vessel General Permit (VGP) provides definitions for medium cruise ships (authorized to carry 100 to 499 people for hire) and large cruise ships (authorized to carry 500 people or more for hire). VGP provisions cover only portions of the sanctuary within 3 miles from shore. U.S. Coast Guard regulates cruise ships as passenger vessels over 100 gross tons, carrying more than 12 passengers for hire, making a voyage lasting more than 24 hours. Given the inconsistency among the various definitions, NOAA will continue to use the definition of cruise ships established in the regulations of the four national marine sanctuaries off the coast of California.

*Comment:* The description of allowed discharges in the proposed cruise ship discharge regulation does not account for all non-discretionary discharges, which ban discharges that cannot be terminated from vessels (*e.g.* leachate from anti-fouling hull coatings, cathodic protection, etc.)

*Response:* The cruise ship discharge regulation does not prohibit leachate from anti-fouling hull coatings or discharges from cathodic protection. Anti-fouling hull coatings are regulated as pesticides by the EPA. NOAA considers such leachates to be water generated by routine vessel operations, and as such they are an allowable discharge in OCNMS regulations (922.152(a)(2)(i)(C)).

*Comment:* NOAA should not prohibit discharging or depositing material from beyond the boundary of the sanctuary that subsequently enters the sanctuary and injures a sanctuary resource or quality.

*Response:* Activities taking place beyond sanctuary boundaries are subject to this regulation only if the discharge injures a sanctuary resource or quality within the sanctuary. This is not a new regulation and has been in place since 1994.

*Comment:* NOAA should stay abreast to the routes of cruise ships and if an area of the sanctuary is scheduled to receive an immense amount of traffic, NOAA should intervene and attempt to redirect the routes.

*Response:* NOAA is aware of cruise ship traffic patterns within the sanctuary and monitors them routinely through the Area To Be Avoided (ATBA) compliance monitoring. Assuming that cruise ships continue their high rate of compliance with the voluntary ATBA, cruise ship routes will remain well offshore where deep and dynamic marine waters will mitigate impacts of discharges. As they transit through the northern waters of the sanctuary at the western entrance to the Strait of Juan de Fuca, cruise ships follow established vessel traffic lanes that are designed to facilitate safe passage of large commercial vessels. NOAA will continue to monitor cruise ship traffic patterns, to evaluate practices, and to assess impacts on the environment.

*Cultural and Historical Resources*

*Comment:* NOAA should commit to a programmatic agreement (PA) to address Section 106 of the NHPA compliance in the management plan.

*Response:* NOAA has committed to developing a programmatic agreement in the FMP (Maritime Heritage Action Plan; Strategy MH1: Cultural Resource Conservation; Activity C). NOAA agrees that the components identified in the comment should be incorporated into this programmatic agreement. NOAA has met requirements under Section 106 to ensure that its FMP is in compliance

with the National Historic Preservation Act.

*Comment:* The protection of cultural resources needs to be incorporated into oil spill response planning, training and GRPs.

*Response:* These issues are addressed within the context of the Northwest Regional Response Team and the Northwest Area Contingency Plan. NOAA supports consideration of additional approaches to ensure the protection of cultural resources during oil spill response, planning and geographic response plans.

*Comment:* NOAA needs to assure that cultural resources data is conveyed to the Washington State Department of Archaeology and Historic Preservation (DAHP) and other consulting tribal governments in a format that is compatible with DAHP GIS standards.

*Response:* NOAA concurs and has edited Maritime Heritage Action Plan, Strategy MH1: Cultural Resource Conservation, Activity B to address the need to develop uniform guidelines/protocols for cultural resource data collection and sharing.

*Treaty Trust Responsibility*

*Comment:* NOAA should develop work protocols for government-to-government consultation.

*Response:* While general tribal consultation procedures are documented in section 2.4 of the FMP/EA, NOAA also looks forward to working with individual Coastal Treaty Tribes to develop more specific, individually defined tribal consultation procedures beyond those outlined in the FMP. To support this effort, NOAA added an activity under the Collaborative and Coordinated Sanctuary Management Action Plan, Strategy CCM2: Coastal Treaty Tribes.

*Comment:* The DMP section on Treaty Trust Responsibility is too heavily focused on treaty rights and the protection of natural resources co-managed by the Tribes and the United States, at the expense of other important tribal interests.

*Response:* Section 2 focuses on treaty rights and NOAA's fulfillment of U.S. treaty obligations within its statutory mandate and as recommended by the Olympic Coast Intergovernmental Policy Council and OCNMS Advisory Council. This chapter was based on substantial work by members from the four Coastal Treaty Tribes and NOAA. Thus, NOAA did not alter the focus or scope of this chapter because specific guidance was not provided by the Coastal Treaty Tribes.

*Comment:* The regulation requiring consultation with the tribes should formalize the co-management status of the coast tribes. The Makah Tribal Council proposes that 922.154 be modified.

*Response:* NOAA recognizes our responsibilities to consult with each Coastal Treaty Tribe on a government-to-government basis. This responsibility is documented in several places in the OCNMS FMP and exists regardless of language in OCNMS regulations. Editing the regulations would not substantively change the requirement to consult. NOAA did not modify this clause in OCNMS regulations.

*Comment:* When a Coastal Treaty Tribe is involved in a project permitted by another agency, NOAA should be required to consider its fiduciary obligations when deciding whether and how to object or condition that project. The Makah Tribal Council proposes that 922.152(g) be modified.

*Response:* NOAA did not propose changes to this provision in the January 2011 proposed rulemaking; therefore, a separate rulemaking process would be required to modify this section of OCNMS regulations. Because case law supports the protection of treaty rights and resources when a Federal agency is issuing or authorizing permits, as a matter of policy, NOAA will consider and respond to a tribal government's recommendations when evaluating permit authorizations. NOAA will consider this change during a future review of regulations.

*Permitting*

*Comment:* Requiring a tribe to be an applicant for a permit from NOAA does not adequately reflect its sovereign status.

*Response:* NOAA does not agree that the requirement to apply for a permit to conduct a prohibited activity does not adequately reflect the sovereign status of an American Indian Tribe. All governmental entities and agencies, federal, state and tribal, are required to obtain a permit to conduct an activity within the sanctuary that would otherwise be prohibited. NOAA issues permits to the sanctuary superintendent to conduct research and other activities that involve prohibited activities such as seafloor disturbance or anchoring. Being an applicant for a permit does not reflect upon the sovereignty of a tribal government and does in fact reflect an equal footing with federal and state agencies including NOAA. It is also important to note that 15 CFR 922.152 (f) specifically recognizes that the prohibited activities in sanctuary regulations do not apply to the exercise of treaty-secured rights.

*Comment:* Requiring a tribe to be the sole applicant for a sanctuary permit would effectively eliminate projects that require partners with technical expertise and greater financial resources.

*Response:* NOAA agrees that language in the preamble to the proposed rule created the inappropriate impression that a tribe had to be the sole applicant for a permit in this category. For the final rule, preamble language was edited to reflect that a permit can be issued to the designee of a tribe as certified by the governing body of that tribe, or with a tribe as the sole applicant or a co-applicant. In addition, NOAA expanded the list of activities eligible for this permit category to include those proposed by the Makah Tribal Council.

*Comment:* The need for the proposed change to the tribal welfare provision of the sanctuary regulations is not adequately explained. The FMP/EA should address the Makah Bay wave energy project or recognize that the coast tribes may prefer jointly sponsored projects that require resources from outside the tribes.

*Response:* NOAA has modified the preamble to the final rule to more clearly reflect the basis for this regulatory change, a concern that an entity other than a tribal government could apply for a tribal welfare permit without an explicit agreement with or participation of the American Indian tribe. NOAA also added information regarding the Makah Bay wave energy project in Section 6.4.4 of the EA.

## VI. References

A complete list of all references cited herein is available upon request (see **ADDRESSES** section).

## List of Subjects in 15 CFR Part 922

Administrative practice and procedure, Coastal zone, Historic preservation, Intergovernmental relations, Marine resources, Natural resources, Penalties, Recreation and recreation areas, Reporting and recordkeeping requirements, Wildlife.

Dated: October 24, 2011.

**David M. Kennedy,**

*Assistant Administrator, for Ocean Services and Coastal Zone Management.*

Accordingly, for the reasons discussed in the preamble, the National Oceanic and Atmospheric Administration amends 15 CFR part 922 as follows:

## PART 922—NATIONAL MARINE SANCTUARY PROGRAM REGULATIONS

■ 1. The authority citation for part 922 continues to read as follows:

**Authority:** 16 U.S.C. 1431 *et seq.*

■ 2. Amend § 922.150 by revising paragraph (a) to read as follows:

**§ 922.150 Boundary.**

(a) The Olympic Coast National Marine Sanctuary (Sanctuary) consists of an area of approximately 2,408 square nautical miles (nmi) of coastal and ocean waters, and the submerged lands thereunder, off the central and northern coast of the State of Washington.

* * * * *

■ 3. Section § 922.151 is revised to read as follows:

**§ 922.151 Definitions.**

In addition to those definitions found at § 922.3, the following definitions apply to this subpart:

*Clean* means not containing detectable levels of harmful matter.

*Cruise ship* means a vessel with 250 or more passenger berths for hire.

*Harmful matter* means any substance, or combination of substances, that because of its quantity, concentration, or physical, chemical, or infectious characteristics may pose a present or potential threat to Sanctuary resources or qualities, including but not limited to: Fishing nets, fishing line, hooks, fuel, oil, and those contaminants (regardless of quantity) listed pursuant to 42 U.S.C. 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act at 40 CFR 302.4.

*Indian reservation* means a tract of land set aside by the Federal Government for use by a federally recognized American Indian tribe and includes, but is not limited to, the Makah, Quileute, Hoh, and Quinault Reservations.

*Lawful fishing* means fishing authorized by a tribal, State or Federal entity with jurisdiction over the activity.

*Treaty* means a formal agreement between the United States Government and an Indian tribe.

■ 4. Section 922.152 is revised to read as follows:

**§ 922.152 Prohibited or otherwise regulated activities.**

(a) Except as specified in paragraphs (b) through (g) of this section, the following activities are prohibited and thus are unlawful for any person to conduct or to cause to be conducted:

(1) Exploring for, developing or producing oil, gas or minerals within the Sanctuary.

(2)(i) Discharging or depositing, from within or into the Sanctuary, other than from a cruise ship, any material or other matter except:

(A) Fish, fish parts, chumming materials or bait used in or resulting from lawful fishing operations in the Sanctuary;

(B) Biodegradable effluent incidental to vessel use and generated by marine sanitation devices approved in accordance with section 312 of the Federal Water Pollution Control Act, as amended, (FWPCA), 33 U.S.C. 1322 *et seq.;*

(C) Water generated by routine vessel operations (*e.g.,* cooling water, deck wash down, and graywater as defined by section 312 of the FWPCA) excluding oily wastes from bilge pumping;

(D) Engine exhaust; or

(E) Dredge spoil in connection with beach nourishment projects related to the Quillayute River Navigation Project.

(ii) Discharging or depositing, from beyond the boundary of the Sanctuary, any material or other matter, except those listed in paragraphs (a)(2)(i)(A) through (E) of this section, that subsequently enters the Sanctuary and injures a Sanctuary resource or quality.

(3) Discharging or depositing, from within or into the Sanctuary, any materials or other matter from a cruise ship except clean vessel engine cooling water, clean vessel generator cooling water, clean bilge water, engine exhaust, or anchor wash.

(4) Moving, removing or injuring, or attempting to move, remove or injure, a Sanctuary historical resource. This prohibition does not apply to moving, removing or injury resulting incidentally from lawful fishing operations.

(5) Drilling into, dredging or otherwise altering the submerged lands of the Sanctuary; or constructing, placing or abandoning any structure, material or other matter on the submerged lands of the Sanctuary, except as an incidental result of:

(i) Anchoring vessels;

(ii) Lawful fishing operations;

(iii) Installation of navigation aids;

(iv) Harbor maintenance in the areas necessarily associated with the Quillayute River Navigation Project, including dredging of entrance channels and repair, replacement or rehabilitation of breakwaters and jetties, and related beach nourishment;

(v) Construction, repair, replacement or rehabilitation of boat launches, docks or piers, and associated breakwaters and jetties; or

(vi) Beach nourishment projects related to harbor maintenance activities.

(6) Taking any marine mammal, sea turtle or seabird in or above the Sanctuary, except as authorized by the Marine Mammal Protection Act, as amended, (MMPA), 16 U.S.C. 1361 *et seq.,* the Endangered Species Act, as amended, (ESA), 16 U.S.C. 1531 *et seq.,* and the Migratory Bird Treaty Act, as amended, (MBTA), 16 U.S.C. 703 *et seq.,* or pursuant to any Indian treaty with an Indian tribe to which the United States is a party, provided that the Indian treaty right is exercised in accordance with the MMPA, ESA, and MBTA, to the extent that they apply.

(7) Flying motorized aircraft at less than 2,000 feet both above the Sanctuary within one NM of the Flattery Rocks, Quillayute Needles, or Copalis National Wildlife Refuge, or within one nmi seaward from the coastal boundary of the Sanctuary, except for activities related to tribal timber operations conducted on reservation lands, or to transport persons or supplies to or from reservation lands as authorized by a governing body of an Indian tribe.

(8) Possessing within the Sanctuary (regardless of where taken, moved or removed from) any historical resource, or any marine mammal, sea turtle, or seabird taken in violation of the MMPA, ESA, or MBTA, to the extent that they apply.

(9) Interfering with, obstructing, delaying or preventing an investigation, search, seizure or disposition of seized property in connection with enforcement of the Act or any regulation or permit issued under the Act.

(b) The prohibitions in paragraph (a)(2) through (5), (7), and (8) of this section do not apply to activities necessary to respond to emergencies threatening life, property, or the environment.

(c) The prohibitions in paragraphs (a)(2) through (5), (7), and (8) of this section do not apply to activities necessary for valid law enforcement purposes.

(d)(1) All Department of Defense military activities shall be carried out in a manner that avoids to the maximum extent practicable any adverse impacts on Sanctuary resources and qualities.

(i) Except as provided in paragraph (d)(2) of this section, the prohibitions in paragraphs (a)(2) through (8) of this section do not apply to the following military activities performed by the Department of Defense in W–237A, W–237B, and Military Operating Areas Olympic A and B in the Sanctuary:

(A) Hull integrity tests and other deep water tests;

(B) Live firing of guns, missiles, torpedoes, and chaff;

(C) Activities associated with the Quinault Range including the in-water testing of non-explosive torpedoes; and

(D) Anti-submarine warfare operations.

(ii) New activities may be exempted from the prohibitions in paragraphs (a)(2) through (8) of this section by the Director after consultation between the Director and the Department of Defense. If it is determined that an activity may be carried out such activity shall be carried out in a manner that avoids to the maximum extent practicable any adverse impact on Sanctuary resources and qualities. Civil engineering and other civil works projects conducted by the U.S. Army Corps of Engineers are excluded from the scope of this paragraph (d).

(2) The Department of Defense is prohibited from conducting bombing activities within the Sanctuary.

(3) In the event of threatened or actual destruction of, loss of, or injury to a Sanctuary resource or quality resulting from an untoward incident, including but not limited to spills and groundings caused by the Department of Defense, the Department of Defense shall promptly coordinate with the Director for the purpose of taking appropriate actions to respond to and mitigate the harm and, if possible, restore or replace the Sanctuary resource or quality.

(e) The prohibitions in paragraphs (a)(2) through (8) of this section do not apply to any activity executed in accordance with the scope, purpose, terms and conditions of a National Marine Sanctuary permit issued pursuant to §§ 922.48 and 922.153 or a Special Use permit issued pursuant to section 310 of the Act.

(f) Members of a federally recognized Indian tribe may exercise aboriginal and treaty-secured rights, subject to the requirements of other applicable law, without regard to the requirements of this part. The Director may consult with the governing body of a tribe regarding ways the tribe may exercise such rights consistent with the purposes of the Sanctuary.

(g) The prohibitions in paragraphs (a)(2) through (8) of this section do not apply to any activity authorized by any lease, permit, license, or other authorization issued after July 22, 1994, and issued by any Federal, State or local authority of competent jurisdiction, provided that the applicant complies with § 922.49, the Director notifies the applicant and authorizing agency that he or she does not object to issuance of the authorization, and the applicant complies with any terms and conditions the Director deems necessary to protect Sanctuary resources and qualities. Amendments, renewals and extensions of authorizations in existence on the effective date of designation constitute authorizations issued after the effective date.

(h) Notwithstanding paragraphs (e) and (g) of this section, in no event may the Director issue a National Marine Sanctuary permit under §§ 922.48 and 922.153 or a Special Use permit under section 310 of the Act authorizing, or otherwise approve: The exploration for, development or production of oil, gas or minerals within the Sanctuary; the discharge of primary-treated sewage within the Sanctuary; the disposal of dredged material within the Sanctuary other than in connection with beach nourishment projects related to the Quillayute River Navigation Project; or bombing activities within the Sanctuary. Any purported authorizations issued by other authorities after July 22, 1994 for any of these activities within the Sanctuary shall be invalid.

■ 5. Section 922.153 is revised to read as follows:

**§ 922.153 Permit procedures and criteria.**

(a) A person may conduct an activity prohibited by § 922.152(a)(2) through (8) if conducted in accordance with the scope, purpose, terms and conditions of a permit issued under this section and § 922.48.

(b) Applications for such permits should be addressed to the Director, Office of National Marine Sanctuaries; *Attn:* Superintendent, Olympic Coast National Marine Sanctuary, 115 East Railroad Avenue, Suite 301, Port Angeles, WA 98362–2925.

(c) The Director, at his or her discretion, may issue a permit, subject to such terms and conditions as he or she deems appropriate, to conduct an activity prohibited by § 922.152(a)(2) through (8), if the Director finds that the activity will not substantially injure Sanctuary resources and qualities and will: Further research related to Sanctuary resources and qualities; further the educational, natural or historical resource value of the Sanctuary; further salvage or recovery operations in or near the Sanctuary in connection with a recent air or marine casualty; assist in managing the Sanctuary; further salvage or recovery operations in connections with an abandoned shipwreck in the Sanctuary title to which is held by the State of Washington; or be issued to an American Indian tribe adjacent to the Sanctuary, and/or its designee as certified by the governing body of the tribe, to promote or enhance tribal self-determination, tribal government functions, the exercise of treaty rights, the economic development of the tribe, subsistence, ceremonial and spiritual activities, or the education or training of tribal members. For the purpose of this part, American Indian tribes adjacent to the sanctuary mean the Hoh, Makah, and Quileute Indian Tribes and the Quinault Indian Nation. In deciding whether to issue a permit, the Director may consider such factors as: The professional qualifications and financial ability of the applicant as related to the proposed activity; the duration of the activity and the duration of its effects; the appropriateness of the methods and procedures proposed by the applicant for the conduct of the activity; the extent to which the conduct of the activity may diminish or enhance Sanctuary resources and qualities; the cumulative effects of the activity; the end value of the activity; and the impacts of the activity on adjacent American Indian tribes. Where the issuance or denial of a permit is requested by the governing body of an American Indian tribe, the Director shall consider and protect the interests of the tribe to the fullest extent practicable in keeping with the purposes of the Sanctuary and his or her fiduciary duties to the tribe. The Director may also deny a permit application pursuant to this section, in whole or in part, if it is determined that the permittee or applicant has acted in violation of the terms or conditions of a permit or of these regulations. In addition, the Director may consider such other factors as he or she deems appropriate.

* * * * *

[FR Doc. 2011–27947 Filed 10–31–11; 8:45 am]

BILLING CODE 3510–NK–P

## DEPARTMENT OF STATE

### 22 CFR Part 42

**[Public Notice 7391]**

**RIN 1400–AC86**

### Visas: Documentation of Immigrants Under the Immigration and Nationality Act, as Amended

**AGENCY:** State Department.

**ACTION:** Interim final rule.

**SUMMARY:** This rule amends the Department of State's regulations relating to adoptions in countries party to The Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption, to include new adoption provisions from the International Adoption Simplification Act. This legislation provides for sibling adoption to include certain children who are under the age of 18 at the time the petition is filed on their behalf, and also certain children who attained the age of 18 on or after April 1, 2008 and who are the

beneficiaries of a petition filed on or before November 30, 2012.

**DATES:**

*Effective Date:* This rule is effective November 1, 2011.

*Comment Date:* The Department will accept comments from the public up to December 1, 2011.

**ADDRESSES:**

You may submit comments by any of the following methods:

- *Email: BeaumontTW@state.gov* (Subject line must read IASA Sibling Reg.).
- *Mail:* Chief, Legislation and Regulation Division, Visa Services—IASA Sibling Reg., 2401 E. Street, NW., Washington, DC 20520–30106.
- ''Persons with access to the Internet may view this notice and provide comments by going to the regulations.gov Web site at: *http://www.regulations.gov/index.cfm,* and searching on the Public Notice number 7391.''

**FOR FURTHER INFORMATION CONTACT:**

Taylor W. Beaumont, Legislation and Regulations Division, Visa Services, Department of State, 2401 E Street, NW., Room L–603D, Washington, DC 20520–0106, who may be reached at (202) 663–1202.

**SUPPLEMENTARY INFORMATION:**

## Definitions

As used in this public notice, the term ''Convention'' means The Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption; the term ''Convention country'' means a country that is a party to the Convention and with which the Convention is in force for the United States; and the term ''IASA'' means the International Adoption Simplification Act, Public Law 111–287 (2010).

## Why is the Department promulgating this rule?

On November 30, 2010, the President signed the IASA into law, modifying the Immigration and Nationality Act (INA) as regards adoptions from Convention countries. Among other changes, the IASA creates a new INA Section 101(b)(1)(G)(iii) to allow U.S. citizens to file an immediate relative petition for a child younger than 18 from a Convention country, provided that child is the natural sibling of a child concurrently or already adopted or being brought to the United States for adoption under INA Sections 101(b)(1)(E)(i), (F)(i), or (G)(i). To qualify as a child who is covered under INA Section 101(b)(1)(G)(iii), a child must be adopted abroad, or be coming to the United States for adoption, by the adoptive parent(s) or prospective adoptive parent(s) of his/her natural sibling. In addition, the child must be otherwise qualified as a Convention adoptee under INA Section 101(b)(1)(G)(i), except that the child is under 18 years of age rather than under 16 years of age, as is required for classification under INA Section 101(b)(1)(G)(i).

The IASA contains an exception at Section 4(b) necessitating a modification of the Department regulation contained in 22 CFR 42.24. Under that section, an alien who is older than 18 years of age nonetheless may be classified under INA Section 101(b)(1)(G)(iii) if he/she turned 18 years of age on or after April 1, 2008 and his/her immediate relative petition is filed not later than November 30, 2012. As currently written, the Department's regulations pertaining to INA Section 101(b)(1)(G) cover exclusively those children whose adoptions will be governed by the Convention. Although aliens qualified under IASA Section 4(b) will be emigrating from a Convention country, the Convention only governs the adoption of children under the age of 18. This rule is necessary to change Department regulations to cover aliens properly qualified under IASA Section 4(b).

## Regulatory Findings

### *Administrative Procedure Act*

The Department is publishing this rule as an interim final rule, and with an effective date less than 30 days from the date of publication, based on the ''good cause'' exceptions set forth at 5 U.S.C. 553(b) and 553(d)(3). Delaying implementation of this rule would be contrary to the public interest, due to the effect of recent legislation (the International Adoption Simplification Act). Because current Department regulations do not contemplate the adoption of children over the age of 18 in countries party to The Hague Convention on Inter-Country Adoption, the lack of procedural certainty regarding 22 CFR 42.24 could forseeably cause undue confusion and delay for American citizens pursuing their rights to adopt as provided by the IASA. The Department will accept public comments for 30 days after publication.

### *Regulatory Flexibility Act/Executive Order 13272: Small Business*

The Department of State has reviewed this regulation and certifies that this rule will not have a significant economic impact on a substantial number of small entities. The Department of State notes that this regulation, as it exclusively facilitates adoptions by U.S. citizens, will have its greatest effect on individuals and not small businesses. While American Adoption Service Providers (ASPs) are essential to intercountry adoptions in Convention countries, this regulation will have a negligible effect on these ASPs, as the Department of State anticipates that this regulation will allow very few adoptions that would not have already been possible in the absence of this regulation.

### *The Unfunded Mandates Reform Act of 1995*

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4, 109 Stat. 48, 2 U.S.C. 1532, generally requires agencies to prepare a statement before proposing any rule that may result in an annual expenditure of $100 million or more by State, local, or tribal governments, or by the private sector. This rule will not result in any such expenditure, nor will it significantly or uniquely affect small governments.

### *The Small Business Regulatory Enforcement Fairness Act of 1996*

This rule is not a major rule as defined by 5 U.S.C. 804, for purposes of congressional review of agency rulemaking under the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121. 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 adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with foreign-based companies in domestic and import markets.

### *Executive Order 12866*

The Department is exempt from Executive Order 12866 except to the extent that it is promulgating regulations in conjunction with a domestic agency that are significant regulatory actions. The Department has reviewed this rule to ensure its consistency with the regulatory philosophy and principles set forth in Executive Order 12866. Consistent with Executive Order 12866, the Department does not consider the rule to be an economically significant action within the scope of section 3(f)(1) of the Executive Order since it is not likely to have an annual effect on the economy of $100 million or more or to adversely affect in a material way the economy, a sector of the economy, competition, jobs, the environment, public health or

safety, or state, local or tribal governments or communities.

*Executive Order 13563*

The Department of State has considered this rule in light of Executive Order 13563, dated January 18, 2011, and affirms that this regulation is consistent with the guidance therein.

*Executive Orders 12372 and 13132: Federalism*

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Nor will the rule have federalism implications warranting the application of Executive Orders No. 12372 and No. 13132.

*Executive Order 13175*

The Department of State has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not pre-empt tribal law. Accordingly, the requirement of Section 5 of Executive Order 13175 does not apply to this rulemaking.

*Paperwork Reduction Act*

This rule does not impose information collection requirements under the provisions of the Paperwork Reduction Act, 44 U.S.C., Chapter 35.

**List of Subjects in 22 CFR Part 42**

Immigration, Passports and Visas.

Accordingly, for the reasons set forth in the preamble, 22 CFR part 42 is amended as follows:

## PART 42—[AMENDED]

■ 1. The authority citation for part 42 continues to read as follows:

**Authority:** 8 U.S.C. 1104 and 1182; Pub. L. 105–277; Pub. L. 108–449; 112 Stat. 2681–795 through 2681–801; The Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (done at the Hague, May 29, 1993), S. Treaty Doc. 105–51 (1998), 1870 U.N.T.S. 167 (Reg. No. 31922 (1993)); The Intercountry Adoption Act of 2000, 42 U.S.C. 14901–14954, Pub. L. 106–279.

■ 2. Section 42.24 is amended by revising paragraph (a) and adding paragraph (n) to read as follows:

**§ 42.24 Adoption under the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption and the Intercountry Adoption Act of 2000.**

(a) Except as described in paragraph (n), for purposes of this section, the definitions in 22 CFR 96.2 apply.

* * * * *

(n) Notwithstanding paragraphs (d) through (m) of this section, an alien described in paragraph (n)(1) of this section may qualify for visa status under INA section 101(b)(1)(G)(iii) without meeting the requirements set forth in paragraphs (d) through (m) of this section.

(1) Per Section 4(b) of the Intercountry Adoption Simplification Act, Public Law 111–287 (IASA), an alien otherwise described in INA section 101(b)(1)(G)(iii) who attained the age of 18 on or after April 1, 2008 shall be deemed to meet the age requirement imposed by INA section 101(b)(1)(G)(iii)(III), provided that a petition is filed for such child in accordance with DHS requirements not later than November 30, 2012.

(2) For any alien described in paragraph (n)(1) of this section, the ''competent authority'' referred to in INA section 101(b)(1)(G)(i)(V)(aa) is the passport issuing authority of the country of origin.

Dated: October 21, 2011.

**Janice L. Jacobs,**

*Assistant Secretary for Consular Affairs, Department of State.*

[FR Doc. 2011–28281 Filed 10–31–11; 8:45 am]

BILLING CODE 4710–06–P

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## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## 26 CFR Parts 31 and 301

**[TD 9554]**

**RIN 1545–BJ07**

## Extending Religious and Family Member FICA and FUTA Exceptions to Disregarded Entities

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final and temporary regulations.

**SUMMARY:** This document contains final and temporary regulations amending 26 CFR parts 31 and 301. These regulations extend the exceptions from taxes under the Federal Insurance Contributions Act (''FICA'') and the Federal Unemployment Tax Act (''FUTA'') under sections 3121(b)(3) (concerning individuals who work for certain family members), 3127 (concerning members of religious faiths), and 3306(c)(5) (concerning persons employed by children and spouses and children under 21 employed by their parents) of the Internal Revenue Code (''Code'') to entities that are disregarded as separate from their owners for federal tax purposes. The temporary regulations also clarify the existing rule that the owners of disregarded entities, except for qualified subchapter S subsidiaries, are responsible for backup withholding and related information reporting requirements under section 3406. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**.

**DATES:** *Effective Date:* These regulations are effective on November 1, 2011.

*Applicability Date:* For dates of applicability see §§ 31.3121(b)(3)–1T(e), 31.3127–1T(d), 31.3306(c)(5)–1T(e), 301.7701–2T(e)(5).

**FOR FURTHER INFORMATION CONTACT:** Joseph Perera (202) 622–6040 (not a toll free call).

**SUPPLEMENTARY INFORMATION:**

### Background

This document contains final and temporary regulations amending the Employment Tax Regulations (26 CFR part 31) and the Procedure and Administration Regulations (26 CFR part 301) to extend the FICA and FUTA exceptions for family members and religious sect members to certain entities that are disregarded as separate from their owners for federal tax purposes under § 301.7701–2(c). Section 301.7701–2(c)(2)(i) provides that generally, except as otherwise provided, a business entity that has a single owner and is not a corporation under § 301.7701–2(b) is disregarded as an entity separate from its owner. Prior to 2009, single-member entities disregarded as separate from their owners were generally disregarded for employment taxes and certain other requirements of law arising under subtitle C. An employer is generally defined as the person for whom an individual performs services as an employee. Sections 3401(d), 3121(d), and 3306(a). Prior to 2009, the owner of the disregarded entity was treated as the employer for purposes of employment tax liabilities and all other employment tax obligations related to wages paid to employees performing services for the disregarded entity.

Recent changes to § 301.7701–2(c)(2)(iv) provide that, with respect to wages paid after December 31, 2008, a disregarded entity is treated as a separate entity for purposes of employment taxes imposed under Subtitle C and related reporting requirements. In addition, the separate entity is treated as a corporation for purposes of employment taxes imposed under Subtitle C and related reporting requirements. Therefore, the entity, rather than the owner, is considered to be the employer of any individual performing services for the entity.

Sections 3111 and 3301 of the Code impose FICA and FUTA taxes, respectively, on the employer in an amount equal to a percentage of the wages paid by that employer with respect to employment. Under section 3101, FICA tax is also imposed on the employee. Sections 3121(b) and 3306(c) define employment for FICA and FUTA purposes as any service, of whatever nature, performed by an employee for the person employing him. However, there are some services which are explicitly excepted from the definition of employment. For example, section 3121(b)(3)(A) provides that service performed by a child under the age of 18 in the employ of his father or mother is not considered employment for FICA purposes. Section 3121(b)(3)(B) provides that service performed by an individual under the age of 21 employed by his father or mother, or performed by an individual employed by his spouse or son or daughter (subject to certain conditions) for domestic service in a private home of the employer is not considered employment for FICA purposes. Section 3306(c)(5) provides that service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of 21 in the employ of his father or mother are not considered employment for FUTA purposes.

Prior to the recent changes to § 301.7701–2(c), the services a family member performed for a disregarded entity wholly owned by another family member could qualify for the exceptions under sections 3121(b)(3) and 3306(c)(5) if all the requirements were satisfied, as the individual family member owner was treated as the employer. However, due to the recent changes to the regulations, family members can no longer qualify for the FICA and FUTA exceptions that apply to family employment because § 301.7701–2(c)(2)(iv) regards the disregarded entity as a separate entity and treats the separate entity as a corporation for employment tax purposes. Sections 31.3121(b)(3)–1(c) and 31.3306(c)(5)–1(c) explicitly state that services performed in the employ of a corporation are not within the exceptions from employment that apply because of the existence of a family relationship between the employee and the individual employing him.

Section 3127 provides an exception from FICA taxes where both the employer and the employee are members of a religious faith opposed to participation in the Social Security Act. Both the employer and the employee must be members of a recognized religious sect and both must have filed and had approved an application certifying that they are members of a qualifying religious faith. Prior to the recent changes made to § 301.7701–2(c), service performed by a member of a qualifying religious sect for a disregarded entity wholly owned by another member of a qualifying religious sect could qualify for this exception as the individual sect member was considered to be the employer. However, as a result of the recent changes to § 301.7701–2(c)(2)(iv), the disregarded entity is regarded as a separate entity for employment tax purposes and the separate entity is treated as a corporation. As a corporation, the entity cannot be considered a member of a qualifying religious sect. Therefore, the exception cannot apply, as the employer would not be a member of a qualifying religious sect.

Section 301.7701–2(c)(2)(iv) treats disregarded entities as corporations for employment tax purposes. Such entities cannot qualify for the FICA and FUTA exceptions contained in sections 3121(b)(3), 3127, and 3306(c)(5) because the individual owner is no longer considered the employer. The IRS and the Treasury Department did not intend to render these exceptions inapplicable to disregarded entities that were eligible for the exceptions prior to the effective date of the new regulations in § 301.7701–2(c). The inability of these entities to benefit from the exceptions for family employees and members of religious faiths has an adverse impact on small businesses. Accordingly, a change is necessary to correct this problem.

While § 301.7701–2(c)(2)(iv) treats an entity that is disregarded as an entity separate from its owner as a corporation for employment tax purposes, such entity remains disregarded for backup withholding and related information reporting purposes. The preamble to Treasury Decision 9356, 2007–39 I.R.B. 675, which finalized the changes to § 301.7701–2(c) indicates that these regulations do not apply to reportable payments under section 3406. Accordingly, the owner of the disregarded entity is responsible for any backup withholding that is required with respect to reportable payments considered made by the owner rather than the disregarded entity, other than a qualified subchapter S subsidiary. However, the final regulations themselves do not explicitly state that such disregarded entities are not responsible for information reporting and backup withholding. This has caused some confusion as to the responsible party for filing information returns for reportable payments and related backup withholding requirements. Therefore, language has been added to these regulations to clarify the existing rules with respect to backup withholding and related information reporting responsibilities.

## Explanation of Provisions

The temporary regulations would allow certain disregarded entities under § 301.7701–2 to qualify for the FICA and FUTA exceptions of sections 3121(b)(3), 3127 and 3306(c)(5). The disregarded entity will continue to be treated as a corporation for all employment tax purposes, except the entity will be disregarded for the limited purposes of applying the FICA and FUTA exceptions found in sections 3121(b)(3), 3127 and 3306(c)(5). For purposes of applying these exceptions only, the owner of the disregarded entity will be treated as the employer and the employee will be considered to be an employee of the owner. Additionally, the regulations clarify the existing rule that disregarded entities under § 301.7701–2 are not responsible for backup withholding and information reporting of reportable payments under section 3406. Rather, the owner of a disregarded entity under § 301.7701–2 is responsible for backup withholding and information reporting of reportable payments under section 3406. This does not change the existing rule.

## Special Analyses

It has been determined that this Treasury Decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this

regulation will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

**Drafting Information**

The principal author of these regulations is Joseph Perera, Office of Associate Chief Counsel (Tax Exempt & Government Entities). However, other personnel from the IRS and Treasury Department participated in their development.

**List of Subjects**

*26 CFR Part 31*

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

*26 CFR Part 301*

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recording requirements.

**Amendments to the Regulations**

Accordingly, 26 CFR parts 31 and 301 are amended as follows:

## PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

■ **Paragraph 1.** The authority citation for part 31 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 31.3121(b)(3)–1 is amended by revising paragraph (c) and adding paragraphs (d) and (e) to read as follows:

**§ 31.3121(b)(3)–1 Family employment.**

* * * * *

(c) [Reserved]. For further guidance, *see* § 31.3121(b)(3)–1T(c).

(d) [Reserved]. For further guidance, *see* § 31.3121(b)(3)–1T(d).

(e) [Reserved]. For further guidance, *see* § 31.3121(b)(3)–1T(e).

■ **Par. 3.** Section 31.3121(b)(3)–1T is added to read as follows:

**§ 31.3121(b)(3)–1T Family employment (temporary).**

(a) [Reserved]. For further guidance, *see* § 31.3121(b)(3)–1(a).

(b) [Reserved]. For further guidance, *see* § 31.3121(b)(3)–1(b).

(c) Services performed in the employ of a corporation are not within the exceptions, except as provided in paragraph (d). Services performed in the employ of a partnership are not within the exception unless the requisite family relationship exists between the employee and each of the partners comprising the partnership.

(d) A disregarded entity that is treated as a corporation under § 301.7701–2(c)(2)(iv)(B) of this chapter (Procedure and Administration Regulations) shall not be treated as a corporation for purposes of applying section 3121(b)(3). For purposes of applying section 3121(b)(3), the owner of the disregarded entity will be treated as the employer.

(e) Paragraphs (c) and (d) of this section apply with respect to wages paid on or after November 1, 2011. However, taxpayers may apply paragraphs (c) and (d) of this section to wages paid on or after January 1, 2009.

(f) *Expiration date.* The applicability of paragraphs (c) and (d) of this section expires on or before October 31, 2014.

■ **Par. 4.** Section 31.3127–1T is added to subpart B to read as follows:

**§ 31.3127–1T Exemption for employers and their employees where both are members of religious faiths opposed to participation in Social Security Act programs (temporary).**

(a) If an employer (or if the employer is a partnership, each partner therein) and their employee are members of a recognized religious sect or division described in section 1402(g)(1) of the Code, both the employer and employee adhere to the tenets and teachings of that sect, and both the employer and employee have filed and had approved applications under section 3127(b) for exemption from the taxes imposed by sections 3111 and 3101 then the employer is exempt from taxes imposed by section 3111 with respect to the wages paid to the eligible employee, and the employee is exempt from the taxes imposed by section 3101 with respect to the wages paid by that employer.

(b) Services performed in the employ of a corporation are not within the exception, except as provided in paragraph (c) of this section.

(c) A disregarded entity that is treated as a corporation under § 301.7701–2(c)(2)(iv)(B) of this chapter (Procedure and Administration Regulations) shall not be treated as a corporation for purposes of applying section 3127. For purposes of section 3127, the owner of the disregarded entity will be treated as the employer and the payor of the employee's wages.

(d) This section applies with respect to wages paid on or after November 1, 2011. However, taxpayers may apply this section to wages paid on or after January 1, 2009.

(e) *Expiration date.* The applicability of this section expires on or before [October 31, 2014].

■ **Par. 5.** Section 31.3306(c)(5)–1 is amended by revising paragraph (c) and adding paragraphs (d) and (e) to read as follows:

**§ 31.3306(c)(5)–1 Family Employment.**

* * * * *

(c) [Reserved]. For further guidance, *see* § 31.3306(c)(5)–1T(c).

(d) [Reserved]. For further guidance, *see* § 31.3306(c)(5)–1T(d).

(e) [Reserved]. For further guidance, *see* § 31.3306(c)(5)–1T(e).

■ **Par. 6.** Section 31.3306(c)(5)–1T is added to read as follows:

**§ 31.3306(c)(5)–1T Family employment (temporary).**

(a) [Reserved]. For further guidance, *see* § 31.3306(c)(5)–1(a).

(b) [Reserved]. For further guidance, *see* § 31.3306(c)(5)–1(b)

(c) Services performed in the employ of a corporation are not within the exception, except as provided in paragraph (d) of this section. Services performed in the employ of a partnership are not within the exception unless the requisite family relationship exists between the employee and each of the partners comprising the partnership.

(d) A disregarded entity that is treated as a corporation under § 301.7701–2(c)(2)(iv)(B) of this chapter (Procedure and Administration Regulations) shall not be treated as a corporation for purposes of applying section 3306(c)(5). For purposes of applying section 3306(c)(5), the owner of the disregarded entity will be treated as the employer.

(e) Paragraphs (c) and (d) of this section apply with respect to wages paid on or after November 1, 2011. However, taxpayers may apply paragraphs (c) and (d) of this section to wages paid on or after January 1, 2009.

(f) *Expiration date.* The applicability of paragraphs (c) and (d) of this section expires on or before [October 31, 2014].

## PART 301—PROCEDURE AND ADMINISTRATION

■ **Par. 7.** The authority citation for part 301 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 * * *

■ **Par. 8.** Section 301.7701–2 is amended by:

■ 1. Revising paragraph (c)(2)(iv)(A).

■ 2. Redesignating paragraph (c)(2)(iv)(C) as paragraph (c)(2)(iv)(D) and adding new paragraph (c)(2)(iv)(C).

**§ 301.7701–2 Business entities; definitions.**

* * * * *

(c) * * *

(2) * * *

(iv) * * *

(A) [Reserved]. For further guidance, *see* § 301.7701–2T(c)(2)(iv)(A).

* * * * *

(C) [Reserved]. For further guidance, *see* § 301.7701–2T(c)(2)(iv)(C).

* * * * *

■ **Par. 9.** Section 301.7701–2T is revised to read as follows:

**§ 301.7701–2T Business entities; definitions (temporary).**

(a) through (c)(2)(iv) [Reserved]. For further guidance, *see* § 301.7701–2(a) through (c)(2)(iv).

(A) *In general.* Section § 301.7701–2(c)(2)(i) (relating to certain wholly owned entities) does not apply to taxes imposed under Subtitle C—Employment Taxes and Collection of Income Tax (Chapters 21, 22, 23, 23A, 24 and 25 of the Internal Revenue Code). However, § 301.7701–2(c)(2)(i) does apply to withholding requirements imposed under section 3406 (backup withholding). The owner of a business entity that is disregarded under § 301.7701–2 is subject to the withholding requirements imposed under section 3406 (backup withholding). Section 301.7701–2(c)(2)(i) also applies to taxes imposed under Subtitle A, including Chapter 2—Tax on Self-Employment Income. The owner of an entity that is treated in the same manner as a sole proprietorship under § 301.7701–2(a) will be subject to tax on self-employment income.

(B) [Reserved]. For further guidance, see § 301.7701–2(c)(2)(iv)(B).

(C) *Exceptions.* For exceptions to the rule in § 301.7701–2(c)(2)(iv)(B), see sections 31.3121(b)(3)–1(d), 31.3127–1(c), and 31.3306(c)(5)–1(d).

(D) through (e)(4) [Reserved]. For further guidance, see § 301.7701–2(c)(2)(iv)(D) through (e)(4).

(5) Paragraphs (c)(2)(iv)(A) and (c)(2)(iv)(C) of this section apply to wages paid on or after November 1, 2011. For rules that apply to paragraph (c)(2)(iv)(A) of this section before November 1, 2011, see 26 CFR part 301 revised as of April 1, 2009. However, taxpayers may apply paragraphs (c)(2)(iv)(A) and (c)(2)(iv)(C) of this section to wages paid on or after January 1, 2009.

(e)(6) through (e)(7) [Reserved]. For further guidance, see § 301.7701–2(e)(6) through (e)(7).

(8) *Expiration Date.* The applicability of paragraphs (c)(2)(iv)(A) and (c)(2)(iv)(C) of this section expires on or before [October 31, 2014].

**Steven T. Miller,**

*Deputy Commissioner for Services and Enforcement.*

Approved: November 19, 2010.

**Michael Mundaca,**

*Assistant Secretary of the Treasury (Tax Policy).*

[FR Doc. 2011–28176 Filed 10–31–11; 8:45 am]

BILLING CODE 4830–01–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R09–OAR–2011–0382; FRL–9477–4]**

## Revisions to the California State Implementation Plan, Placer County Air Pollution Control District and Sacramento Metro Air Quality Management District

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve revisions to the Placer County Air Pollution Control District (PCAPCD) and Sacramento Metro Air Quality Management District (SMAQMD) portions of the California State Implementation Plan (SIP). These revisions concern oxides of nitrogen ($NO_X$) emissions from industrial, institutional and commercial boilers, stationary internal combustion engines and water heaters. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

**DATES:** This rule is effective on January 3, 2012 without further notice, unless EPA receives adverse comments by December 1, 2011. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

**ADDRESSES:** Submit comments, identified by docket number EPA–R09–OAR–2011–0382, by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions.

2. *Email: steckel.andrew@epa.gov.*

3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

*Instructions:* All comments 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 Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *http://www.regulations.gov* or email. *http://www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send email directly to EPA, your email address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* Generally, documents in the docket for this action are available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at *http://www.regulations.gov,* some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material, large maps), and some may not be publicly available in either location (*e.g.,* CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Idalia Pérez, EPA Region IX, (415) 972–3248, *perez.idalia@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Throughout this document, ''we,'' ''us,'' and ''our'' refer to EPA.

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### I. The State's Submittal

#### *A. What rules did the State submit?*

Table 1 lists the rules we are approving with the dates that they were

adopted or amended by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1—SUBMITTED RULES

| Local agency | Rule No. | Rule title | Adopted/ Amended | Submitted |
|---|---|---|---|---|
| PCAPCD | 231 | Industrial, Institutional and Commercial Boiler, Steam Generator and Process Heaters. | 10/09/97 | 03/17/09 |
| PCAPCD | 242 | Stationary Internal Combustion Engines | 04/10/03 | 12/07/10 |
| PCAPCD | 246 | Natural Gas-Fired Water Heaters | 06/19/97 | 12/07/10 |
| SMAQMD | 414 | Water Heaters, Boilers and Process Heaters Rated Less Than 1,000,000 BTU per hour. | 03/25/10 | 04/05/11 |

On April 20, 2009, EPA determined that the submittal for PCAPCD Rule 231 met the completeness criteria in 40 CFR part 51 appendix V, which must be met before formal EPA review. On January 13, 2011, EPA determined that the submittal for PCAPCD Rules 242 and 246 met the completeness criteria in 40 CFR part 51 appendix V, which must be met before formal EPA review. On May 6, 2011, EPA determined that the submittal for SMAQMD Rule 414 met the completeness criteria in 40 CFR part 51 appendix V, which must be met before formal EPA review.

*B. Are there other versions of these rules?*

There are no previous versions of Rules 231, 242 and 246 in the SIP. The PCAPCD adopted an earlier version of Rule 231 on October 17, 1994, and CARB submitted it to us on October 19, 1994 but it was later withdrawn. We approved an earlier version of SMAQMD Rule 414 into the SIP on April 20, 1999 (64 FR 19277).

*C. What is the purpose of the submitted rules?*

$NO_X$ helps produce ground-level ozone, smog and particulate matter, which harm human health and the environment. Section 110(a) of the CAA requires States to submit regulations that control $NO_X$ emissions. Rule 231 limits emission of $NO_X$ and carbon monoxide (CO) from boilers, steam generators and process heaters fueled on liquid or gas fuels that are 5 MMBtu/hour or larger. Rule 242 regulates emissions of $NO_X$ and CO from internal combustion engines with a rated brake horse power of 50 or greater. Rule 246 limits $NO_X$ emissions from natural gas water heaters rated below 75,000 btu/hour. Rule 414 limits $NO_X$ and CO emissions from boilers rated below 1 MMBtu/hour. EPA's technical support documents (TSD) have more information about these rules.

## II. EPA's Evaluation and Action

*A. How is EPA evaluating the rules?*

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for each category of sources covered by a Control Techniques Guidelines (CTG) document as well as each $NO_X$ or VOC major source in ozone nonattainment areas classified as moderate or above (see sections 182(b)(2) and 182(f)), and must not relax existing requirements in violation of CAA sections 110(l) and 193. SIP rules must also implement Reasonably Available Control Measures (RACM), including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology (RACT), as expeditiously as practicable for nonattainment areas (see CAA section 172(c)(1)). The PCAPCD and SMAQMD regulate ozone nonattainment areas classified as severe for the 8-hour ozone NAAQS (40 CFR 81.305), so Rules 231, 242, 246 and 414 must fulfill RACT and RACM for $NO_X$.

Guidance and policy documents that we use to evaluate enforceability, RACT and RACM requirements consistently include the following:

1. ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' 57 FR 13498 (April 16, 1992); 57 FR 18070 (April 28, 1992).
2. ''State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule,'' (the $NO_X$ Supplement), 57 FR 55620, November 25, 1992.
3. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,'' EPA, May 25, 1988 (the Bluebook).
4. ''Guidance Document for Correcting Common VOC & Other Rule Deficiencies,'' EPA Region 9, August 21, 2001 (the Little Bluebook).
5. ''Determination of Reasonably Available Control Technology and Best Available Retrofit Control Technology for Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters'', CARB (July 18, 1991).
6. ''Alternative Control Techniques Document—$NO_X$ Emissions from Industrial/Commercial/Institutional (ICI) Boilers'', US EPA 453/R–94–022 (March 1994).
7. ''Alternative Control Techniques Document—$NO_X$ Emissions from Utility Boilers'', US EPA 452/R–93–008 (March 1994).
8. ''Alternative Control Techniques Document—$NO_X$ Emissions from Stationary Reciprocating Internal Combustion Engines'', US EPA 453/R–93–032 (July 1993).
9. ''Determination of Reasonably Available Control Technology and Best Available Retrofit Control Technology for Stationary Spark-Ignited Internal Combustion Engines'', CARB (November 2001).

*B. Do the rules meet the evaluation criteria?*

We believe these rules are consistent with the relevant policy and guidance regarding enforceability and SIP relaxations. We are not evaluating the RACM requirement in this action but believe that PCAPCD and SMAQMD are required to evaluate any reasonably available control measures for the sources covered by these rules. We believe Rule 231 implements RACT. We believe there are no sources subject to Rule 242 that exceed the major source threshold (25 tpy), thus it is not required to meet RACT for $NO_X$. For this reason, we are not making a determination on RACT for Rule 242 in this action. Rules 246 and 414 are not subject to RACT requirements because they are applicable to sources that are too small to exceed the major source threshold. The TSDs have more information on our evaluation.

*C. EPA Recommendations To Further Improve the Rules*

The TSDs describe additional rule revisions that we recommend for the next time the local agencies modify the rules.

*D. Public Comment and Final Action*

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by December 1, 2011, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on January 3, 2012. This will incorporate these rules into the federally enforceable SIP.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

**III. Statutory and Executive Order Reviews**

Under the Clean Air Act, 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 Clean Air Act. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

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

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. 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 Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 3, 2012. 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. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the Proposed Rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. 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**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements.

Dated: September 28, 2011.

**Keith Takata,**

*Acting Regional Administrator, Region IX.*

Part 52, chapter I, title 40 of the Code of Federal Regulations 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 F—California

■ 2. Section 52.220 is amended by adding paragraphs (c)(363)(i)(D), (388)(i)(D)(*2*), and (389)(i)(B)(*2*) and (*3*) to read as follows:

**§ 52.220 Identification of plan.**

* * * * *

(c) * * *

(363) * * *

(i) * * *

(D) Placer County Air Pollution Control District.

(*1*) Rule 231, ''Industrial, Institutional and Commercial Boiler, Steam Generator and Process Heaters,'' amended on October 9, 1997.

* * * * *

(388) * * *

(i) * * *

(D) * * *

(*2*) Rule 414, ''Water Heaters, Boilers and Process Heaters Rated Less Than 1,000,000 BTU per hour,'' amended on March 25, 2010.

* * * * *

(389) * * *

(i) * * *

(B) * * *

(*2*) Rule 242, ''Stationary Internal Combustion Engines,'' adopted on April 10, 2003.

(*3*) Rule 246, ''Natural Gas-Fired Water Heaters,'' adopted on June 19, 1997.

* * * * *

[FR Doc. 2011–28246 Filed 10–31–11; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

[EPA–R09–OAR–2011–0356; FRL–9479–3]

## Revisions to the California State Implementation Plan, Joaquin Valley Unified Air Pollution Control District and Imperial County Air Pollution Control District

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

**ACTION:** Final rule.

**SUMMARY:** EPA is finalizing approval of revisions to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) and Imperial County Air Pollution Control District (ICAPCD) portions of the California State Implementation Plan (SIP). These revisions were proposed in the **Federal Register** on June 3, 2011 and concern volatile organic compound (VOC) emissions from Motor Vehicle Assembly, Metal Parts and Products, Plastic Parts and Products and Pleasure Crafts, Aerospace Operations and Automotive Refinishing Operations. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

**DATES:** *Effective Date:* This rule is effective on December 1, 2011.

**ADDRESSES:** EPA has established docket number EPA–R09–OAR–2011–0356 for this action. Generally, documents in the docket for this action are available electronically at *http://www.regulations.gov* or in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at *http://www.regulations.gov,* some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps, multi-volume reports), and some may not be available in either location (e.g., confidential business information (CBI)). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Adrianne Borgia, EPA Region IX, (415) 972–3576, *borgia.adrianne@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

### Table of Contents

I. Proposed Action
II. Public Comments and EPA Responses
III. EPA Action
IV. Statutory and Executive Order Reviews

### I. Proposed Action

On June 3, 2011 (FR 32113), EPA proposed to approve the following rules into the California SIP.

| Local agency | Rule No. | Rule title | Adopted | Submitted |
|---|---|---|---|---|
| SJVUAPCD | 4602 | Motor Vehicle Assembly Coatings | 9/17/09 | 5/17/10 |
| SJVUAPCD | 4603 | Surface Coating of Metal Parts and Products, Plastic Parts and Products and Pleasure Crafts. | 9/17/09 | 5/17/10 |
| ICAPCD | 425 | Aerospace Coating Operations | 2/23/10 | 7/20/10 |
| ICAPCD | 427 | Automotive Refinishing Operations | 2/23/10 | 7/20/10 |

We proposed to approve these rules because we determined that they complied with the relevant CAA requirements. Our proposed action contains more information on the rules and our evaluation.

### II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period, we received no comments.

### III. EPA Action

No comments were submitted that change our assessment that the submitted rules comply with the relevant CAA requirements. Therefore, as authorized in section 110(k)(3) of the Act, EPA is fully approving these rules into the California SIP.

### IV. Statutory and Executive Order Reviews

Under the Clean Air Act, 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 Clean Air Act. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

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

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is

not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. 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).

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

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

Dated: September 28, 2011.

**Keith Takata,**

*Acting Regional Administrator, Region IX.*

Part 52, Chapter I, Title 40 of the Code of Federal Regulations 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 F—California

■ 2. Section 52.220, is amended by adding paragraphs (c)(379)(i)(C)(*3*) and (*4*) and (c)(381)(i)(A)(*3*) and (*4*) to read as follows:

**§ 52.220 Identification of plan.**

* * * * *

(c) * * *

(379) * * *

(i) * * *

(C) * * *

(*3*) Rule 4602, ''Motor Vehicle Assembly Coatings,'' amended on September 17, 2009.

(*4*) Rule 4603, ''Surface Coating of Metal Parts and Products, Plastic Parts and Products and Pleasure Crafts,'' amended on September 17, 2009.

* * * * *

(381) * * *

(i) * * *

(A) * * *

(*3*) Rule 425, ''Aerospace Coating Operations,'' revised February 23, 2010.

(*4*) Rule 427, ''Automotive Refinishing Operations,'' revised February 23, 2010.

* * * * *

[FR Doc. 2011–28251 Filed 10–31–11; 8:45 am]

BILLING CODE 6560–50–P

## GENERAL SERVICES ADMINISTRATION

## 41 CFR Part 101–26

**[FPMR Amendment 2011–01; FPMR Case 2011–101–1; Docket Number 2011–017; Sequence 1]**

**RIN 3090–AJ19**

## Federal Property Management Regulation (FPMR); Procurement Sources and Programs

**AGENCY:** Office of Governmentwide Policy, General Services Administration (GSA).

**ACTION:** Final rule.

**SUMMARY:** The General Services Administration (GSA) is revising the Federal Property Management Regulation (FPMR) by removing the provisions regarding priorities for use of Government supply sources. Users may access the FPMR and any corresponding documents at GSA's Web site at *http://www.gsa.gov/fmr* and by clicking on ''FPMR & Related Files'' on the left-hand menu.

**DATES:** *Effective Date:* This final rule is effective November 1, 2011.

**FOR FURTHER INFORMATION CONTACT:** The Regulatory Secretariat (MVCB), 1275 First St., NE., Washington, DC 20417, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Robert Holcombe, Office of Travel, Transportation and Asset Management (MT), General Services Administration, at (202) 501–3828 or email at *robert.holcombe@gsa.gov.* Please cite FPMR Amendment 2011–01.

**SUPPLEMENTARY INFORMATION:**

### A. Background

GSA is amending the FPMR (41 CFR Chapter 101) by removing the provisions regarding priorities for use of Government supply sources. The Federal Acquisition Regulation (FAR) is considered the primary regulation for use by all Federal executive agencies in their acquisition of supplies and services with appropriated funds; therefore, policies that repeat, paraphrase, or restate the FAR are unnecessary.

### B. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a ''significant regulatory action'' although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget.

### C. Regulatory Flexibility Act

This final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the revisions are not considered substantive. This final rule is also exempt from the Regulatory Flexibility Act per 5 U.S.C. 553(a)(2) because it applies to agency management or personnel. However, this final rule is being published to provide transparency in the promulgation of Federal policies.

### D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the final rule does not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

### E. Small Business Regulatory Enforcement Fairness Act

This final rule is exempt from Congressional review under 5 U.S.C. 801 since it relates solely to agency management and personnel.

**List of Subjects in 41 CFR Part 101–26**

Procurement sources and programs.

Dated: August 4, 2011.

**Martha Johnson,**

*Administrator of General Services.*

For the reasons set forth in the preamble, GSA amends 41 CFR Chapter 101 as follows:

## CHAPTER 101—FEDERAL PROPERTY MANAGEMENT REGULATIONS

## PART 101–26—PROCUREMENT SOURCES AND PROGRAMS

■ 1. The authority for 41 CFR part 101–26 is amended to read as follows:

**Authority:** 40 U.S.C. 121(c).

**§ 101–26.107 [Removed]**

■ 2. Remove § 101–26.107.

[FR Doc. 2011–27754 Filed 10–31–11; 8:45 am]

BILLING CODE 6820–14–P

## GENERAL SERVICES ADMINISTRATION

## 41 CFR Part 102–39

**[FMR Change 2011–02; FMR Case 2011–102–3; Docket No. 2011–0019, Sequence 1]**

**RIN 3090–AJ20**

## Federal Management Regulation; Prohibited List for Exchange/Sale of Personal Property

**AGENCY:** Office of Governmentwide Policy, General Services Administration (GSA).

**ACTION:** Final rule.

**SUMMARY:** The General Services Administration (GSA) is amending the Federal Management Regulation (FMR) by making changes to its policy on the replacement of personal property pursuant to the exchange/sale authority.

**DATES:** This final rule is effective on November 1, 2011.

**FOR FURTHER INFORMATION CONTACT:** The Regulatory Secretariat (MVCB), 1275 First Street, NE., Washington, DC 20417, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Robert Holcombe, Office of Governmentwide Policy, Office of Travel, Transportation, and Asset Management (MT), (202) 501–3828 or email at *robert.holcombe@gsa.gov.* Please cite FMR Change 2011–02, FMR Case 2011–102–3.

**SUPPLEMENTARY INFORMATION:**

### A. Background

A proposed rule was published in the **Federal Register** on June 26, 2009 (74 FR 30493). Three changes were proposed.

Two of the proposed changes, regarding the handling of scrap property and an administrative change, did not elicit any significant objections during the public review period and were incorporated into a final rule published in the **Federal Register** on May 6, 2010 (75 FR 24820).

The most significant change was the proposal to remove the exchange/sale prohibition on aircraft and airframe structural components subject to certain conditions. GSA received eleven comments on that proposal. Due to the interest in this proposal, GSA took this intervening time to carefully review and consider these comments and objections. Public comments may be found at *http://www.regulations.gov* and searching for the applicable docket: GSA–FMR–2009–0002.

After careful review and consideration, GSA is choosing to codify the removal of the exchange/sale prohibition on aircraft and airframe structural components. In short, GSA has determined that removing the prohibition is in the best interest of the Government and will reduce agencies' costs of managing their aircraft fleets. GSA understands the intent of the property management legislation at 40 U.S.C. 501 *et seq.* to require that property-holding agencies make full use of property already acquired in support of their mission. The exchange/sale authority, codified at 40 U.S.C. 503, supports that intent by allowing agencies to make use of their investment in these valuable assets and does not provide any commodity restrictions to this authority.

The rationale for removing aircraft from the prohibited list was provided in the ''Background'' section of the proposed rule is still considered valid and relevant. This rationale is reprinted below:

> This proposed rule would remove the exchange/sale prohibition on aircraft and airframe structural components, subject to certain conditions. These commodities have been included on the list of properties normally ineligible for exchange/sale so that the acquisition and disposal of these commodities could be managed more closely. To conduct an exchange/sale of such commodities (which is encouraged to reduce the agency costs of managing their aircraft fleets), agencies have been required to submit deviation requests for approval by GSA. Adequate tools are now available for managing these assets without going through the time consuming and onerous deviation process. Further, removing these commodities from the ''prohibited list'' should not have a detrimental impact on the donation of such property. Finally, although agencies would no longer need to request deviations from GSA, a provision would be added to alert agencies that they must comply with the restrictions and limitations on the disposal of aircraft and aircraft parts contained in 41 CFR part 102–33.

Thus, for these reasons, this final rule revises the regulation to remove aircraft and aircraft structural components from the exchange/sale prohibited list as long as such transactions are conducted in accordance with provisions found at FMR part 102–33 (41 CFR part 102–33). Some specific comments received in response to the proposed rule, and GSA's response to those comments, are provided below:

*Comment:* The proposed changes are unnecessary, unwise, and would constitute an evasion of congressional appropriation authority.

*GSA Response:* The proposed changes have been requested by the Federal property managers and aviation managers as a way to better manage aviation assets. As the Federal officials responsible for safely maintaining our Federal aviation assets in a state of readiness, GSA disagrees with the characterization that these changes are ''unnecessary'' and ''unwise.'' Also, GSA notes that Congress has specifically authorized the exchange/sale program under Title 40 U.S.C. 503. Therefore, this FMR change does not introduce the ability to conduct an exchange/sale transaction, nor evade Congressional authority; it furthers an agency's ability to conduct an exchange/sale transaction as provided by law.

*Comment:* Furthermore, if enacted, this proposed change would further diminish the amount of personal property available to the State Agencies to place in public use. (10 similar comments).

*GSA Response:* As discussed in other documents and in discussions with our stakeholders, GSA has never denied a deviation request for the exchange/sale of these types of assets. These aviation assets were maintained on the prohibited list simply so that GSA could better manage these assets in compliance with GSA responsibilities under OMB Circular A–126, Section 13c. In addition, FMR § 102–37.40 requires that property provided to donation recipients be Federal surplus. Conversely, FMR § 102–39.65(b) states that property available for exchange/sale cannot be excess or surplus. Thus, this proposed change cannot diminish the amount of personal property available for donation to State Agencies, because the change only applies to personal property that was not eligible for donation in the first place.

*Comment:* Generally characterized as 'This rule change will hurt Federal civilian agencies who are not exchange/selling aviation assets because they will not be able to obtain excess aviation assets from other Federal agencies because of the notional rush by the holding agency to exchange/sell all possible assets to satisfy its aviation requirements.' (3 comments).

*GSA Response:* Federal agencies are tasked to maintain their aviation assets to meet their agency missions, often with insufficient funds to meet all requirements. In order to meet their programmatic needs, they are encouraged to seek any funding

solution, including the exchange/sale authority authorized under law.

*Comment:* Generally characterized as 'The exchange/sale program only returns ''pennies on the dollar'' to the agency, whereas disposing of the asset through other methods provides a greater benefit to other agencies or donees.' (3 comments).

*GSA Response:* It is in agencies' best interests to maximize their available funds by obtaining the best return on their personal property investments. Therefore, there is little support for the comment that agencies would intentionally fund their aviation requirements by selling their aviation assets for anything less than the best price.

Also, GSA notes that the exchange/sale regulation at FMR § 102–39.55 allows agencies to offer personal property through either a reimbursable transfer with another agency, or through a negotiated sale with a State Agencies for Surplus Property (SASP). GSA is not aware of any such request by an agency or SASP offering to pay below-fair-market value to obtain aviation property. If the holding agency were truly selling items at just pennies on the dollar, then we would expect other Federal agencies and SASPs to be eager to obtain such assets at bargain prices. However, GSA has never observed such a transaction, leading to the conclusion that agencies are not willing to sell aircraft for minimal, below-fair-market value prices.

*Comment:* Generally characterized as ''the exchange/sale authorities should be subordinate to the donation authorities.'' (2 comments)

*GSA Response:* GSA recognizes the vast benefits provided to the nation by the utilization and donation programs. At the same time, GSA also recognizes that under the expressed direction of Congress contained in 40 U.S.C. 503, the authority to conduct exchange/sale transactions is granted directly to Federal agencies (40 U.S.C. 503(a)). On the other hand the donation program authority is granted exclusively to GSA, with such transfers being made at GSA's discretion (40 U.S.C. 549(b)). GSA therefore rejects the argument that its discretionary authority takes precedence over statutory authority granted to all other agencies. GSA also reiterates the argument that donation authority applies only to surplus property, whereas exchange/sale authority applies to non-surplus property, rendering moot any discussion of subordinate and superior authorities.

Finally, there is the issue of fire control systems and guided missiles. Over the past several years, GSA has worked with Department of Defense (DOD) agencies on deviations to allow the exchange/sale of fire control systems (FSC Group 12) and guided missiles (FSC Group 14). These assets are also on the prohibited list at FMR § 102–39.60(a). GSA observes that the ''Note'' to this section removes the requirement for deviations from the prohibited list for DOD transactions of these FSC Groups when otherwise meeting DOD and Federal laws and regulations. Because other, more stringent DOD and Federal laws are in place to prevent the inappropriate use of these assets outside their intended use, GSA sees no value in keeping these on the exchange/sale prohibited list. For these reasons, and since there would be no other legitimate, competing interests in obtaining this property outside the realm in which DOD operates, GSA does not see a need to obtain public comment on this matter through the publication of a proposed rule.

**B. Executive Order 12866 and 13563**

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. This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

**C. Regulatory Flexibility Act**

This final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the revisions are not considered substantive. This final rule is also exempt from the Regulatory Flexibility Act per 5 U.S.C. 553(a)(2) because it applies to agency management or personnel. However, this final rule is being published to provide transparency in the promulgation of Federal policies.

**D. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the changes to the FMR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

**E. Small Business Regulatory Enforcement Fairness Act**

This final rule is exempt from Congressional review under 5 U.S.C. 801 since it relates solely to agency management and personnel.

**List of Subjects in 41 CFR Part 102–39**

Government property management and Personal property.

Dated: August 7, 2011.

**Martha Johnson,**

*Administrator of General Services.*

For the reasons set forth in the preamble, GSA amends 41 CFR part 102–39 as set forth below:

## PART 102–39—REPLACEMENT OF PERSONAL PROPERTY PURSUANT TO THE EXCHANGE/SALE AUTHORITY

■ 1. The authority citation for 41 CFR part 102–39 continues to read as follows:

**Authority:** 40 U.S.C. 121(c); 40 U.S.C. 503.

■ 2. Amend § 102–39.60—

■ a. In paragraph (a) by removing the third entry ''12 Fire control equipment'', the fourth entry ''14 Guided missiles''; and, the fifth entry ''15 Aircraft and airframe structural components (except FSC Class 1560 Airframe Structural Components)'';

■ b. In paragraph (l) by removing ''584'' and adding ''548'' in its place; and

■ c. By adding paragraph (m) to read as follows:

**§ 102–39.60 What restrictions and prohibitions apply to the exchange/sale of personal property?**

* * * * *

(m) Aircraft and aircraft parts, unless there is full compliance with all exchange/sale provisions in part 102–33 of this chapter (41 CFR part 102–33).

[FR Doc. 2011–27757 Filed 10–31–11; 8:45 am]

BILLING CODE 6820–14–P

## DEPARTMENT OF HOMELAND SECURITY

## Federal Emergency Management Agency

## 44 CFR Part 64

**[Docket ID FEMA–2011–0002; Internal Agency Docket No. FEMA–8203]**

## Suspension of Community Eligibility

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

**ACTION:** Final rule.

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

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

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

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

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

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

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

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

*Regulatory Classification.* This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

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

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

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

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

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

## PART 64—[AMENDED]

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

**Authority:** 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

### § 64.6 [Amended]

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

| State and location | Community No. | Effective date authorization/cancellation of sale of flood insurance in community | Current effective map date | Date certain Federal assistance no longer available in SFHAs |
|---|---|---|---|---|
| **Region III** | | | | |
| Pennsylvania: | | | | |
| Beccaria, Township of, Clearfield County. | 421512 | April 8, 1976, Emerg; July 4, 1989, Reg; November 2, 2011, Susp. | Nov. 2, 2011 ..... | Nov. 2, 2011. |
| Bigler, Township of, Clearfield County .. | 421514 | January 22, 1976, Emerg; November 16, 1990, Reg; November 2, 2011, Susp. | .....do ..... | Do. |

| State and location | Community No. | Effective date authorization/cancellation of sale of flood insurance in community | Current effective map date | Date certain Federal assistance no longer available in SFHAs |
|---|---|---|---|---|
| Bloom, Township of, Clearfield County | 422379 | September 21, 1979, Emerg; August 24, 1984, Reg; November 2, 2011, Susp. | .....do ..... | Do. |
| Boggs, Township of, Clearfield County | 421515 | May 11, 1984, Emerg; April 1, 1986, Reg; November 2, 2011, Susp. | .....do ..... | Do. |
| Bradford, Township of, Clearfield County. | 421516 | November 7, 1979, Emerg; April 1, 1986, Reg; November 2, 2011, Susp. | .....do ..... | Do. |
| Brady, Township of, Clearfield County .. | 421517 | February 1, 1977, Emerg; August 1, 1986, Reg; November 2, 2011, Susp. | .....do ..... | Do. |
| Brisbin, Borough of, Clearfield County .. | 420297 | September 21, 1976, Emerg; August 3, 1984, Reg; November 2, 2011, Susp. | .....do ..... | Do. |
| Burnside, Borough of, Clearfield County | 420298 | February 28, 1977, Emerg; July 17, 1989, Reg; November 2, 2011, Susp. | .....do ..... | Do. |
| Burnside, Township of, Clearfield County. | 421518 | January 29, 1976, Emerg; August 1, 1986, Reg; November 2, 2011, Susp. | .....do ..... | Do. |
| Chest, Township of, Clearfield County .. | 421519 | April 11, 1980, Emerg; August 1, 1986, Reg; November 2, 2011, Susp. | .....do ..... | Do. |
| Clearfield, Borough of, Clearfield County. | 420300 | August 24, 1973, Emerg; September 5, 1979, Reg; November 2, 2011, Susp. | .....do ..... | Do. |
| Coalport, Borough of, Clearfield County | 420301 | August 12, 1975, Emerg; July 4, 1989, Reg; November 2, 2011, Susp. | .....do ..... | Do. |
| Cooper, Township of, Clearfield County | 421520 | January 13, 1976, Emerg; August 1, 1986, Reg; November 2, 2011, Susp. | .....do ..... | Do. |
| Covington, Township of, Clearfield County. | 421521 | October 6, 1976, Emerg; April 1, 1986, Reg; November 2, 2011, Susp. | .....do ..... | Do. |
| Curwensville, Borough of, Clearfield County. | 420302 | April 7, 1975, Emerg; July 4, 1989, Reg; November 2, 2011, Susp. | .....do ..... | Do. |
| Decatur, Township of, Clearfield County | 421189 | March 18, 1977, Emerg; November 16, 1990, Reg; November 2, 2011, Susp. | .....do ..... | Do. |
| Dubois, City of, Clearfield County ..... | 420303 | December 19, 1973, Emerg; December 1, 1978, Reg; November 2, 2011, Susp. | .....do ..... | Do. |
| Ferguson, Township of, Clearfield County. | 422380 | September 27, 1976, Emerg; August 3, 1984, Reg; November 2, 2011, Susp. | .....do ..... | Do. |
| Girard, Township of, Clearfield County | 422381 | October 12, 1976, Emerg; June 17, 1986, Reg; November 2, 2011, Susp. | .....do ..... | Do. |
| Glen Hope, Borough of, Clearfield County. | 420305 | March 2, 1977, Emerg; April 1, 1986, Reg; November 2, 2011, Susp. | .....do ..... | Do. |
| Goshen, Township of, Clearfield County | 422382 | March 8, 1976, Emerg; April 1, 1986, Reg; November 2, 2011, Susp. | .....do ..... | Do. |
| Graham, Township of, Clearfield County. | 421522 | October 5, 1976, Emerg; April 1, 1986, Reg; November 2, 2011, Susp. | .....do ..... | Do. |
| Grampian, Borough of, Clearfield County. | 420306 | July 24, 1975, Emerg; July 4, 1989, Reg; November 2, 2011, Susp. | .....do ..... | Do. |
| Greenwood, Township of, Clearfield County. | 421523 | August 10, 1979, Emerg; August 1, 1986, Reg; November 2, 2011, Susp. | .....do ..... | Do. |
| Gulich, Township of, Clearfield County | 421524 | January 21, 1976, Emerg; November 16, 1990, Reg; November 2, 2011, Susp. | .....do ..... | Do. |
| Houtzdale, Borough of, Clearfield County. | 420307 | January 26, 1977, Emerg; April 1, 1986, Reg; November 2, 2011, Susp. | .....do ..... | Do. |
| Huston, Township of, Clearfield County | 421525 | February 24, 1981, Emerg; January 3, 1990, Reg; November 2, 2011, Susp. | .....do ..... | Do. |
| Irvona, Borough of, Clearfield County ... | 420308 | December 6, 1976, Emerg; November 3, 1989, Reg; November 2, 2011, Susp. | .....do ..... | Do. |
| Karthaus, Township of, Clearfield County. | 421526 | February 28, 1977, Emerg; April 1, 1986, Reg; November 2, 2011, Susp. | .....do ..... | Do. |
| Mahaffey, Borough of, Clearfield County. | 420310 | February 28, 1977, Emerg; July 4, 1989, Reg; November 2, 2011, Susp. | .....do ..... | Do. |
| Morris, Township of, Clearfield County | 421529 | November 17, 1975, Emerg; December 5, 1989, Reg; November 2, 2011, Susp. | .....do ..... | Do. |
| New Washington, Borough of, Clearfield County. | 420312 | March 16, 1977, Emerg; August 3, 1984, Reg; November 2, 2011, Susp. | .....do ..... | Do. |
| Pike, Township of, Clearfield County .... | 421190 | December 3, 1979, Emerg; September 15, 1989, Reg; November 2, 2011, Susp. | .....do ..... | Do. |
| Sandy, Township of, Clearfield County | 421191 | July 9, 1975, Emerg; September 6, 1989, Reg; November 2, 2011, Susp. | .....do ..... | Do. |
| Troutville, City of, Clearfield County ..... | 420315 | March 14, 1980, Emerg; December 17, 1985, Reg; November 2, 2011, Susp. | .....do ..... | Do. |
| Union, Township of, Clearfield County .. | 421531 | January 12, 1984, Emerg; September 1, 1987, Reg; November 2, 2011, Susp. | .....do ..... | Do. |
| Westover, Borough of, Clearfield County. | 420317 | July 23, 1975, Emerg; August 15, 1989, Reg; November 2, 2011, Susp. | .....do ..... | Do. |

| State and location | Community No. | Effective date authorization/cancellation of sale of flood insurance in community | Current effective map date | Date certain Federal assistance no longer available in SFHAs |
|---|---|---|---|---|
| Virginia: Poquoson, City of, Independent City. | 510183 | August 29, 1973, Emerg; May 16, 1977, Reg; November 2, 2011, Susp. | .....do ..... | Do. |
| **Region IV** | | | | |
| Alabama: | | | | |
| Auburn, City of, Lee County ..... | 010144 | November 21, 1974, Emerg; September 16, 1981, Reg; November 2, 2011, Susp. | .....do ..... | Do. |
| Lee County, Unincorporated Areas ..... | 010250 | N/A, Emerg; December 29, 2005, Reg; November 2, 2011, Susp. | .....do ..... | Do. |
| Opelika, City of, Lee County ..... | 010145 | June 20, 1975, Emerg; September 16, 1981, Reg; November 2, 2011, Susp. | .....do ..... | Do. |
| Smiths Station, City of, Lee County ..... | 010491 | N/A, Emerg; August 24, 2009, Reg; November 2, 2011, Susp. | .....do ..... | Do. |
| Demopolis, City of, Marengo County .... | 010157 | August 21, 1975, Emerg; December 17, 1987, Reg; November 2, 2011, Susp. | .....do ..... | Do. |
| Linden, City of, Marengo County ..... | 010158 | December 27, 1974, Emerg; September 18, 1985, Reg; November 2, 2011, Susp. | .....do ..... | Do. |
| Marengo County, Unincorporated Areas | 010156 | July 21, 1975, Emerg; January 17, 1990, Reg; November 2, 2011, Susp. | .....do ..... | Do. |
| Providence, Town of, Marengo County | 010159 | N/A, Emerg; January 30, 2008, Reg; November 2, 2011, Susp. | .....do ..... | Do. |
| Thomaston, Town of, Marengo County | 010273 | June 8, 1976, Emerg; August 19, 1985, Reg; November 2, 2011, Susp. | .....do ..... | Do. |
| Kentucky: | | | | |
| McCracken County, Unincorporated Areas. | 210151 | July 24, 1975, Emerg; June 4, 1980, Reg; November 2, 2011, Susp. | .....do ..... | Do. |
| Paducah, City of, McCracken County ... | 210152 | May 12, 1975, Emerg; April 15, 1980, Reg; November 2, 2011, Susp. | .....do ..... | Do. |
| Tennessee: | | | | |
| Claiborne County, Unincorporated Areas. | 470212 | April 16, 1974, Emerg; May 4, 1988, Reg; November 2, 2011, Susp. | .....do ..... | Do. |
| New Tazewell, City of, Claiborne County. | 470030 | November 1, 1974, Emerg; August 5, 1986, Reg; November 2, 2011, Susp. | .....do ..... | Do. |
| Tazewell, City of, Claiborne County ..... | 475449 | October 30, 1970, Emerg; October 30, 1970, Reg; November 2, 2011, Susp. | .....do ..... | Do. |
| **Region V** | | | | |
| Illinois: | | | | |
| Cave-In-Rock, Village of, Hardin County | 170274 | August 27, 1975, Emerg; December 1, 1983, Reg; November 2, 2011, Susp. | .....do ..... | Do. |
| Elizabethtown, Village of, Hardin County. | 170275 | July 2, 1975, Emerg; September 15, 1983, Reg; November 2, 2011, Susp. | .....do ..... | Do. |
| Rosiclare, City of, Hardin County ..... | 170276 | July 3, 1975, Emerg; September 15, 1983, Reg; November 2, 2011, Susp. | .....do ..... | Do. |

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

Dated: October 13, 2011.

**Edward L. Connor,**

*Deputy Associate Administrator for Federal Insurance, Department of Homeland Security, Federal Emergency Management Agency.*

[FR Doc. 2011–28217 Filed 10–31–11; 8:45 am]

**BILLING CODE 9110–12–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[DA 11–1689]**

### Radio Broadcasting Services; Various Locations

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Audio Division, on its own motion, updates the FM Table of Allotments to reinstate certain vacant FM allotments. Formerly, the FM Table listed all vacant FM allotments as well as FM channels and communities occupied by authorized facilities. In 2006, the Commission removed the allotments of authorized and awarded FM facilities from the FM Table in order to accommodate the new application procedures for radio stations to change their communities of license. However, when an authorization is cancelled, the vacant allotment must be reinstated in the FM Table to preserve the opportunity to license a future station in the specified community. Accordingly, we are adding to the FM Table of Allotments thirty allotments in various communities that are considered vacant FM allotments.

**DATES:** Effective November 1, 2011.

**ADDRESSES:** Secretary, Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Rolanda F. Smith, Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, adopted October 6, 2011, and released October 7, 2011. The full text of this Commission decision is available for inspection and copying during normal business hours in the

FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractors, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1 (800) 378–3160 or via email *http://www.BCPIWEB.com.* This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). The Commission will not send a copy of this *Order* pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A), because these allotments were previously reported.

**List of Subjects in 47 CFR Part 73**

Radio, Radio broadcasting.

Federal Communications Commission.

**Nazifa Sawez,**

*Assistant Chief, Audio Division, Media Bureau.*

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

## PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334, 336.

### § 73.202 [Amended]

■ 2. Amend § 73.202(b) Table of FM Allotments as follows:

■ a. Add Port Lions, under Alaska, Channel 221C0.

■ b. Add Dermott, under Arkansas, Channel 289A; Lake Village, Channel 278C3; and Pine Bluff, Channel 257A and Channel 267C3.

■ c. Add Willows, under California, Channel 292A.

■ d. Add Sanborn, under Iowa, Channel 264A.

■ e. Add Culver, under Indiana, Channel 252A.

■ f. Add Phillipsburg, under Kansas, Channel 237A.

■ g. Add Bunker, under Missouri, Channel 292C3 and Deerfield, Channel 264C3.

■ h. Add Cleveland, under Mississippi, Channel 225C2; Drew, Channel 237A; Mound Bayou, Channel 270A; and Vardaman, Channel 258A.

■ i. Add Alberton, under Montana, Channel 288C3.

■ j. Add Cloudcroft, under New Mexico, Channel 250C1 and Tularosa, Channel 274C3.

■ k. Add Medina, under North Dakota, Channel 222C and Sarles, Channel 290C1.

■ l. Add Alva, under Oklahoma, Channel 289C2.

■ m. Add Altamont, under Oregon, Channel 249C1 and Malin, Channel 263A.

■ n. Add Mission, under South Dakota, Channel 264A and Murdo, Channel 283A.

■ o. Add Byrdstown, under Tennessee, Channel 255A.

■ p. Add Cisco, under Texas, Channel 261C3; Giddings, Channel 240A; Santa Anna, Channel 288C3; Seymour, Channel 222C2; Shamrock, Channel 225C2.

■ q. Add Byron, under Wyoming, Channel 221C.

[FR Doc. 2011–27451 Filed 10–31–11; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Part 79

**[CG Docket No. 06–181; FCC 11–159]**

## Anglers for Christ Ministries, Inc., New Beginning Ministries; Petitioners; Interpretation of Economically Burdensome Standard

**AGENCY:** Federal Communications Commission.

**ACTION:** Interim rule.

**SUMMARY:** In this document, the Commission provides guidance on how it will construe, on an interim basis, the term ''economically burdensome'' for purposes of evaluating requests for individual exemptions. The intended effect of these actions is to ensure that the Commission evaluates petitions for exemption from the captioning rules in the way intended by the Communications Act (Act).

**DATES:** Effective November 1, 2011.

**FOR FURTHER INFORMATION CONTACT:** Traci Randolph, Consumer and Governmental Affairs Bureau, Disability Rights Office, at (202) 418–0569 or email *Traci.Randolph@fcc.gov.*

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Order (*Order*), document FCC 11–159, adopted October 20, 2011, and released October 20, 2011, in CG Docket No. 06–181. Simultaneously with the Order, the Commission also issued a Memorandum Opinion and Order in CG Docket No. 06–81, and Notice of Proposed Rulemaking in CG Docket No. 11–175. The full text of document FCC 11–159 and copies of any subsequently filed documents in this matter will be available for public inspection and copying via ECFS, and during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, *telephone:* (800) 378–3160, *fax:* (202) 488–5563, or *Internet: http://www.bcpiweb.com.* Document FCC 11–159 can also be downloaded in Word or Portable Document Format (PDF) at: *http://www.fcc.gov/cgb/dro/caption.*

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), (202) 418–0432 (TTY).

**Paperwork Reduction Act of 1995 Analysis**

Document FCC 11–159 does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

**Synopsis**

1. As originally enacted, section 713(d)(3) of the Act authorized the Commission to grant an individual exemption upon a showing that providing closed captioning ''would result in an undue burden.'' Congress provided guidance to the Commission on how it should evaluate these captioning exemptions by setting forth, in section 713(e) of the Act, the following ''four factors to be considered'' in determining whether providing closed captioning ''would result in an undue economic burden'': (1) The nature and cost of the closed captions for the programming; (2) the impact on the operation of the provider or program owner; (3) the financial resources of the provider or program owner; and (4) the type of operations of the provider or program owner.

2. In the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA), Congress amended section 713(d)(3) of the Act by replacing the term ''undue burden'' with the term ''economically burdensome.'' Specifically, amended section 713(d)(3) of the Act states: ''A provider of video programming or program owner may petition the Commission for an exemption from the requirements of this section, and the Commission may grant such petition upon a showing that the requirements contained in this section would be economically burdensome.''

3. In document FCC 11–159, the Commission provides guidance on how it will construe, on an interim basis, the term ''economically burdensome'' for purposes of evaluating requests for individual exemptions under section 713(d)(3) of the Act, as amended by the CVAA. The Commission concludes that Congress, when it enacted the CVAA, intended for the Commission to continue using the undue burden factors contained in 713(e) of the Act, as interpreted by the Commission and reflected in Commission rules and precedent, for individual exemption petitions, rather than to make a substantive change to this standard.

4. The Commission also directs CGB, with respect to all petitions filed or re-filed subsequent to October 8, 2010, the date on which the CVAA became law, to use the original factors set forth in section 713(e) of the Act, as codified in §§ 79.1(f)(2) and (3) of the Commission's rules, in accordance with the guidance provided in the instant order, when making determinations as to whether an individual petitioner has made a documented showing that requiring closed captioning would be ''economically burdensome.''

**Congresssional Review Act**

The Commission will send a copy of document FCC 11–159 in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act.

**Ordering Clauses**

5. Pursuant to the authority contained in sections 4, 5, 303, and 713 of the Communications Act of 1934, as amended, 47 U.S.C. 154, 155, 303, and 613, and §§ 1.115 and 1.411 of the Commission's rules, 47 CFR 1.115, 1.411, document FCC 11–159 *Is Adopted.*

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 2011–28170 Filed 10–31–11; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Part 79

**[CG Docket No. 06–181; FCC 11–159]**

## Anglers for Christ Ministries, Inc., New Beginning Ministries; Petitioners; Interpretation of Economically Burdensome Standard

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Commission grants an Application for Review challenging the *Anglers Order,* and reverses the two exemptions granted in the *Anglers Order* and the 296 exemptions subsequently granted in reliance on the *Anglers Order.* The intended effect of this action is to ensure that the Commission evaluates petitions for exemption from the captioning rules in the way intended by the Communications Act (Act).

**DATES:** Effective November 1, 2011.

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

**FOR FURTHER INFORMATION CONTACT:** Traci Randolph, Consumer and Governmental Affairs Bureau, Disability Rights Office, at (202) 418–0569 or email *Traci.Randolph@fcc.gov.*

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Memorandum Opinion and Order (*MO&O*), document FCC 11–159, adopted October 20, 2011, and released October 20, 2011, in CG Docket No. 06–181. Simultaneously with the *MO&O,* the Commission also issued an Order *(Order)* in CG Docket No. 06–181, and a Notice of Proposed Rulemaking (*NPRM*) in CG Docket No. 11–175. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send copies of FCC 11–159 via certified mail, return receipt requested to counsel for or the last known address for each of the petitioners named in this matter by November 3, 2011. Each of the petitions noted in document FCC 11–159 Appendix A that were the subject of the Application for Review shall be dismissed by January 18, 2012. Affected petitioners may file new petitions in accordance with the statute and Commission rules by January 18, 2012. Any such petitioner who does not file a new petition in accordance with the statute and Commission rules by January 18, 2012 must begin providing closed captioning of its programming beginning on January 19, 2012. The full text of document FCC 11–159 and copies of any subsequently filed documents in this matter will be available for public inspection and copying via ECFS, and during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, *telephone:* (800) 378–3160, *fax:* (202) 488–5563, or *Internet: http://www.bcpiweb.com.* Document FCC 11–159 can also be downloaded in Word or Portable Document Format (PDF) at: *http://www.fcc.gov/cgb/dro/caption.* Appendix A associated with FCC 11–159 listing the Bureau Letter Orders is available at *http://www.fcc.gov/cgb/dro/caption.*

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), (202) 418–0432 (TTY).

**Paperwork Reduction Act of 1995 Analysis**

Document FCC 11–159 does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

**Synopsis**

1. Section 713 of the Act allows the Commission to grant individual exemptions, which are to be considered on a case-by-case basis upon submission of a petition to the Commission. Section 713(d)(3) of the Act, as originally enacted, permitted the Commission to grant such individual closed captioning exemptions to a provider, owner, or producer of video programming that petitioned the Commission, upon a showing that the closed caption requirements would ''result in an undue burden.'' Section 713(e) of the Act

defines ''undue burden'' to mean ''significant difficulty or expense,'' and directs the Commission to consider the following factors in making an undue burden determination: (1) The nature and cost of the closed captions for the programming; (2) the impact on the operation of the provider or program owner; (3) the financial resources of the provider or program owner; and (4) the type of operations of the provider or program owner. The petitioner also may present for the Commission's consideration ''any other factors the petitioner deems relevant to the Commission's final determination,'' including alternatives that might constitute a reasonable substitute for closed captioning.

2. Commission rules require the Commission to place any petition seeking an individual exemption from the closed captioning requirements under section 713(d)(3) of the Act on public notice, after which parties are given an opportunity to provide comments and petitioners are given an opportunity to reply to those comments. During the pendency of the petition, the programming that is the subject of the petition is exempt from the closed captioning rules.

3. On September 11, 2006, the Consumer and Governmental Affairs Bureau (CGB) released an Order (*Anglers Order*), 21 FCC Rcd 10094, granting exemptions to two petitioners—Anglers for Christ Ministries, Inc., and New Beginning Ministries—in a manner that deviated from the Act and the Commission's rules. The CGB then granted 301 individual petitions for exemption relying on the new standard established in the *Anglers Order,* also in a manner that deviated from the Act and the Commission's rules.

4. On October 12, 2006, a group of consumer organizations filed an Application for Review and a Petition for Emergency Stay requesting the Commission to rescind the *Anglers Order* and the hundreds of exemptions that were based on the *Anglers Order.*

5. In FCC 11–159, the Commission grants the relief sought in the Application for Review, and reverses exemptions granted to Anglers and New Beginning in the *Anglers Order.* The Commission concludes that the reasoning used in the *Anglers Order* for evaluating requests for exemption from the closed captioning rules on the basis of undue burden under section 713(d)(3) is not supported by the Act, its legislative history, or the Commission's implementing regulations and Orders. Specifically, the Commission reverses these exemptions because it finds that: (1) It was not appropriate to grant exemptions based on the non-commercial nature and lack of remunerative value of Angler's and New Beginning's programming; (2) the *Anglers Order* should not have placed substantial reliance on Anglers' and New Beginning's non-profit status; (3) the presumption created in the *Anglers Order,* that future exemptions would be granted to non-profit entities for whom the provision of closed captions would ''curtail other activities important to [their] mission,'' is an unworkable standard and not an appropriate factor for undue burden determinations; (4) neither Anglers nor New Beginning should have received permanent exemptions; and (5) the *Anglers Order* failed to consider whether petitioners solicited captioning assistance from their video programming distributors, as required by Commission precedent. Accordingly, the Commission rejects the undue burden criteria used in Anglers, and affirms instead the undue burden analyses previously applied to decisions that predate the *Anglers Order.*

6. In addition, the Commission reverses the hundreds of exemptions that were based on the rationale in the *Anglers Order.* As a substantive matter, the Commission finds that each of these exemptions cannot stand because each relied on the *Anglers Order's* rationale. Additionally, the Commission reverses the exemptions because none of the orders analyzed the individual circumstances of the petitioners under the ''undue burden'' criteria, as required under the Act and the Commission's rules. Finally, the orders were procedurally flawed because they waived, without justification, the Commission's public notice requirements for undue burden exemption petitions.

7. Each of the petitioners affected by document FCC 11–159 shall be provided with a copy of document FCC 11–159 and notified, by letter sent by first class mail, that it may file a new petition for a closed captioning exemption, consistent with the requirements of the Commission's rules and document FCC 11–159.

## Congresssional Review Act

The Commission will send a copy of document FCC 11–159 in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act.

## Ordering Clauses

Pursuant to the authority contained in sections 4, 5, 303, and 713 of the Communications Act of 1934, as amended, 47 U.S.C. 154, 155, 303, and 613, and §§ 1.115 and 1.411 of the Commission's rules, 47 CFR 1.115, 1.411, FCC 11–159 is adopted.

Pursuant to § 1.115 of the Commission's rules, 47 CFR 1.115, the Consumer Organizations' Application for Review of the *Anglers Order* and the Bureau Letter Orders is granted to the extent indicated in the item.

The Petition for Emergency Stay, filed by the Consumer Organizations is dismissed as moot.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 2011–28179 Filed 10–31–11; 8:45 am]

**BILLING CODE 6712–01–P**

# Proposed Rules

Federal Register
Vol. 76, No. 211
Tuesday, November 1, 2011

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

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 7 CFR Part 319

**[Docket No. APHIS–2011–0073]**

**RIN 0579–AD54**

### Importation of Dracaena Plants From Costa Rica

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

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to amend the plants for planting regulations to provide conditions for the importation into the continental United States of *Dracaena* spp. plants from Costa Rica. These conditions would apply to plants less than 460 mm in length, which are currently allowed to be imported, and would also allow for the importation of plants over 460 mm and up to 1,371.6 mm in length, which are currently prohibited. As a condition of entry, *Dracaena* spp. plants from Costa Rica would have to be produced in accordance with integrated pest risk management measures that would include requirements for registration of places of production and packinghouses, a pest management plan, inspection for quarantine pests, sanitation, and traceability from place of production through the packing and export facility and to the port of entry into the United States. All *Dracaena* spp. plants from Costa Rica would also be required to be accompanied by a phytosanitary certificate with an additional declaration stating that all conditions for the importation of the plants have been met and that the consignment of plants has been inspected and found free of quarantine pests. This action would allow for the importation of oversized *Dracaena* spp. plants from Costa Rica into the United States while continuing to provide protection against the introduction of quarantine pests.

**DATES:** We will consider all comments that we receive on or before January 3, 2012.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2011-0073-0001*.
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2011–0073, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0073* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

**FOR FURTHER INFORMATION CONTACT:** Mr. William D. Aley, Senior Import Specialist, Plants for Planting Policy, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1231; (301) 734–5057.

**SUPPLEMENTARY INFORMATION:**

## Background

The regulations in ''Subpart—Plants for Planting'' (7 CFR 319.37 through 319.37–14, referred to below as the regulations) restrict, among other things, the importation of living plants, plant parts, seeds, and plant cuttings for planting to prevent the introduction and dissemination of plant pests that are new to or not widely distributed within the United States.

*Dracaena* is a genus of about 40 species of tree- and shrub-like plants. Several species are grown as houseplants for their decorative strap-like foliage, low maintenance requirements, and tolerance of a wide range of growing conditions. Popular *Dracaena* spp. houseplants include *Dracaena fragrans,* commonly known as the corn plant, and *Dracaena sanderiana,* commonly known as lucky bamboo.

Currently, whole and intact *Dracaena* spp. plants (including roots, stems, and leaves) may be imported into the United States only if they meet the size requirements in § 319.37–2(b)(6)(i) and other general requirements in the regulations. The regulations currently allow only *Dracaena* spp. plants less than 460 mm (approximately 18 inches) in length. The size requirement was established because plants of that size are easily inspected and, if necessary, treated for pests; the size and density of growth of larger plants makes them more difficult to inspect and treat.

The Animal and Plant Health Inspection Service (APHIS) has received a request from the national plant protection organization (NPPO) of Costa Rica to increase the maximum allowable size of *Dracaena* plants imported from Costa Rica to 137.16 centimeters (approximately 54 inches). As part of our evaluation of Costa Rica's request, we prepared a pest risk assessment (PRA) and a risk management document. Copies of the PRA and the risk management document may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT** or viewed on the *Regulations.gov* Web site (see **ADDRESSES** above for instructions for accessing *Regulations.gov*).

The PRA, titled ''Importation of Oversized *Dracaena* spp. As Ornamental Plants from Costa Rica into the Continental United States,'' evaluates the risks associated with the importation of *Dracaena* plants into the continental United States (the lower 48 States, the District of Columbia, and Alaska) from Costa Rica, including plants under 460 mm in height. Because exports of *Dracaena* spp. plants from Costa Rica to Hawaii and U.S. territories have historically been low, the PRA does not consider the risks associated with importation of oversized *Dracaena* spp. plants into Hawaii or the territories. The risk management document lists the phytosanitary measures necessary to ensure the safe importation into the continental United States of *Dracaena* plants from Costa Rica.

The PRA identified 15 pests of quarantine significance that could be introduced into the United States in consignments of *Dracaena* plants from Costa Rica:

- *Ancistrocercus circumdatus,* a katydid;
- *Caldwelliola reservata,* a leafhopper;

- *Chaetanaphothrips signipennis,* banana rust thrips;
- *Coccus viridis,* the green scale;
- *Diplosolenodes occidentalis,* the spotted leatherleaf slug;
- *Erioloides consobrinus,* a katydid;
- *Neoconocephalus affinis,* the rattler conehead katydid;
- *Oncometopia clarior,* the blue sharpshooter;
- *Ovachlamys fulgens,* a helicaronid snail;
- *Palliferra costaricensis,* the Costa Rica mantle slug;
- *Planococcus minor,* the passionvine mealybug;
- *Pseudococcus landoi,* the lando mealybug;
- *Sarasinula plebeia,* the Caribbean leatherleaf slug;
- *Succinea costaricana,* an amber snail; and
- *Xylosandrus morigerus,* the brown coffee twig beetle.

In the PRA, the likelihood and consequences of introducing these pests into the continental United States are considered. Five of the pests: *Ancistrocercus circumdatus, Chaetanaphothrips signipennis, Erioloides consobrinus, Neoconocephalus affinis,* and *Pallifera costaricensis,* were assigned a medium pest risk potential. The remaining pests were assigned a high pest risk potential. The PRA states that measures beyond standard port-of-entry inspection are required to mitigate the risks posed by these plant pests, and provides a number of potential options for such measures. After consideration of these options, we have prepared a risk management document to recommend specific measures to mitigate these risks.

Based on the findings of our PRA and risk management document, we are proposing to allow the importation of *Dracaena* spp. plants into the continental United States, subject to integrated pest risk management measures, also known as a systems approach. Under integrated pest risk management measures, a set of phytosanitary conditions, at least two of which have an independent effect in mitigating the pest risk associated with the movement of commodities, is specified, whereby plants for planting may be imported into the United States from countries that are not free of certain plant pests. We are proposing to add integrated pest risk management measures governing the importation of *Dracaena* spp. plants from Costa Rica into the continental United States to the regulations in a new § 319.37–5(y). The proposed integrated pest risk management measures are discussed in greater detail below.

*General Requirements*

Paragraph (y) of § 319.37–5 would set out requirements for the NPPO of Costa Rica and for growers producing *Dracaena* plants for export to the continental United States. *Dracaena* spp. plants from Costa Rica would not be allowed to be imported into Hawaii, Puerto Rico, and U.S. territories. These requirements reflect the scope of the PRA, which did not specifically assess the risks associated with the importation of oversized Dracaena spp. plants to Hawaii, Puerto Rico, and U.S. territories, but also reflect the overall pest risk the PRA describes.

Paragraph (y)(1) would require that *Dracaena* plants from Costa Rica not exceed 1,371.6 mm (approximately 54 inches) in length from the soil line (or top of the rooting zone for plants produced by air layering) to the farthest terminal growing point.

Paragraph (y)(2) would require the NPPO of Costa Rica to provide a bilateral workplan to APHIS that details the activities that the NPPO will, subject to APHIS' approval of the workplan, carry out to meet the requirements of proposed § 319.37–5(y). A bilateral workplan is an agreement between APHIS' Plant Protection and Quarantine program, officials of the NPPO of a foreign government, and, when necessary, foreign commercial entities that specifies in detail the phytosanitary measures that will comply with our regulations governing the import or export of a specific commodity. Bilateral workplans establish detailed procedures and guidance for the day-to-day operations of specific import/export programs. Workplans also establish how specific phytosanitary issues are dealt with in the exporting country and make clear who is responsible for dealing with those issues. The implementation of integrated pest risk management measures typically requires a bilateral workplan to be developed.

*Phytosanitary Certificate*

Paragraph (y)(3) would require the phytosanitary certificate required by § 319.37–4 that accompanies each consignment of *Dracaena* plants to contain additional declarations that the plants in the consignment have been produced, packed, stored, and exported in accordance with the requirements of proposed 7 CFR 319.37–5(y) and the bilateral workplan, and that the consignment has been inspected and found free of quarantine pests.

Requiring a phytosanitary certificate would ensure that the NPPO of Costa Rica has inspected the plants and certified that the plants meet the conditions for export to the United States.

*Participant and Facility Registration*

Paragraph (y)(4) would require that producers, packers, and exporters of *Dracaena* plants be registered with the NPPO of Costa Rica. *Dracaena* plants would have to be grown, packed, stored, and exported in compliance with a written agreement between the participant and the NPPO of Costa Rica, and the participant would have to agree to comply with the provisions of the regulations and the bilateral workplan.

In addition, paragraph (y)(5) would require production, packing, and export facilities to be inspected, approved, and registered by the NPPO of Costa Rica for inclusion in the program. Registered packing and export facilities processing *Dracaena* plants for export to the United States would only be allowed to accept plants from registered production facilities where plants are grown in compliance with the proposed requirements and the bilateral workplan. The NPPO of Costa Rica would have to provide APHIS with access to the lists of registered participants and facilities annually and when changes occur.

Registration of participants and facilities would allow the NPPO of Costa Rica to conduct site visits and inspections. It would also allow traceback to the production site if pest problems were found on *Dracaena* plants shipped to the United States. Problem production sites could then be removed from the program until further mitigation measures were taken to reduce pest populations.

*Training*

Paragraph (y)(6) would require participants and personnel at approved production, packing, and export facilities to be trained in the requirements of proposed paragraph (y) and the bilateral workplan, and in recognizing the quarantine pests listed earlier. Training records would have to be maintained and made available to the NPPO of Costa Rica and APHIS upon request.

*Pest Management Program*

Paragraph (y)(7) would require that participants establish a pest management program for all approved production, packing, and export facilities. Pest management programs would be tailored to each individual site to address local concerns, but would have to include field or facility scouting, monitoring, and control of pests, and would have to be approved and monitored by the NPPO of Costa Rica.

APHIS may visit sites to inspect and monitor the pest management program. Each approved facility would be required to have a trained, dedicated person to supervise the pest management program. Records of pest management activities would have to be maintained and made available to the NPPO of Costa Rica and APHIS upon request.

*Sanitation*

Paragraph (y)(8) would require that sanitation measures be maintained at approved production, packing, and export facilities. Fallen or discarded plant material and debris, or plants with pests, would have to be removed and could not be included in field containers brought from production to packing facilities for export. Packing facilities would also have to be free of sand, soil, earth, and plants pests, and phytosanitary practices adequate to exclude pests would have to be employed. In addition, equipment, materials, and tools would have to be sanitized to avoid spreading pests or to prevent recontamination.

*Inspections*

Paragraph (y)(9) would require that dedicated, trained personnel at approved facilities conduct inspections at least once weekly, and that the NPPO of Costa Rica conduct inspections at least once monthly. Inspections would include, but would not be limited to, approved production, packing, and export facilities as well as packing materials and shipping containers. Inspection dates and results would have to be recorded and would have to be made available to APHIS upon request.

*Traceability*

Paragraph (y)(10) would require that participants establish a traceability system approved and audited by the NPPO of Costa Rica and APHIS. The identity and origin of *Dracaena* spp. plants would have to be maintained from the production unit through the packing and export facilities to the port of entry in the United States. A traceability system would allow for a traceback investigation in the event of a pest detection.

*Recordkeeping*

Paragraph (y)(11) would require that participants maintain records of program activities, including corrective measures, for a minimum of 3 years. The records would have to be made available to the NPPO of Costa Rica and APHIS on request.

*Ineligibility for Participation*

Paragraph (y)(12) would state that persons who produce, pack, or ship *Dracaena* spp. plants would be ineligible for participation in the export program for *Dracaena* spp. plants established by the NPPO of Costa Rica and their production sites or packing or export facilities would lose approved status if live specimens of the quarantine pests listed above are found in a production site or in shipments of plants, or if growers violate the requirements set out in the regulations or required under the export program established by the NPPO of Costa Rica. Paragraph (y)(12) would also provide for conditions under which a grower may be reinstated.

*Trust Fund*

Paragraph (y)(13) would require that the Government of Costa Rica enter into a trust fund agreement with APHIS before each growing season. The Government of Costa Rica or its designated representative would be required to pay in advance all estimated costs that APHIS would expect to incur through its involvement in overseeing the execution of the requirements of the certification programs described above. These costs would include the administrative expenses incurred in conducting the services enumerated and all salaries (including overtime and the Federal share of employee benefits), travel expenses (including per diem expenses), and other incidental expenses incurred by inspectors in performing these services.

**Miscellaneous Changes**

Because we are proposing to require that all *Dracaena* spp. plants from Costa Rica be imported into the United States subject to a systems approach, we also propose to amend the list of prohibited articles in § 319.37–2(a) to state that *Dracaena* spp. plants not meeting the conditions for import in § 319.37–5(y) would not be allowed to be imported into the United States. We are also proposing to amend § 319.37–2(b)(6)(1) to state that *Dracaena* spp. plants from Costa Rica may be imported into the continental United States under the provisions of § 319.37–5(y).

**Executive Order 12866 and Regulatory Flexibility Act**

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities. The analysis is summarized below. Copies of the full analysis are available from the person listed under **FOR FURTHER INFORMATION CONTACT** or on the *Regulations.gov* Web site (see **ADDRESSES** above for instructions for accessing *Regulations.gov*).

Under the current regulations, *Dracaena* spp. plants that are 18 inches or less in height may be imported into the United States. The proposed amendment allow *Dracaena* spp. plants up to 54 inches in height to be imported into the continental United States from Costa Rica. The proposal would require that all *Dracaena* spp. plants entering the continental United States from Costa Rica be subject to integrated pest risk management measures to reduce pest risks. *Dracaena* spp. plants of any size would not be allowed to enter Hawaii and U.S. territories from Costa Rica.

The United States imports approximately 25 million *Dracaena* spp. plants from Costa Rica annually. On average, APHIS intercepts and fumigates over 8 percent of the *Dracaena* shipments and destroys less than 1 percent. Producing *Dracaena* spp. plants under the proposed systems approach would reduce pest infestations and subsequently pest interceptions and costs of fumigation or destruction of shipments at ports of entry.

The oversized *Dracaena* spp. plants would be of greater value than the smaller plants currently allowed entry, and we expect U.S. nurseries would adjust to new marketing opportunities afforded by the larger plants. While most U.S. nurseries and other entities that may be affected by the proposed rule are small, effects of the proposed rule are undetermined as APHIS does not have information about nurseries that produce *Dracaena* spp. plants. APHIS invites public comment on the potential effects of the proposed rule.

**Executive Order 12988**

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

**National Environmental Policy Act**

To provide the public with documentation of APHIS' review and analysis of any potential environmental impacts associated with the importation of oversized *Dracaena* spp. plants from Costa Rica, we have prepared an

environmental assessment. The environmental assessment was prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

The environmental assessment may be viewed on the *Regulations.gov* Web site or in our reading room. (A link to *Regulations.gov* and information on the location and hours of the reading room are provided under the heading **ADDRESSES** at the beginning of this proposed rule.) In addition, copies may be obtained by calling or writing to the individual listed under **FOR FURTHER INFORMATION CONTACT.**

## Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. APHIS–2011–0073. Please send a copy of your comments to: (1) Docket No. APHIS–2011–0073, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue, SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

Allowing the importation of *Dracaena* spp. plants into the United States from Costa Rica will require the completion of the following documents: Bilateral workplan, phytosanitary certificate with declaration, registration agreement, facility registration agreement, participant and personnel training, pest management program, inspections, traceability system, recordkeeping, detailed report with corrective actions, and a trust fund.

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

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

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.,* permitting electronic submission of responses).

*Estimate of burden:* Public reporting burden for this collection of information is estimated to average 0.60008 hours per response.

*Respondents:* Importers of *Dracaena* spp. plants and foreign officials.

*Estimated annual number of respondents:* 97.

*Estimated annual number of responses per respondent:* 25.5979.

*Estimated annual number of responses:* 2,483.

*Estimated total annual burden on respondents:* 1,490 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

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

## E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this proposed rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

## List of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we propose to amend 7 CFR part 319 as follows:

## PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 continues to read as follows:

**Authority:** 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

2. Section 319.37–2 is amended as follows:

a. In the table in paragraph (a), by adding a new entry for ''*Dracaena* spp. plants not meeting the conditions for import in § 319.37–5 (y)'', in alphabetical order, to read as set forth below.

b. In paragraph (b)(6)(i), by adding the words ''*Dracaena* spp. plants from Costa Rica meeting the conditions of § 319.37–5(y),'' after the citation ''§ 319.37–5(q),''.

**§ 319.37–2 Prohibited articles.**

(a) * * *

| Prohibited article (includes seeds only if specifically mentioned) | Foreign places from which prohibited | Plant pests existing in the places named and capable of being transported with the prohibited article |
|---|---|---|
| * * | * | * * * * * |
| *Dracaena* spp. plants not meeting the conditions for import in § 319.37–5(y). | Costa Rica ..... | *Ancistrocercus circumdatus; Caldwelliola reservata; Chaetanaphothrips signipennis* (banana rust thrips); *Coccus viridis* (green scale); *Diplosolenodes occidentalis* (spotted leatherleaf slug); *Erioloides consobrinus; Neoconocephalus affinis* (rattler conehead katydid); *Oncometopia clarior* (blue sharpshooter); *Ovachlamys fulgens; Palliferra costaricensis* (Costa Rica mantle slug); *Planococcus minor* (passionvine mealybug); *Pseudococcus landoi* (lando mealybug); *Sarasinula plebeia* (Caribbean leatherleaf slug); *Succinea costaricana; Xylosandrus morigerus* (brown coffee twig beetle). |
| * * | * | * * * * * |

* * * * *

3. In § 319.37–5, a new paragraph (y) is added to read as follows:

**§ 319.37–5 Special foreign inspection and certification requirements.**

* * * * *

(y) *Special foreign inspection and certification requirements for Dracaena spp. plants from Costa Rica. Dracaena* spp. plants from Costa Rica may only be imported into the continental United States in accordance with the requirements of this paragraph (y), to prevent the plant pests *Ancistrocercus circumdatus, Caldwelliola reservata, Chaetanaphothrips signipennis, Coccus viridis, Diplosolenodes occidentalis, Erioloides consobrinus, Neoconocephalus affinis, Oncometopia clarior, Ovachlamys fulgens, Palliferra costaricensis, Planococcus minor, Pseudococcus landoi, Sarasinula plebeia, Succinea costaricana,* and *Xylosandrus morigerus* from entering the United States.

(1) *Size requirements. Dracaena* spp. plants from Costa Rica imported into the continental United States may not exceed 1,371.6 mm (approximately 54 inches) in length from the soil line (or top of the rooting zone for plants produced by air layering) to the farthest terminal growing point.

(2) *Bilateral workplan.* The national plant protection organization (NPPO) of Costa Rica must provide a bilateral workplan to APHIS that details the activities that the NPPO of Costa Rica will, subject to APHIS' approval of the workplan, carry out to meet the requirements of this paragraph (y).

(3) *Phytosanitary certificate.* The phytosanitary certificate of inspection required by § 319.37–4 that accompanies each consignment of *Dracaena* spp. plants from Costa Rica must contain additional declarations that the plants in the consignment have been produced, packed, stored, and exported in accordance with the requirements of 7 CFR 319.37–5(y) and the bilateral workplan, and that the consignment has been inspected and found free of quarantine pests.

(4) *Participant registration and agreement.* Persons in Costa Rica who produce, pack, or ship *Dracaena* spp. plants for export to the United States must:

(i) Be registered and approved by the NPPO of Costa Rica; and

(ii) Enter into an agreement with the NPPO of Costa Rica whereby the persons agree to participate in and follow the export program for *Dracaena* spp. plants established by the NPPO of Costa Rica.

(5) *Facility registration and agreement.* Production, packing, and export facilities must be approved and registered by the NPPO of Costa Rica. Registered packing and export facilities may only accept plants from registered production facilities where plants are grown in compliance with the requirements of this paragraph (y) and the bilateral workplan. The NPPO of Costa Rica will provide APHIS with access to the list of registered facilities at least annually and when changes occur.

(6) *Training.* Participants and personnel at approved production, packing, and export facilities must be trained in the requirements of this paragraph (y) and the bilateral workplan and in recognizing the quarantine listed in this paragraph (y). Training records must be maintained and made available to the NPPO of Costa Rica and APHIS on request.

(7) *Pest management program.* Participants must establish a pest management program for all approved production, packing, and export facilities. Pest management programs must include field or facility scouting, monitoring, and control of target pests, and must be monitored and approved by the NPPO of Costa Rica. APHIS may visit sites to inspect and monitor the pest management program. Each approved facility must have a trained, dedicated person to supervise the pest management program. Records of pest management activities must be maintained and made available to the NPPO of Costa Rica and APHIS upon request.

(8) *Sanitation.* Sanitation measures must be maintained at approved production, packing, and export facilities. Fallen or discarded plant material and debris, or plants with pests, must be removed and must not be included in field containers brought from production to packing facilities for export. Packing facilities must be free of sand, soil, earth, and plant pests, and phytosanitary practices adequate to exclude pests must be employed. Equipment, materials, and tools must be sanitized to avoid spreading pests or to prevent recontamination.

(9) *Inspections.* Inspections undertaken in the export program for *Dracaena* spp. plants established by the NPPO of Costa Rica will include, but may not be limited to, the following:

(i) Approved production, packing, and export facilities must be inspected by dedicated trained personnel at the approved facilities at least once weekly, and by the NPPO of Costa Rica at least once monthly.

(ii) Packing materials and shipping containers for the plants must be approved by APHIS and inspected by the NPPO of Costa Rica to ensure that they do not introduce pests of concern to the plants.

(iii) Inspection dates and results must be recorded and made available to APHIS upon request.

(10) *Traceability.* Participants must establish a traceability system approved and audited by the NPPO of Costa Rica and APHIS. The identity and origin of the *Dracaena* spp. plants must be maintained from the production unit through the packing and export facilities and to the port of entry in the United States.

(11) *Recordkeeping.* Participants must maintain records of program activities, including corrective measures, for a minimum of 3 years. Records must be made available to the NPPO of Costa Rica and APHIS on request.

(12) *Ineligibility for participation.* (i) Persons who produce, pack, or ship *Dracaena* spp. plants will be ineligible for participation in the export program for *Dracaena* spp. plants and their production sites or packing or export facilities will lose approved status if:

(A) Live pests are found in a production site;

(B) Live pests are found in a shipment of plants; or

(C) Persons who produce, pack, or ship *Dracaena* spp. plants violate the requirements set out in this section or required under the export program established by the NPPO of Costa Rica.

(ii) A person who produces, packs, or ships *Dracaena* spp. plants may be reinstated, and that person's production sites or packing or export facilities may regain approved status, by requesting reapproval and submitting a detailed report describing the corrective actions taken by the person. Reapproval will only be granted upon concurrence from the NPPO of Costa Rica and APHIS.

(13) *Trust fund.* The Government of Costa Rica must enter into a trust fund agreement with APHIS before each growing season. The Government of Costa Rica or its designated representative is required to pay in advance all estimated costs that APHIS expects to incur through its involvement in overseeing the execution of paragraph (y) of this section. These costs will include administrative expenses incurred in conducting the services enumerated in paragraph (y) of this section and all salaries (including overtime and the Federal share of employee benefits), travel expenses (including per diem expenses), and other incidental expenses incurred by the inspectors in performing these

services. The Government of Costa Rica or its designated representative is required to deposit a certified or cashier's check with APHIS for the amount of the costs estimated by APHIS. If the deposit is not sufficient to meet all costs incurred by APHIS, the agreement further requires the Government of Costa Rica or its designated representative to deposit with APHIS a certified or cashier's check for the amount of the remaining costs, as determined by APHIS, before the services will be completed. After a final audit at the conclusion of each shipping season, any overpayment of funds would be returned to the Government of Costa Rica or its designated representative or held on account until needed.

* * * * *

Done in Washington, DC, this 26th day of October 2011.

**Kevin Shea,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 2011–28253 Filed 10–31–11; 8:45 am]

**BILLING CODE 3410–34–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Parts 31 and 301

**[REG–136565–09]**

**RIN 1545–BJ06**

## Extending Religious and Family Member FICA and FUTA Exceptions To Disregard Entities

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking by cross-reference to temporary regulations.

**SUMMARY:** In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations to extend the exceptions from taxes under the Federal Insurance Contributions Act (''FICA'') and the Federal Unemployment Tax Act (''FUTA'') under sections 3121(b)(3), 3127, and 3306(c)(5) to entities that are disregarded as separate from their owners for federal tax purposes. The temporary regulations also clarify the existing rule that the owners of disregarded entities, except for qualified subchapter S subsidiaries, are responsible for backup withholding and related information reporting requirements under section 3406. The text of those regulations also serves as the text of these proposed regulations.

**DATES:** Written or electronic comments and requests for a public hearing must be received by January 30, 2012.

**ADDRESSES:** Send submissions to CC:PA:LPD:PR (REG–136565–09), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. to 4 p.m. to CC:PA:LPD:PR (REG–136565–09), Courier's Desk, Internal Revenue Service, 1111 Constitution Ave. NW., Washington, DC. Alternatively, taxpayers may submit electronic comments via the Federal eRulemaking Portal at *http://www.regulations.gov* (indicate IRS and REG–136565–09).

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed regulations, Joseph Perera, at (202) 622–6040; concerning submissions of comments or requests for a hearing, Oluwafunmilayo (Funmi) Taylor at (202) 622–7180 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

### Background and Explanation of Provisions

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** contain amendments to Employment Tax Regulations (26 CFR part 31) and the Procedure and Administration Regulations (26 CFR part 301). The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations and these proposed regulations. Generally, the regulations allow certain disregarded entities under § 301.7701–2 that are treated as corporations for employment tax purposes, to qualify for the FICA and FUTA exceptions of sections 3121(b)(3), 3127, and 3306(c)(5) by treating the owner of the disregarded entity as the employer for purposes of applying those sections. Additionally, the regulations clarify the existing rule that the owners of disregarded entities, other than qualified subchapter S subsidiaries are responsible for backup withholding and related information reporting requirements on reportable payments.

### Proposed Effective/Applicability Date

The regulations, as proposed, apply to wages paid on or after November 1, 2011.

However, the rules in these proposed regulations may be relied on by taxpayers for wages paid after December 31, 2008.

### Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

### Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be made available for public inspection and copying.

### Drafting Information

The principal author of these regulations is Joseph Perera, Office of Associate Chief Counsel (Tax Exempt & Government Entities).

### List of Subjects

*26 CFR Part 31*

Employment taxes, Income Taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social Security, Unemployment compensation.

*26 CFR Part 301*

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recording requirements.

### Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 31 and 301 are proposed to be amended as follows:

## PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

**Paragraph 1.** The authority citation for part 31 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 * * *

**Par. 2.** Section 31.3121(b)(3)–1 is amended by:

1. Revising paragraph (c).
2. Adding paragraphs (d) and (e).

The revision and addition read as follows:

**§ 31.3121(b)(3)–1 Family Employment.**

* * * * *

(c) [The text of the proposed amendment to § 31.3121(b)(3)–1(c) is the same as the text of § 31.3121(b)(3)–1T(c) published elsewhere in this issue of the **Federal Register**].

(d) [The text of the proposed amendment to § 31.3121(b)(3)–1(d) is the same as the text of § 31.3121(b)(3)–1T(d) published elsewhere in this issue of the **Federal Register**].

(e) [The text of the proposed amendment to § 31.3121(b)(3)–1(e) is the same as the text of § 31.3121(b)(3)–1T(e) published elsewhere in this issue of the **Federal Register**].

**Par. 3.** Section 31.3127–1 is added to read as follows:

**§ 31.3127–1 Exceptions for employers and their employees where both are members of religious faiths opposed to participation in Social Security Act programs.**

[The text of the proposed § 31.3127–1 is the same as the text of § 31.3127–1T published elsewhere in this issue of the **Federal Register**].

**Par. 4.** Section 31.3306(c)(5)–1 is amended by:

1. Revising paragraph (c).
2. Adding paragraphs (d) and (e).

The revision and addition read as follows:

**§ 31.3306(c)(5)–1 Family Employment.**

* * * * *

(c) [The text of the proposed amendment to § 31.3306(c)(5)–1(c) is the same as the text of § 31.3306(c)(5)–1T(c) published elsewhere in this issue of the **Federal Register**].

(d) [The text of the proposed amendment to § 31.3306(c)(5)–1(d) is the same as the text of § 31.3306(c)(5)–1T(d) published elsewhere in this issue of the **Federal Register**].

(e) [The text of the proposed amendment to § 31.3306(c)(5)–1(e) is the same as the text of § 31.3306(c)(5)–1T(e) published elsewhere in this issue of the **Federal Register**].

## PART 301—PROCEDURE AND ADMINISTRATION

**Par. 5.** The authority citation for part 301 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 * * *

**Par. 6.** Section 301.7701–2 is amended by:

1. Revising paragraph (c)(2)(iv)(A).
2. Redesignating paragraph (c)(2)(iv)(C) as paragraph (c)(2)(iv)(D) and adding new paragraph (c)(2)(iv)(C).
3. Adding a sentence at the end of paragraph (e)(5).

The additions and revisions read as follows:

**§ 301.7701–2 Business entities; definitions.**

* * * * *

(c) * * *

(2) * * *

(iv) * * *

(A) [The text of the proposed amendment to § 301.7701–2(c)(2)(iv)(A) is the same as the text of § 301.7701–2T(c)(2)(iv)(A) published elsewhere in this issue of the **Federal Register**].

(B) * * *

(C) [The text of the proposed amendment to § 301.7701–2(c)(2)(iv)(C) is the same as the text of § 301.7701–2T(c)(2)(iv)(C) published elsewhere in this issue of the **Federal Register**].

* * * * *

(e) * * *

(5) * * * [The text of the proposed amendment to § 301.7701–2(e)(5) is the same as the text of § 301.7701–2T(e)(5) published elsewhere in this issue of the **Federal Register**].

* * * * *

**Steven T. Miller,**

*Deputy Commissioner for Services and Enforcement.*

[FR Doc. 2011–28177 Filed 10–31–11; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Parts 135 and 136

**[USCG–2004–17697]**

**RIN 1625–AA03**

## Claims Procedures Under the Oil Pollution Act of 1990

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of inquiry.

**SUMMARY:** The Coast Guard is developing a supplemental notice of proposed rulemaking (SNPRM) to finalize a 1992 interim rule that set forth the Oil Pollution Act of 1990 (OPA'90) claims procedures and removed certain conflicting and superseded regulations from the Code of Federal Regulations. Before publishing the SNPRM, the Coast Guard is inviting members of the public to respond to questions and offer comments on their experience to date with the OPA'90 claims procedures and on whether additional pre-OPA'90 rules should be removed from the Code of Federal Regulations. The Coast Guard is also inviting the public to provide background information and cost data that will better inform the regulatory assessment for this rulemaking.

**DATES:** Comments and related material must either be submitted to our online docket via *http://www.regulations.gov* on or before January 30, 2012, or reach the Docket Management Facility by that date.

**ADDRESSES:** You may submit comments identified by docket number USCG–2004–17697 using any one of the following methods:

(1) *Federal eRulemaking Portal*: *http://www.regulations.gov.*

(2) *Fax:* (202) 493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366–9329.

To avoid duplication, please use only one of these four methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for additional instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this notice, call or email Benjamin H. White, National Pollution Funds Center, U.S. Coast Guard, telephone (202) 493–6863, email *Benjamin.H.White@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

**SUPPLEMENTARY INFORMATION:**

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## I. Abbreviations

1992 Comments The public comments on the Interim Rule, submitted during and shortly after the 120-day public comment period that followed publication of the Interim Rule, all of which are posted on the public docket for this rulemaking
CFR Code of Federal Regulations
Claims Procedures The OPA'90 regulatory procedures for designating oil spill sources and denying oil spill source designations, advertising for claims, and presenting, filing, processing, settling, and adjudicating OPA'90 claims against the Oil Spill Liability Trust Fund, published at 33 CFR part 136, subparts A through D
Document # The unique identifier number assigned by the Docket Management Facility to each document in the public docket for this rulemaking
E.O. Federal Executive Order
FR **Federal Register**
Fund or OSLTF The Oil Spill Liability Trust Fund, established by 26 U.S.C. 9509
FWPCA Federal Water Pollution Control Act, 33 U.S.C. 1251–1387 (2010)
Interim Rule The Coast Guard's interim rule, establishing the OPA'90 Claims Procedures (33 CFR part 136) and amending the OCSLAA Rule (33 CFR part 135) [57 FR 36316, August 12, 1992; 57 FR 41104, September 9, 1992 (correction)]
NAICS North American Industry Classification System
NOI Notice of Inquiry
NPFC National Pollution Funds Center
OCS Outer Continental Shelf
OCSLAA Title III of the Outer Continental Shelf Lands Act Amendments of 1978, Pub. L. 95–372, 92 Stat. 629 (previously codified at 43 U.S.C. 1811–1824; repealed August 18, 1990, by OPA'90 Section 2004 (26 U.S.C. 9509 note))
OSCLAA Fund The Offshore Oil Spill Pollution Compensation Fund, established under OCSLAA Section 302 (previously codified at 43 U.S.C. 1812; terminated by OPA'90 Section 2004 (26 U.S.C. 9509 note))
OCSLAA Rule The OCSLAA regulations, published at 33 CFR part 135
OPA'90 The Oil Pollution Act of 1990, Pub. L. 101–380, 104 Stat. 484 (August 18, 1990), as amended, Title I of which is codified at 33 U.S.C. 2701, *et seq.* (2010)
SNPRM Supplemental notice of proposed rulemaking
U.S.C. United States Code
USCG or Coast Guard United States Coast Guard

## II. Public Participation and Request for Comments

We encourage you to submit comments and related material on the Interim Rule and to respond to the questions included below in Part V of this Notice of Inquiry. All comments received will be posted, without change, to *http://www.regulations.gov,* and will include any personal information you have provided.

### *A. Submitting Comments*

If you submit a comment, please include the docket number for this notice (USCG–2004–17697) and provide a reason for each suggestion or recommendation. We recommend that you include your name and a mailing address, an email address, and a telephone number in the body of your document so that we can contact you if we have questions regarding your submission. You may submit your comments and material online, or by fax, mail or hand delivery, but please use only one of these means.

To submit your comments online, go to *http://www.regulations.gov* and type ''USCG–2004–17697'' in the ''Keyword'' box. Click ''Search'' then click on the balloon shape in the ''Actions'' column and enter your comment. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Docket Management Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

### *B. Viewing the Comments and Supplemental Materials in the Public Docket*

The public docket for this rulemaking contains the Interim Rule, the public comments submitted immediately following publication of the Interim Rule (1992 Comments), any public comments submitted in response to this Notice of Inquiry, and other supplemental materials concerning this rulemaking. To view the public docket for this rulemaking online go to *http://www.regulations.gov,* click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''USCG–2004–17697'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column.

If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

### *C. Privacy Act*

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review a Privacy Act system of records notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

## III. Background

The Coast Guard is developing a supplemental notice of proposed rulemaking (SNPRM) that will propose amendments to a 1992 interim rule, titled ''Claims Under the Oil Pollution Act of 1990'' (Interim Rule, 57 FR 36316, August 12, 1992; 57 FR 41104, September 9, 1992 (correction)). The Interim Rule established new procedures under Title I of the Oil Pollution Act of 1990 (OPA'90) (33 U.S.C. 2701, *et seq.*), at Title 33 of the

Code of Federal Regulations (CFR) part 136, for designating oil spill sources, denying source designations, advertising for claims, and presenting, filing, processing, settling, and adjudicating claims against the Oil Spill Liability Trust Fund (Claims Procedures). As explained further below, the Interim Rule also removed from the Code of Federal Regulations certain conflicting and superseded regulations that had been established under provisions of Federal law that were later revoked by OPA'90.

A 120-day public comment period followed publication of the Interim Rule, and the public will have an opportunity to comment again on this rulemaking during the public comment period that will follow our publication of the SNPRM. Before publishing the SNPRM, however, the Coast Guard believes that additional input from interested members of the public would be very useful. This input will help the Coast Guard review the Interim Rule as it has been implemented since 1992, to determine whether the rule can be better tailored or streamlined to improve its effectiveness and reduce burden on the public.

The Coast Guard is particularly interested in hearing the public's views of the Interim Rule based on the public's years of experience with the Claims Procedures, including recent experience arising from the 2010 DEEPWATER HORIZON spill of national significance. The Coast Guard, therefore, invites you to comment on the Interim Rule and the 1992 Comments, based on your experience, and to respond to the other questions concerning this rulemaking set forth below in Part V of this Notice of Inquiry.

The following statutory overview and regulatory background is provided to help you respond to this Notice of Inquiry.

*A. Overview of the OPA'90 Liability and Compensation Statutory Scheme*

Under Title I of OPA'90, the responsible parties for a vessel or facility from which oil is discharged, or which poses the substantial threat of a discharge of oil, into or upon the navigable waters or adjoining shorelines or the exclusive economic zone of the United States, are strictly liable, jointly and severally, for the resulting oil removal costs and six categories of damages specified in OPA'90 (33 U.S.C. 2702(b)), up to the applicable OPA'90 limit of liability.[1]

In addition, under OPA'90 (33 U.S.C. 2714), when an oil spill incident occurs, the President (acting through a Federal official) designates the source or sources of the discharge or threat, where possible and appropriate. If the source is a vessel or facility, the Federal official also notifies the responsible party and guarantor, if known, of the source designation. Thereafter, unless the responsible party or guarantor denies the source designation within 5 days after receiving the notice of designation, the responsible party or guarantor must begin advertising the source designation and the procedures for presenting claims for OPA'90 removal costs or damages. The advertisement must begin by no later than 15 days after the date of the source designation.

Under certain circumstances, including if the responsible party and the guarantor both deny the source designation within 5 days after receiving the notice of designation, or fail to advertise, or if the Federal official is unable to designate the source or sources of the discharge or threat, the President (acting through the U.S. Coast Guard, National Pollution Funds Center (NPFC)) advertises or otherwise notifies potential claimants of the procedures by which claims for uncompensated OPA'90 removal costs and damages may be presented either to the responsible party or guarantor, or to the NPFC for payment by the Oil Spill Liability Trust Fund (the OSLTF or Fund). (See 33 U.S.C. 2714(c).)

OPA'90 also specifies the procedures claimants must follow to seek compensation for their removal costs and damages. OPA'90 (33 U.S.C. 2713(a)) provides that ''Except as provided in subsection (b) of this section, all claims for removal costs or damages shall be presented first to the responsible party or guarantor of the source designated under section 2714(a) of this title.''[2] Thereafter, if the claim is denied by each person to whom the claim is presented (*e.g.,* the responsible party or guarantor), or the claim is not settled by any person by payment within 90 days after the date the claim was presented or advertising was begun, whichever is later, the claimant may elect to commence an action in court against the responsible party or guarantor or to present a claim for the uncompensated removal costs and damages to the Fund. (33 U.S.C. 2713(c) and (d)).

These provisions of OPA'90 preserve the concept that those responsible for an oil pollution incident have the primary duty to respond to claims for OPA'90 removal costs and damages resulting from the incident. They impose an obligation on the responsible party (or guarantor) to advertise for and pay OPA'90 removal cost and damage claims, and afford claimants additional judicial and administrative remedies when the responsible party (or guarantor) does not pay a claim.

OPA'90 also prohibits double recovery by claimants and preserves the ability of the United States to seek to recover amounts paid by the Fund to claimants. Several sections of OPA'90 speak to these protections.

First, under OPA'90 (33 U.S.C. 2712(a)(4) and 2713(d)), claims may only be presented to, and paid by, the Fund for ''uncompensated'' removal costs and damages. Claimants thus bear the burden to demonstrate that their claimed removal costs and damages are uncompensated. In addition, OPA'90 (33 U.S.C. 2706(d)(3)) prohibits double recovery by trustees of natural resource damages for the same incident and natural resources. Similarly, OPA'90 (33 U.S.C. 2712(i)) prohibits double payment of claims from the Fund, stating that ''In any case in which the President has paid an amount from the Fund for any removal costs or damages specified under subsection (a) of this section, no other claim may be paid from the Fund for the same removal costs or damages.''

OPA'90 (33 U.S.C. 2712(f)) also provides that ''Payment of any claim or obligation by the Fund under this Act shall be subject to the United States Government acquiring by subrogation all rights of the claimant or State to recover from the responsible party.'' In addition, OPA'90 (33 U.S.C. 2713(b)(2)) states that ''No claim of a person against the Fund may be approved or certified during the pendency of an action by the person in court to recover costs which are the subject of the claim.'' Finally, OPA'90 (33 U.S.C. 2715(a)) provides that ''Any person, including the Fund, who pays compensation pursuant to this Act to any claimant for removal costs or damages shall be subrogated to all rights, claims, and causes of action that

[1] The OPA'90 limits of liability, if they apply (see exceptions in 33 U.S.C. 2704(c)), can be found in 33 CFR part 138, subpart B for vessels and deepwater ports, and 33 U.S.C. 2704(a)(3) and (4) for offshore and onshore facilities. The limits of liability are subject to adjustment by regulation as provided under 33 U.S.C. 2704(d).

[2] Under OPA'90 (33 U.S.C. 2713(b)(1)) claims may be presented first to the Fund in four cases:

(A) If the President has advertised or otherwise notified claimants in accordance with section 2714(c) of this title;

(B) by a responsible party who may assert a claim under section 2708 of this title;

(C) by the Governor of a State for removal costs incurred by that State; or

(D) by a United States claimant in a case where a foreign offshore unit has discharged oil causing damage for which the Fund is liable under section 2712(a) of this title.

the claimant has under any other law.'' Under OPA'90 (33 U.S.C. 2715(c)), the United States may, thereafter, recover not only the compensation paid to claimants, but also all costs incurred by the Fund by reason of the claim, including interest, administrative and adjudicative costs, and attorney's fees.

OPA'90 (33 U.S.C. 2713(e) and 33 U.S.C. 2714(b)) requires that the procedures for advertising source designations and for presenting, filing, processing, settling, and adjudicating claims against the Fund, be established by regulation. This rulemaking focuses on those rulemaking requirements, which have been implemented at 33 CFR part 136 (Claims Procedures).

*B. Repeal by OPA'90 of Title III of The Outer Continental Shelf Lands Act Amendments of 1978*

In addition to establishing a new liability and compensation scheme, OPA'90 repealed a patchwork of earlier Federal oil spill laws, among them Title III of the Outer Continental Shelf Lands Act Amendments of 1978 (hereafter OCSLAA).

OCSLAA had established an oil spill liability, compensation and financial responsibility regime for the Outer Continental Shelf (OCS) that was later mirrored in Title I of OPA'90. OCSLAA also contained OCS oil spill incident notification and penalty provisions similar to those in the Federal Water Pollution Control Act (FWPCA)(33 U.S.C. 1321(b)), as amended by OPA'90, and provisions for funding and managing a predecessor fund to the OSLTF, known as the Offshore Oil Spill Pollution Compensation Fund (OCSLAA Fund). These OCSLAA provisions were implemented by Coast Guard regulations at 33 CFR part 135 (OCSLAA Rule).

OPA'90 Section 2004 (26 U.S.C. 9509 note) repealed OCSLAA, providing that: ''Title III of the Outer Continental Shelf Lands Act Amendments of 1978 (43 U.S.C. 1811–1824) is repealed. Any amounts remaining in the Offshore Oil Pollution Compensation Fund Established under section 302 of that title (43 U.S.C. 1812) shall be deposited in the Oil Spill Liability Trust Fund established under section 9509 of the Internal Revenue Code of 1986 (26 U.S.C. 9509). The Oil Spill Liability Trust Fund shall assume all liability incurred by the Offshore Oil Pollution Compensation Fund.'' (See 26 U.S.C. 9509 note.) This provision of OPA'90 effectively revoked the legal authority for the OCSLAA Rule.

OPA'90 (33 U.S.C. 2751(b)), however, preserved the legal effect of certain regulations established under laws replaced by OPA'90 until repealed, amended, or superseded. In addition, OPA'90 (33 U.S.C. 2716(h)) expressly preserved the legal force and effect of the OCSLAA Rule's evidence of financial responsibility provisions, at 33 CFR part 135, subpart C, until the requirements were superseded by new evidence of financial responsibility regulations mandated by OPA'90 (33 U.S.C. 2716(e)). (The OPA'90 financial responsibility provisions require responsible parties for certain vessels, deepwater ports and offshore facilities to establish and maintain evidence of financial responsibility, up to the applicable OPA'90 limit of liability.)

*C. Regulatory History*

1. Interim Rule

On October 18, 1991, the President issued Executive Order (E.O.) 12777, delegating the President's OPA'90 regulatory authorities. (56 FR 54757, 3 CFR, 1991 Comp., p. 351, as amended by E.O. 13286, 68 FR 10619, 3 CFR, 2004 Comp., p. 166). The delegations include OPA'90 delegations to ''the Secretary of the department in which the Coast Guard is operating'' of the President's authorities to establish the OPA'90 Claims Procedures. (E.O. 12777, Sec. 7). In addition, E.O. 12777 Sec. 8(i) revoked the delegations for the OCSLAA Rule.

On August 12, 1992, the Coast Guard published the Interim Rule with request for comments, pursuant to this delegated authority. A copy of the Interim Rule is available in the public docket for this rulemaking (Document # USCG–2004–17697–0001). (Note that the docket number for this rulemaking referenced in the Interim Rule was CGD 91–035. The docket for this rulemaking was transferred in 2004 to a new docket system, and re-numbered USCG–2004–17697.)

*a. OPA'90 Claims Procedures.* The Interim Rule established the OPA'90 Claims Procedures required by OPA'90 (33 U.S.C. 2713(e) and 2714(b)), at 33 CFR part 136, subparts A through D. Subpart A of the Claims Procedures sets forth general provisions. Subpart D of the Claims Procedures implements the OPA'90 (33 U.S.C. 2714) requirements concerning designation of the source or sources of a discharge, or threat of discharge, of oil, and the procedures for responsible parties (or their guarantors) to timely deny the source designation or advertise the source designation and the procedure by which claims may be presented.

Subparts B and C of the Claims Procedures set forth the OPA'90 (33 U.S.C. 2713) procedures for presenting, filing, processing, settling, and adjudicating OPA'90 claims for ''uncompensated'' removal costs and damages to the NPFC for payment by the Fund. The latter include claims that are properly presented first to the responsible party or guarantor of the source, but that are denied or not settled by payment within the 90-day period prescribed in OPA'90 (33 U.S.C. 2713(c)), and claims that are excepted by OPA'90 (33 U.S.C. 2713(b)) from the requirement to present claims first to the responsible party or guarantor.

The Claims Procedures prevent double recovery by claimants and preserve the ability of the United States to recover claims paid by the Fund. For example, the Claims Procedures require that a claim to the Fund be properly documented by the claimant, including documentation sufficient for the NPFC to determine whether, and the extent to which, a claim is uncompensated. In addition, the Claims Procedures incorporate the OPA'90 (33 U.S.C. 2713(b)(2)) limitation on payment by the Fund of any claim pending in an action by the person in court (§ 136.103(d)); and require that the claimant's legal rights to recover against the responsible party be released to the Fund upon the Fund's payment of the claim.

We note that OPA'90 requires regulations setting forth the procedures for presenting claims to the Fund (33 U.S.C. 2713(e)), and the requirements for the responsible party or guarantor to advertise the source designation and the procedures by which claims may be presented (33 U.S.C. 2714(b)(1)). OPA'90 does not, however, authorize Federal regulation of the procedures the responsible parties and claimants must use to settle claims presented to responsible parties. Those procedures therefore are not covered by the Claims Procedures.

The OPA'90 and the Claims Procedures also do not address liability or compensation for oil removal costs or damages resulting from discharges or substantial threats of discharge of oil from public vessels, as defined by OPA'90. This is because the definition of ''vessel'' in OPA'90 (33 U.S.C. 2701(37)) expressly excludes ''public vessels'' (defined in 33 U.S.C. 2701(29)) and OPA'90 expressly excludes ''any discharge * * * from a public vessel'' from the OPA'90 Title I liability and compensation provisions (33 U.S.C. 2702(c)).

*b. OCSLAA Rule amendments.* In addition to establishing the OPA'90 Claims Procedures, the Interim Rule amended the OCSLAA Rule, removing the oil spill source designation and claims advertising regulations from

subpart D of the OCSLAA Rule (33 CFR part 135). These amendments were ministerial in nature and intended to remove obvious conflicts between the pre-OPA'90 regulations and the new OPA'90 source designation and advertising requirements in subpart D of the Claims Procedures (33 CFR part 136).[3]

2. 1992 Comments on the Interim Rule

The Coast Guard provided a 120-day opportunity for the public to comment on the Interim Rule following its publication, and received 28 comment letters, containing approximately 250 discrete comments on the Interim Rule (1992 Comments). To view the 1992 Comments, please refer to the instructions above for viewing documents posted to the public docket for this rulemaking (USCG–2004–17697), in the section titled ''Public Participation and Request for Comments.'' We also have summarized the 1992 Comments in a document titled ''1992 Comments Matrix'', which also is available in the public docket for this rulemaking (Document #USCG–2004–17697–0032).

We note that the Docket Management Facility has designated the Interim Rule in the public docket as Document # USCG–2004–17697–0001. As a result, the public docket document number assigned to each of the 1992 Comments differs by one number. For example, ''1992 Commenter 1'' appears in the public docket for this rulemaking as Document #USCG–2004–17697–0002, ''1992 Commenter 2'' appears in the public docket as Document #USCG–2004–17697–0003, and so forth.

Three commenters expressed views concerning the Interim Rule's amendments to the OCSLAA Rule striking the OCSLAA source designation and advertising provisions from subpart D of the OCSLAA Rule. One commenter expressed support for the amendments. Another commenter noted that OCSLAA had been revoked, and expressed the view that the remaining provisions of the OCSLAA Rule included requirements that duplicate requirements under other law and should be removed from the Code of Federal Regulations. The third commenter expressed views concerning incident notification requirements under the Federal Water Pollution Control Act (33 U.S.C. 1321(b)(4)) that are similar to the OCSLAA incident notification requirements in subpart D of the OCSLAA Rule.

A number of 1992 Comments expressed views about the OPA'90 statutory scheme generally, and about statutory authorities and regulatory issues that are not related to this rulemaking.

The remaining 1992 Comments concerned the OPA'90 Claims Procedures. Some commenters thought the Claims Procedures were generally reasonable and fair, and would ensure prompt, full and adequate recovery by claimants, to the extent authorized by OPA'90. Other 1992 Comments raised concerns about the wording of particular sections and how the Claims Procedures would be implemented.

3. Subsequent Corrections, Amendments and Superseding Rulemakings

The Coast Guard published a correction to the Interim Rule, and has since published a number of technical amendments to the OCSLAA Rule and the Claims Procedures.[4] To date, however, the Coast Guard has not published substantive changes to the Claims Procedures or further amended the OCSLAA Rule based on the 1992 Comments.

Several rulemakings have, however, effectively superseded the remaining provisions of the OCSLAA Rule. For example:

- As contemplated by OPA'90 (33 U.S.C. 2716), the Coast Guard published OPA'90 vessel evidence of financial responsibility regulations at 33 CFR part 138 (''Financial Responsibility for Water Pollution (Vessels)'', 59 FR 34210, July 1, 1994 [interim rule] and 61 FR 9264, March 7, 1996 [final rule]), and the Minerals Management Service published OPA'90 offshore facility evidence of financial responsibility regulations at 30 CFR part 253 (''Oil Spill Financial Responsibility for Offshore Facilities'', 63 FR 42699, August 11, 1998). As provided in OPA'90 (33 U.S.C. 2716(h)), those regulations superseded the OCS financial responsibility requirements at subpart C of the OCSLAA Rule.
- The incident notification requirements in subpart D of the OCSLAA Rule appear to have been overtaken by Coast Guard and Environmental Protection Agency regulations (33 CFR part 153, subpart B, and 40 CFR 110.6, respectively). Those regulations implement the requirement in FWPCA (33 U.S.C. 1321(b)(5)) for persons in charge of a vessel or facility to report incidents prohibited under FWPCA (33 U.S.C. 1321(b)(3)).
- Subpart E of the OCSLAA Rule, concerning access to vessels subject to OCSLAA, production of their certificates of financial responsibility, and denial of entry and detention, appear to overlap, in part if not in whole, with 33 CFR 138.140. Subpart E of the OCSLAA Rule also appears to have been overtaken by implementation of the 2008 amendments to 33 CFR part 138, which eliminated paper certificates of financial responsibility.

Similarly, subparts A and B of the OCSLAA Rule, concerning management of the OCSLAA Fund, have been overtaken by events. In particular, OPA'90 Section 2004 (26 U.S.C. 9509 note) terminated and transferred the balance of the OCSLAA Fund to the OSLTF, and all outstanding claims to that OCSLAA Fund have long since been adjudicated.

## IV. Purpose of the Notice of Inquiry

The OPA'90 Claims Procedures have now been in effect for over 19 years as an Interim Rule, and have proven adequate. For example, between August 12, 1992, when the Claims Procedures were first promulgated, and October 26, 2011, the NPFC adjudicated 13,066 claims, with resulting payments from the Fund of $414,212,615.

The Coast Guard recognizes that the Claims Procedures could be amended to address regulatory gaps, and that certain of its provisions could be clarified. Moreover, as previously mentioned, the OCSLAA Rule's remaining provisions appear to have been effectively superseded or overtaken by other regulations. The Coast Guard is, therefore, considering removing the OCSLAA Rule and reserving 33 CFR part 135.

The Coast Guard has considered all of the 1992 Comments on the Interim Rule, but recognizes that some of the 1992 Comments concerned legal issues that have since been resolved, and others may have resulted from the public's lack of experience with the Claims

[3] The Interim Rule similarly removed pre-OPA'90 claims procedures, at 33 CFR part 137, that had implemented provisions of the Deepwater Port Act of 1974 that were revoked by OPA'90 Section 2003. Part 137 of 33 CFR was later removed in its entirety from the Code of Federal Regulations (see 61 FR 9274, March 7, 1996), and is now used for a separate OPA'90 regulatory requirement not pertinent to this rulemaking.

[4] Technical corrections to the Interim Rule preamble and two sections of 33 CFR part 136: 57 FR 41104, September 9, 1992. Amendment to 33 CFR 136.9 Falsification of claims, removing the dollar amount of possible civil penalties: 62 FR 16695, April 8, 1997. Amendments to the NPFC addresses referenced throughout 33 CFR part 136: 74 FR 441, June 10, 2009. Amendments to the addresses referenced in OCSLAA Rule §§ 135.9 and 135.305 of the: 63 FR 35530, June 30, 1998, 71 FR 39209, July 12, 2006, 72 FR 36328, July 2, 2007, 73 FR 35013, July 19, 2008, 74 FR 27440, June 10, 2009. Amendment to 33 CFR 135.103(b) to reflect an organizational name change from the Minerals Management Service to the Bureau of Ocean Energy Management Regulation and Enforcement: 76 FR 31831, June 2, 2011.

Procedures at the time. Therefore, before publishing a SNPRM to amend the Claims Procedures, we would like to know what the public's views are of the Claims Procedures, based on the experience gained over the years since they were published. We also would like to know the public's views on whether the remaining provisions of the OCSLAA Rule should be removed from the Code of Federal Regulations. Finally, we would like current information from the public that will help us conduct the regulatory assessments required for this rulemaking.

This notice of inquiry is consistent with Executive Order 12866, as supplemented by Executive Order 13563, in that it seeks public comments on the burden and effectiveness of the existing regulations, so that the Coast Guard may consider how best to tailor or streamline the regulations.

**A. Scope of the Notice of Inquiry**

The questions in Part V of this Notice of Inquiry invite you to comment on the 1992 Comments, on your experience with the OPA'90 Claims Procedures, on removal of the OCSLAA Rule from the Code of Federal Regulations, and on regulatory analysis issues relevant to this rulemaking. These questions are not intended to be a comprehensive list of the subjects we may decide to address in the SNPRM, and you will have an opportunity to comment on any subjects not mentioned here during the public comment period that will follow our publication of the SNPRM.

Your responses to the questions in Part V of this Notice of Inquiry will, however, help us determine the scope of the issues that may need to be addressed in this rulemaking and will inform us about ways we may be able to improve the OPA'90 Claims Procedures based on experience. For example, we want to ensure we know about issues that may not have been apparent in 1992 and were not raised in the 1992 Comments. Likewise, a number of the 1992 Comments asked questions about how the Coast Guard planned to implement the Claims Procedures. The Coast Guard does not want to propose changes to the Claims Procedures to address issues the public had in 1992 that the public believes are now well understood or have since been resolved through implementation of the Claims Procedures.

We are, therefore, interested in knowing whether, based on your experience, the issues raised in the 1992 Comments are still a concern, and whether other issues need to be addressed. For this reason, we invite you to address any or all of the questions in Part V of this Notice of Inquiry, and to submit comments on any other issues concerning this rulemaking that you would like to bring to our attention.

*B. Some of the 1992 Comments Will Not Need To Be Addressed Further in This Rulemaking*

We have responded to some of the issues raised in the 1992 Comments, in Column C of the ''1992 Comments Matrix'', which is available in the public docket for this rulemaking (Document # USCG–2004–17697–0032). We do not plan to revisit those issues in the future, and are not requesting further comment from you on those issues. Examples of the resolved issues include the following:

1. Some of the 1992 Comments expressed views about OPA'90 and other statutory and regulatory issues that are beyond the scope of this rulemaking.

2. Some of the 1992 Comments responded to a reference in the preamble of the Interim Rule (at 57 FR 36315, column 1), to then-pending questions regarding whether Federal, State and Indian tribe trustees can claim against the Fund for natural resource damages under OPA'90 (33 U.S.C. 2713). The United States subsequently resolved those issues, concluding that trustee claims may be paid using amounts available from the Fund for claims.

3. Some of the 1992 Comments requested amendments to the Claims Procedures that would be clearly contrary to OPA'90.

4. One of the 1992 Comments noted that a technical editorial correction was needed, replacing the word ''Commander'' in the last line of § 136.101(b) with the word ''Director''. This correction was made in a **Federal Register** notice published at 57 FR 41104 on September 9, 1992. Another of the 1992 Comments pointed out a technical error in § 136.305(b)(3) that we are aware of and plan to address in the SNPRM.

5. Two 1992 Comments related to the Coast Guard's finding of ''good cause'' to make the interim rule immediately effective upon publication, under the Administrative Procedure Act (5 U.S.C. 553(b)(B) and (d)(3)). That finding was based on the need to make the OPA'90 Claims Procedures immediately available to those eligible to file a claim against the Fund. The Coast Guard provided the public a 120-day opportunity to comment on the Interim Rule following its publication, is providing an additional opportunity for public comment by publishing this Notice of Inquiry, and plans to provide an opportunity for further public comment when the SNPRM is published.

6. One of the 1992 Comments was a request to meet with the NPFC. The NPFC did not meet with the commenter and does not believe that meeting at this time would aid the rulemaking.

7. One of the 1992 Comments objected to submitting comments in triplicate. Commenters are no longer required to submit their comments in triplicate.

*C. Information We Would Like You To Include in Your Comments*

When responding to the questions in Part V of this Notice of Inquiry below, please identify your interest in the rulemaking. Please also identify the specific regulatory provision you are commenting on and, as applicable, identify each of the 1992 Comments you are commenting on and describe any issues not addressed in the 1992 Comments. Lastly, please describe your experience, including how any issues were resolved and how any remaining issues might be addressed through the rulemaking.

*D. How To Use the Comment Matrices*

You may choose to submit your comments using any of the methods discussed in **ADDRESSES**, and in any of the formats discussed in the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section, including in a standard letter. In addition, to promote maximum public participation in this rulemaking and assist you in responding to the questions in Part V of this Notice of Inquiry, we have provided two downloadable Excel format matrix documents in the public docket for this rulemaking (USCG–2004–17697) that you may choose to use to provide your comments, and we encourage you to do so.[5]

The documents are titled: ''1992 Comments Matrix'' (Document # USCG–2004–17697–0032) and ''NOI Questions Matrix'' (Document # USCG–2004–17697–0033). You may access the matrix documents as follows:

(1) Go to *http://www.regulations.gov.*

[5] If you do not have Microsoft Office on your computer, libreoffice.org, openoffice.org and other groups offer free office suites that you may wish to download to your computer. Many of these suites run on Windows, Mac OS and Linux operating systems and include programs that can open and edit MS Excel documents. Your local public library may also have computers for the public's use that are equipped with Excel or other compatible software.

(2) Enter the docket number of this rulemaking (USCG–2004–17697) in box titled ''Enter Keyword or ID'' and click the box labeled ''Search''.

(3) In the search results page, check the ''Rulemaking'' box under ''Docket Type''.

(4) Further down on the page, select the ''View by Relevance'' tab.

(5) You may sort (or reverse sort) the listed documents by document ID number by clicking on the document ''ID'' column.

(6) Scroll to the document you want to view, and click on the link for the document. This will take you to the Document Details page for the document you want to view.

(7) On the right side of the ''Attachments'' box on the Document Details page select the XLS icon.

To comment using a matrix document, please first download the document to your computer, and save the document with a unique file name in Excel 97–2003 Workbook (*.xls) format. For example, after downloading the ''NOI Questions Matrix'', please go to ''save as'' on your computer, give the document a unique file name such as ''NOI Questions Matrix—ABC Company Comments'', and select Excel 97–2003 Workbook (*.xls) in the document ''save as type'' drop down.[6] (If your comments are anonymous, you may save the document as ''NOI Questions Matrix—Anonymous Comments''.)

After saving the matrix document with a unique name, you may add your comments and contact information in the columns and cells provided, as follows:

1. In the document titled ''NOI Questions Matrix'', the Notice of Inquiry questions appear in Column A. You may use Column B to provide your answers to the questions asked in Part V of this Notice of Inquiry, and Column C to provide your (optional) contact information and to specify the interest group you belong to, or represent (see question 1, in Part V below.)

2. In the document titled ''1992 Comments Matrix'', the 1992 Comments are summarized in Column A, and Column B provides the 1992 commenter number and public docket document number for the comment letter. You may use the ''1992 Comments Matrix'' to respond to questions 2 and 3, in Part V, below. Specifically, you may provide your comments in Column C, and your (optional) contact information and information about the interest group you belong to, or represent in Column D.

Note that we have sorted the comment summaries topically in the ''1992 Comments Matrix'', based on: The Interim Rule **Federal Register** page and column number; the regulatory part, subpart, section and subsection number each comment relates to; and the docket number assigned to each comment document.

When a commenter made the same comment more than once, we have summarized the comment only once in the ''1992 Comment Matrix'', sorted by the first section referenced by the commenter, and have included cross-references within the summary to the other regulatory sections referenced by the commenter. For example, one commenter commented multiple times on the need to avoid double counting of amounts claimed.

We also have included certain clarifying explanatory information at the end of some of the comment summaries in the ''1992 Comments Matrix''. This information, which is not reflected in the 1992 Comments, is in brackets and italics.

In both matrix documents, we have locked the text we have provided, such as the Notice of Inquiry questions and 1992 Comment summaries. This is to protect against inadvertent changes to that information while you are entering your comments in the document.

If you need more space in a cell you wish to enter text into, you may expand the width of each column and the height of each row.[7] You may also adjust the font size of the text.

After you have entered your comments and contact information, save the matrix document again. Then submit the matrix document to the public docket using any of the methods discussed in **ADDRESSES**. If you choose to upload the matrix document to the public docket electronically, follow the instructions for submitting comments to the public docket electronically provided above in the section of this Notice of Inquiry titled ''Public Participation and Request for Comments'' under ''Submitting comments''.

## V. Notice of Inquiry Questions

### *A. Question Concerning Your Interest in the Rulemaking*

*Question 1.* What interest group do you belong to or represent?

*Discussion:* Knowing what interest group a commenter belongs to or represents helps us understand the comments we receive. This information, however, is not always clear from the letterhead used by the commenter. We, therefore, invite you to let us know what interest group you belong to, or represent, by responding to question 1. For example, you may be, or represent, a State government or political subdivision, an Indian tribe, a Federal, State or Indian tribe natural resource trustee, an oil spill response organization, or other public or private claimant; a responsible party or guarantor; a facility owner, operator, licensee, lessee or permittee; a vessel owner, operator or demise charterer; an industry association; or other interested individual, business, public interest association, agency of the U.S. Government or other public agency.

### *B. Questions Concerning the 1992 Comments on the Interim Rule*

*Question 2.* What, if any, issues raised in the 1992 Comments do you believe it would be helpful for the Coast Guard to address in the SNPRM?

*Question 3.* What, if any, issues raised in the 1992 Comments do you believe no longer need to be addressed?

*Discussion:* The Coast Guard has reviewed and considered the 1992 Comments on the Interim Rule. We believe that some of the issues raised by the 1992 Comments reflected the public's lack of experience with the Claims Procedures at that time, and have been resolved through implementation of 33 CFR part 136 and the public's increased familiarity with the OPA'90 claims process.

We do not plan to revisit issues raised in the 1992 Comments that appear to have been resolved unless the public expresses interest in our doing so. We, therefore, invite you to review the 1992 Comments and alert us to issues you would like us to address. We are particularly interested in hearing from you if you submitted a 1992 Comment, if you have been an OPA'90 claimant to the Fund or a responsible party or guarantor, or if you have other experience with the OPA'90 Claims Procedures or the OCSLAA Rule.

If you respond to either question 2 or 3, please identify each of the 1992 Comments you are responding to, and provide your views on why you believe it would be helpful for us to address the

[6] We are requesting that you save the document to the Excel 97–2003 Workbook (*.xls) version of Excel so that other members of the public who do not have access to more recent versions of Excel can view your comments.

[7] To change the width of columns, position the mouse pointer on the right boundary of a column letter heading until it turns into a double-sided arrow. Drag until the column is the width that you want. To change the row height, position the mouse pointer on the bottom boundary of the row number heading until it turns into a double-sided arrow. Drag until the row is the height that you want. You can find more information about changing column widths and row heights in Excel help.

issues in the rulemaking, or why it is no longer necessary for an issue to be addressed in the rulemaking. You may use the ''1992 Comments Matrix'' to respond to questions 2 or 3.

*C. Questions Concerning the Claims Procedures (33 CFR Part 136)*

1. Rule Organization and Other Clarifications to the Claims Procedures

*Question 4.* What organizational changes would improve the Claims Procedures (33 CFR Part 136)?

*Question 5.* What, if any, regulatory gaps would you like us to address in the Claims Procedures (33 CFR part 136)?

*Question 6.* Are there procedures in the Claims Procedures (33 CFR part 136) that you would like us to streamline?

*Question 7.* Are there procedures in the Claims Procedures (33 CFR part 136) that you would like us to clarify or explain in greater detail in the regulations?

*Question 8.* What, if any, terms used in the Claims Procedures (33 CFR part 136) would you like us to define or clarify?

*Discussion:* Executive Order (E.O.) 12866 requires that regulations be simple and easy to understand. The goals of these requirements include minimizing the potential for uncertainty, and ensuring the public understands important regulatory requirements.

The Coast Guard is, therefore, considering amendments to the Claims Procedures, to clarify the presentation and address regulatory gaps. For example, we are considering reorganizing the rule along certain lines, possibly including the following:

- Moving the source designation and claims advertising regulations, which currently appear in subpart D, earlier in the rule to a new subpart B, to reflect the chronological order in which matters arise following an oil spill incident;
- Creating a separate subpart for natural resource damage trustee claims under 33 U.S.C. 2702(b)(2)(A), which may only be brought by Federal, State, Indian tribe, and certain foreign trustees (see 33 U.S.C. 2707);
- Adding a separate subpart for responsible party claims, which are not expressly addressed in the current rules;
- Creating a separate subpart for the claims determination and reconsideration procedures; and
- Consolidating certain generally-applicable requirements in subpart A.

Other possible amendments to the regulatory text might include: Stating the procedures in simpler terms (plain language); explaining other requirements in greater detail; and adding or amending the definitions for terms that may not be well understood. The Coast Guard invites you to comment on whether these types of clarifying changes would be helpful, and on any other recommendations you might have for clarifying the Claims Procedures.

2. Claims Procedures Regulatory Deadlines

*Question 9.* Have you been able to work within the regulatory deadlines in the Claims Procedures (33 CFR part 136)?

*Question 10.* Do you have a comment on changing the deadlines in § 136.115(b) and § 136.115(d) to 90 days after mailing by the Director, NPFC?

*Discussion:* The Claims Procedures establish a number of different deadlines. Some of the deadlines are required by OPA'90, such as those in 33 U.S.C. 2714 and subpart D of the Claims Procedures concerning source designations and advertising. Changes to these statutory deadlines would require a change in the law. The statutory deadlines are, therefore, outside the scope of this regulation.

Other Claims Procedures deadlines, however, are entirely regulatory. For example, § 136.115(b) establishes a 60-day regulatory deadline for claimants to accept an offer of settlement by the Fund, and § 136.115(d) establishes two deadlines, a 60-day or 30-day deadline, for the NPFC to receive requests for reconsideration.

We are considering changing these regulatory deadlines to 90 days after mailing by the Director, NPFC, to simplify the rule and minimize confusion between these deadlines. The Coast Guard, therefore, invites your views on whether the Claims Procedures deadlines are clear, and whether the changes we are considering to the deadlines in § 136.115, or to any other regulatory deadlines in part 136, would be helpful. (We are not requesting comment on any statutory deadline.)

3. Claims Submission Requirements

*Question 11.* Do you have any comment on amending § 136.105(c) to allow claimants to submit claims that are not ''signed in ink'' originals?

*Question 12.* What, if any, recommendations do you have on limits the Coast Guard could consider placing on claims submissions to ensure their authenticity and reliability?

*Question 13.* What, if any, other changes to the claims submission requirements in subparts A and B of the Claims Procedures, (33 CFR part 136) are needed or would be helpful?

*Discussion:* The Claims Procedures (§ 136.105(c)) require that claim submissions be ''signed in ink''. The Interim Rule, however, pre-dated substantial legal precedent recognizing the authenticity and reliability of electronic documents, such as scanned documents, which can be submitted almost instantly by electronic mail, and facsimile copies of original documents.

The Coast Guard is, therefore, considering removing the ''signed in ink'' requirement (§ 136.105(c)) in order to take advantage of technological advances in communications. Claimants would still be required to certify that the claim accurately reflects all material facts. The Coast Guard invites your views on this change.

The Coast Guard also invites your views on whether any other changes to the other claims submission requirements in subparts A and B of the Claims Procedures are needed or would be helpful.

4. Claims Determination and Reconsideration Procedures

*Question 14.* Do you have any comment about removing the requirement in § 136.115(c) to send claims denials by certified or registered mail?

*Question 15.* What, if any, other comments do you have on the claims determination and reconsideration procedures?

*Discussion:* The Claims Procedures (§ 136.115(c)) state that the NPFC will send claims denial determinations to claimants by certified or registered mail. This increases the Coast Guard's administrative costs. It also may not be helpful to the public since claims determinations can be, and are now also, transmitted electronically (*e.g.,* electronic mail and facsimile transmissions).

Therefore, although the Coast Guard would continue to send all determinations to claimants by reliable means, including by U.S. mail, we are considering removing the certified or registered mail requirement from the regulations, and we invite your comment on this change. The Coast Guard also invites you to comment on any other aspect of the claims determination and reconsideration procedures.

5. Distinguishing the Different Categories of Claims Due to Injury, Loss or Destruction to, or Loss of Use of, Natural Resources

*Question 16.* What, if any, clarification is needed concerning the

distinctions in OPA'90 and the Claims Procedures between the different categories of claims resulting from the injury, loss or destruction to, or loss of use of, natural resources due to an oil spill incident?

*Discussion:* Under OPA'90 (33 U.S.C. 2702(b)(2)), claims may be made to the Fund for four distinct categories of damages due to injury, loss or destruction to, or loss of use of, natural resources as a result of an oil spill incident: (1) Damages for loss of subsistence use of natural resources, which may only be claimed by a person who so uses natural resources which have been injured, destroyed or lost, without regard to the ownership or management of the resources; (2) damages equal to the loss of profits or impairment of earning capacity due to the injury, destruction, or loss of natural resources, which are recoverable by any claimant; (3) damages for injury, loss or destruction to, or loss of use of, natural resources as a result of an oil spill, which can only be recovered by Federal trustees, State trustees, Indian tribe trustees, and certain foreign trustees; and (4) damages equal to the net loss of government revenue (*i.e.,* taxes, royalties, rents, fees, or net profit shares) due to the injury, destruction, or loss of natural resources, which can only be recovered by the Government of the United States, a State or a political subdivision thereof.[8] Issues have, however, come up over the years indicating that the distinctions between these claims categories, particularly the distinctions between subsistence use loss and other claim categories, may not be well understood.

Two courts have considered what constitutes a subsistence use loss of natural resources under OPA'90. See *In re Cleveland Tankers, Inc.,* 791 F. Supp. 669 (E.D. Mich. 1992), and *Sekco Energy, Inc.* v. *M/V Margaret Chouest,* 820 F. Supp. 1008 (E.D. La. 1993). Both courts found that this type of damage may be claimed only by persons who are dependent on the injured, destroyed, or lost natural resources to obtain the minimum necessities of life, such as food, water, and shelter, and does not include commercial uses of natural resources.

The NPFC has further determined that loss of subsistence use of natural resources damages may only be compensated by the Fund to individuals and households who can show that they rely on the natural resources which have been injured, destroyed, or lost due to an oil spill incident, to meet their minimum necessities of life; but that claims for the lost commercial use of natural resources (including the use of natural resources for barter) may be compensated by the Fund to any claimant who can show a loss of profits or impairment of earning capacity due to the injury, destruction, or loss of the natural resources as a result of an oil spill incident. In addition, the NPFC has determined that recreational or public use losses due to the injury, destruction, or loss of natural resources as a result of an oil spill incident may only be claimed as a measure of damages in natural resource damage claims brought by Federal, State, Indian tribe, and certain foreign trustees; and that claims for the net loss of revenues due to the injury, destruction, or loss of natural resources as a result of an oil spill incident, may only be brought by the United States, a State or a political subdivision of a State.

The Coast Guard invites you to comment on whether clarifications are needed in the regulatory text to further explain these distinctions and the proof requirements for each of these categories of claims.

6. The Public Notice and Comment Exception for Certain Natural Resource Damage Trustee Claims

*Question 17.* Do you have any views on whether claims that fall under the exception in OPA'90 33 U.S.C. 2712(j)(2) to the public notice and planning requirement of OPA'90 33 U.S.C. 2706(c), should be further defined or separately addressed in the Claims Procedures (33 CFR part 136)?

*Discussion:* OPA'90 (33 U.S.C. 2706(c)(5)) requires that Federal, State, Indian tribe, and foreign trustees develop and implement plans for the restoration rehabilitation, replacement, or acquisition of the equivalent of the natural resource under their trusteeship ''only after adequate public notice, opportunity for a hearing, and consideration of all public comment.'' OPA'90 (33 U.S.C. 2712(j)(1)) in turn provides that, with one exception, amounts may be obligated from the Fund for the restoration, rehabilitation, replacement, or acquisition of natural resources only in accordance with a plan adopted under OPA'90 (33 U.S.C. 2706(c)).

OPA'90 (33 U.S.C. 2712(j)(2)), however, permits obligations from the Fund without a plan adopted pursuant to OPA'90 (33 U.S.C. 2706(c)(5)) ''in a situation requiring action to avoid irreversible loss of natural resources or to prevent or reduce any continuing danger to natural resources or similar need for emergency action'' (referred to as ''emergency restoration''). The current Claims Procedures do not address this exception to the planning requirement. The Coast Guard, therefore, invites your views on whether, and how, the planning exception in OPA'90 (33 U.S.C. 2712(j)(2)) should be addressed in the Claims Procedures.

7. Damage Assessment Costs

*Question 18.* What, if any, clarification is needed concerning the distinction in § 136.105(e)(8) of the Claims Procedures (33 CFR part 136) between (1) The reasonable costs incurred by a claimant in assessing the damages claimed (damage assessment costs), which may be compensated by the Fund, and (2) attorney's fees or other administration costs associated with preparation of a claim, which are not compensable by the Fund?

*Question 19.* What criteria might the Coast Guard use to determine if costs are compensable damage assessment costs, or clearly not compensable attorney's fees or other administration costs associated with preparation of a claim?

*Discussion:* Under OPA'90 and the Claims Procedures, the reasonable costs incurred by a claimant in assessing the damages claimed are compensable by the Fund. This may, for example, include the reasonable cost of an accountant, scientist or other expert to determine, measure, or otherwise quantify, the extent of economic losses resulting from destruction of real or personal property, or the extent of injury to, destruction of, loss of, or loss of use of, a natural resource, or the extent of lost profits. In addition, for natural resource damage trustee claims, the NPFC has determined that assessment costs include the reasonable cost of determining the restoration actions needed, including the reasonable administrative and legal costs of damage assessment and restoration planning. OPA'90 and the Claims Procedures, however, do not authorize compensation from the Fund for the costs of attorney's fees and other administrative costs associated with preparation of a claim.

The Coast Guard is considering clarifying damage assessment costs in the Claims Procedures and invites your comment.

8. Other Comments on the Claims Procedures for Different Categories of Claims

*Question 20.* What, if any, other comments do you have about the

[8] As noted in Question 20, below, claims for damages equal to the loss of profits or impairment of earning capacity, and the net loss of government revenue, may also be brought if due to the injury, destruction, or loss of real or personal property.

requirements in subpart C of the Claims Procedures (33 CFR part 136) concerning the different categories of claims that may be compensated by the Fund under OPA'90?

*Discussion:* In addition to the damage claims categories resulting from injury to, destruction of, loss of, or loss of use of, natural resources, claims resulting from an oil spill incident may be made to the Fund for: (1) Removal costs incurred due to an oil spill incident, which are recoverable as provided in OPA'90 (33 U.S.C. 2702(b)(1)), including by any person for acts taken by the person which are consistent with the National Contingency Plan; (2) damages for injury to, or economic losses resulting from destruction of, real or personal property damages, which are recoverable by a claimant who owns or leases that property; (3) damages equal to the net loss of government revenues due to the injury, destruction, or loss of real property or personal property, which can only be recovered by the Government of the United States, a State or a political subdivision thereof; (4) damages equal to the loss of profits or impairment of earning capacity due to the injury, destruction, or loss of real property or personal property, which are recoverable by any claimant; and (5) damages for the net costs of providing increased or additional public services during or after oil spill removal activities, which may be recovered by a State or political subdivision. The Coast Guard invites your views on any issues concerning the regulatory requirements in subpart C of the Claims Procedures for these different OPA'90 claims categories.

9. Source Designations and Claims Advertising

*Question 21.* What, if any, comments do you have on the requirements in subpart D of the Claims Procedures (33 CFR part 136) concerning source designations and claims advertising?

*Discussion:* Subpart D of the Claims Procedures sets forth the procedures for designating the source of an incident (*i.e.,* a vessel or facility) and for notifying the responsible party and guarantor of the source, when known, about the designation, and the requirements concerning the type, geographic scope, frequency, initiation and duration of claims advertising following an oil spill incident. A number of 1992 Comments concerned these requirements. The Coast Guard is, therefore, interested in your views on whether these procedures are clear, or whether further clarification is needed to these requirements.

*D. Questions Concerning Removal of the OCSLAA Rule (33 CFR Part 135) From The Code of Federal Regulations*

*Question 22.* What, if any, comments do you have on whether the OCSLAA Rule (33 CFR part 135) should be removed from the Code of Federal Regulations?

*Question 23.* What, if any, provisions of the OCSLAA Rule (33 CFR part 135) would it be helpful to keep in the Code of Federal Regulations?

*Discussion:* As discussed above, at Part III.B. and Part III.C., OPA'90 revoked OCSLAA, but OPA'90 (33 U.S.C. 2751(b) and 33 U.S.C. 2716(h)) preserved the force and effect of certain regulations under prior law, including the OCSLAA Rule's evidence of financial responsibility regulations, until they were superseded by regulations contemplated by OPA'90. The Interim Rule, therefore, struck certain provisions of the OCSLAA Rule to eliminate obvious conflicts with the OPA'90 Claims Procedures, but left removal of the remaining provisions of the OCSLAA Rule for future rulemaking.

Since 1992, a number of regulations have been promulgated that supersede, or appear to overlap with, the remaining provisions of the OCSLAA Rule. The Coast Guard is consequently considering whether to further amend the OCSLAA Rule or remove its remaining provisions entirely from the Code of Federal Regulations. We, therefore, invite you to comment on whether the OCSLAA Rule should be removed from the Code of Federal Regulations, in whole or in part.

*E. Questions Concerning the Regulatory Analysis for This Rulemaking*

1. Claims Procedures (33 CFR Part 136)—Economic Analysis

If you have experience with the Claims Procedures, we invite you to respond to the following questions. Please provide as much quantitative data and source documentation as possible in support of your responses to each question, so that we may incorporate your experience into the regulatory analysis for this rulemaking.

*Question 24.* How much time did you spend and what were your costs associated with reading the Claims Procedures (33 CFR part 136) regulations?

*Question 25.* If you have experience as a claimant to the Fund, how much time did you spend and what were your costs associated with preparing each of your claims?

*Question 26.* If you have experience as a claimant to the Fund, how much time did you spend and what were your costs associated with responding to any requests by the NPFC for supplemental or clarifying information concerning each of your claims?

*Question 27.* If you have experience as a claimant, how much time did you spend and what were your costs associated with any claim reconsideration requests?

*Question 28.* If you have experience as a responsible party or guarantor, how much time did you spend and what were your costs associated with preparing and publishing the required advertisement?

*Question 29.* What, if any, provisions of the Claims Procedures have you found to be burdensome or costly, and what were your burdens or costs?

*Question 30.* If you have ideas for specific amendments to the Claims Procedures that could reduce your burden or costs, what are they and to what extent would they reduce your burden or costs?

2. Claims Procedures (33 CFR Part 136)—Small Entities Analysis

If you are a small entity (*i.e.,* a small business or not-for-profit organization that is independently owned and operated and is not dominant in the field, or a governmental jurisdiction with a population of less than 50,000) with experience with the Claims Procedures, we invite you to respond to the following questions. Please provide as much quantitative data and source documentation as possible in support of your responses to each question, so that we may incorporate your experience into the regulatory analysis for this rulemaking.

*Question 31.* If you have experience with the Claims Procedures (33 CFR part 136), what industry (*e.g.,* North American Industry Classification System (NAICS) Code) and what type of small entity do you represent?

*Question 32.* If you have experience with the Claims Procedures (33 CFR part 136), what, if any, provisions of the Claims Procedures (33 CFR part 136) are burdensome or costly because you are a small entity, and what were your burdens or costs?

*Question 33.* If you have ideas for specific amendments to the Claims Procedures (33 CFR part 136) that could make them more flexible to accommodate your special needs as a small entity, what are they and to what extent would they reduce your burden or costs?

3. Removal of OCSLAA Rule (33 CFR Part 135)—Economic Analysis

If you have experience with the OCSLAA Rule, we invite you to respond to the following question. Please provide as much quantitative data and source documentation as possible in support of your responses, so that we may incorporate your experience into the regulatory analysis for this rulemaking.

*Question 34.* What, if any, provisions of the OCSLAA Rule (33 CFR part 135) have you found to be burdensome or costly, and what were your burdens or costs?

4. Removal of the OCSLAA Rule (33 CFR Part 135)—Small Entities Analysis

If you are a small entity (*i.e.,* a small business, not-for-profit organization that is independently owned and operated and are not dominant in the field, or a governmental jurisdiction with a population of less than 50,000) with experience with the OCSLAA Rule, we invite you to respond to the following questions. Please provide as much quantitative data and source documentation as possible in support of your responses to each question, so that we may incorporate your experience into the regulatory analysis for this rulemaking.

*Question 35.* If you have experience with the OCSLAA Rule (33 CFR part 135), what industry (*e.g.,* NAICS Code) and what type of small entity do you represent?

*Question 36.* If you have experience with the OCSLAA Rule (33 CFR part 135), what, if any, provisions of that part have you found to be burdensome or costly because you are a small entity, and what were your burdens or costs?

*Discussion:* The Coast Guard will be conducting a regulatory assessment for this rulemaking. To ensure we have the best information for the assessment, we invite you to respond to questions 24 through 36. Please identify the specific provisions that you think would affect you. Please describe the impacts, and quantify any costs and/or benefits of the provisions to the extent possible.

*F. Other Issues*

*Question 37.* Are there any issues concerning this rulemaking that were not mentioned above or in the 1992 Comments, that you would like us to consider?

We will review and analyze all public comments received in order to develop the SNPRM.

This notice is issued under authority of 33 U.S.C. 2713(e), 33 U.S.C. 2714(b), and 33 U.S.C. 2716(h).

Dated: October 26, 2011.

**William R. Grawe,**

*Acting Director, National Pollution Funds Center, U.S. Coast Guard.*

[FR Doc. 2011–28189 Filed 10–31–11; 8:45 a.m.]

BILLING CODE 9110–04–P

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 167

**[USCG–2009–0765]**

## Port Access Route Study: In the Approaches to Los Angeles-Long Beach and in the Santa Barbara Channel

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of availability of study results.

**SUMMARY:** The Coast Guard announces the availability of a Port Access Route Study (PARS) which evaluated the continued applicability of and the potential need for modifications to the traffic separation schemes in the approaches to Los Angeles-Long Beach and in the Santa Barbara Channel. The study was completed in June 2011. This notice summarizes the study and final recommendation.

**ADDRESSES:** Comments and material received from the public, as well as documents mentioned in this preamble, as being available in the docket, are part of docket USCG–2009–0765 and are available online by going to *http://www.regulations.gov,* inserting USCG–2009–0765 in the ''Keyword'' box, and then clicking ''Search.'' This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions concerning this notice, contact Lieutenant Lucas Mancini, Eleventh Coast Guard District, telephone (510) 437–3801, email *Lucas.W.Mancini@uscg.mil.* If you have questions on viewing the docket, contact Renee V. Wright, Program Manager, Docket Operations, (202) 366–9826.

*Definitions:* The following definitions should help the reader to understand terms used throughout this document:

*Marine Environment,* as defined by the Ports and Waterways Safety Act, means the navigable waters of the United States and the land resources therein and thereunder; the waters and fishery resources of any area over which the United States asserts exclusive fishery management authority; the seabed and subsoil of the Outer Continental Shelf of the Unites States, the resources thereof and the waters superjacent thereto; and the recreational, economic, and scenic values of such waters and resources.

*Precautionary area* means a routing measure comprising an area within defined limits where vessels must navigate with particular caution and within which the direction of traffic flow may be recommended.

*Traffic lane* means an area within defined limits in which one-way traffic is established. Natural obstacles, including those forming separation zones, may constitute a boundary.

*Traffic Separation Scheme* or *TSS* means a routing measure aimed at the separation of opposing streams of traffic by appropriate means and by the establishment of traffic lanes.

*Vessel routing system* means any system of one or more routes or routing measures aimed at reducing the risk of casualties; it includes traffic separation schemes, two-way routes, recommended tracks, areas to be avoided, no anchoring areas, inshore traffic zones, roundabouts, precautionary areas, and deep-water routes.

**SUPPLEMENTARY INFORMATION:**

### Background and Purpose

The Coast Guard published a notice of study in the **Federal Register** on April 7, 2010 (75 FR 17562), entitled ''Port Access Route Study: In the Approaches to Los Angeles-Long Beach and in the Santa Barbara Channel'' and completed the study in June, 2011.

The study covered the geographic area with a northern boundary at 34°30′ N; a western boundary at 121°00′ W; a southern boundary at 33°15′ N; and an eastern boundary along the shoreline. This area encompasses the traffic separation schemes in the Santa Barbara Channel and in the approaches to Los Angeles-Long Beach; and the approach to the San Pedro Channel from the Pacific Ocean, particularly the area south of San Miguel, Santa Rosa, Santa Cruz, and Anacapa Islands; and north of San Nicolas, Santa Barbara, and Santa Catalina Islands where an increase in vessel traffic has been identified.

The primary purpose of the study was to reconcile the need for safe access routes with other reasonable waterway uses, to the extent practical. The goal of the study was to help reduce the risk of marine casualties and increase the

efficiency of vessel traffic in the study area. When vessels follow predictable and charted routing measures, congestion may be reduced, and mariners may be better able to predict where vessel interactions may occur and act accordingly.

Fourteen letters and six studies were received in response to the published notice of study. The Eleventh Coast Guard District also held public meetings in Oxnard and San Pedro California to allow for comments in person. These meetings were announced in the **Federal Register** and conducted at the Port Hueneme Harbor District office on October 13, 2010 and the Port of Los Angeles Administration Building, on October 14, 2010.

The recommendations of the PARS are based in large part on the comments received to the docket, public outreach, and consultation with other government agencies.

**Study Recommendations**

The PARS evaluated 4 major concerns and 5 separate options for modification to the current vessel routing system before reaching a recommendation. We considered information presented in various studies and data collected by the U.S. Coast Guard and by other stakeholder organizations on vessel traffic patterns, density, and risks. The actual PARS should be consulted for a detailed explanation of the final recommendation. It can be accessed as described in the **ADDRESSES** section of this notice.

**Conclusion**

Based upon the results of the PARS, we found unbounded vessel traffic transiting the waters south of the Channel Islands to be a safety concern. With increased vessel traffic, the risk of collision needed to be addressed. The Coast Guard recommends creating traffic lanes south of the Channel Islands to increase predictability by providing a defined route for vessel traffic transiting south of the islands. The Coast Guard also recommends decreasing the width of the separation scheme in the Santa Barbara Channel to help in preserving the marine environment. The current separation scheme would be reduced from 4nm to 3nm, moving the southern inbound lane 1nm toward the northern lane, and reducing the separation zone between the lanes from 2nm to 1nm. The northern outbound lane would remain in place. Decreasing the width of the separation zone and shifting the southern lane 1nm to the north, will move vessel traffic away from the Channel Islands National Marine Sanctuary.

The PARS contains recommendations which would require the approval of the International Maritime Organization for implementation. The Coast Guard will follow the Federal rulemaking process for implementation of any of the proposed changes to the traffic separation scheme. This process will also include consultations with the National Marine Fisheries Service in accordance with the Endangered Species Act. This will provide ample opportunity for additional comments on proposed changes to the existing vessel routing system through a notice of proposed rulemaking (NPRM) published in the **Federal Register**.

Dated: October 13, 2011.

**J.R. Castillo,**

*Rear Admiral, U.S. Coast Guard, Commander, Eleventh Coast Guard District.*

[FR Doc. 2011–28270 Filed 10–31–11; 8:45 am]

**BILLING CODE 9110–04–P**

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R09–OAR–2011–0382; FRL–9477–3]**

## Revisions to the California State Implementation Plan, Placer County Air Pollution Control District

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve revisions to the Placer County Air Pollution Control District (PCAPCD) and Sacramento Metro Air Quality Management District (SMAQMD) portions of the California State Implementation Plan (SIP). These revisions concern oxides of nitrogen ($NO_X$) emissions from industrial, institutional and commercial boilers, stationary internal combustion engines and water heaters. We are proposing to approve local rules to regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

**DATES:** Any comments on this proposal must arrive by December 1, 2011.

**ADDRESSES:** Submit comments, identified by docket number EPA–R09–OAR–2011–0382, by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions.

2. *E-mail: steckel.andrew@epa.gov.*

3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

*Instructions:* All comments 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 Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *http://www.regulations.gov* or email. *http://www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send email directly to EPA, your email address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* Generally, documents in the docket for this action are available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at *http://www.regulations.gov,* some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material, large maps), and some may not be publicly available in either location (*e.g.,* CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Idalia Pérez, EPA Region IX, (415) 972–3248, *perez.idalia@epa.gov.*

**SUPPLEMENTARY INFORMATION:** This proposal addresses the following local rules: Rule 231, Industrial, Institutional and Commercial Boiler, Steam Generator and Process Heaters, Rule 242, Stationary Internal Combustion Engines, Rule 246, Natural Gas-Fired Water Heaters, and Rule 414, Water Heaters, Boilers and Process Heaters Rated Less Than 1,000,000 BTU per hour. In the Rules and Regulations section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions

are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: September 28, 2011.

**Keith Takata,**

*Acting Regional Administrator, Region IX.*

[FR Doc. 2011–28247 Filed 10–31–11; 8:45 am]

BILLING CODE 6560–50–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[MB Docket No. 11–168; RM–11642, DA 11–1712]**

### Radio Broadcasting Services; Llano, Texas

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document sets forth a proposal to amend the FM Table of Allotments. The Commission requests comment on a petition filed by Bryan King, proposing to amend the Table of Allotments by substituting Channel 242C3 for vacant Channel 293C3, at Llano, Texas. The proposal is part of a contingently filed ''hybrid'' application and rule making petition. Channel 242C3 can be allotted at Llano in compliance with the Commission's minimum distance separation requirements with a site restriction of 19.1 km (11.9 miles) north of Llano, at 30–55–34 North Latitude and 98–43–24 West Longitude. Concurrence is required for the allotment of Channel 242C3 at Llano, Texas, because the proposed allotment is located within 320 kilometers (199 miles) of the U.S.-Mexican border. *See* **SUPPLEMENTARY INFORMATION** *infra.*

**DATES:** Comments must be filed on or before December 5, 2011. Reply comments must be filed on or before December 20, 2011.

**ADDRESSES:** You may submit comments, identified by docket no. 11–168 to Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for petitioner as follows: Lee J. Peltzman, *Esq.,* Shainis & Peltzman, Chartered, 1850 M Street, NW., Suite 240, Washington, DC 20036.

**FOR FURTHER INFORMATION CONTACT:** Deborah A. Dupont, Media Bureau (202) 418–7072.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Notice of Proposed Rule Making,* MB Docket No. 11–168, adopted October 12, 2011, and released October 14, 2011. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (800) 378–3160, or via the company's Web site, *http://www.bcpiweb.com.* This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

The Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio, Radio broadcasting.

Federal Communications Commission.

**Nazifa Sawez,**

*Assistant Chief, Audio Division, Media Bureau.*

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

## PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334, 336, and 339.

**§ 73.202 [Amended]**

2. In section 73.202(b), the Table of FM Allotments under Texas, is amended by removing 293C3 and adding 242C3 at Llano.

[FR Doc. 2011–27744 Filed 10–31–11; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 79

**[CG Docket No. 11–175; FCC 11–159]**

### Anglers for Christ Ministries, Inc., New Beginning Ministries; Petitioners; Interpretation of Economically Burdensome Standard

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Commission proposes to continue utilizing the factors used for the ''undue burden'' exemption standard when evaluating future petitions seeking individual exemptions under the new economically burdensome standard contained in the CVAA. In addition, the Commission proposes to replace all current references to ''undue burden'' in the Commission's closed captioning rules with the term ''economically burdensome'' to correspond with the new language reflected in the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA). The intended effect of this action is to ensure that the Commission's rules conform to section 202 of the CVAA.

**DATES:** Comments are due on or before December 1, 2011. Reply comments are due on or before December 16, 2011.

**ADDRESSES:** You may submit comments identified by [CG Docket No. 11–175], by any of the following methods:

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the Commission's Electronic Comment Filing System (ECFS), through the Commission's Web site *http://fjallfoss.fcc.gov/ecfs2/.* Filers should follow the instructions provided on the Web site for submitting comments. For ECFS filers, in completing the

transmittal screen, filers should include their full name, U.S. Postal service mailing address, and CG Docket No. 11–175.

• *Paper filers:* Parties who choose to file by paper must file an original and four copies 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 (although the Commission continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

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

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

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

In addition, parties must serve one copy of each pleading with the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554, or via email to *fcc@bcpiweb.com*.

**FOR FURTHER INFORMATION CONTACT:** Traci Randolph, Consumer and Governmental Affairs Bureau at (202) 418–0569, or email: *Traci.Randolph@fcc.gov*.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rulemaking (*NPRM*), document FCC 11–159, adopted October 20, 2011, and released October 20, 2011, in CG Docket No. 11–175, seeking comment on (1) continuing to utilize the factors used for the ''undue burden'' exemption standard contained in section 713(e) of the Act and codified in § 79.1(f)(2) of the Commission's rules, when evaluating future petitions seeking individual exemptions under the new economically burdensome standard contained in the CVAA and (2) replacing all current references to ''undue burden'' in section 79.1(f) of the rules with the term ''economically burdensome'' to correspond with the new language reflected in the CVAA. Simultaneously, with the *NPRM,* the Commission also issued a Memorandum Opinion and Order (*MO&O)* and *Order* in CG Docket No. 06–181. The full text of FCC 11–159 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. FCC 11–159 and copies of subsequently filed documents in this matter may also be purchased from the Commission's duplicating contractor at Portals II, 445 12th Street SW., Room CY–B402, Washington, DC 20554. Customers may contact the Commission's duplicating contractor at its Web site, *http://www.bcpiweb.com,* or by calling 1–(800) 378–3160. FCC 11–159 can also be downloaded in Word or Portable Document Format (PDF) at: *http://www.fcc.gov/cgb/dro/trs.caption*.

Pursuant to 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 and reply comments must include a short and concise summary of the substantive discussion and questions raised in the document FCC 11–159. The Commission further directs all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. Comments and reply comments must otherwise comply with 47 CFR 1.48 and all other applicable sections of the Commission's rules.

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) 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.

*People with Disabilities:* 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), (202) 418–0432 (TTY).

## Initial Paperwork Reduction Act of 1995 Analysis

Document FCC 11–159 does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

## Synopsis

1. In document FCC 11–159, the Commission proposes to continue utilizing the factors used for the ''undue burden'' exemption standard contained in section 713(e) of the Act and codified in § 79.1(f)(2) of the Commission's rules, when evaluating future petitions seeking individual exemptions under the new economically burdensome standard contained in the CVAA. The Commission tentatively concludes that Congress intended no substantive change in these factors and that, notwithstanding the change in nomenclature from an ''undue burden'' to an ''economically burdensome'' standard, Congress intended for the Commission to continue using the undue burden factors. The Commission seeks comment on this tentative

conclusion. The Commission also seek comment on any other interpretations of the term ''economically burdensome'' that the Commission should consider in evaluating requests for individual exemptions from the closed captioning requirements.

2. At present, the Commission's rules, at § 79.1(f), contain various references to the prior undue burden standard. The Commission proposes to replace all current references to ''undue burden'' in § 79.1(f) of its rules with the term ''economically burdensome'' to correspond with the new language reflected in the CVAA and to make clear that petitioners seeking individual exemptions from the captioning rules must now show that providing captions on their programming would be ''economically burdensome.'' The Commission seeks comment on this proposed action.

**Initial Regulatory Flexibility Certification**

3. The Regulatory Flexibility Act of 1980, as amended (RFA), requires that an initial regulatory flexibility analysis be prepared for notice-and-comment rule making proceedings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' 5 U.S.C. 605(b). The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' 5 U.S.C. 601(6). In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. 5 U.S.C. 601(3). 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). 15 U.S.C. 632.

4. In document FCC 11–159, the Commission proposes to revise the references to ''undue burden'' contained in § 79.1(f) of its rules—''*Procedures for exemptions based on undue burden*''—to ''economically burdensome'' as required by the. No substantive changes to the existing rule beyond this change in terminology are proposed. Since the change is only a change in terminology, there is no burden of compliance on regulated entities subject to these rules. No action is required that would impose any monetary costs or burdens of compliance on any regulated entity. The Commission concludes there will be no economic impact by this rule change on small business entities or consumers. Therefore, since there will be no economic impact of any kind, the Commission certifies that the proposals in document FCC 11–159, if adopted, will not have any significant economic impact on a substantial number of small entities. Therefore, the question about impact to small entities is moot.

5. The Commission will send a copy of document FCC 11–159, including a copy of the Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the SBA.

**Ordering Clauses**

Pursuant to the authority contained in sections 4, 5, 303, and 713 of the Communications Act of 1934, as amended, 47 U.S.C. 154, 155, 303, and 613, and §§ 1.115 and 1.411 of the Commission's rules, 47 CFR 1.115, 1.411, FCC 11–159 *is adopted.*

The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of document FCC 11–159, including the Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

**List of Subjects in 47 CFR Part 79**

Cable television operators, Multichannel video programming distributors (MVPDs), Satellite television service providers, Television broadcasters.

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 79 as follows:

## PART 79—CLOSED CAPTIONING AND VIDEO DESCRIPTION OF VIDEO PROGRAMMING

1. The authority citation for part 79 continues to read as follows:

**Authority:** 47 U.S.C. 151, 152(a), 154(i), 303, 307, 309, 310, 613.

2. Section 79.1 is amended by revising paragraphs (f)(1), (2), (3), (4), (10), and (11) to read as follows:

**§ 79.1 Closed captioning of video programming.**

* * * * *

(f) *Procedures for exemptions based on economic burden.* (1) A video programming provider, video programming producer or video programming owner may petition the Commission for a full or partial exemption from the closed captioning requirements. Exemptions may be granted, in whole or in part, for a channel of video programming, a category or type of video programming, an individual video service, a specific video program or a video programming provider upon a finding that the closed captioning requirements will be economically burdensome.

(2) A petition for an exemption must be supported by sufficient evidence to demonstrate that compliance with the requirements to closed caption video programming would be economically burdensome. The term ''economically burdensome'' means significant difficulty or expense. Factors to be considered when determining whether the requirements for closed captioning are economically burdensome include:

(i) The nature and cost of the closed captions for the programming;

(ii) The impact on the operation of the provider or program owner;

(iii) The financial resources of the provider or program owner; and

(iv) The type of operations of the provider or program owner.

(3) In addition to these factors, the petition shall describe any other factors the petitioner deems relevant to the Commission's final determination and any available alternatives that might constitute a reasonable substitute for the closed captioning requirements including, but not limited to, text or graphic display of the content of the audio portion of the programming. The extent to which the provision of closed captions is economically burdensome shall be evaluated with regard to the individual outlet.

(4) An original and two (2) copies of a petition requesting an exemption based on the economically burdensome standard, and all subsequent pleadings, shall be filed in accordance with § 0.401(a) of this chapter.

* * * * *

(10) The Commission may deny or approve, in whole or in part, a petition for an economically burdensome exemption from the closed captioning requirements.

(11) During the pendency of an economically burdensome determination, the video programming subject to the request for exemption shall be considered exempt from the closed captioning requirements.

* * * * *

[FR Doc. 2011–28181 Filed 10–31–11; 8:45 am]

BILLING CODE 6712–01–P

**DEPARTMENT OF TRANSPORTATION**

**Federal Transit Administration**

**49 CFR Part 633**

**[Docket No. FTA–2009–0030]**

**RIN 2132–AA92**

## Capital Project Management

**AGENCY:** Federal Transit Administration (FTA), DOT.

**ACTION:** Extension of comment period on proposed rule and notice of informational webinar.

**SUMMARY:** FTA is extending the comment period on its proposed rule for Capital Project Management to December 2, 2011, to allow interested parties time to carefully review the Notice of Proposed Rulemaking (NPRM) issued September 13, 2011. Also, FTA will hold a webinar on November 10, 2011, to enable the public to ask questions and to clarify any misunderstandings regarding the NPRM or the Federal Transit Administrator's *Dear Colleague* letter of September 30, 2011.

**DATES:** Comments on the NPRM must be received by December 2, 2011. Late-filed comments will be considered to the extent practicable.

*Webinar Date:* FTA will hold a webinar on Thursday, November 10, 2011, commencing at 1 p.m., Eastern Daylight Time. Interested parties are invited to join the webinar and conference call as follows:

1. Click on or paste in your browser the following link: *http://fta.adobeconnect.com/capitalprojects-nprm.*
2. Click ''Enter as Guest,'' then type your first and last name, then click ''Enter Room.''
3. Connect to the Conference Call at 1–(877) 873–8017, Access Code: 2956512. Note that the webinar is only for informational purposes. Commenters must submit their comments to the official docket to have them considered by FTA.

**ADDRESSES:** You may submit comments to DOT Docket Number FTA–2009–0030 by any of the following methods:

*Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

*U.S. Mail:* U.S. Department of Transportation, Docket Operations, West Building, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

*Hand Delivery:* U.S. Department of Transportation, Docket Operations, West Building, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Fax:* (202) 493–2251.

*Instructions:* You must include the agency name (Federal Transit Administration) and docket number [FTA–2009–0030] or Regulatory Identification Number [RIN–2132–AA92] for this rulemaking at the beginning of your comments. All comments received will be posted, without change and including any personal information provided, to *http://www.regulations.gov,* where they will be available to internet users. *Please see* the Privacy Act.

You should submit two copies of your comments if you submit them by mail. If you wish to receive confirmation that FTA received your comments, you must include a self-addressed, stamped postcard. Due to security procedures in effect since October 2001 regarding mail deliveries, mail received through the U.S. Postal Service may be subject to delays. Parties submitting comments may wish to consider using an express mail firm to ensure the prompt filing of any submissions not filed electronically or by hand.

**FOR FURTHER INFORMATION CONTACT:** For program matters, please contact Aaron C. James, Sr. at (202) 493–0107 or *aaron.james@dot.gov* or Carlos M. Garay at (202) 366–6471 or *carlos.garay@dot.gov.* For legal matters, please contact Scott A. Biehl at (202) 366–0826 or *scott.biehl@dot.gov* or Jayme L. Blakesley at (202) 366–0304 or *jayme.blakesley@dot.gov.* FTA is headquartered at 1200 New Jersey Avenue SE., East Building, Washington, DC 20590. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:** On September 13, 2011, FTA published an NPRM in the **Federal Register** (76 FR 56363–81) proposing to transform the current FTA rule for project management oversight into a discrete set of managerial principles for sponsors of major capital projects; set standards to enable FTA to more clearly identify whether a sponsor has the management capacity and capability necessary to manage a major capital project; spell out the many facets of project management that must be addressed by a sponsor in the project management plan for a major capital project; change the scope and applicability of the rule; tailor the level of FTA oversight to the costs, complexities, and risks of a major capital project; set forth the means and objectives of FTA risk assessments; and articulate the roles and responsibilities of FTA's project management oversight contractors. On September 20, 2011, FTA staff made an informational presentation on the NPRM during the agency's Construction Roundtable, held in Salt Lake City, which was attended by a number of managers and engineers from sponsors of major capital projects from across the United States. On October 5, 2011, FTA staff made another informational presentation on the NPRM during the New Starts Workshop held in conjunction with the Annual Meeting of the American Public Transportation Association (APTA) in New Orleans, which was attended by a number of managers and planners from sponsors of major capital projects across the nation, and a number of consultants to the transit industry.

By letter dated October 14, 2011, APTA has requested an extension of the comment period to allow its members additional time to consider the many proposals set forth in the NPRM and provide thoughtful comments to the rulemaking docket. Moreover, FTA is aware that the NPRM is of considerable interest throughout the transit, public works, and engineering communities, thus, the agency has scheduled a webinar for November 10, 2011, to summarize the NPRM and answer any questions from the public on any of the subjects related to the NPRM. This webinar is not an opportunity to submit comments to FTA on the NPRM, however. Interested parties must submit their comments to the rulemaking docket as described in this notice, above.

Also, on a related matter, on September 30, 2011, the Federal Transit Administrator issued a *Dear Colleague* letter announcing a more streamlined process for conducting risk assessments on New Starts projects, which are among the types of ''major capital projects'' that are the subject of the NPRM for Capital Project Management. The Administrator's *Dear Colleague* letter, and the accompanying letter of the same date from two of the agency's associate administrators which sets forth additional information on risk assessments, are posted on FTA's public Web site and are available at *http://www.fta.dot.gov/newsroom/12910_13883.html.* FTA staff will be available to answer any questions regarding the *Dear Colleague* letter on risk assessments during the webinar on the NPRM on November 10, 2011.

FTA agrees with APTA that an extension of the comment period is in the public interest. Accordingly, FTA is extending the comment period on the proposed rule from November 14, 2011,

to December 2, 2011. This extension applies to all parts of the NPRM.

Issued on: October 26, 2011.

**Peter Rogoff,**

*Federal Transit Administrator.*

[FR Doc. 2011–28300 Filed 10–31–11; 8:45 am]

BILLING CODE 4910–57–P

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 17

**[Docket No. FWS–R9–ES–2010–0086; MO 92210–0–0010 B6]**

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

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

**ACTION:** Notice of petition finding and initiation of status review; correction, availability of supporting documents, and reopening of public comment period.

**SUMMARY:** On September 1, 2011, we, the U.S. Fish and Wildlife Service, published in the **Federal Register** a 90-day finding on a petition to list all chimpanzees (*Pan troglodytes*) as endangered under the Endangered Species Act of 1973, as amended. We are now correcting an incorrect Docket Number given under **ADDRESSES** in that document. We are also making the petition and the large volume of supporting documents submitted with the petition available to the public on *http://www.regulations.gov.* To allow the public adequate time to review the petition and provide information, we are reopening the public comment period for an additional 90 days. However, please note that information already submitted does not need to be resubmitted.

**DATES:** We request that we receive information on or before January 30, 2012.

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

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

We will post all information received on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us. See the Information Solicited section of our September 1, 2011, notice (76 FR 54423) for more details.

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

**SUPPLEMENTARY INFORMATION:** On September 1, 2011, we published in the **Federal Register** (76 FR 54423) a 90-day finding on a petition to list all chimpanzees (*Pan troglodytes*) as endangered under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.;* Act). This publication opened a public comment period, which ended on October 31, 2011. Upon publication, we initiated a review of the status of the species to determine if listing the entire species as endangered is warranted. To ensure that this status review is comprehensive, we requested scientific and commercial data and other information regarding this species from the public, concerned governmental agencies, the scientific community, industry, or any other interested parties. For details on what kinds of information we are requesting, see our September 1, 2011, document, which can be found on our Web site at *http://www.fws.gov/policy/library/2011/2011–22372.pdf* or at *http://www.regulations.gov.* Based on the status review, we will issue a 12-month finding on the petition, which will address whether the petitioned action is warranted, as provided in section 4(b)(3)(B) of the Act.

During the course of the comment period for our September 1, 2011, petition finding document, it came to our attention that the docket number given under **ADDRESSES** for U.S. mail and hand-delivery was incorrect. Therefore, we are correcting this error. Please be assured that any hard-copy comments submitted on this petition finding to the incorrect docket number that published (FWS–R9–IA–2008–0123) will be routed to the correct docket and do not need to be resubmitted. Moreover, the docket number that published for comments submitted via *http://www.regulations.gov* was correct, so comments submitted electronically have already been posted to the docket and do not need to be resubmitted.

Additionally, we are now making the petition available to the public on *http://www.regulations.gov* (Docket No. FWS–R9–ES–2010–0086). This petition includes a large volume of supporting documents. To allow the public adequate time to review these documents and provide information, we are reopening the comment period for an additional 90 days to allow all interested parties to submit information. However, please note that information already submitted to us does not need to be resubmitted.

Dated: October 18, 2011.

**Hannibal Bolton,**

*(Acting) Director, U.S. Fish and Wildlife Service.*

[FR Doc. 2011–28126 Filed 10–31–11; 8:45 am]

BILLING CODE 4310–55–P

# Notices

Federal Register

Vol. 76, No. 211

Tuesday, November 1, 2011

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Performance Review Board Appointments

**AGENCY:** Office of Human Resource Management, Departmental Management, USDA.

**ACTION:** Notice of appointment.

**SUMMARY:** This notice announces the appointment of the members of the Senior Executive Service (SES), Senior Level (SL), and Scientific or Professional (ST) Performance Review Boards (PRB) for the Department of Agriculture, as required by 5 U.S.C. 4314(c)(4). The PRBs are a group of executives responsible for the oversight of the performance management and compensation processes for SES employees. A PRB reviews the rating official's initial summary ratings of SES employees and makes recommendations for official ratings, performance awards, and base salary increases.

**DATES:** Effective November 7, 2011, through November 18, 2011.

**FOR FURTHER INFORMATION CONTACT:** Karen Messmore, Director, Office of Human Resources Management, *telephone:* (202) 690–2994, *email: karen.messmore@dm.usda.gov,* or Patricia Moore, Director, Executive Resources Division, telephone: (202) 720–8629, email: *patty.moore@dm.usda.gov.*

**SUPPLEMENTARY INFORMATION:** In accordance with 5 U.S.C. 4314(c)(4), the following executives are appointed by mission areas to the USDA, PRB: Pearlie S. Reed, Assistant Secretary for Administration.

**Office of the Secretary (OSEC)**

Baening, Brian; Bittleman, Sarah; Bonnie, Robert; Daschle, Lindsay; Gutter, Karis T.; Harden, Krysta; Hipp, Janie; Holtzman, Max T.; Jett, Carole E.; MacMillian, Anne; Mande, Jerold; Mills, Ann C.; Palmieri, Suzanne; Pfaeffle, Frederick; Willis, Brandon; Wright, Ann.

**Departmental Management and Staff Offices (DM–SO)**

Armstrong, Kent W.; Bange, Gerald A.; Baumes, Harry S.; Bender, Stuart; Bice, Donald; Black, David O.; Brady, Terence M.; Brewer, John; Bumbary Langston, Inga P.; Chasteen, G. Taylor; Christian, Lisa A.; Clanton, Michael W.; Davenport, Peter; Douglas, Walt; Foster, Andrea L.; Golden, John; Gonzales, Oscar; Grahn, David P.; Hawk, Gilbert; Hobbs, Alma; Hohenstein, William G.; Holladay, Jon; Jackson, Yvonne T.; Jenson, William; Jones, Carmen; Jones, Diem Linh L.; Kelley, James M.; Kelley, Janet K.; Leland, Arlean; Leonard, Joe; Linden, Ralph A.; Lowe, Christopher S.; Maddux, Sheryl; McClam, Charles; Messmore, Karen; Milton, William; Moulton, Robert J.; Paul, Matt; Repass, Todd; Robinson, Quentin; Romero, Ramona; Ruiz, Carl-Martin; Shaub, James D.; Shearer, David P.; Silverman, Steven; Smith, Christopher; Speed, Randy L.; Swenson, Richard; Wallace, Charles; Walsh, Thomas M.; Watts, Michael; White, John S.; White, Sharmian L.; Wilburn, Curtis; Wilusz, Lisa; Worthington, Ruth M.; Young, Benjamin; Young, Mike; Zehren, Christopher J.

**Food Safety (FS) and Marketing and Regulatory Programs (MRP)**

Avalos, Ed; Hagen, Elisabeth; Ronholm, Brian.

**Agricultural Marketing Service**

Bailey, Douglas; Barnes, Rex; Coale, Dana; Earnest, Darryl; Epstein, Robert; Keeney, Robert; King, Ellen; McEvoy, Miles; Morris, Craig; Neal, Arthur; Shipman, David.

**Animal and Plant Health Inspection Service**

Beach, Rebecca; Berger, Philip; Brown, Charles; Clark, Larry; Clay, William; Clifford, John; Coursey, Sharon; Diaz-Soltero, Hilda; Dick, Jere; Diez, Jose; Eggert, Paul; Garcia, Phillip; Gipson, Chester; Granger, Larry; Green, Jeffrey; Green, Alan; Gregoire, Michael; Harabin, Victor; Hicks, Ronald; Hill, Jr., Richard; Holland, Marilyn; Huttenlocker, Robert; Jones, Bethany; Kaplan, David; Lautner, Elizabeth; McCluskey, Brian; Mendoza, Jr., Martin; Morgan, Andrea; Munno, Joanne; Myers, Thomas; Parham, Gregory; Purcell, Roberta; Shea, A. Kevin; Shere, Jack; Simmons, Beverly; Smith, Cynthia; Thiermann, Alejandro B.; Zakarka, Christine.

**Food Safety and Inspection Service (FSIS)**

Almanza, Alfred; Carrasco, Lorena; Chen, Vivian; Derfler, Philip; Edelstein, Rachel; Engeljohn, Daniel; Hicks, Cheryl; James, William; Jones, Ronald; Lange, Loren; Nintemann, Terri; Petersen, Kenneth; Riggins, Judith; Roth, Jane; Smith, William; Stevens, Janet; Stuck, Karen; Tawardrous, Armia.

**Grain Inspection, Packers and Stockyards Administration (GIPSA)**

Butler, John; Christian, Alan; Jones, Randall.

**Farm and Foreign Agricultural Services (FFAS)**

Scuse, Michael; Vetter, Darci.

**Foreign Agricultural Service (FAS)**

Foster, Christian; Quick, Bryce; Nuzum, Janet; Riemenschneider, Robert; Sheikh, Patricia.

**Farm Service Agency**

Beyerhelm, Christopher; Cooksie, Carolyn; Harwood, Joy; Monahan, James; Nelson, Bruce; Short, Philip; Stephenson, Robert; Thompson, Candace; Wooden, Michael.

**Risk Management Agency (RMA)**

Alston, Michael; Hand, Michael; Leach, Barbara; Murphy, William; Witt, Timothy.

**Food, Nutrition and Customer Services**

Concannon, Kevin; Thornton, Jane; Alboum, Jonathan; Anand, Rajen; Arena-DeRosa, James; Arnette, Donald; Barnes, Darlene; Carlson, Steven; Holden, Ollice; Ludwig, William; Maupin, Gary; Ng, Allen; O'Connor, Thomas; Pino, Lisa; Rowe, Audrey; Shahin, Jessica; Tribiano, Jeffrey.

**Rural Development (RD)**

Tonsager, Dallas; Cook, Cheryl; O'Brien, Doug.

**Rural Business Service (RBS)**

Canales, Judith Ann; Hadjy, Pandor; Hagy, III, William; Wiley, Curtis A.

**Rural Housing Service**

Allen, Joyce; Banegas, Ronald; Burek, Linda; Davis, Richard; Glendenning,

Roger; Hannah, Thomas; Hooper, Bryan; Jorstad, Van Blake; Parker, Chadwick; Ross, Robert; Thompson, Clyde; Trevino, Tammye.

**Rural Utilities Service (RUS)**

Ackerman, Kenneth; Bojes, Gary; Elgohary, Nivin; Newby, James; Ponti-Lazaruk, Jacqueline; Villano, David; Zufolo, Jessica.

**Natural Resources and Environment (NRE)**

Crandall, Doug; Sherman, Harris.

**Forest Service (FS)**

Agpaoa, Elizabeth; Bailey, Jr., Robin; Bedwell, James; Bryant, Arthur; Carmical, Donna M.; Cleaves, David A.; Coleman, Angela V.; Connaughton, Kent P.; DeCoster, Timothy P.; Dixon, Antione; Doudrick, Robert; Eav, Bov B.; Ferguson, Tony; Ferrell, David L.; Forsgren, Harvey L.; Foster, George S.; Guldin, Richard; Harbour, Thomas C.; Holtrop, Joel D.; Hubbard, James E.; Lugo, Ariel E.; Mangold, Robert D.; Mezainis, Valdis E.; Moore, Randy; Muse, Debra A.; Myers, Jr., Charles L.; Myers, Jacqueline; Nash, Douglas R.; Newman, Corbin L.; Pena, James M.; Pendeleton, Beth G.; Phipps, John E.; Rains, Michael T.; Reaves, Jimmy L.; Ries, Paul F.; Rodriguez-Franco, Carlos; Smith, Gregory C.; Stouder, Deanna J.; Thompson, Robin L.; Tidwell, Thomas; Tooke, Tony; Wagner, Mary A.; Weldon, Leslie; Zimmermann, Anne J.

**Natural Resources Conservation Service (NRCS)**

Burton, Lincoln; Christensen, Thomas; DuVarney, Andree; Erickson, Terrell; Gelburd, Diane; Golden, Micheal; Herbert, Noller; Honeycutt, C. Wayne; Hubbs, Michael; Jordan, Leonard; Kramer, Anthony; Kunze, Stephen; Lawrence, Douglas; Murphy, Virginia; Laur, Michele; Perry, Janet; Reed, Lesia; Salinas, Salvador; Speight, Eloris; Washington, Gary; Weller, Jason; White, Dave.

**Research, Education and Economics (REE)**

Bartuska, Ann; Jacobs-Young, Chavonda; Woteki, Catherine.

**Agricultural Research Service (ARS)**

Allen, Lindsay; Blackburn, Wilbert; Brennan, Deborah; Brenner, Richard; Chandler, Laurence; Cleveland, Thomas; Collins, Wanda; Erhan, Sevin; Gibson, Paul; Hammond, Andrew; Hefferan, Colien; Kappes, Steven; King, Jr., Edgar; Knipling, Edward; Kretsch, Mary; Kunickis, Sheryl; Liu, Simon; Matteri, Robert; McGuire, Michael; McMurtry, John; Narang, Sudhir; Pollak, Emil; Rexroad, Jr., Caird; Sebesta, Paul; Shafer, Steven; Shelton, Carol; Simmons, Mary W.; Spence, Joseph; St. John, Judith; Swietlik, Dariusz; Tu, Shu-I; Upchurch, Dan; Yates, Allison; Zhang, Howard; Zuelke, Kurt.

**Economic Research Service (ERS)**

Bianchi, Ronald; Bohman, Mary; Kort, John; Thompson, Sarahelen; Unnevehr, Laurian.

**National Agricultural Statistics Service (NASS)**

Bass, Robert; Bennett, Norman; Clark, Cynthia; Goodwin, Janice; Hamer, Jr., Hubert; Harris, James Mark; Picanso, Robin; Prusacki, Joseph; Reilly, Joseph; Valivullah, Michael.

**National Institute of Food and Agriculture (NIFA)**

Boteler, Franklin; Brandon, Andrea; Broussard, Meryl; Desbois, Michel; Otto, Ralph; Sheely, Deborah.

* * * * *

Signed in Washington, DC, this day: October 21, 2011.

**Thomas J. Vilsack,**

*Secretary.*

[FR Doc. 2011–28225 Filed 10–31–11; 8:45 am]

BILLING CODE 3410–XD–P

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Madera County Resource Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting cancellation.

**SUMMARY:** The Madera County Resource Advisory Committee was scheduled to meet November 15, 2011 in North Fork, California. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) (the Act) and operates in compliance with the Federal Advisory Committee Act. The committee's charter expired in October 2011 and its renewal is under review by the Secretary of Agriculture. In compliance with the Federal Advisory Committee Act the committee will not be meeting until the charter is renewed.

**DATES:** The cancelled meeting was scheduled for Wednesday, November 15, 2011, 6:30 p.m.

**ADDRESSES:** The canceled meeting would have been held at the Bass Lake Ranger District Office, 57003 Road 225, North Fork, California 93643. Written comments concerning this cancellation may be submitted to the Designated Federal Officer.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at 57003 Road 225, North Fork, California 93643. Please call ahead to (559) 877–2218 x3159 to facilitate entry into the building to view comments.

**FOR FURTHER INFORMATION CONTACT:** David Martin, Designated Federal Officer, Sierra National Forest, 57003 Road 225, North Fork, California 93643: *Telephone:* (559) 877–2218 or email at: *dmartin05@fs.fed.us*.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800) 877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

Dated: October 26, 2011.

**David W. Martin,**

*Designated Federal Officer, Sierra National Forest RAC.*

[FR Doc. 2011–28220 Filed 10–31–11; 8:45 am]

BILLING CODE P

## DEPARTMENT OF COMMERCE

### Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

*Agency:* U.S. Census Bureau.

*Title:* 2012 Economic Census Covering the Manufacturing Sector.

*OMB Control Number:* 0607–0938.

*Form Number(s):* MA–10000, MC–31000, MC–32000.

*Type of Request:* Reinstatement of a previously approved collection.

*Burden Hours:* 693,000.

*Number of Respondents:* 168,000.

*Average Hours per Response:* 4 hours and 8 minutes.

*Needs and Uses:* The 2012 Economic Census covering the Manufacturing Sector will use a mail canvass, supplemented by data from federal administrative records, to measure the economic activity of more than 291,000 establishments classified in the North American Industry Classification System (NAICS).

The manufacturing sector comprises establishments engaged in the mechanical, physical, or chemical transformation of materials, substances, or components into new products. The assembling of component parts of

manufactured products is considered manufacturing, except in cases where the activity is appropriately classified in Sector 23, Construction. The economic census will produce basic statistics by industry for number of establishments, payroll, employment, value of shipments, value added, capital expenditures, depreciation, materials consumed, selected purchased services, electric energy used, and inventories held.

The economic census is the primary source of facts about the structure and functioning of the Nation's economy and features unique industry and geographic detail. Economic census statistics serve as part of the framework for the national accounts and provide essential information for government, business, and the general public. The Federal government (*i.e.,* Bureau of Economic Analysis (BEA), Bureau of Labor Statistics (BLS)) uses information from the economic census as an important part of the framework for the national income and product accounts, input-output tables, economic indexes, and other composite measures that serve as the factual basis for economic policymaking, planning, and program administration. Further, the census provides sampling frames and benchmarks for current surveys which track short-term economic trends, serve as economic indicators, and contribute critical source data for current estimates of the gross domestic product. State and local governments rely on the economic census as a unique source of comprehensive economic statistics for small geographic areas for use in policymaking, planning, and program administration. Finally, industry, business, academia, and the general public use information from the economic census for evaluating markets, preparing business plans, making business decisions, developing economic models and forecasts, conducting economic research, and establishing benchmarks for their own sample surveys.

If the economic census was not conducted, the Federal government would lose vital source data and benchmarks for the national accounts, input-output tables, and other composite measures of economic activity, causing a substantial degradation in the quality of these important statistics. Further, the government would lose critical benchmarks for current sample-based economic surveys and an essential source of detailed, comprehensive economic information for use in policymaking, planning, and program administration.

*Affected Public:* Business or other for-profit.

*Frequency:* One-time.

*Respondent's Obligation:* Mandatory.

*Legal Authority:* This information collection is part of the 2012 Economic Census, which is required by law under Title 13, United States Code (U.S.C.). Section 131 of this statute directs the taking of a census at five-year intervals. Section 224 makes reporting mandatory.

*OMB Desk Officer:* Brian Harris-Kojetin, (202) 395–7314.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Brian Harris-Kojetin, OMB Desk Officer either by fax (202) 395–7245) or email (*bharrisk@omb.eop.gov*).

Dated: October 26, 2011.

**Glenna Mickelson,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 2011–28140 Filed 10–31–11; 8:45 am]

**BILLING CODE 3510–07–P**

## DEPARTMENT OF COMMERCE

### Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

*Agency:* U.S. Census Bureau.

*Title:* 2012 Economic Census Covering the Construction Sector.

*OMB Control Number:* 0607–0935.

*Form Number(s):* CC–23601, CC–23701, CC–23801, CC–23802, CC–23803, and CC–23804.

*Type of Request:* Reinstatement, with change, of an expired collection.

*Burden Hours:* 299,000.

*Number of Respondents:* 130,000.

*Average Hours per Response:* 2 hours and 18 minutes.

*Needs and Uses:* The 2012 Economic Census covering the Construction Sector will use a mail canvass to measure the economic activity of nearly 650,000 establishments classified in the North American Industry Classification System (NAICS).

The construction sector comprises establishments primarily engaged in the construction of buildings and other structures, additions, alterations, reconstruction, installation, and maintenance and repairs. The economic census will produce basic statistics by industry for number of establishments, value of construction work, payroll, employment, selected costs, depreciable assets, and capital expenditures. It also will yield a variety of subject statistics, including estimates of type of construction work done, kind of business activity, and other industry-specific measures. Industry statistics will be summarized for the United States and states.

The economic census is the primary source of facts about the structure and functioning of the Nation's economy and features unique industry and geographic detail. Economic census statistics serve as part of the framework for the national accounts and provides essential information for government, business, and the general public. The Economic Census covering the Construction Sector collects information from contractors of all types of construction. Among the important statistics produced by the construction sector are estimates of the value of construction work during the covered year. The Federal government uses the information from the economic census as an important part of the framework for the national accounts, input-output measures, key economic indexes, and other estimates that serve as the factual basis for economic policymaking, planning, and program administration. State and local governments rely on the economic census as a unique source of comprehensive economic statistics for small geographical areas for use in policymaking, planning, and program administration. Finally, industry, business, and the general public use data from the economic census for economic forecasts, market research, benchmarks for their own sample-based surveys, and business and financial decisionmaking.

If the economic census was not conducted, the Federal government would lose vital source data and benchmarks for the national accounts, the input-output tables, and other composite measures of economic activity. Further, the government would lose critical benchmarks for current, sample-based economic surveys and an essential source of detailed, comprehensive economic information for use in policymaking and program administration.

*Affected Public:* Business or other for-profit.

*Frequency:* Every 5 years.

*Respondent's Obligation:* Mandatory.

*Legal Authority:* This information collection is part of the 2012 Economic Census, which is required by law under Title 13, United States Code (U.S.C.). Section 131 of this statute directs the taking of a census at 5-year intervals. Section 224 makes reporting mandatory.

*OMB Desk Officer:* Brian Harris-Kojetin, (202) 395–7314.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Brian Harris-Kojetin, OMB Desk Officer either by fax (202) 395–7245 or email (*bharrisk@omb.eop.gov*).

Dated: October 26, 2011.

**Glenna Mickelson,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 2011–28167 Filed 10–31–11; 8:45 am]

**BILLING CODE 3510–07–P**

## DEPARTMENT OF COMMERCE

### Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

*Agency:* U.S. Census Bureau.

*Title:* 2012 Economic Census Covering the Mining Sector.

*OMB Control Number:* 0607–0939.

*Form Number(s):* Various.

*Type of Request:* Reinstatement of a previously approved collection.

*Burden Hours:* 72,920.

*Number of Respondents:* 16,400.

*Average Hours per Response:* 4 hours and 27 minutes.

*Needs and Uses:* The 2012 Economic Census covering the Mining Sector will use a mail canvass, supplemented by data from federal administrative records, to measure the economic activity of approximately 26,000 mining establishments classified in the North American Industry Classification System (NAICS).

The mining sector of the economic census distinguishes two basic activities: Mine operation and mining support activities. The economic census will produce basic statistics for number of establishments, shipments, payroll, employment, detailed supplies and fuels consumed, depreciable assets, inventories, and capital expenditures. It also will yield a variety of subject statistics, including shipments by product line, type of operation, size of establishments and other industry-specific measures.

The economic census is the primary source of facts about the structure and functioning of the Nation's economy and features unique industry and geographic detail. Economic census statistics serve as part of the framework for the national accounts and provides essential information for government, industry, business, and the general public. The federal government uses information from the economic census as an important part of the framework for the national accounts, input-output measures, key economic indexes, and other estimates that serve as the factual basis for economic policy-making, planning, and program administration. State and local governments rely on the economic census as a unique source of comprehensive economic statistics for small geographical areas for use in policy-making, planning, and program administration. Finally, industry, business, and the general public use data from the economic census for economic forecasts, market research, benchmarks for their own sample-based surveys, and business and financial decision making.

If the economic census was not conducted, the federal government would lose vital source data and benchmarks for the national accounts, input-output tables, and other composite measures of economic activity, causing substantial degradation in the quality of these important statistics. Further, the government would lose critical benchmarks for current, sample-based economic surveys and an essential source of detailed, comprehensive economic information for use in policy-making and program administration.

*Affected Public:* Business or other for-profit.

*Frequency:* One-time.

*Respondent's Obligation:* Mandatory.

*Legal Authority:* This information collection is part of the 2012 Economic Census, which is required by law under Title 13, United States Code (U.S.C.). Section 131 of this statute directs the taking of a census at 5-year intervals. Section 224 makes reporting mandatory.

*OMB Desk Officer:* Brian Harris-Kojetin, (202) 395–7314.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Brian Harris-Kojetin, OMB Desk Officer either by fax (202) 395–7245) or email (*bharrisk@omb.eop.gov*).

Dated: October 26, 2011.

**Glenna Mickelson,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 2011–28161 Filed 10–31–11; 8:45 am]

**BILLING CODE 3510–07–P**

## DEPARTMENT OF COMMERCE

### U.S. Census Bureau

### Proposed Information Collection; Comment Request; Federal Statistical System Public Opinion Survey

**AGENCY:** U.S. Census Bureau.

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** To ensure consideration, written comments must be submitted on or before January 3, 2012.

**ADDRESSES:** Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Jennifer Hunter Childs, *Jennifer.hunter.childs@census.gov* (301) 763–4927, U.S. Census Bureau, Center for Survey Measurement, 4600 Silver Hill Road, Washington, DC 20233.

**SUPPLEMENTARY INFORMATION:**

## I. Abstract

From December 2009 through April 2010, the U.S. Census Bureau contracted a private survey firm to conduct a nightly poll of public attitudes toward the 2010 Census, public awareness of Census promotional efforts, and intent to mail back their Census forms. The nationally representative sample of 200 respondents per night was rolled up into 7 day moving estimates that provided nearly immediate feedback on public reaction to national events that might influence perceptions of the 2010 Census, and on the success or failure of our communications campaign messaging. The Census Bureau used this feedback to make communication campaign decisions during the 2010 Census that contributed to achieving a mail-back participation rate of 74%, despite increased vacancy rates due to the economic downturn, increased public skepticism about the role of the Federal Government, and a general decline in survey response rates during the decade that crossed both public and private sector surveys.

Moving forward the Census Bureau is seeking ways to reverse the decline in response rates for its ongoing surveys to avoid both increasing operational costs and potential declines in data quality. The information collected will assist the Census Bureau in addressing attitudes, beliefs, and concerns the public may have regarding its trust (confidence) in federal statistics and in the collection of statistical information by the federal government from the public, as well attitudes toward and knowledge of the statistical uses of administrative records. The data will also allow us to understand how current events impact public perception towards federal statistics.

Ultimately, this public opinion data will enable the Census Bureau to better understand public perceptions, which will provide guidance for communicating with the public and for future planning of data collection that reflects a good understanding of public perceptions and concerns. Because all federal statistical agencies are also these facing issues of declining response rates and increasing costs in a time of constrained budgets, the Census Bureau will share the results of these surveys with other federal statistical agencies, including those that sponsor surveys conducted by the Census Bureau, to maximize the utility of this information collection and ultimately, the quality and efficiency of federal statistics.

## II. Method of Collection

The Census Bureau plans to add up to 25 questions to a sample of cases in an ongoing survey, the Gallup Daily Tracking, which is a daily survey asking U.S. adults about various political, economic, and well-being topics. The survey includes sample coverage in Alaska and Hawaii, and relies on a three-call design to reach respondents not contacted on the initial attempt. The survey methods for the Gallup Daily Tracking rely on live interviews, dual-frame sampling (which includes listed landline interviewing as well as cell phone sampling to reach those in cell phone-only households, cell phone-mostly households, and unlisted landline-only households), and a random selection method for choosing respondents within the household. The survey conducts Spanish-language interviews for respondents who speak only Spanish. The Census Bureau will ask questions of 200 respondents who participate in the Gallup survey most evenings from January 3, 2012 through September 20, 2013.

## III. Data

*OMB Control Number:* None.
*Form Number:* None.
*Type of Review:* Regular submission.
*Affected Public:* Individuals or households.
*Estimated Number of Respondents:* 70,000.
*Estimated Time per Response:* 10 minutes.
*Estimated Total Annual Burden Hours:* 11,667.
*Estimated Total Annual Cost:* $0.
*Respondent's Obligation:* Voluntary.
*Legal Authority:* Title 13 U.S.C. chapter 5.

## IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: October 27, 2011.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 2011–28212 Filed 10–31–11; 8:45 am]

BILLING CODE 3510–07–P

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## DEPARTMENT OF COMMERCE

## Foreign-Trade Zones Board

**[Order No. 1794]**

## Approval for Expanded Manufacturing Authority; Foreign-Trade Subzone 158D Nissan North America, Inc.; (Motor Vehicles) Canton, MS

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order.

*Whereas,* Nissan North America, Inc. (NNA), operator of Subzone 158D, has requested an expansion of the scope of manufacturing authority within Subzone 158D in Canton, Mississippi, and authority to shift production between Subzone 158D and Subzone 78A, as needed, provided that NNA's combined activity at the two subzones remains consistent with the products, components and production capacity authorized individually for Subzone 158D and Subzone 78A (FTZ Docket 14–2011, filed 2–22–2011);

*Whereas,* notice inviting public comment has been given in the **Federal Register** (76 FR 11196, 3/1/2011) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and

*Whereas,* the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

*Now, therefore,* the Board hereby orders:

The application to expand the scope of manufacturing authority under zone procedures within Subzone 158D and to shift authorized production between Subzone 158D and Subzone 78A, as described in the application and **Federal Register** notice, is approved, subject to the FTZ Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 24th day of October 2011.

**Ronald K. Lorentzen,**

*Deputy Assistant Secretary for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.*

[FR Doc. 2011–28326 Filed 10–31–11; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF COMMERCE

## Foreign-Trade Zones Board

**[Order No. 1796]**

## Reorganization of Foreign-Trade Zone 37 (Expansion of Service Area) Under Alternative Site Framework Orange County, NY

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

*Whereas,* the Board adopted the alternative site framework (ASF) (74 FR 1170, 01/12/09; correction 74 FR 3987, 01/22/09; 75 FR 71069–71070, 11/22/10) as an option for the establishment or reorganization of general-purpose zones;

*Whereas,* Orange County, grantee of Foreign-Trade Zone 37, submitted an application to the Board (FTZ Docket 42–2011, filed 6/15/2011) for authority to expand the service area of the zone to include Duchess County, as described in the application, adjacent to the New York/Newark Customs and Border Protection port of entry;

*Whereas,* notice inviting public comment was given in the **Federal Register** (76 FR 36080, 06/21/11) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

*Whereas,* the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

*Now, therefore,* the Board hereby orders:

The application to reorganize FTZ 37 to expand the service area under the alternative site framework is approved, subject to the FTZ Act and the Board's regulations, including Section 400.28, and to the Board's standard 2,000-acre activation limit for the overall general-purpose zone project.

Signed at Washington, DC, this 24th day of October 2011.

**Ronald K. Lorentzen,**

*Deputy Assistant Secretary for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.*

[FR Doc. 2011–28325 Filed 10–31–11; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF COMMERCE

## International Trade Administration

**[A–201–830]**

## Carbon and Certain Alloy Steel Wire Rod From Mexico: Notice of Preliminary Results of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** In response to timely requests, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on carbon and certain alloy steel wire rod (wire rod) from Mexico covering the period of review (POR) October 1, 2009, through September 30, 2010. This review covers one producer/exporter of subject merchandise: ArcelorMittal Las Truchas, S.A. de C.V. (AMLT).[1]

We preliminarily determine that, during the POR, AMLT and its affiliate, ArcelorMittal International America LLC (AMIA) made sales of subject merchandise at less than normal value (NV). If these preliminary results are adopted in the final results of this administrative review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries of subject merchandise during the POR.

Interested parties are invited to comment on these preliminary results. The Department will issue the final results within 120 days after publication of the preliminary results.

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

**FOR FURTHER INFORMATION CONTACT:** Jolanta Lawska, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–8362.

**SUPPLEMENTARY INFORMATION:**

### Background

On October 29, 2002, the Department of Commerce (the Department) published in the **Federal Register** the antidumping duty order on wire rod from Mexico. *See Notice of Antidumping Duty Orders: Carbon and Certain Alloy Steel Wire Rod from Brazil, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine,* 67 FR 65945 (October 29, 2002) (Wire Rod Orders). On October 1, 2010, the Department published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order on wire rod from Mexico. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 75 FR 60733 (October 1, 2010). On October 29, 2010, in accordance with 19 CFR 351.213(b), the Department received a timely request from Nucor Corporation (Nucor) and Cascade Steel Rolling Mills, Inc. (Cascade Steel), domestic producers of carbon wire rod, to conduct an administrative review of the sales of Aceros San Luis SA. de C.V. (Aceros), Arcelor Mittal Las Truchas, S.A. de C.V. (AMLT), DeAcero de C.V. (DeAcero), Siderurgica Lazaro Cardenas Las Truchas S.A. de C.V. (Sicartsa), and Talleres y Aceros S.A. de C.V. (Talleres). On October 29, 2010, in accordance with 19 CFR 351.213(b), the Department also received a timely request from ArcelorMittal USA, Inc. (ArcelorMittal), Gerdau Ameristeel US Inc. (Gerdau), and Evraz Rocky Mountain Steel (Evraz), domestic producers of carbon and certain alloy steel wire rod, to conduct an administrative review of the sales of AMLT, Sicartsa,[2] Ternium Mexico S.A. de C.V. (Ternium), DeAcero, Aceros, Talleres, and Altos Hornos de Mexico S..A. de C.V. (Altos Hornos). On November 1, 2010, AMLT, a Mexican producer of the subject merchandise requested an administrative review of its exports subject to the antidumping order referenced above.

On November 29, 2010, the Department published in the **Federal Register** the notice of initiation of this antidumping duty administrative review with respect to the following companies for the period October 1, 2009, through September 30, 2010: Aceros, Altos

[1] We determined that AMLT is the successor-in-interest to Sicartsa in an antidumping changed circumstances review. The final **Federal Register** notice was published on July 29, 2011. *See Final Results of Antidumping Duty Changed Circumstances Review: Carbon and Certain Alloy Steel Wire Rod from Mexico,* (76 FR 45509 (July 29, 2011)).

[2] ArcelorMittal did not join in the request for a review of AMLT or Sicartsa. On February 28, 2011, ArcelorMittal withdrew its participation in this administrative review.

Hornos, AMLT, DeAcero, Sicartsa, Talleres, and Ternium. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 75 FR 73036 (November 29, 2010) (*Initiation Notice*). Subsequently, on March 24, 2011, the Department rescinded the review with respect to DeAcero, Aceros, Talleres, Ternium, and Altos Hornos. *See Carbon and Certain Alloy Steel Wire Rod from Mexico: Notice of Partial Rescission of Antidumping Duty Administrative Review,* 76 FR 16607 (March 24, 2011).

The Department selected AMLT/Sicartsa as mandatory respondents in this review.[3] On January 10, 2011, the Department sent the initial questionnaire covering sections A through D to AMLT. On February 17, 2011, AMLT submitted its section A questionnaire response to the Department's questionnaire. On February 24, 2011, AMLT submitted its sections B through C response to the Department's questionnaire. On March 3, 2011, AMLT submitted its section D response to the Department's questionnaire. On March 21, 2011, the Department sent to AMLT a supplemental questionnaire for section D and received the response on April 25, 2011. On March 28, 2011, the Department sent to AMLT a supplemental questionnaire for sections A through C and received the response on May 5, 2011. On April 28, 2011, the Department sent to AMLT a second supplemental questionnaire for sections A through C and received the response on May 12, 2011. On April 28, 2011, the Department sent to AMLT a third supplemental questionnaire for sections A through C. We received the response on May 23, 2011. On July 5, 2011, the Department issued a second supplemental section D questionnaire, and received the response on July 22, 2011. On August 4, 2011, the Department issued a third supplemental section D questionnaire, and received the response on September 1, 2011. On May 3, 2011, Gerdau Ameristeel US Inc. and Evraz Rocky Mountain Steel, a division of Evraz, Inc. NA (petitioners) submitted comments on the April 28, 2011, supplemental questionnaire response from AMLT. On September 16, 2011, petitioners submitted comments for the Department's consideration in its preliminary analysis of the questionnaire responses of AMLT. On June 10, 2011, the Department published a notice extending the time period for issuing the preliminary results of the administrative review from July 3, 2011, to October 31, 2011. *See Carbon and Certain Alloy Steel Wire Rod from Mexico: Extension of Time Limits for the Preliminary Results of Fifth Antidumping Duty Administrative Review,* 76 FR 34044 (June 10, 2011).

**Verification**

Pursuant to section 782(i) of the Tariff Act of 1930, as amended (the Act), the Department conducted verification of the questionnaire responses submitted by AMLT in March, April, and May 2011. *See* Memorandum to the File, ''Verification of the Sales Response of ArcelorMittal las Truchas S.A. de C.V. (AMLT) in the Antidumping Review of Carbon and Certain Alloy Steel Wire Rod from Mexico,'' (July 12, 2011). The verification report is available on file in the Central Records Unit (CRU), Room 7046 of the Department's main building.

On June 8, 2011, the Department received a revised home market and U.S. market sales database based on minor corrections submitted at the sales verification of AMLT in Mexico City, Mexico. On June 30, 2011, the Department also received a revised U.S. market database based on minor corrections submitted at the sales verification of AMLT's affiliate in Chicago.

**Scope of the Order**

The merchandise subject to this order is certain hot-rolled products of carbon steel and alloy steel, in coils, of approximately round cross section, 5.00 mm or more, but less than 19.00 mm, in solid cross-sectional diameter.

Specifically excluded are steel products possessing the above-noted physical characteristics and meeting the Harmonized Tariff Schedule of the United States (HTSUS) definitions for (a) Stainless steel; (b) tool steel; (c) high nickel steel; (d) ball bearing steel; and (e) concrete reinforcing bars and rods. Also excluded are (f) free machining steel products (*i.e.,* products that contain by weight one or more of the following elements: 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.04 percent of phosphorus, more than 0.05 percent of selenium, or more than 0.01 percent of tellurium).

Also excluded from the scope are 1080 grade tire cord quality wire rod and 1080 grade tire bead quality wire rod. This grade 1080 tire cord quality rod is defined as: (i) Grade 1080 tire cord quality wire rod measuring 5.0 mm or more but not more than 6.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no non-deformable inclusions greater than 20 microns and no deformable inclusions greater than 35 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.15 mm; (vi) capable of being drawn to a diameter of 0.30 mm or less with 3 or fewer breaks per ton, and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.006 percent or less of nitrogen, and (5) not more than 0.15 percent, in the aggregate, of copper, nickel and chromium.

This grade 1080 tire bead quality rod is defined as: (i) Grade 1080 tire bead quality wire rod measuring 5.5 mm or more but not more than 7.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no non-deformable inclusions greater than 20 microns and no deformable inclusions greater than 35 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.2 mm; (vi) capable of being drawn to a diameter of 0.78 mm or larger with 0.5 or fewer breaks per ton; and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of soluble aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.008 percent or less of nitrogen, and (5) either not more than 0.15 percent, in the aggregate, of copper, nickel and chromium (if chromium is not specified), or not more than 0.10 percent in the aggregate of copper and nickel and a chromium content of 0.24 to 0.30 percent (if chromium is specified).

For purposes of the grade 1080 tire cord quality wire rod and the grade 1080 tire bead quality wire rod, an inclusion will be considered to be deformable if its ratio of length (measured along the axis—that is, the direction of rolling—of the rod) over thickness (measured on the same inclusion in a direction perpendicular to the axis of the rod) is equal to or greater than three. The size of an inclusion for purposes of the 20 microns and 35 microns limitations is the measurement of the largest dimension observed on a longitudinal section

[3] *See* Memorandum from Eric B. Greynolds, Program Manager, to Melissa Skinner, Director, Operations, Office 3, entitled ''Respondent Selection,'' dated January 10, 2011.

measured in a direction perpendicular to the axis of the rod. This measurement methodology applies only to inclusions on certain grade 1080 tire cord quality wire rod and certain grade 1080 tire bead quality wire rod that are entered, or withdrawn from warehouse, for consumption on or after July 24, 2003.

The designation of the products as ''tire cord quality'' or ''tire bead quality'' indicates the acceptability of the product for use in the production of tire cord, tire bead, or wire for use in other rubber reinforcement applications such as hose wire. These quality designations are presumed to indicate that these products are being used in tire cord, tire bead, and other rubber reinforcement applications, and such merchandise intended for the tire cord, tire bead, or other rubber reinforcement applications is not included in the scope. However, should the petitioners or other interested parties provide a reasonable basis to believe or suspect that there exists a pattern of importation of such products for other than those applications, end-use certification for the importation of such products may be required. Under such circumstances, only the importers of record would normally be required to certify the end use of the imported merchandise.

All products meeting the physical description of subject merchandise that are not specifically excluded are included in this scope.

The products subject to this order are currently classifiable under subheadings 7213.91.3000, 7213.91.3010, 7213.91.3011, 7213.91.3015, 7213.91.3020, 7213.91.3090, 7213.91.3091, 7213.91.3092, 7213.91.3093, 7213.91.4500, 7213.91.4510, 7213.91.4590, 7213.91.6000, 7213.91.6010, 7213.91.6090, 7213.99.0030, 7213.99.0031, 7213.99.0038, 7213.99.0090, 7227.20.0000, 7227.20.0010, 7227.20.0020, 7227.20.0030, 7227.20.0080, 7227.20.0090, 7227.20.0095, 7227.90.6010, 7227.90.6020, 7227.90.6050, 7227.90.6051 7227.90.6053, 7227.90.6058, 7227.90.6059, 7227.90.6080, and 7227.90.6085 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

**Product Comparisons**

In accordance with section 771(16) of the Act, all products produced by the respondent covered by the description in the Scope of the Order section, above, and sold in Mexico during the POR are considered to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We have relied on eight criteria to match U.S. sales of subject merchandise to comparison market sales of the foreign like product: Grade range, carbon content range, surface quality, deoxidization, maximum total residual content, heat treatment, diameter range, and coating. These characteristics have been weighted by the Department where appropriate. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics listed above. Where there were no sales of similar merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to constructed value (CV).

**Comparisons to Normal Value**

To determine whether sales of wire rod from Mexico were made in the United States at less than NV, we compared the export price (EP) or constructed export price (CEP) to the NV, as described in the ''Export Price and Constructed Export Price'' and ''Normal Value'' sections of this notice. In accordance with section 777A(d)(2) of the Act, we calculated monthly weighted-average prices for NV and compared these to individual U.S. transactions.

**Export Price and Constructed Export Price**

For the price to the United States, we used, as appropriate, EP or CEP, in accordance with sections 772(a) and (b) of the Act. We calculated EP when the merchandise was sold by the producer or exporter outside the United States directly to the first unaffiliated purchaser in the United States prior to importation and when CEP was not otherwise warranted based on the facts on the record. We calculated CEP for those sales where a person in the United States, affiliated with the foreign exporter or acting for the account of the exporter, made the sale to the first unaffiliated purchaser in the United States of the subject merchandise. We based EP and CEP on the packed prices charged to the first unaffiliated customer in the United States and the applicable terms of sale.

In accordance with section 772(c)(2) of the Act, we made deductions, where appropriate, for movement expenses including inland freight from plant or warehouse to port of exportation, warehousing expense incurred in the country of manufacture, international freight, marine insurance, U.S. and foreign brokerage and handling charges, discharge survey fees and other transportation expenses. We also adjusted EP for billing adjustments, discounts and rebates.

For CEP, in accordance with section 772(d)(1) of the Act, when appropriate, we deducted from the starting price those selling expenses that were incurred in selling the subject merchandise in the United States, including direct selling expenses (cost of credit). In addition, we deducted indirect selling expenses that related to economic activity in the United States. These expenses include inventory carrying costs incurred by affiliated U.S. distributors. We also deducted from CEP an amount for profit in accordance with sections 772(d)(3) and (f) of the Act.

**Normal Value**

*A. Selection of Comparison Markets*

To determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared AMLT's volume of home market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise. Pursuant to sections 773(a)(1)(B) of the Act, because AMLT had an aggregate volume of home market sales of the foreign like product that was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market was viable.

*B. Cost of Production Analysis*

In the most recently completed segment of the proceeding in which AMLT participated, the Department found that the respondent made sales in the home market at prices below the cost of producing the merchandise and excluded such sales from the calculation of NV. *See Notice of Final Results of Antidumping Duty Administrative Review, Carbon and Certain Alloy Steel Wire Rod from Mexico,* 71 FR 27989 (May 15, 2006). Therefore, pursuant to section 773(b)(2)(A)(ii) of the Act, the Department determined that there were reasonable grounds to believe or suspect that AMLT made sales of wire rod in Mexico at prices below the cost of production (COP) in this administrative review. As a result, we initiated a COP inquiry for AMLT.

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated a weighted-average COP based on the sum of the cost of materials and fabrication for the

foreign like product, plus amounts for selling, general, and administrative expenses, packing expenses, and interest expense. We relied on the cost data submitted by AMLT in their section D responses except as noted below.

1. We recalculated AMLT's G&A and financial expense, by multiplying the G&A and financial expense ratio by the sum of the costs reported in the following fields: TOTCOM, VARADU, FIXADU and FIXADU2.[4] *See* Memorandum from Laurens van Houten, Senior Accountant, to Neal M. Halper, Director, Office of Accounting, entitled ''Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results—ArcelorMittal las Truchas, S.A. de C.V'' (Cost Calculation Memorandum), dated October 31, 2011.

2. We allocated the entire amount of the AMLT's ''nonoperational plant or low production expenses'' over AMLT's cost of goods sold, and applied the adjustment factor to the total cost of manufacture (TOTCOM) of all control numbers (CONNUMs) produced.

3. AMLT inadvertently applied a 2009 adjustment factor to 2010 costs and also the 2010 adjustment factor to 2009 costs. We corrected this error by applying the 2009 factor to 2009 costs and the 2010 factor to the 2010 costs.

2. Test of Comparison Market Prices

We examined the cost data and determined that our quarterly cost methodology is not warranted and, therefore, we have applied our standard methodology of using annual costs based on the reported data, adjusted as described in the ''Cost of Production'' section above. Because we are applying our standard annual-average cost test in these preliminary results, we have also applied our standard cost-recovery test with no adjustments.

As required under section 773(b)(2) of the Act, we compared the weighted-average COP to the per-unit price of the comparison market sales of the foreign like product, to determine whether these sales were made at prices below the COP within an extended period of time in substantial quantities, and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time. We determined the net comparison market prices for the below-cost test by subtracting from the gross unit price any applicable movement charges, discounts, rebates, direct and indirect selling expenses and packing expenses which were excluded from COP for comparison purposes.

3. Results of COP Test

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product during the POR were at prices less than the COP, we determined such sales to have been made in ''substantial quantities.'' *See* section 773(b)(2)(C) of the Act. Further, the sales were made within an extended period of time, in accordance with section 773(b)(2)(B) of the Act, because we examined below-cost sales occurring during the entire POR. In such cases, because we compared prices to POR-average costs, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, for purposes of this administrative review, we disregarded below-cost sales of a given product and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

*C. Calculation of Normal Value Based on Comparison Market Prices*

We calculated NV based on ex-works, free on board (FOB) or delivered prices to comparison market customers. We made deductions from the starting price, when appropriate, for inland freight, warehousing, inland insurance, discounts, and rebates. In accordance with sections 773(a)(6)(A) and (B) of the Act, we added U.S. packing costs and deducted home market packing, respectively. In addition, we made circumstances of sale (COS) adjustments for direct expenses including imputed credit expenses, commissions, and billing adjustments in accordance with section 773(a)(6)(C)(iii) of the Act.

When comparing U.S. sales with comparison market sales of similar, but not identical, merchandise, we also made adjustments for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the variable cost of manufacturing for the foreign like product and subject merchandise, using weighted-average costs.

Further, pursuant to section 776(b) of the Act, we applied partial adverse facts available (AFA) with regard to AMLT's inland freight expense in the home market as a replacement for the non-verifiable data at verification in the INLFTCH field of the home market database. Specifically, we applied the lowest expense reported in the INLFTCH field in the home market database for all CONNUMs containing non-verified INLFTCH expenses. *See* Memorandum to the File ''Calculation Memorandum for ArcelorMittal Las Truchas S.A. de C.V. (AMLT)'' (Preliminary Sales Calculation Memorandum), dated October 31, 2011.

*D. Level of Trade*

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP or CEP transaction. In identifying LOTs for EP and comparison market sales (*i.e.,* NV based on home market), we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. *See Micron Technology, Inc.* v. *United States,* 243 F.3d 1301, 1314 (Fed. Cir. 2001).

To determine whether NV sales are at a different LOT than EP or CEP transactions, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act. For CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision).

In the home market, AMLT reported sales made through one LOT corresponding to one channel of distribution. In the U.S. market, AMLT reported two LOTs corresponding to two channels of distribution. AMLT made direct sales to unaffiliated end users and through its U.S. affiliate. We have determined that the sales made by AMLT directly to U.S. customers are EP sales and those made by AMLT's

[4] TOTCOM = Total Cost of Manufacture.
VARADU = Adjustment Made to Variable Costs.
FIXADU = First Adjustment Made to Fixed Costs.
FIXADU2 = Second Adjustment Made to Fixed Costs.

affiliated U.S. reseller constitute CEP sales. Furthermore, we have found that U.S. sales and home market sales were made at different LOT. AMLT requested that a CEP offset should be made in calculating the normal value because according to AMLT, the activities in the home market are at a more advanced level of trade. Accordingly, we preliminarily find it necessary to make a CEP offset. For further explanation of our LOT analysis, see Preliminary Sales Calculation Memorandum.

**Preliminary Results of Review**

As a result of our review, we preliminarily determine that the following weighted-average dumping margin exists for the period October 1, 2009, through September 30, 2010:

| Producer/Manufacturer | Weighted-Average margin |
|---|---|
| AMLT | 5.45% |

The Department will disclose calculations performed within five days of the date of publication of this notice to the parties of this proceeding in accordance with 19 CFR 351.224(b). An interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 37 days after the date of publication, or the first working day thereafter, unless the Department alters the date pursuant to 19 CFR 351.310(d). Interested parties may submit case briefs no later than 30 days after the date of publication of these preliminary results of review. *See* 19 CFR 351.309(c)(ii). Rebuttal briefs limited to issues raised in the case briefs may be filed no later than 35 days after the date of publication. *See* 19 CFR 351.309(d). Parties who submit arguments are requested to submit with the argument (1) A statement of the issue, and (2) a brief summary of the argument. The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, or at a hearing, within 120 days of publication of these preliminary results. *See* section 751(a)(3)(A) of the Act.

**Assessment Rate**

The Department shall determine and CBP shall assess antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b)(1), the Department calculates an assessment rate for each importer of the subject merchandise for each respondent. Upon issuance of the final results of this administrative review, if any importer-specific assessment rates calculated in the final results are above *de minimis* (*i.e.,* at or above 0.5 percent), the Department will issue appraisement instructions directly to CBP to assess antidumping duties on appropriate entries.

To determine whether the duty assessment rates covering the period were *de minimis,* in accordance with the requirement set forth in 19 CFR 351.106(c)(2), for each respondent we calculated importer (or customer)-specific *ad valorem* rates by aggregating the dumping margins calculated for all U.S. sales to that importer or customer and dividing this amount by the total value of the sales to that importer (or customer). Where an importer (or customer)-specific *ad valorem* rate is greater than *de minimis,* and the respondent has reported reliable entered values, we apply the assessment rate to the entered value of the importer's/customer's entries during the review period. Where an importer (or customer)-specific *ad valorem* rate is greater than *de minimis* and we do not have reliable entered values, we calculate a per-unit assessment rate by aggregating the dumping duties due for all U.S. sales to each importer (or customer) and dividing this amount by the total quantity sold to that importer (or customer).

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003). This clarification will apply to entries of subject merchandise during the POR produced by the respondent for which it did not know its merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, see *Antidumping and Countervailing Duty Proceedings Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

**Cash Deposit Requirements**

To calculate the cash deposit rate for AMLT, we divided the total dumping margin by the total net value for AMLT's sales during the POR.

The following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of wire rod from Mexico entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for AMLT will be the rate established in the final results of this review, except if the rate is less than 0.5 percent and, therefore, *de minimis,* the cash deposit rate will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent final results in which that manufacturer or exporter participated; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent final results for the manufacturer of the merchandise; and, (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 20.11 percent, the all-others rate established in the LTFV investigation. These cash deposit requirements, when imposed, shall remain in effect until further notice.

**Notification to Importers**

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and increase the subsequent assessment of the antidumping duties by the amount of antidumping duties reimbursed.

These preliminary results of review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: October 21, 2011.

**Ronald K. Lorentzen,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. 2011–28317 Filed 10–31–11; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–929]**

### Small Diameter Graphite Electrodes From the People's Republic of China: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

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

**FOR FURTHER INFORMATION CONTACT:** Dmitry Vladimirov, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; *telephone:* (202) 482–0665.

**SUPPLEMENTARY INFORMATION:**

## Background

On March 31, 2011, the Department of Commerce (the Department) initiated an administrative review of the antidumping duty order on small diameter graphite electrodes from the People's Republic of China (PRC) for the period February 1, 2010, through January 31, 2011. See *Initiation of Antidumping Duty Administrative Reviews, Requests for Revocation in Part, and Deferral of Administrative Review,* 76 FR 17825 (March 31, 2011) (*Initiation Notice*). We initiated an administrative review of 160 companies.[1]

The preliminary results of the review are currently due no later than October 31, 2011.

## Extension of Time Limit for Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to complete the preliminary results within 245 days after the last day of the anniversary month of an order for which a review is requested and the final results within 120 days after the date on which the preliminary results are published. If it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary results to a maximum of 365 days after the last day of the anniversary month.

We determine that it is not practicable to complete the preliminary results of this review within the original time limit because we require additional time to analyze the appropriateness of the sales and factors-of-production data reported. Therefore, we are extending the time period for issuing the preliminary results of this review by 95 days until February 3, 2012.

This notice is published in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2).

Dated: October 26, 2011.

**Christian Marsh,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2011–28323 Filed 10–31–11; 8:45 am]

**BILLING CODE 3510–DS–P**

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# DEPARTMENT OF COMMERCE

## International Trade Administration

## Initiation of Five-Year (''Sunset'') Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** In accordance with section 751(c) of the Tariff Act of 1930, as amended (''the Act''), the Department of Commerce (''the Department'') is automatically initiating a five-year review (''Sunset Review'') of the antidumping duty orders listed below. The International Trade Commission (''the Commission'') is publishing concurrently with this notice its notice of *Institution of Five-Year Review* which covers the same orders.

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

**FOR FURTHER INFORMATION CONTACT:** The Department official identified in the *Initiation of Review* section below at AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. For information from the Commission contact Mary Messer, Office of Investigations, U.S. International Trade Commission at (202) 205–3193.

**SUPPLEMENTARY INFORMATION:**

## Background

The Department's procedures for the conduct of Sunset Reviews are set forth in its *Procedures for Conducting Five-Year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders,* 63 FR 13516 (March 20, 1998) and 70 FR 62061 (October 28, 2005). Guidance on methodological or analytical issues relevant to the Department's conduct of Sunset Reviews is set forth in the Department's Policy Bulletin 98.3—*Policies Regarding the Conduct of Five-Year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders: Policy Bulletin,* 63 FR 18871 (April 16, 1998).

## Initiation of Review

In accordance with 19 CFR 351.218(c), we are initiating the Sunset Review of the following antidumping duty orders:

| DOC case No. | ITC case No. | Country | Product | Department contact |
|---|---|---|---|---|
| A–570–806 | 731–TA–472 | China | Silicon Metal (3rd Review) | Julia Hancock (202) 482–1394. |
| A–475–828 | 731–TA–865 | Italy | Stainless Steel Butt-Weld Pipe Fittings (2nd Review). | Dana Mermelstein (202) 482–1391. |
| A–557–809 | 731–TA–866 | Malaysia | Stainless Steel Butt-Weld Pipe Fittings (2nd Review). | Dana Mermelstein (202) 482–1391. |
| A–565–801 | 731–TA–867 | Philippines | Stainless Steel Butt-Weld Pipe Fittings (2nd Review). | Dana Mermelstein (202) 482–1391. |

## Filing Information

As a courtesy, we are making information related to Sunset Review proceedings, including copies of the pertinent statue and Department's regulations, the Department schedule for Sunset Reviews, a listing of past revocations and continuations, and current service lists, available to the public on the Department's Internet Web site at the following address: ''*http://ia.ita.doc.gov/sunset/.*'' All submissions in these Sunset Reviews must be filed in accordance with the Department's regulations regarding format, translation, and service of documents. These rules can be found at 19 CFR 351.303.

This notice serves as a reminder that any party submitting factual information in an AD/CVD proceeding must certify to the accuracy and completeness of that information. *See* section 782(b) of the Act. Parties are hereby reminded that revised certification requirements are in effect for company/government officials as well as their representatives in all AD/CVD investigations or proceedings

[1] In the *Initiation Notice,* we listed names by which certain companies are also known, or were formerly known, as reflected in the February 25, 2011, request for an administrative review submitted by the petitioners, SGL Carbon LLC and Superior Graphite, Co.

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) and supplemented by *Certification of Factual Information To Import Administration During Antidumping and Countervailing Duty Proceedings: Supplemental Interim Final Rule,* 76 FR 54697 (September 2, 2011). The formats for the revised certifications are provided at the end of the *Interim Final Rule.* The Department intends to reject factual submissions if the submitting party does not comply with the revised certification requirements.

Pursuant to 19 CFR 351.103(d), the Department will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact the Department in writing within 10 days of the publication of the Notice of Initiation.

Because deadlines in Sunset Reviews can be very short, we urge interested parties to apply for access to proprietary information under administrative protective order (''APO'') immediately following publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The Department's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306.

**Information Required From Interested Parties**

Domestic interested parties defined in section 771(9)(C), (D), (E), (F), and (G) of the Act and 19 CFR 351.102(b) wishing to participate in a Sunset Review must respond not later than 15 days after the date of publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to articipate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with the Department's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, the Department will automatically revoke the order without further review. *See* 19 CFR 351.218(d)(1)(iii).

If we receive an order-specific notice of intent to participate from a domestic interested party, the Department's regulations provide that *all parties* wishing to participate in the Sunset Review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of this notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic parties. Also, note that the Department's information requirements are distinct from the Commission's information requirements. Please consult the Department's regulations for information regarding the Department's conduct of Sunset Reviews.[1] Please consult the Department's regulations at 19 CFR part 351 for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at the Department.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

Dated: October 18, 2011.

**Christian Marsh,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2011–28315 Filed 10–31–11; 8:45 am]

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[1] In comments made on the interim final sunset regulations, a number of parties stated that the proposed five-day period for rebuttals to substantive responses to a notice of initiation was insufficient. This requirement was retained in the final sunset regulations at 19 CFR 351.218(d)(4). As provided in 19 CFR 351.302(b), however, the Department will consider individual requests to extend that five-day deadline based upon a showing of good cause.

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**FOR FURTHER INFORMATION CONTACT:** Brenda E. 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.

**Background**

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspended investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended (''the Act''), may request, in accordance with 19 CFR 351.213, of the Department of Commerce (''the Department'') regulations, that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

All deadlines for the submission of comments or actions by the Department discussed below refer to the number of calendar days from the applicable starting date.

**Respondent Selection**

In the event the Department limits the number of respondents for individual examination for administrative reviews initiated pursuant to requests made for the orders identified below, the Department intends to select respondents based on U.S. Customs and Border Protection (''CBP'') data for U.S. imports during the period of review. We intend to release the CBP data under Administrative Protective Order (''APO'') to all parties having an APO within five days of publication of the initiation notice and to make our decision regarding respondent selection within 21 days of publication of the initiation **Federal Register** notice. Therefore, we encourage all parties interested in commenting on respondent selection to submit their APO applications on the date of publication of the initiation notice, or as soon thereafter as possible. 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 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 November 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.

The Department is providing this notice on its Web site, as well as in its ''Opportunity to Request Administrative Review'' notices, so that interested parties will be aware of the manner in which the Department intends to exercise its discretion in the future.

*Opportunity To Request a Review:* Not later than the last day of November 2011,[1] interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in November for the following periods:

| | Period of review |
|---|---|
| **Antidumping Duty Proceedings** | |
| Brazil: | |
| Polyethylene Terephthalate (Pet) Film A–351–841 | 11/1/10–10/31/11 |
| Circular Welded Non-Alloy Steel Pipe A–351–809 | 11/1/10–10/31/11 |
| Germany: Lightweight Thermal Paper A–428–840 | 11/1/10–10/31/11 |
| Indonesia: Certain Coated Paper Suitable For High-Quality Print Graphics Using Sheet-Fed Presses A–560–823 | 11/17/10–10/31/11 |
| Mexico: | |
| Seamless Refined Copper Pipe And Tube A–201–838 | 11/22/10–10/31/11 |
| Circular Welded Non-Alloy Steel Pipe A–201–805 | 11/1/10–10/31/11 |
| Republic of Korea: | |
| Circular Welded Non-Alloy Steel Pipe A–580–809 | 11/1/10–10/31/11 |
| Diamond Sawblades A–580–855 | 11/1/10–10/31/11 |
| Taiwan: | |
| Certain Welded Non-Alloy Steel Pipe A–583–814 | 11/1/10–10/31/11 |
| Certain Hot-Rolled Carbon Steel Flat Products A–583–835 | 11/1/10–10/31/11 |
| Thailand: Certain Hot-Rolled Carbon Steel Flat Products A–549–817 | 11/1/10–10/31/11 |
| The People's Republic of China: | |
| Certain Cut-To-Length Carbon Steel A–570–849 | 11/1/10–10/31/11 |
| Certain Hot-Rolled Carbon Steel Flat Products A–570–865 | 11/1/10–10/31/11 |
| Coated Paper Suitable For High-Quality Print Graphics Using Sheet-Fed Presses A–570–958 | 11/17/10–10/31/11 |
| Diamond Sawblades A–570–900 | 11/1/10–10/31/11 |
| Garlic, Fresh A–570–831 | 11/1/10–10/31/11 |
| Lightweight Thermal Paper A–570–920 | 11/1/10–10/31/11 |
| Paper Clips A–570–826 | 11/1/10–10/31/11 |
| Polyethylene Terephthalate A–570–924 | 11/1/10–10/31/11 |
| Pure Magnesium In Granular Form A–570–864 | 11/1/10–10/31/11 |
| Refined Brown Aluminum Oxide A–570–882 | 11/1/10–10/31/11 |
| Seamless Carbon And Alloy Steel A–570–956 Standard, Line, And Pressure Pipe | 11/10/10–10/31/11 |
| Seamless Refined Copper Pipe And Tube A–570–964 | 11/22/10–10/31/11 |
| Ukraine: Certain Hot-Rolled Carbon Steel Flat Products A–823–811 | 11/1/10–10/31/11 |
| United Arab Emirates: Polyethylene Terephthalate (Pet) Film A–520–803 | 11/1/10–10/31/11 |
| **Countervailing Duty Proceedings** | |
| Indonesia: Coated Paper Suitable For High-Quality Print Graphics Using Sheet-Fed Presses C–560–824 | 11/17/10–12/31/10 |
| The People's Republic of China: | |
| Coated Paper Suitable For High-Quality Print Graphics Using Sheet-Fed Presses C–570–959 | 11/17/10–12/31/10 |
| Lightweight Thermal Paper C–570–921 | 1/1/10–12/31/10 |
| Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe C–570–957 | 11/10/10–12/31/10 |
| **Suspension Agreements** | |
| Ukraine: Certain Cut-To-Length Carbon Steel Plate A–823–808 | 11/1/10–10/31/11 |

[1] Or the next business day, if the deadline falls on a weekend, federal holiday or any other day when the Department is closed.

In accordance with section 351.213(b), an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review. In addition, a domestic interested party or an interested party described in section 771(9)(B) of the Act must state why it desires the Secretary to review those particular producers or exporters.[2] If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Please note that, for any party the Department was unable to locate in prior segments, the Department will not accept a request for an administrative review of that party absent new information as to the party's location. Moreover, if the interested party who files a request for review is unable to locate the producer or exporter for which it requested the review, the interested party must provide an explanation of the attempts it made to locate the producer or exporter at the same time it files its request for review, in order for the Secretary to determine if the interested party's attempts were reasonable, pursuant to 19 CFR 351.303(f)(3)(ii).

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003), the Department has clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders. *See also* the Import Administration Web site at *http://ia.ita.doc.gov.*

All requests must be filed electronically in Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS'') on the IA ACCESS Web site at *http://iaaccess.trade.gov*. *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263, (July 6, 2011). Further, in accordance with section 351.303(f)(l)(i) of the regulations, a copy of each request must be served on the petitioner and each exporter or producer specified in the request.

The Department will publish in the **Federal Register** a notice of ''Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation'' for requests received by the last day of November 2011. If the Department does not receive, by the last day of November 2011, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct the CBP to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

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.

This notice is not required by statute but is published as a service to the international trading community.

Dated: October 25, 2011.

**Christian Marsh,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2011–28308 Filed 10–31–11; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Advance Notification of Sunset Reviews

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

### Background

Every five years, pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''), the Department of Commerce (''the Department'') and the International Trade Commission automatically initiate and conduct a review to determine whether revocation of a countervailing or antidumping duty order or termination of an investigation suspended under section 704 or 734 of the Act would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury.

### Upcoming Sunset Reviews for December 2011

The following Sunset Reviews are scheduled for initiation in December 2011 and will appear in that month's Notice of Initiation of Five-Year Sunset Reviews.

| Antidumping Duty Proceedings | Department Contact |
|---|---|
| Foundry Coke from China (A–570–862) (2nd Review) | Julia Hancock (202) 482–1394. |
| Stainless Steel Bar from India (A–533–810) (3rd Review) | David Goldberger (202) 482–4136. |
| Stainless Steel Bar from Brazil (A–351–825) (3rd Review) | David Goldberger (202) 482–4136. |
| Stainless Steel Bar from Japan (A–588–833) (3rd Review) | David Goldberger (202) 482–4136. |
| Stainless Steel Bar from Spain (A–469–805) (3rd Review) | David Goldberger (202) 482–4136. |

[2] If the review request involves a non-market economy and the parties subject to the review request do not qualify for separate rates, all other exporters of subject merchandise from the non-market economy country who do not have a separate rate will be covered by the review as part of the single entity of which the named firms are a part.

**Countervailing Duty Proceedings**

No Sunset Review of countervailing duty orders is scheduled from initiation in December 2011.

**Suspended Investigations**

No Sunset Review of suspended investigations is scheduled from initiation in December 2011.

The Department's procedures for the conduct of Sunset Reviews are set forth in 19 CFR 351.218. Guidance on methodological or analytical issues relevant to the Department's conduct of Sunset Reviews is set forth in the Department's Policy Bulletin 98.3—*Policies Regarding the Conduct of Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin,* 63 FR 18871 (April 16, 1998) . The Notice of Initiation of Five-Year (''Sunset'') Reviews provides further information regarding what is required of all parties to participate in Sunset Reviews.

Pursuant to 19 CFR 351.103(c), the Department will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact the Department in writing within 10 days of the publication of the Notice of Initiation.

Please note that if the Department receives a Notice of Intent to Participate from a member of the domestic industry within 15 days of the date of initiation, the review will continue. Thereafter, any interested party wishing to participate in the Sunset Review must provide substantive comments in response to the notice of initiation no later than 30 days after the date of initiation.

This notice is not required by statute but is published as a service to the international trading community.

Dated: October 18, 2011.

**Christian Marsh,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2011–28311 Filed 10–31–11; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Executive-led Business Development Mission to Kabul, Afghanistan, September 2011 (Dates Are Withheld)

**AGENCY:** International Trade Administration, Department of Commerce.

**ACTION:** Notice.

**Mission Description**

The United States Department of Commerce's International Trade Administration is organizing a business development trade mission to Kabul, Afghanistan in September 2011. This mission will be led by a Senior Commerce Department official. Targeted sectors include: construction (including engineering, architecture, transportation and logistics, and infrastructure); mining (including equipment, technology, and services); agribusiness; and information and communications technology. The mission's goal is to help U.S. companies explore long-term business opportunities in Afghanistan and enhance U.S.—Afghan commercial relations by providing U.S. participants with first-hand market information, access to government decision makers as well as one-on-one meetings with business contacts, including potential agents, distributors, and partners, to position themselves to enter or expand their presence in the targeted sectors.

**Commercial Setting**

The Government of the Islamic Republic of Afghanistan (GIRoA) is taking steps to develop its market economy and increase both domestic and foreign private investment. GIRoA continues to develop legal and administrative regulatory frameworks that will lead to a market more conducive to trade, investment and private sector development. For example, Afghanistan adopted an investment law that allows investments to be 100% foreign-owned. Additionally, on October 28, 2010, Afghanistan and Pakistan signed the Afghanistan Pakistan Transit Trade Agreement (APTTA), allowing Afghan container trucks to drive through Pakistan to the Indian border, and also to port cities such as Karachi.

After 30 years of war reconstruction and development efforts are required to grow and stabilize Afghanistan's economy. The GIRoA is committed to promoting economic development, increasing production and earnings, promoting technology transfer, improving national prosperity and advancing Afghans' standard of living in partnership with international donor agencies. GIRoA recognizes that U.S. services, equipment and technology would enhance development of Afghanistan's industrial sector and lead to increased productivity and greater technical skills for Afghan citizens. International donors continue to support Afghanistan's development; however, long-term sustainable growth will take place through private sector development.

To support Afghanistan's private sector and promote reconstruction efforts, GIRoA has identified domestic priority sectors needing investment and development in both equipment and services. These priority sectors are: construction and infrastructure, logistics and transportation, mining, agribusiness, and information and communications technology providers.

The economy is beginning to move from one based on state owned enterprises and the informal economy to a more formal market economy. A notable sign of this transition for the U.S. business community is the establishment of an American Chamber of Commerce in Kabul in 2010.

Kabul is the capital of Afghanistan, situated in Kabul Province. With a total metropolitan population of 2.6 million, it is also the largest city in Afghanistan. It is the commercial center for the country, with national Afghan businesses, associations, and GIRoA ministries maintaining a presence in Kabul. Afghanistan's GDP per capita is approximately $500, and has experienced double digit growth in recent years.

The Commerce Department has supported commercial and private sector development in Afghanistan since 2002, and posted a Senior Commercial Officer in Kabul in June 2010.

**Mission Goals**

The goal of the mission is to provide U.S. participants with first-hand market information, access to government decision makers and one-on-one meetings with business contacts, including potential agents, distributors, and partners, so that they can position themselves to enter the Afghan market or expand their business presence in Afghanistan. Thus, the mission seeks to:

- Improve U.S. companies' understanding of commercial opportunities in Afghanistan.
- Facilitate business meetings between U.S. and Afghan businesses to promote the development of U.S. commercial opportunities in Afghanistan.
- Introduce U.S. industry to the Afghan business community and government leaders.
- Provide GIRoA policymakers with U.S. industry feedback on the direction of its commercial reforms.

**Mission Scenario**

The business development mission will take place in Kabul, Afghanistan.

Participants will meet with Afghan leaders in the public and private sector, learn about the market by participating in Embassy briefings, and explore additional opportunities at networking receptions. Activities will include one-on-one meetings with pre-screened business prospects. (Note that the regular workweek in Afghanistan is Sunday through Thursday.)

PROPOSED TIMETABLE

[The State Department will follow RSO procedure in reference to security within and around the mission event]

| | |
|---|---|
| Day One (weekend) | Travel Day—Depart U.S. on evening flight. |
| Day Two | Travel Day—Participants arrive in transit city (tbd) and overnight in pre-arranged departure from transit city. |
| Day Three | Travel Day, Arrive in Kabul, Afghanistan (afternoon), Evening Event. |
| Day Four | Security Briefing, Market Briefing, One-on-One Business Appointments, Reception. |
| Day Five | Market Briefing, Industry Sector Briefing, Meetings with Government and Industry Officials, One-on-One Business Appointments, Reception. |
| Day Six | One-on-One Business Appointments (optional) Travel Day—Depart for the U.S. (evening). |
| Day Seven | Travel Day—Arrive in U.S. (morning). |

**Participation Requirements**

This business development mission is designed for a minimum of 10 qualified companies and can accommodate a maximum of 20 participants from the companies accepted. All parties interested in participating in this business development mission to Kabul, Afghanistan, must submit a completed application package for consideration by the U.S. Department of Commerce. All applicants will be evaluated on their ability to meet certain conditions and to best satisfy the selection criteria as outlined below. U.S. companies already doing business in the target sectors as well as U.S. companies seeking to enter this market for the first time are encouraged to apply.

**Fees and Expenses**

After a company has been selected to participate in the mission, a payment to the U.S. Department of Commerce in the form of a participation fee is required. The participation fee is $4,800 for a single participant for a small- or medium-sized enterprise (SME) [1] and $5,245 for a single participant for a large firm. Participants per company will be limited due to space constraints. The fee for each additional participant is $1,500. Applicants are encouraged to provide a clear business purpose and clarification of role of any additional participants proposed to participate in the mission.

Interpretation services for official activities are included in the fee. Expenses for travel, lodging, meals, and incidentals will be the responsibility of each mission participant. Lodging and meals for each participant will cost approximately $150 USD per day.

**Conditions for Participation**

- An applicant must submit a completed and signed mission application and supplemental application materials, including information on the company's products and/or services, primary market objectives, and goals for participation. If the U.S. Department of Commerce receives an incomplete application, the Department may reject the application, request additional information, or take the lack of information into account when evaluating the application.
- Each applicant must also certify that the products and services it seeks to export through the mission are either produced in the United States, or, if not, marketed under the name of a U.S. firm and have at least fifty-one percent U.S. content.

**Selection Criteria for Participation**

Selection will be based on the following criteria:

- Suitability of the company's products or services to the mission goals.
- Applicant's potential for business in Afghanistan.
- Consistency of the applicant's goals and objectives with the stated scope of the mission.

(Additional factors, such as diversity of company, size, type and location, may be considered during the selection process).

Referrals from political organizations and any documents containing references to partisan political activities (including political contributions) will be removed from an applicant's submission and will not be considered during the selection process.

**Timeframe for Recruitment and Applications**

Mission recruitment will be conducted in an open and public manner, including posting on the U.S. Department of Commerce trade missions calendar—*http://www.trade.gov/trade-missions/*—and other Internet Web sites, publication in domestic trade publications and association newsletters, direct outreach to the Department's clients and distribution lists, publication in the **Federal Register,** and announcements at industry meetings, symposia, conferences, and trade shows.

Recruitment for the mission will begin immediately and conclude no later than January 3, 2012, by the close of business. Applications received after January 3, 2012, will be considered only if space and scheduling constraints permit.

**Disclaimer, Security, and Transportation**

Business development mission members participate in the mission and undertake related travel at their own risk and are advised to obtain insurance accordingly. Any question regarding insurance coverage must be resolved by the participant. The U.S. Government does not make any representations or guarantees as to the safety or security of participants. Companies should consult the State Department's travel warning for Afghanistan: *http://travel.state.gov/travel/cis_pa_tw/tw/tw_2121.html. http://travel.state.gov/travel/cis_pa_tw/tw/tw_2121.html.*

ITA will coordinate with the U.S. Embassy in Kabul to arrange for transportation of the mission participants to and from the airport and lodging facilities. The primary venue for the mission has security measures in place.

*For More Information and an Application Packet Contact:*

U.S. Commercial Service Domestic Contact: Jessica Arnold, International Trade Specialist, U.S. Commercial Service, Washington, DC, Tel.: (202)

[1] An SME is defined as a firm with 500 or fewer employees or that otherwise qualifies as a small business under SBA regulations. *See http://www.sba.gov/contractingopportunities/owners/basics/whatismallbusiness/index.html.* Parent companies, affiliates, and subsidiaries will be considered when determining business size. The dual pricing reflects the Commercial Service's user fee schedule that became effective May 1, 2008. *See http://www.export.gov/newsletter/march2008/initiatives.html.*

482–2026, *afghanmission2011@trade.gov.*

Afghanistan Investment and Reconstruction Task Force Contact: Ariana Marshall, International Trade Specialist, Afghanistan Investment and Reconstruction Task Force, *Tel:* (202) 482–3754, *afghanmission2011@trade.gov.*

**Elnora Moye,**

*Trade Program Assistant.*

[FR Doc. 2011–28258 Filed 10–31–11; 8:45 am]

**BILLING CODE 3510–FP–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–552–802]**

### Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Extension of Time Limit for the Preliminary Results of the New Shipper Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

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

**SUMMARY:** The Department of Commerce (the ''Department'') has decided to extend the time limit for the preliminary results of the new shipper review (''NSR'') of the antidumping duty order on certain frozen warmwater shrimp (''shrimp'') from the Socialist Republic of Vietnam (''Vietnam'') to December 9, 2011. The period of review (''POR'') for this NSR is February 1, 2010, through January 31, 2011.

**FOR FURTHER INFORMATION CONTACT:** Susan Pulongbarit or Seth Isenberg, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; *telephone:* (202) 482–4031 and (202) 482–0588, respectively.

**SUPPLEMENTARY INFORMATION:**

#### Background

The notice announcing the antidumping duty order on shrimp from Vietnam was published in the **Federal Register** on February 1, 2005.[1] On February 28, 2011, pursuant to section 751(a)(2)(B)(i) of the Tariff Act of 1930, as amended (the ''Act''), and section 351.214(c) of the Department's regulations, the Department received a NSR request from Thong Thuan Company Limited and its subsidiary company, Thong Thuan Seafood Company Limited (collectively, ''Thong Thuan''). Thong Thuan certified that it is a producer and exporter of the subject merchandise upon which the request was based. The notice initiating the NSR was published on March 23, 2011.[2] The Department extended the time limit for the preliminary results by 60 days on September 7, 2011.[3] The preliminary results are currently due no later than October 9, 2011.

#### Statutory Time Limits

Section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (the ''Act''), provides that the Department will issue the preliminary results of a new shipper review of an antidumping duty order within 180 days after the day on which the review was initiated. *See also* 19 CFR 351.214(i)(1). The Act further provides that the Department may extend that 180-day period to 300 days if it determines that the case is extraordinarily complicated. *See also* 19 CFR 351.214(i)(2).

#### Extension of Time Limit of Preliminary Results

The Department determines that this new shipper review involves extraordinarily complicated methodological issues, including Thong Thuan's multiple production stages for subject merchandise and the need to evaluate the *bona fide* nature of Thong Thuan's sales. The Department finds that these extraordinarily complicated issues require additional time to evaluate. Therefore, in accordance with section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.214(i)(2), the Department is extending the time limit for the preliminary results by an additional 30 days, until no later than December 9, 2011. The final results continue to be due 90 days after the publication of the preliminary results.

We are issuing and publishing this notice in accordance with sections 751(a)(2)(B)(iv) and 777(i) of the Act.

Dated: October 26, 2011.

**Christian Marsh,**

*Deputy Assistant Secretary of Antidumping and Countervailing Duty Operations.*

[FR Doc. 2011–28324 Filed 10–31–11; 8:45 am]

**BILLING CODE 3510–DS–P**

[1] *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam,* 70 FR 5152 (February 1, 2005).

[2] *See Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Initiation of Antidumping Duty New Shipper Review,* 76 FR 16384 (March 23, 2011).

[3] *See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Extension of Time Limit for the Preliminary Results of the New Shipper Review,* 76 FR 55350 (September 7, 2011).

## DEPARTMENT OF COMMERCE

### National Institute of Standards and Technology

**[Docket Number 111027658–1659–01]**

### Request for Comments on NIST Special Publication 500–293, US Government Cloud Computing Technology Roadmap, Release 1.0 (Draft)

**AGENCY:** National Institute of Standards and Technology (NIST), Department of Commerce.

**ACTION:** Notice; request for comments.

**SUMMARY:** The National Institute of Standards and Technology (NIST) publishes this notice to seek public comments on the first draft of Special Publication 500–293, *US Government Cloud Computing Technology Roadmap, Release 1.0 (Draft).* This document is intended to be the mechanism to define and communicate interoperability, portability, and security requirement priorities that must be met in terms of standards, guidance and technology for U.S. Government (USG) agencies to accelerate their adoption of cloud computing. The roadmap has been developed through a transparent working group process, which included five NIST Cloud Computing Working Groups that were established in November 2010.

**DATES:** Comments must be received on or before 5 p.m. Eastern time on December 2, 2011.

**ADDRESSES:** Written comments may be sent to: Robert Bohn, National Institute of Standards and Technology, 100 Bureau Dr., Stop 2000, Gaithersburg, MD 20899–2000. Electronic comments may be sent to: *ccroadmap.comments@nist.gov.*

The report will be available at: *http://www.nist.gov/itl/cloud/index.cfm.*

**FOR FURTHER INFORMATION CONTACT:** Robert Bohn, National Institute of Standards and Technology, 100 Bureau Dr., Stop 2000, Gaithersburg, MD 20899–2000, telephone (301) 975–4731.

**SUPPLEMENTARY INFORMATION:** The National Institute of Standards and Technology (NIST) has a technology leadership role in support of a secure and effectively adopted Cloud Computing model[1] to reduce costs and improve services. This role is described

[1] NIST defines Cloud Computing as,''a model for enabling ubiquitous, convenient, on-demand network access to a shared pool of configurable computing resources (*e.g.,* networks, servers, storage, applications, and services) that can be rapidly provisioned and released with minimal management effort or service provider interaction.'' Special Publication 800–145 (Draft).

in the 2011 Federal Cloud Computing Strategy [2] as ''a central one in defining and advancing standards, and collaborating with USG Agency CIOs, private sector experts, and international bodies to identify and reach consensus on cloud computing technology & standardization priorities.''

In carrying out this role, NIST established the NIST Cloud Computing program and collaborative initiative to build a USG Cloud Computing Technology Roadmap. The release of the first draft of Special Publication 500–293, *US Government Cloud Computing Technology Roadmap, Release 1.0 (Draft),* for public comment marks completion of the first milestone step of this effort. The roadmap is intended to be the mechanism to define and communicate interoperability, portability, and security requirement priorities that must be met in terms of standards, guidance and technology for USG agencies to accelerate their adoption of cloud computing. The roadmap has been developed through a transparent working group process, which included five NIST Cloud Computing Working Groups that were established in November 2010. The technical work produced by these groups, which has been used to develop the roadmap document, has been made publicly available during the November 2010 through September 2011 timeframe.

## Request for Comments

NIST requests comments from all interested parties on Special Publication 500–293, *US Government Cloud Computing Technology Roadmap, Release 1.0 (Draft).* Comments should be sent to the address or email address given above in the **ADDRESSES** section of this notice.

Dated: October 27, 2011.

**Willie E. May,**

*Associate Director for Laboratory Programs.*

[FR Doc. 2011–28285 Filed 10–31–11; 8:45 am]

**BILLING CODE 3510–13–P**

[2] Office of Management and Budget, U.S. Chief Information Officer, ''Federal Cloud Computing Strategy,'' Feb. 8, 2011. Online: *http://www.cio.gov/documents/Federal-Cloud-Computing-Strategy.pdf.*

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XA743**

### Takes of Marine Mammals Incidental to Specified Activities; Piling and Structure Removal in Woodard Bay Natural Resources Conservation Area, WA

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

**ACTION:** Notice; issuance of incidental harassment authorization.

**SUMMARY:** In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA), as amended, notification is hereby given that NMFS has issued an Incidental Harassment Authorization (IHA) to the Washington State Department of Natural Resources (DNR) to incidentally harass, by Level B harassment only, small numbers of harbor seals during restoration activities within the Woodard Bay Natural Resources Conservation Area (NRCA) in Washington.

**DATES:** This authorization is effective from November 1, 2011, through February 28, 2012.

**ADDRESSES:** A copy of the IHA and DNR's application and monitoring report are available by writing to Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

A copy of the application containing a list of the references used in this document may be obtained by writing to the above address, telephoning the contact listed here (see **FOR FURTHER INFORMATION CONTACT**) or visiting the Internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.* Supplemental documents, including NMFS' Environmental Assessment and associated Finding of No Significant Impact, prepared pursuant to the National Environmental Policy Act (NEPA), are available at the same site. Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

**FOR FURTHER INFORMATION CONTACT:** Ben Laws, Office of Protected Resources, NMFS, (301) 427–8401.

**SUPPLEMENTARY INFORMATION:**

## Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to authorize, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is published in the **Federal Register** to provide public notice and initiate a 30-day comment period.

Authorization for incidental taking of small numbers of marine mammals shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant). The authorization must set forth the permissible methods of taking, requirements pertaining to the mitigation, monitoring, and reporting of such taking, and other means of effecting the least practicable adverse impact on the species or stock and its habitat. NMFS has defined 'negligible impact' in 50 CFR 216.103 as ''* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Section 101(a)(5)(D) of the MMPA established an expedited process by which U.S. citizens can apply for an authorization to incidentally take small numbers of marine mammals, by harassment only, as defined below. This provision mandates a 45-day time limit for NMFS' review of an application, followed by a 30-day public notice and comment period on a proposed authorization for the incidental harassment of marine mammals. Within 45 days of the close of the public comment period, NMFS must either issue or deny the authorization. If authorized, the IHA may be effective for a maximum of one year from the date of issuance.

Except with respect to certain activities not pertinent here, the MMPA defines 'harassment' as:

Any act of pursuit, torment, or annoyance which (i) Has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing,

nursing, breeding, feeding, or sheltering [Level B harassment].

**Summary of Request**

On July 1, 2011, NMFS received an application from the DNR requesting renewal of an IHA for the taking, by Level B harassment only, of small numbers of harbor seals (*Phoca vitulina*) incidental to activities conducted in association with a habitat restoration project within the Woodard Bay NRCA, Washington. Following NMFS review, DNR submitted an adequate and complete application on August 3, 2011. The DNR's habitat restoration project is a long-term effort to restore Woodard Bay habitat by removing or maintaining, as appropriate, derelict structures associated with a defunct log dump. DNR was first issued an IHA that was valid from November 1, 2010, through February 28, 2011 (75 FR 67951). The specified activity includes all or part of the following actions, dependent on final funding levels: removal of 20,000 $ft^2$ (1,858 $m^2$) of pier superstructure and 400 creosoted timber pilings from Chapman Bay Pier and vicinity, and maintenance on 10,000 $ft^2$ (929 $m^2$) of Chapman Bay Pier to enhance bat roost habitat. Pilings will be removed by vibratory hammer extraction methods or by direct pull with cables. The superstructure materials will be removed by excavator and/or cables suspended from a barge-mounted crane. Maintenance and enhancement of bat roost habitat will require the use of power tools and a generator. The proposed activities will occur during the designated in-water work window of November 1 through February 28 (2011–12), and are estimated to take approximately 40 days in total.

**Description of the Specified Activity**

In accordance with regulations implementing the MMPA, NMFS published notice of the proposed IHA in the **Federal Register** on September 12, 2011 (76 FR 56172). A complete description of the action was included in that notice and will not be reproduced here.

Proposed restoration activities requested under the IHA are funding dependent. They include all or part of the following:

- Removal of 20,000 $ft^2$ (1,858 $m^2$) of pier superstructure and 400 pilings from Chapman Bay Pier and vicinity.
- Maintenance on 10,000 $ft^2$ (929 $m^2$) of Chapman Bay Pier to enhance bat roost habitat.

Work will be accomplished using barges and skiffs. The pilings will be removed by vibratory hammer or by direct pull with cables; both methods are suspended from a barge-mounted crane. The vibratory hammer is a large steel device lowered on top of the pile, which then grips and vibrates the pile until it is loosened from the sediment. The pile is then pulled up by the hammer and placed on a barge. For direct pull, a cable is set around the piling to grip and lift the pile from the sediment. The superstructure materials will be removed by excavator and/or cables suspended from a barge-mounted crane.

Approximately 400 12–24 in (0.3–0.6 m) diameter pilings will be removed near but not directly adjacent to haul-outs. Pilings associated with remnant log booms used by seals as haul-outs will not be removed. An approximate maximum of 60 pilings will be removed per day. The vibratory hammer typically vibrates for less than one minute per pile, so there will be no more than 60 non-consecutive minutes of hammer vibration over an 8-hour period. After vibration, a choker is used to lift the pile out of the water where it is placed on the barge for transport to an approved disposal site. Pilings that cannot be removed by hammer or cable, or that break during extraction, will be recorded via global positioning system for divers to relocate for removal at the final phase of project activities.

Operations will begin on the pilings and structures that are furthest from the seal haul-out so that there is an opportunity for the seals to adjust to the presence of the contracted work crews and their equipment. Vibratory extraction operations are expected to occur for approximately 15 days over the course of the 4-month work window (November 1 through February 28). Other work days will be spent removing pier superstructure, which does not involve vibratory extraction. NMFS anticipates that the presence of crew and use of a vibratory hammer will result in behavioral harassment. Although the removal of Chapman Bay Pier superstructure does not involve vibratory extraction, it has the potential to result in behavioral harassment due to the close proximity of working crew to harbor seal haul-outs.

Maintenance and enhancement of bat roost habitat will include replacement of old stringers and installation of flashing and lumber to create optimal spacing and heat requirements for the maternity roost. Equipment employed will include power tools and a generator. Presence of crew conducting enhancement of bat habitat on the pier may result in behavioral harassment through flushing of seals from the haul-out.

**Comments and Responses**

On September 12, 2011, NMFS published a notice of proposed IHA (76 FR 56172) in response to DNR's request to take marine mammals incidental to restoration activities and requested comments and information concerning that request. During the 30-day public comment period, NMFS received comments from the Marine Mammal Commission (Commission) on the proposed IHA. No comments were received by any other members of the public.

*Comment 1:* The Commission recommends that NMFS require the DNR to monitor the presence and behavior of marine mammals during all proposed activities.

*Response:* NMFS and the DNR proposed that monitoring be conducted for a total of 15 days out of an estimated 40 days total work, as was the case for the monitoring plan implemented under the previous year's IHA. As it indicated in commenting on the previous year's IHA proposal, the Commission believes that this level of monitoring effort is not sufficient, and that monitoring should be conducted during 100 percent of restoration activity. The Commission states that because marine mammal reactions to different sources of disturbance are not always predictable, continuous monitoring is the only way to ensure that unexpected reactions are detected, documented, and evaluated. In support, the Commission gives as an example a scenario where monitoring does not coincide with the presence of marine mammals and vessels, thus resulting in observations that may not be indicative of actual impacts and underestimation of the total number of takes. While it is true that marine mammal reactions to a given stimulus are not always predictable, the scenario given by the Commission in support is not realistic. The 15 monitoring days are not selected haphazardly, but are chosen such that days of heightened activity are monitored, while the remainder is days that are representative of typical levels of activity. Further, while dedicated observers are not present during the non-monitored days, construction personnel and DNR staff are on-site. As reported anecdotally, no significantly deviant behavior or numbers of harbor seals were observed on non-monitored days during the previous year's IHA. As such, the estimated number of total takes, extrapolated from the 14 monitored days to the total 35 work days, likely represents an overestimate because the days with heaviest activity were monitored.

As described in the IHA proposal and in this document, the 15 days will include: (1) The first 5 days of project activities, when the contractors are mobilizing and starting use of the vibratory hammer; (2) 5 days when activities are occurring nearest to the haul-out area; and (3) 5 additional days, to be decided when the schedule of work is provided by the contractor. At least one observer will conduct monitoring at both the north and south haul-outs. NMFS will specify that the 5 additional monitoring days shall be either additional days of heightened activity (if they occur) or representative of typical levels of activity. Should extreme reactions of seals occur (*e.g.,* apparent abandonment of the haul-out) at any time during the project, DNR will stop removal activities and consult with NMFS.

In addition, NMFS considered and rejected this expanded plan when developing the proposed IHA, and provided a discussion of the reasoning and justification for that decision in the proposed IHA **Federal Register** notice. Please see that discussion for complete justification of this decision. The Commission has not provided any new information that would change NMFS' determination that the monitoring plan is sufficient when considering benefit to the species and practicability for the applicant.

*Comment 2:* The Commission recommends that NMFS require the presence of approved observers before, during, and after all soft starts of pile removal activities to gather the data needed to determine the effectiveness of this technique as a mitigation measure.

*Response:* The Commission repeats its previous recommendation, but limits it to a subset of activity—the soft start of the vibratory hammer. The reasoning for this recommendation is that the efficacy of the soft start technique has not been empirically verified and, as such, NMFS should not assume that this mitigation method is effective. While it is reasonable to assume that the gradual introduction of sound into the marine environment would alert animals and allow them to depart an area before the sound reached levels that could result in injury (no sound that could result in injury to pinnipeds will be produced by this project; thus, use of soft start is precautionary), NMFS concurs that it is improper to assume any reduction in incidental take absent empirical verification. As such, in conducting its required analyses before determining whether a negligible impact determination may be reached, NMFS does not consider that the soft start technique will result in any reduction of incidental take. NMFS does consider soft start to be a mitigation measure, and accordingly recommends the measure to applicants, but does not attempt to quantify the level of mitigation that the technique may provide, nor does it rely on any assumption of efficacy in reaching its negligible impact determination. Further, it is unclear how expanded monitoring, in the absence of specific experimental design, would empirically verify the efficacy of this technique. The Commission does not provide any information that would be useful in this regard.

For the reasons discussed in NMFS' **Federal Register** notice of proposed IHA, and in the preceding response, an expanded monitoring program is not warranted or considered practicable in this instance.

*Comment 3:* The Commission recommends that NMFS require the DNR to (1) Immediately report all injured or dead marine mammals to NMFS and the local stranding network and (2) suspend the construction activities if a marine mammal is seriously injured or killed and the injury or death could have been caused by those activities (*e.g.,* a fresh carcass is discovered). The Commission also recommends that if further measures are not likely to reduce the risk of additional serious injuries or deaths to a very low level, NMFS should require the DNR to obtain the necessary authorization for such takings under section 101(a)(5)(A) of the MMPA before resuming its construction activities.

*Response:* NMFS concurs with the Commission's recommendation.

## Description of Marine Mammals in the Area of the Specified Activity

The only marine mammal species that may be harassed incidental to DNR's restoration activities is the harbor seal. Harbor seals are not listed as threatened or endangered under the ESA, nor are they categorized as depleted under the MMPA. NMFS presented a more detailed discussion of the status of the Washington Inland Waters stock of harbor seals and its occurrence in the action area in the notice of the proposed IHA (76 FR 56172; September 12, 2011).

## Potential Effects of the Activity on Marine Mammals

Potential effects of DNR's proposed activities are likely to be limited to behavioral disturbance of seals at the two log boom haul-outs located in the action area. Other potential disturbance could result from the introduction of sound into the environment as a result of pile removal activities; however, this is unlikely to cause an appreciably greater amount of harassment in either numbers or degree, in part because it is anticipated that most seals will be disturbed initially by physical presence of crews and vessels or by sound from vessels.

There is a general paucity of data on sound levels produced by vibratory extraction of timber piles; however, it is reasonable to assume that extraction will not result in higher sound pressure levels (SPLs) than vibratory installation of piles. As such, NMFS assumes that source levels from the proposed activity will not be as high as average source levels for vibratory installation of 12–24 in steel piles (155–165 dB; Caltrans, 2009). NMFS' general in-water harassment thresholds for pinnipeds exposed to continuous noise, such as that produced by vibratory pile extraction, are 190 dB root mean square (rms) re: 1 μPa as the potential onset of Level A (injurious) harassment and 120 dB RMS re: 1 μPa as the potential onset of Level B (behavioral) harassment. These levels are considered precautionary and NMFS is currently revising these thresholds to better reflect the most recent scientific data.

Vibratory extraction will not result in sound levels near 190 dB; therefore, injury will not occur. However, noise from vibratory extraction will likely exceed 120 dB near the source and may induce responses in-water such as avoidance or other alteration of behavior at time of exposure. However, seals flushing from haul-outs in response to small vessel activity and the presence of work crews would already be considered as 'harassed'; therefore, any harassment resulting from exposure to sound pressure levels above the 120 dB criterion for behavioral harassment would not be considered additional.

The airborne sound disturbance criteria currently used by NMFS for Level B harassment is 90 dB rms re: 20 μPa for harbor seals. Based on information on airborne source levels measured for pile driving with vibratory hammer, removal of wood piles is unlikely to exceed 90 dB (WA DNR, 2011); further, the vibratory hammer will be outfitted with a muffling device ensuring that airborne SPLs are no higher than 80 dB.

Potential effects of sound produced by the action on harbor seals were detailed in the notice of the proposed IHA (76 FR 56172; September 12, 2011). In short, while it may be inferred that temporary hearing impairment (temporary threshold shift; TTS) could theoretically result from the DNR project, it is highly unlikely, due to the source levels and duration of exposure possible. It is expected that elevated sound will have

only a negligible probability of causing TTS in individual seals. Further, seals are likely to be disturbed via the approach of work crews and vessels long before the beginning of any pile removal operations and would be apprised of the advent of increased underwater sound via the soft start of the vibratory hammer. It is not expected that airborne sound levels will induce any form of behavioral harassment, much less TTS in individual pinnipeds.

The DNR and other organizations, such as the Cascadia Research Collective, have been monitoring the behavior of harbor seals present within the NRCA since 1977. Past disturbance observations at Woodard Bay NRCA have shown that seal harassment results from the presence of non-motorized vessels (*e.g.,* recreational kayaks and canoes), motorized vessels (*e.g.,* fishing boats), and people (Calambokidis and Leathery, 1991; Buettner *et al.,* 2008). Results of these studies are described in the proposed IHA notice for this action. Based on these studies, NMFS anticipates that the presence of work crews and vessels will result in behavioral harassment, primarily by flushing seals off log booms, or by causing short-term avoidance of the area or similar short-term behavioral disturbance.

In summary, based on the preceding discussion and on observations of harbor seals during past management activities in Woodard Bay, NMFS has determined that impacts to harbor seals during restoration activities will be limited to behavioral harassment of limited duration and limited intensity (*i.e.,* temporary flushing at most) resulting from physical disturbance. It is anticipated that seals would be initially disturbed by the presence of crew and vessels associated with the habitat restoration project. Seals entering the water following such disturbance could also be exposed to underwater SPLs greater than 120 dB (*i.e.,* constituting harassment); however, given the short duration and low energy of vibratory extraction of 12–24 in timber piles, PTS will not occur and TTS is not likely. Alternatively, the presence of work crews and vessels, or the introduction of sound into the water, could result in short-term avoidance of the area by seals seeking to use the haul-out. Abandonment of any portion of the haul-out is not expected, as harbor seals have been documented as quickly becoming accustomed to the presence of work crews. During similar activities carried out under the previous IHA, seals showed no signs of abandonment or of using the haul-outs to a lesser degree.

**Anticipated Effects on Habitat**

NMFS provided a detailed discussion of the potential effects of this action on marine mammal habitat in the notice of the proposed IHA (76 FR 56172; September 12, 2011). While marine mammal habitat will be temporarily ensonified by low sound levels resulting from habitat restoration effort, no impacts to the physical availability of haul-out habitat will occur. It is expected that, at most, temporary disturbance of habitat potentially utilized by harbor seal prey species may occur as piles are removed. The DNR's restoration activities will result in a long-term net positive gain for marine mammal habitat, compared with minimal short-term, temporary impacts.

**Mitigation**

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses.

The DNR will continue certain mitigation measures stipulated in the 2010 IHA, designed to minimize disturbance to harbor seals within the action area in consideration of timing, location, and equipment use. Foremost, pile and structure removal will only occur between November and February (*i.e.,* within the designated in-water work window designed to reduce impacts to fish species in Woodard Bay), outside of harbor seal pupping and molting seasons. Therefore, no impacts to pups or molting individuals from the specified activity during these sensitive time periods will occur. In addition, the following measures will be implemented:

- The DNR will approach the action area slowly to alert seals to their presence from a distance and will begin pulling piles at the farthest location from the log booms used as harbor seal haul-out areas;
- The contractor or PSO will survey the operational area for seals before initiating activities and wait until the seals are at a sufficient distance (*i.e.,* 50 ft [15 m]) from the activity so as to minimize the risk of direct injury from the equipment or from a piling or structure breaking free;
- The DNR will require the contractor to initiate a vibratory hammer soft start at the beginning of each work day; and
- The vibratory hammer power pack will be outfitted with a muffler to reduce in-air noise levels to a maximum of 80 dB.

The soft start method involves a reduced energy vibration from the hammer for the first 15 seconds and then a 1-minute waiting period. This method will be repeated twice before commencing with operations at full power.

In addition, and as a result of an unauthorized mortality resulting from entanglement, DNR will no longer mark broken pilings with buoys for later retrieval by divers. The entanglement and subsequent death of a harbor seal in one of these buoy lines was considered to be an unusual occurrence and is unlikely to happen again. Nonetheless, contractors will be required to record broken piling locations for divers using a global positioning system instead of marking pilings with buoys or flags. This measure eliminates the possibility of such mortality.

NMFS has carefully evaluated the applicant's mitigation measures as proposed and considered their effectiveness in past implementation to preliminarily determine whether they are likely to effect the least practicable adverse impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures includes consideration of the following factors in relation to one another: (1) The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals, (2) the proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and (3) the practicability of the measure for applicant implementation, including consideration of personnel safety.

Injury, serious injury, or mortality to pinnipeds could likely only potentially result from startling animals inhabiting the haul-out into a stampede reaction. However, even in the event that such a reaction occurred, it is unlikely that it would result in injury, serious injury, or mortality, as the activities will occur outside of the pupping season, and access to the water from the haul-outs is relatively easy and unimpeded. However, DNR has proposed to approach haul-outs gradually from a distance, and will begin daily work at the farthest distance from the haul-out in order to eliminate the possibility of such events. During the previous year of work under NMFS' authorization, implementation of similar mitigation measures has resulted in no known injury, serious injury, or mortality (other than an atypical event that was outside

the scope of the mitigation measures considered in relation to disturbing seals from the haul-outs).

Based upon the DNR's record of management in the NRCA, information from monitoring DNR's implementation of the mitigation measures as prescribed under the previous IHA, and NMFS' evaluation of the applicant's proposed measures and other measures considered by NMFS, NMFS has determined that the proposed mitigation measures provide the means of effecting the least practicable adverse impacts on marine mammal species or stocks and their habitat.

**Monitoring and Reporting**

In order to issue an ITA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must set forth ''requirements pertaining to the monitoring and reporting of such taking''. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for IHAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present.

DNR's monitoring plan adheres to protocols already established for Woodard Bay to the maximum extent practical for the specified activity. Monitoring of both the north and south haul-outs will occur for a total of 15 out of the 40 work days. Monitoring will occur during the first 5 days of project activities, when the contractors are mobilizing and starting use of the vibratory hammer; during 5 days when activities are occurring within 100 yd (91 m) of the haul-out area; and during 5 additional days, to be decided when the schedule of work is provided by the contractor. Monitoring of both haul-outs will be performed by at least one protected species observer (PSO). The PSO will (1) Be on-site prior to crew and vessel arrival to determine the number of seals present pre-disturbance; (2) maintain a low profile during this time to minimize disturbance from monitoring; and (3) conduct monitoring beginning 30 minutes prior to crew arrival, during pile removal or other restoration activities, and for 30 minutes after crew leave the site (or until dark).

The PSO will record incidental takes (*i.e.,* numbers of seals flushed from the haul-out). This information will be determined by recording the number of seals using the haul-out on each monitoring day prior to the start of restoration activities and recording the number of seals that flush from the haul-out or, for animals already in the water, display adverse behavioral reactions to vibratory extraction. A description of the disturbance source, the proximity in meters of the disturbance source to the disturbed animals, and observable behavioral reactions to specific disturbances will also be noted. In addition, the PSO will record:

- The number of seals using the haul-out on each monitoring day prior to the start of restoration activities for that day;
- Seal behavior before, during and after pile and structure removal;
- Monitoring dates, times and conditions;
- Dates of all pile and structure removal activities; and
- After correcting for observation effort, the number of seals taken over the duration of the habitat restoration project.

Within 30 days of the completion of the project, DNR will submit a monitoring report to NMFS that will include a summary of findings and copies of field data sheets and relevant daily logs from the contractor.

**Estimated Take by Incidental Harassment**

NMFS is authorizing DNR to take harbor seals, by Level B harassment only, incidental to specified restoration activities. These activities, involving extraction of creosoted timber piles and removal of derelict pier superstructure, are expected to harass marine mammals present in the vicinity of the project site through behavioral disturbance only. Estimates of the number of marine mammals that may be harassed by the activities are based upon actual counts of harbor seals harassed during days monitored under the previous IHA, and the estimated total number of working days. Methodology of take estimation was discussed in detail in NMFS' notice of proposed IHA (76 FR 56172; September 12, 2011).

DNR considers that 40 total work days may occur, potentially resulting in incidental harassment of harbor seals. Using the average count from monitoring under the previous IHA (November–December 2010; 52), the result is an estimated incidental take of 2,080 harbor seals (40 days × 52 seals per day). NMFS considers this to be a highly conservative estimate in comparison with the estimated actual take of 875 seals from 2010, which is nonetheless based upon the best available scientific information.

**Negligible Impact and Small Numbers Analysis and Determination**

NMFS has defined 'negligible impact' in 50 CFR 216.103 as ''* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

In determining whether or not authorized incidental take will have a negligible impact on affected species or stocks, NMFS considers a number of criteria regarding the impact of the proposed action, including the number, nature, intensity, and duration of take that may occur. DNR's restoration activities may harass only those pinnipeds hauled out in Woodard Bay, a relatively small and localized group of animals. No mortality or injury is anticipated or proposed for authorization, nor will the proposed action result in long-term impacts such as permanent abandonment of the haul-out. Seals will likely become alert or, at most, flush into the water in reaction to the presence of crews and equipment. However, seals have been observed as becoming habituated to physical presence of work crews, and quickly re-inhabit haul-outs upon cessation of stimulus. In addition, the proposed restoration actions may provide improved habitat function for seals, both indirectly through a healthier prey base and directly through restoration and maintenance of man-made haul-out habitat. No impacts will be expected at the population or stock level.

No pinniped stocks known from the action area are listed as threatened or endangered under the ESA or determined to be strategic or depleted under the MMPA. Recent data suggests that harbor seal populations have reached carrying capacity.

Although the estimated take of 2,080 is relatively high in comparison with the estimated population of 14,612 for the Washington Inland Waters stock of harbor seals (14 percent), the number of individual seals harassed will be low, with individual seals likely harassed multiple times. In addition, although the estimated take is based upon the best scientific information available, NMFS considers the estimate to be highly conservative. For similar restoration activities in 2010, estimated actual take was much lower (875 seals, albeit over 35 work days rather than the 40 estimated for 2011).

Mitigation measures will minimize onset of sudden and potentially dangerous reactions as well as overall disturbance. In addition, restoration work is not likely to affect seals at both

haul-outs simultaneously, based on location of the crew and barge. Further, although seals may initially flush into the water, based on previous disturbance studies and maintenance activity at the haul-outs, the DNR expects seals will quickly habituate to piling and structure removal operations. For these reasons no long term or permanent abandonment of the haul-out is anticipated. The proposed action is not anticipated to result in injury, serious injury, or mortality to any harbor seal. The DNR will not conduct habitat restoration operations during the pupping and molting season; therefore, no pups or molting individuals will be affected by the proposed action and no impacts to any seals will occur as a result of the specified activity during these sensitive time periods.

Based on the foregoing analysis, behavioral disturbance to pinnipeds in Woodard Bay will be of low intensity and limited duration. To ensure minimal disturbance, DNR will implement the mitigation measures described previously, which NMFS has determined will serve as the means for effecting the least practicable adverse effect on marine mammal stocks or populations and their habitat. NMFS finds that DNR's restoration activities will result in the incidental take of small numbers of marine mammals, and that the requested number of takes will have no more than a negligible impact on the affected species and stocks.

### Impact on Availability of Affected Species for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by this action.

### Endangered Species Act (ESA)

There are no ESA-listed marine mammals found in the action area; therefore, no consultation under the ESA is required.

### National Environmental Policy Act (NEPA)

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), as implemented by the regulations published by the Council on Environmental Quality (40 CFR parts 1500–1508), and NOAA Administrative Order 216–6, NMFS prepared an Environmental Assessment (EA) to consider the direct, indirect and cumulative effects to the human environment resulting from issuance of an IHA to DNR. NMFS signed a Finding of No Significant Impact on October 27, 2010. NMFS has reviewed the proposed application and determined that there are no substantial changes to the proposed action or new environmental impacts or concerns. Therefore, NMFS has determined that a new or supplemental EA or Environmental Impact Statement is unnecessary. The EA referenced above is available for review at *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.*

### Determinations

NMFS has determined that the impact of conducting the specific activities described in this notice and in the IHA request in Woodard Bay, Washington may result, at worst, in temporary modifications in behavior (Level B harassment) of small numbers of marine mammals. Further, this activity is expected to result in a negligible impact on the affected stock of marine mammals. The provision requiring that the activity not have an unmitigable impact on the availability of the affected species or stock of marine mammals for subsistence uses is not implicated for this action.

### Authorization

As a result of these determinations, NMFS has issued an IHA to DNR to conduct habitat restoration activities in Woodard Bay during the period of November 1, 2011, through February 28, 2012, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: October 26, 2011.

**Wanda L. Cain,**

*Chief, Planning and Program Coordination Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2011–28307 Filed 10–31–11; 8:45 am]

**BILLING CODE 3510–22–P**

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## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Determination Under the Textile and Apparel Commercial Availability Provision of the Dominican Republic-Central America-United States Free Trade Agreement (''CAFTA–DR Agreement'')

**AGENCY:** The Committee for the Implementation of Textile Agreements.

**ACTION:** Determination to add a product in unrestricted quantities to Annex 3.25 of the CAFTA–DR Agreement.

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

**SUMMARY:** The Committee for the Implementation of Textile Agreements (''CITA'') has determined that certain cotton/nylon/spandex raschel knit open work crepe fabric, as specified below, is not available in commercial quantities in a timely manner in the CAFTA–DR countries. The product will be added to the list in Annex 3.25 of the CAFTA–DR Agreement in unrestricted quantities.

**FOR FURTHER INFORMATION CONTACT:** Maria Dybczak, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3651.

**FOR FURTHER INFORMATION ON-LINE:** *http://web.ita.doc.gov/tacgi/CaftaReqTrack.nsf* under ''Approved Requests,'' Reference number: 157.2011.09.26.Fabric.ST&RforHansae.

**SUPPLEMENTARY INFORMATION:**

### Authority

The CAFTA–DR Agreement; Section 203(o)(4) of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (''CAFTA–DR Implementation Act''), Public Law 109–53; the Statement of Administrative Action, accompanying the CAFTA–DR Implementation Act; and Presidential Proclamations 7987 (February 28, 2006) and 7996 (March 31, 2006).

### Background

The CAFTA–DR Agreement provides a list in Annex 3.25 for fabrics, yarns, and fibers that the Parties to the CAFTA–DR Agreement have determined are not available in commercial quantities in a timely manner in the territory of any Party. The CAFTA–DR Agreement provides that this list may be modified pursuant to Article 3.25(4)–(5), when the President of the United States determines that a fabric, yarn, or fiber is not available in commercial quantities in a timely manner in the territory of any Party. *See* Annex 3.25 of the CAFTA–DR Agreement; *see also* section 203(o)(4)(C) of the CAFTA–DR Implementation Act.

The CAFTA–DR Implementation Act requires the President to establish procedures governing the submission of a request and providing opportunity for interested entities to submit comments and supporting evidence before a commercial availability determination is made. In Presidential Proclamations 7987 and 7996, the President delegated to CITA the authority under section 203(o)(4) of CAFTA–DR Implementation Act for modifying the Annex 3.25 list. Pursuant to this authority, on September 15, 2008, CITA published modified procedures it would follow in considering requests to modify the Annex 3.25 list of products determined to be not commercially available in the territory of any Party to CAFTA–DR (*Modifications to Procedures for*

*Considering Requests Under the Commercial Availability Provision of the Dominican Republic-Central America-United States Free Trade Agreement,* 73 FR 53200) (''CITA's procedures'').

On September 26, 2011, the Chairman of CITA received a request for a Commercial Availability determination (''Request'') from Sandler, Travis & Rosenberg, P.A., on behalf of Hansae Co. Ltd., for certain cotton/nylon/spandex raschel knit open work crepe fabric, as specified below. On September 28, 2011, in accordance with CITA's procedures, CITA notified interested parties of the Request, which was posted on the dedicated Web site for CAFTA–DR Commercial Availability proceedings. In its notification, CITA advised that any Response with an Offer To Supply (''Response'') must be submitted by October 11, 2011, and any Rebuttal Comments to a Response (''Rebuttal'') must be submitted by October 17, 2011, in accordance with Sections 6 and 7 of CITA's procedures. No interested entity submitted a Response to the Request advising CITA of its objection to the Request and its ability to supply the subject product.

In accordance with section 203(o)(4)(C) of the CAFTA–DR Implementation Act, and Section 8(c)(2) of CITA's procedures, as no interested entity submitted a Response objecting to the Request and demonstrating its ability to supply the subject product, CITA has determined to add the specified fabric to the list in Annex 3.25 of the CAFTA–DR Agreement.

The subject product has been added to the list in Annex 3.25 of the CAFTA–DR Agreement in unrestricted quantities. A revised list has been posted on the dedicated Web site for CAFTA–DR Commercial Availability proceedings.

**Specifications: Certain Cotton/Nylon/Spandex Raschel Knit Open Work Crepe Fabric**

HTS: 6005.32.00, 6005.34.00
Fabric Type: Raschel knit, open work crepe fabric.
Fiber Content:
18–20% Cotton, 76–80% Nylon, 2–4% spandex
Yarn Size:
*Cotton:*
English: 57 to 62/2
Metric: 96 to 107/2
*Nylon:*
English: 48 to 52 denier/48 filament
Metric: 173 to 187.5/48 filament
*Gimped yarn with Spandex core:*
Spandex—
English: 199.5 to 220.5 denier
Metric: 40.85 to 45.15
Nylon—
English: 66 to 74 denier/24 filament/2
Metric: 121.6 to 136.3/24 filament/2
Machine gauge: 18 GG
Number of bars: 42
Weight: 110–140 grams per sq. meter
Width: 127 to 152 centimeters
Finishing Process: Piece dyed or printed

**Kim Glas,**

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 2011–28320 Filed 10–31–11; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Availability of the Fiscal Year 2010 United States Special Operations Command (USSOCOM) Inventory List of Contracts for Services; Correction

**AGENCY:** United States Special Operations Command (USSOCOM), Department of Defense (DoD).

**ACTION:** Notice of availability; correction.

**SUMMARY:** On October 25, 2011 (76 FR 66051), DoD published a notice titled Availability of the Fiscal Year 2010 United States Special Operations Command (USSOCOM) Inventory List of Contracts for Services. A web site in this document was incorrectly printed. This notice corrects that error.

**FOR FURTHER INFORMATION CONTACT:** Marian Duchesne (CTR, Team Jacobs) at (813) 826–6499 or email *marian.duchesne@socom.mil.*

**SUPPLEMENTARY INFORMATION:** Subsequent to the publication of the notice described in the **SUMMARY**, DoD discovered that the web site on page 66051 was printed incorrectly. The correct web site is printed below.

*Correction*

In the notice (FR Doc. 2011–27457) published on October 25, 2011 (76 FR 66051), make the following correction:

On page 66051, in the third column, the web site at the end of the **SUMMARY** paragraph should read *http://www.socom.mil/sordac/Documents/USSOCOM%20FY10%20Services%20Inventory%20List.pdf.*

Dated: October 27, 2011.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2011–28264 Filed 10–31–11; 8:45 am]

BILLING CODE 5001–06–P

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Reserve Forces Policy Board (RFPB); Notice of Advisory Committee Meeting

**AGENCY:** Department of Defense; Office of the Secretary of Defense Reserve Forces Policy Board.

**ACTION:** Notice of advisory committee meeting.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Sunshine in the Government Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, the Department of Defense announces the following Federal advisory committee meeting of the Reserve Forces Policy Board (RFPB).

**DATES:** Tuesday, November 29, 2011, from 7:30 a.m.–3:30 p.m.

**ADDRESSES:** Meeting address is Pentagon Library and Conference Center, Room B6, Arlington, VA. Mailing address is Reserve Forces Policy Board, 7300 Defense Pentagon, Washington, DC 20301–7300.

**FOR FURTHER INFORMATION CONTACT:** LtCol Ken Olivo, Designated Federal Officer, (703) 697–4486 (Voice), (703) 693–5371 (Facsimile), *RFPB@osd.mil.* Mailing address is Reserve Forces Policy Board, 7300 Defense Pentagon, Washington, DC 20301–7300. *Web site: http://ra.defense.gov/rfpb/.*

**SUPPLEMENTARY INFORMATION:** *Purpose of the Meeting:* A preparatory meeting, not open to the public, of the Reserve Forces Policy Board.

*Agenda:* Operational Readiness/Top Issues Briefs, Board Review of Information & Formulation of Subcommittee Work Plans.

*Meeting Accessibility:* Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165, this is a preparatory meeting closed to the public.

*Written Statements:* Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to the membership of the Reserve Forces Policy Board at any time or in response to the stated agenda of a planned meeting. Written statements should be submitted to the Reserve Forces Policy Board's Designated Federal Officer. The Designated Federal Officer's contact information can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp.*

Written statements that do not pertain to a scheduled meeting of the Reserve Forces Policy Board may be submitted at any time. However, if individual

comments pertain to a specific topic being discussed at a planned meeting then these statements must be submitted no later than five business days prior to the meeting in question. The Designated Federal Officer will review all submitted written statements and provide copies to all the committee members.

Dated: October 27, 2011.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2011–28229 Filed 10–31–11; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Renewal of Department of Defense Federal Advisory Committees

**AGENCY:** Department of Defense (DoD).

**ACTION:** Renewal of Federal Advisory Committee.

**SUMMARY:** Under the provisions of the Federal Advisory Committee Act of 1972, (5 U.S.C. Appendix), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b), and 41 CFR 102–3.50(d), the Department of Defense gives notice that it is renewing the charter for the Secretary of the Navy Advisory Panel (hereafter referred to as ''the Panel'').

The Panel is a discretionary Federal advisory committee that shall provide the Secretary of Defense, through the Secretary of the Navy, independent advice and recommendations on critical matters concerning the Department of the Navy. The Panel's focus will include the Navy energy program, the shipbuilding defense industrial base, Asia/Pacific engagement, intelligence organization and related maritime issues.

The Panel reports to the Secretary of the Navy who is authorized to act upon the Panel's advice and recommendations.

The Panel shall be composed of no more than 15 members, who are eminent authorities in the fields of national security policy, intelligence, science, engineering, or energy and industry. Panel members appointed by the Secretary of Defense, who are not full-time or permanent part-time Federal officers or employees, shall be appointed to serve as experts and consultants under the authority of 5 U.S.C. 3109, and to serve as special government employees. Panel members shall be appointed on an annual basis by the Secretary of Defense, and with the exception of travel and per diem for official travel, Panel members shall serve without compensation.

The Secretary of the Navy shall select the Panel's Chairperson from the total membership.

All Panel members are appointed to provide advice on behalf of the government on the basis of their best judgment without representing any particular point of view and in a manner that is free from conflict of interest.

With DoD approval, the Panel is authorized to establish subcommittees, as necessary and consistent with its mission. These subcommittees shall operate under the provisions of the Federal Advisory Committee Act of 1972, the Government in the Sunshine Act of 1976 (5 U.S.C. 552b), other governing Federal statutes and regulations, and governing DoD policies.

Such subcommittees shall not work independently of the chartered Panel, and shall report all their recommendations and advice to the Panel for full deliberation and discussion. Subcommittees have no authority to make decisions on behalf of the chartered Panel; nor shall any subcommittee or its members report or update directly to the Department of Defense or any Federal officers or employees who are not Panel members.

All subcommittee members shall be appointed in the same manner as the Panel members; that is, the Secretary of Defense shall appoint subcommittee members even if the member in question is already a Panel member.

Such individuals, if not full-time or part-time government employees, shall be appointed to serve as experts and consultants under the authority of 5 U.S.C. 3109, and to serve as special government employees, whose appointments must be renewed on an annual basis. With the exception of travel, subcommittee members shall serve without compensation.

**FOR FURTHER INFORMATION CONTACT:** Jim Freeman, Deputy Advisory Committee Management Officer for the Department of Defense, (703) 692–5952.

**SUPPLEMENTARY INFORMATION:** The Panel shall meet at the call of the Designated Federal Officer, in consultation with the Secretary of the Navy and the Panel's Chairperson and the estimated number of Panel meetings is three per year.

The Designated Federal Officer, pursuant to DoD policy, shall be a full-time or permanent part-time DoD employee, and shall be appointed in accordance with governing DoD policies and procedures. In addition, the Designated Federal Officer is required to be in attendance at all Panel and subcommittee meetings for the entire duration of each and every meeting. However, in the absence of the Designated Federal Officer, the Alternate Designated Federal Officer shall attend the entire duration of the Panel or subcommittee meeting.

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to the Secretary of the Navy Advisory Panel's membership about the Panel's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of Secretary of the Navy Advisory Panel.

All written statements shall be submitted to the Designated Federal Officer for the Secretary of the Navy Advisory Panel, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Secretary of the Navy Advisory Panel's Designated Federal Officer can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp.*

The Designated Federal Officer, pursuant to 41 CFR 102–3.150, will announce planned meetings of the Secretary of the Navy Advisory Panel. The Designated Federal Officer, at that time, may provide additional guidance on the submission of written statements that are in response to the stated agenda for the planned meeting in question.

Dated: October 26, 2011.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2011–28148 Filed 10–31–11; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF EDUCATION

### National Advisory Committee on Institutional Quality and Integrity (NACIQI) Meeting

**AGENCY:** National Advisory Committee on Institutional Quality and Integrity, Office of Postsecondary Education, Department of Education.

**ACTION:** Notice of Amended Agenda and Procedures for Making Oral Comments at December 14–16, 2011 Open Meeting of the National Advisory Committee on Institutional Quality and Integrity (NACIQI).

**ADDRESS:** U.S. Department of Education, Office of Postsecondary Education, 1990 K Street NW., Room 8060, Washington, DC 20006.

**SUMMARY:** This notice sets forth changes to the December 14–16, 2011 NACIQI

meeting agenda that was published in the August 17, 2011, **Federal Register** (76 FR 159); a complete listing of the agenda items for the December 14–16, 2011 NACIQI meeting, as revised; and information related to members of the public making oral comments at the meeting. The notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act (FACA) and Section 114(d)(1)(B) of the Higher Education Act (HEA).

*Meeting Date and Place:* The NACIQI meeting will be held on December 14–16, 2011, from 8:30 a.m. to approximately 5:30 p.m., Eastern Standard Time, except for December 16, 2011, when it is anticipated that the meeting will end mid-afternoon, at the Crowne Plaza Old Town Alexandria, Washington Ballroom, 901 North Fairfax, Alexandria, Virginia.

*Changes to Agenda:* Since the publication of the August 17, 2011 **Federal Register** notice, the Department has added an item to the agenda: The review of an informational report on initial accrediting decisions since October 2010 by the Higher Learning Commission of the North Central Association of Colleges and Schools as required by the corrective actions report issued by the Department's Office of Postsecondary Education on May 6, 2010. The NACIQI will not be making a recommendation to the Senior Department Official concerning the informational report from the Higher Learning Commission of the North Central Association of Colleges and Schools. Also, the Mississippi Institutes of Higher Learning Board of Trustees of State Institutions of Higher Education has been removed from the December meeting agenda.

*Meeting Agenda:* Below is a list of agencies and the current and requested scopes of recognition scheduled for review during the December 14–16, 2011 NACIQI meeting.

**Petitions for Renewal of Recognition**

*Accrediting Agencies*

1. American Podiatric Medical Association, Council on Podiatric Medical Education. (Current Scope: the accreditation and preaccreditation [''Candidate Status''] throughout the United States of freestanding colleges of podiatric medicine and programs of podiatric medicine, including first professional programs leading to the degree of Doctor of Podiatric Medicine).

2. The Council on Chiropractic Education, Commission on Accreditation. (Current Scope: The accreditation of programs leading to the Doctor of Chiropractic degree and single-purpose institutions offering the Doctor of Chiropractic program).

3. Commission on English Language Program Accreditation. (Current Scope: The accreditation of postsecondary, non-degree-granting English language programs and institutions in the United States).

4. Joint Review Committee on Education in Radiologic Technology. (Current Scope: The accreditation of education programs in radiography, magnetic resonance, radiation therapy, and medical dosimetry, including those offered via distance education, at the certificate, associate, and baccalaureate levels).

5. North Central Association Commission on Accreditation and School Improvement, Board of Trustees. (Current Scope: The accreditation and preaccreditation [''Candidacy Status''] of schools offering non-degree, postsecondary education in Arizona, Arkansas, Colorado, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, New Mexico, North Dakota, Ohio, Oklahoma, South Dakota, West Virginia, Wisconsin, Wyoming, and in the Navajo Nation).

**State Approval Agencies for Nursing Education**

1. Kansas State Board of Nursing. (Current Scope: A State agency for the approval of nurse education).

2. Maryland State Board of Nursing. (Current Scope: A State agency for the approval of nurse education).

3. New York State Board of Regents, State Education Department, Office of the Professions (Nursing Education). (Current Scope: A State agency for the approval of nurse education).

**State Approval Agencies for Postsecondary Education Vocational Education**

1. New York State Board of Regents, State Education Department, Office of the Professions (Public Postsecondary Vocational Education, Practical Nursing). (Current Scope: State agency for the approval of public postsecondary vocational education in the field of practical nursing offered by the Board of Cooperative Educational Services, the Educational Opportunity Centers, and the New York City Board of Education to prepare persons for licensed practical nursing careers in the State of New York).

2. Pennsylvania State Board for Vocational Education, Bureau of Career and Technology Education. (Current Scope: State agency for the approval of public postsecondary vocational education).

**Petitions for Renewal of Recognition and Expansion of Scope to Include Distance Education**

*Accrediting Agency*

1. American Association for Marriage and Family Therapy, Commission on Accreditation for Marriage and Family Therapy Education. (Current Scope: the accreditation and preaccreditation [''Candidacy''] throughout the United States of clinical training programs in marriage and family therapy at the master's, doctoral, and postgraduate levels. Requested Scope: The accreditation throughout the United States of clinical training programs in marriage and family therapy at the master's, doctoral, and postgraduate levels, including programs offering distance education.)

**State Approval Agency for Postsecondary Education Vocational Education**

1. Oklahoma Board of Career and Technology Education. (Current Scope: State agency for the approval of public postsecondary vocational education offered at institutions in the State of Oklahoma that are not under the jurisdiction of the Oklahoma State Regents for Higher Education. Requested Scope: State agency for the approval of public postsecondary vocational education offered at institutions in the State of Oklahoma that are not under the jurisdiction of the Oklahoma State Regents for Higher Education, including programs offered via distance education.)

**Compliance Reports**

*Accrediting Agencies*

1. American Optometric Education, Accreditation Council on Optometric Education. (Current Scope: The accreditation in the United States of professional optometric degree programs, optometric technician [associate degree] programs, and optometric residency programs, and for the preaccreditation categories of ''Preliminary Approval'' for professional optometric degree programs and ''Candidacy Pending'' for optometric residency programs in Department of Veterans Affairs facilities).

2. Western Association of Schools and Colleges, Accrediting Commission for Community and Junior Colleges. (Current Scope: The accreditation and preaccreditation [''Candidate for Accreditation''] of two-year, associate degree-granting institutions located in California, Hawaii, the United States territories of Guam and American Samoa, the Republic of Palau, the

Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, and the Republic of the Marshall Islands, including the accreditation of such programs offered via distance education at these colleges].

**Informational Report**

*Accrediting Agency*

1. The Higher Learning Commission of the North Central Association of Colleges and Schools. (Current Scope: The accreditation and preaccreditation [''Candidate for Accreditation''] of degree-granting institutions of higher education in Arizona, Arkansas, Colorado, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, New Mexico, North Dakota, Ohio, Oklahoma, South Dakota, West Virginia, Wisconsin, Wyoming, including tribal institutions, and the accreditation of programs offered via distance education with these institutions. This recognition extends to the Institutional Actions Committee, jointly with the Board of Trustees of the Commission, for decisions on cases for continued accreditation or reaffirmation and continued candidacy. This recognition also extends to the Review Committee of the Accreditation Review Council, jointly with the Board of Trustees of the Commission, for decisions on cases for continued accreditation or candidacy and for initial candidacy or initial accreditation when there is a consensus decision by the Review Committee.)

*Instructions for Making a Third-Party Oral Comment at the December 2011 NACIQI Meeting:* There are two methods the public may use to make a third-party oral comment of three to five minutes concerning one of the agencies scheduled for review during the December 14–16, 2011 meeting.

*Method One:* Submit a written request by email in advance of the meeting to make a third-party oral presentation. All individuals or groups submitting an advance request in accordance with this notice will be afforded an opportunity to speak for a minimum of three minutes each. Each request must concern the recognition of a single agency scheduled in this notice for review, must be received no later than thirty days after the date of publication of this notice, and must be sent to *aslrecordsmanager@ed.gov* with the subject line ''Oral Comments re: (agency name).'' Your request (no more than one page maximum) must include:

1. The name, title, affiliation, mailing address, email address, telephone and facsimile numbers, and Web site (if any) of the person/group requesting to speak, and

2. A brief summary of the principal points to be made during the oral presentation.

Only requests made in accordance with these instructions will result in an opportunity to speak under this method. Individuals making oral presentations may not distribute written materials at the meeting. Please do not send material directly to the NACIQI members.

*Method Two:* Register on December 14, 15, or 16, 2011, for an oral presentation opportunity during the NACIQI's deliberations concerning a particular agency scheduled for review. The requester should provide his or her name, title, affiliation, mailing address, email address, telephone and facsimile numbers, and Web site (if any). A total of up to fifteen minutes during each agency's review will be allotted for commenters who sign up the day of the meeting (in addition to those commenters who signed up in advance); and, if a person or group requests to make comments in advance, they cannot sign-up to make comments the day of the meeting. Individuals or groups that sign up on the day of the meeting will be selected on a first-come, first-served basis. If selected, each commenter may speak from three to five minutes, depending on the number of individuals or groups who signed up the day of the meeting. The Committee may engage the commenter in discussion afterwards.

Members of the public will be eligible for making third-party oral comments only in accordance with these instructions. The oral comments will become part of the official record and will be considered by the Department and the NACIQI in their deliberations. Individuals and groups making oral presentations may not distribute written materials at the meeting.

Oral comments about agencies seeking continued recognition or presenting a compliance report must relate to the Criteria for the Recognition of Accrediting Agencies, the Criteria and Procedures for Recognition of State Agencies for Nurse Education, or the Criteria and Procedures for Recognition of State Agencies for Approval of Public Postsecondary Vocational Education, which are available at *http://www.ed.gov/admins/finaid/accred/index.html*.

If the Committee is reviewing an agency's petition, comments must relate to whether the agency meets the Criteria for Recognition. If the Committee is reviewing an agency's compliance/interim report, comments must relate to the NACIQI's area of consideration, which will be whether the agency has demonstrated compliance with the specific criteria specified in the Department's request for the report. Third parties having concerns about agencies regarding matters outside the scope of the requested compliance report should report those concerns to Department staff.

*Written Comments:* This notice invites third-party oral testimony about the agencies scheduled for review, not written comment. Requests for written comments on agencies that are scheduled for review during the meeting were published in the **Federal Register** (76 FR 159) on August 17, 2011. The NACIQI will receive and consider only written comments that were submitted by the September 17, 2011 deadline specified in the above referenced **Federal Register** notice.

*Access to Records of the Meeting:* The Department will post the official report of the meeting on the NACIQI Web site shortly after the meeting. Pursuant to the FACA, the public may also inspect the materials at 1990 K Street NW., Washington, DC, by emailing the *aslrecordsmanager@ed.gov*, or by calling (202) 219–7067 to schedule an appointment.

*Reasonable Accommodations:* Individuals who will need accommodations for a disability in order to attend the December 14–16, 2011 meeting (*i.e.,* interpreter services, assistive listening devices, and/or materials in alternative format) should contact department staff by telephone: (202) 219–7011; or, *email: aslrecordsmanagement@ed.gov*, no later than November 21, 2011. We will attempt to meet requests after this date but cannot guarantee the availability of the requested accommodation. The meeting site is accessible.

**FOR FURTHER INFORMATION CONTACT:** Contact Melissa Lewis, Executive Director, NACIQI, U.S. Department of Education, Room 8060, 1990 K Street, NW., Washington, DC 20006, *telephone:* (202) 219–7011; *email: Melissa.Lewis@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the federal Information Relay Service at 1–(800) 877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

*NACIQI'S Statutory Authority and Functions:* The NACIQI is established under Section 114 of the Higher Education Act (HEA) as amended, 20 U.S.C. 1011c. The NACIQI advises the Secretary of Education about:

- The establishment and enforcement of the Criteria for Recognition of accrediting agencies or associations

under Subpart 2, Part H, Title IV, HEA, as amended.

- The recognition of specific accrediting agencies or associations, or a specific State approval agency.
- The preparation and publication of the list of nationally recognized accrediting agencies and associations.
- The eligibility and certification process for institutions of higher education under Title IV, HEA.
- The relationship between: (1) Accreditation of institutions of higher education and the certification and eligibility of such institutions, and (2) State licensing responsibilities with respect to such institutions.
- Any other advisory functions relating to accreditation and institutional eligibility that the Secretary may prescribe.

*Electronic Access to this Document:* The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *http://www.gpo.gov/fdsys*. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *http://www.federalregister.gov*. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

**Eduardo M. Ochoa,**

*Assistant Secretary for Postsecondary Education.*

[FR Doc. 2011–28263 Filed 10–31–11; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

### National Advisory Committee on Institutional Quality and Integrity (NACIQI) Meeting

**AGENCY:** National Advisory Committee on Institutional Quality and Integrity, Office of Postsecondary Education, U.S. Department of Education.

**ACTION:** Opportunity for the public to make written comments and/or oral comments concerning the NACIQI's report on the reauthorization of the Higher Education Act (HEA).

**SUMMARY:** This notice invites the public to submit written comments and requests to make oral comments concerning the NACIQI's draft report on the reauthorization of the HEA.

**ADDRESSES:** U.S. Department of Education, Office of Postsecondary Education, 1990 K Street NW., Room 8060, Washington, DC 20006.

**SUPPLEMENTARY INFORMATION:** The NACIQI meeting will be held on December 14–16, 2011, from 8:30 a.m. to approximately 5:30 p.m., at the Crowne Plaza Old Town Alexandria, Washington Ballroom, 901 North Fairfax Street, Alexandria, VA 22314.

During the afternoons of December 15 and December 16, 2011, the Committee will consider its report on the reauthorization of the HEA.

*Agenda for the Portion of the Meeting Concerning the Committee's Draft Report on the HEA:* The portion of the meeting concerning the Committee's draft report will consist of public comments and deliberations concerning the draft report to the Secretary of U.S. Department of Education on the reauthorization of the HEA. The report may be accessed at *http://www2.ed.gov/about/bdscomm/list/naciqi-dir/hea-recommendations.doc* and *http://www2.ed.gov/about/bdscomm/list/naciqi-dir/hea-recommendations.pdf.*

*Submission of Written Comments Concerning the Committee's Draft Report on the Reauthorization of the HEA:* Submitters should provide written comments as a Microsoft Word document that is attached to an electronic mail message (email) or provide comments in the body of an email message. Email messages must be received no later than November 25, 2011, to *aslrecordsmanager@ed.gov* with the subject line ''Written Comments regarding the draft report on the reauthorization of the HEA: Option Letter and/or Number.''

The Department intends to post the submissions on the NACIQI Web site. To help ensure accessibility to all interested parties, we are requesting that all submissions comply with the requirements of Section 508 of the Rehabilitation Act, or be submitted in an electronic format that can be made accessible, such as Microsoft Word. However, we will accept comments in any electronic or written form provided, but comments submitted in other forms, which are inaccessible, will not be posted online. Instead, we will index the inaccessible comments received and make them available upon request. Also, if copyrighted materials are submitted, written permission to post the materials on the U.S. Department of Education's NACIQI Web site must accompany the copyrighted materials.

Only materials submitted by the deadline to the email address listed in this notice, and in accordance with these instructions, become part of the official record concerning the reauthorization of the HEA and are considered by the Department and the NACIQI in their deliberations. Do not send material directly to NACIQI members or to staff.

*Instructions for Requests to Make Oral Comments Concerning the Committee's Draft Report on the Reauthorization of the HEA:* There are two methods the public may use to make an oral comment concerning the Committee's report on the reauthorization of the HEA.

*Method One:* Submit a request by email in advance of the meeting to make an oral comment. All individuals or groups submitting an advance request in accordance with this notice will be afforded an opportunity to speak for up to a maximum of three minutes each. Each request must be received no later than November 18, 2011, and must be sent to *aslrecordsmanager@ed.gov* with the subject line ''Oral Comment Request regarding the draft report on the reauthorization of the HEA: Option Letter and/or Number.'' Your request (no more than one page maximum) must include:

1. The name, title, affiliation, mailing address, email address, telephone and facsimile numbers, and Web site (if any) of the person/group requesting to speak, and
2. A brief summary of the principal points to be made during the oral presentation.

Do not send material directly to the NACIQI members or staff.

*Method Two:* Register on December 16, 2011, for an opportunity to comment on the draft report. The requester should provide his or her name, title, affiliation, mailing address, email address, telephone and facsimile numbers, and Web site (if any). The requester should provide the ''Option Letter and/or Number'' for the item the requester wishes to address. Up to 30 minutes total will be divided among oral commenters who register (in addition to those commenters who signed up in advance). Individuals or groups that register to make oral comments on December 16. 2011, will be selected on a first-come, first-served basis for each issue reviewed. If selected, each commenter may speak from three to five minutes, depending on the number of individuals or groups who registered for an oral presentation opportunity for each issue. The

Committee may engage the commenter in discussion afterwards. If a person or group requests to make comments in advance, they cannot sign-up to make comments at the meeting.

Members of the public will be eligible to make oral comments concerning the reauthorization of the HEA only in accordance with these instructions. The oral comments made will become part of the official record and will be considered by the Department and the NACIQI in their deliberations.

*Written and Oral Comments Concerning the Agencies/Institutions Scheduled for Review on December 14 and 15, 2011:* Two separate **Federal Register** notices were previously published on August 17, 2011 (76 FR 51014) and [publication date to be determined for the NACIQI Oral Comments notice] that contained the meeting notice and instructions for providing written or oral comments concerning the agencies and the Federal institution scheduled for review.

*Access to Records of the Meeting:* The Department will record the meeting and post the official report of the meeting on the NACIQI Web site shortly after the meeting. Pursuant to the FACA, the public may also inspect the materials at 1990 K Street NW., Washington, DC, by emailing *aslrecordsmanager@ed.gov,* or by calling (202) 219–7067 to schedule an appointment.

*Reasonable Accommodation:* Individuals who will need accommodations for a disability in order to attend the December 14–16, 2011 meeting (*i.e.,* interpreter services, assistive listening devices, and/or materials in alternative format) should contact department staff by telephone: (202) 219–7011; or, email: *aslrecordsmanagement@ed.gov,* no later than November 21, 2011. We will attempt to meet requests after this date but cannot guarantee the availability of the requested accommodation. The meeting site is accessible.

**FOR FURTHER INFORMATION CONTACT:** Melissa Lewis, Executive Director, NACIQI, U.S. Department of Education, Room 8060, 1990 K Street, NW., Washington, DC 20006, telephone: (202) 219–7009; email: *Melissa.Lewis@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1 (800) 877–8339, between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

*NACIQI'S Statutory Authority and Functions:* The NACIQI is established under Section 114 of the Higher Education Act (HEA) of 1965, as amended, 20 U.S.C. 1011c. The NACIQI advises the Secretary of Education about:

- The establishment and enforcement of the Criteria for Recognition of accrediting agencies or associations under Subpart 2, Part H, Title IV, HEA, as amended.
- The recognition of specific accrediting agencies or associations, or a specific State approval agency.
- The preparation and publication of the list of nationally recognized accrediting agencies and associations.
- The eligibility and certification process for institutions of higher education under Title IV, HEA.
- The relationship between: (1) Accreditation of institutions of higher education and the certification and eligibility of such institutions, and (2) State licensing responsibilities with respect to such institutions.
- Any other advisory functions relating to accreditation and institutional eligibility that the Secretary may prescribe.

*Electronic Access to This Document:* The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at *http://www.gpo.gov/fdsys.* At this site you can view this document, as well as all other document of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at this site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *http://www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

**Eduardo M. Ochoa,**

*Assistant Secretary for Postsecondary Education.*

[FR Doc. 2011–28266 Filed 10–31–11; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF ENERGY

**[OE Docket No. EA–243–B]**

## Application To Export Electric Energy; Tenaska Power Services Co.

**AGENCY:** Office of Electricity Delivery and Energy Reliability, DOE.

**ACTION:** Notice of application.

**SUMMARY:** Tenaska Power Services Co. (Tenaska) has applied to renew its authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act (FPA).

**DATES:** Comments, protests, or motions to intervene must be submitted on or before December 1, 2011.

**ADDRESSES:** Comments, protests, or motions to intervene should be addressed to: Christopher Lawrence, Office of Electricity Delivery and Energy Reliability, Mail Code: OE–20, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585–0350. Because of delays in handling conventional mail, it is recommended that documents be transmitted by overnight mail, by electronic mail to *Christopher.Lawrence@hq.doe.*gov, or by facsimile to (202) 586–8008.

**FOR FURTHER INFORMATION CONTACT:** Christopher Lawrence (Program Office) at (202) 586–5260, or by email to *Christopher.Lawrence@hq.doe.gov.*

**SUPPLEMENTARY INFORMATION:** Exports of electricity from the United States to a foreign country are regulated by the Department of Energy (DOE) pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b), 7172(f)) and require authorization under section 202(e) of the FPA (16 U.S.C.824a(e)).

On August 16, 2001, the Department of Energy (DOE) issued Order No. EA–243 which authorized Tenaska to transmit electric energy from the United States to Canada as a power marketer for a two-year term using existing international transmission facilities. DOE renewed the Tenaska export authorization on March 1, 2007 in Order No. EA–243–A. That authority will expire on March 1, 2012. On September 13, 2011, Tenaska filed an application with DOE for renewal of the export authority contained in Order No. EA–243–A for an additional five-year term.

The electric energy that Tenaska proposes to export to Canada would be surplus energy purchased from electric utilities, Federal power marketing agencies, and other entities within the United States. The existing international transmission facilities to be utilized by Tenaska have previously been authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties.

*Procedural Matters:* Any person desiring to be heard in this proceeding should file a comment or protest to the application at the address provided above. Protests should be filed in accordance with Rule 211 of the Federal

Energy Regulatory Commission's (FERC) Rules of Practice and Procedures (18 CFR 385.211). Any person desiring to become a party to these proceedings should file a motion to intervene at the above address in accordance with FERC Rule 214 (385.214). Five copies of such comments, protests, or motions to intervene should be sent to the address provided above on or before the date listed above.

Comments on the Tenaska application to export electric energy to Canada should be clearly marked with OE Docket No. 243–B. An additional copy is to be filed directly with Norma Rosner Iacovo, Associate General Counsel, Tenaska Power Services Co., 1701 E. Lamar Blvd., Suite 100, Arlington, TX 76006 and Neil L. Levy, King & Spalding LLP, 1700 Pennsylvania Avenue NW., Washington, DC 20006–4706. A final decision will be made on this application after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after a determination is made by DOE that the proposed action will not have an adverse impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above, by accessing the program Web site at *http://energy.gov/node/11845* or by emailing Angela Troy at *Angela.Troy@hq.doe.gov.*

Issued in Washington, DC, on October 26, 2011.

**Brian Mills,**

*Director, Permitting and Siting, Office of Electricity Delivery and Energy Reliability.*

[FR Doc. 2011–28237 Filed 10–31–11; 8:45 am]

**BILLING CODE 6450–01–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:* RP12–41–000.
*Applicants:* Crossroads Pipeline Company.
*Description:* Crossroads Pipeline Company submits tariff filing per 154.204: Operational Transactions to be effective 10/26/2011.
*Filed Date:* 10/25/2011.
*Accession Number:* 20111025–5063.
*Comment Date:* 5 p.m. Eastern Time on Monday, November 7, 2011.

*Docket Numbers:* RP12–42–000.
*Applicants:* Natural Gas Pipeline Company of America LLC.
*Description:* Natural Gas Pipeline Company of America LLC submits tariff filing per 154.204: Negotiated Rate Filing—Integrys Energy to be effective 11/1/2011.
*Filed Date:* 10/25/2011.
*Accession Number:* 20111025–5095.
*Comment Date:* 5 p.m. Eastern Time on Monday, November 7, 2011.

*Docket Numbers:* RP12–43–000.
*Applicants:* Natural Gas Pipeline Company of America LLC.
*Description:* Natural Gas Pipeline Company of America LLC submits tariff filing per 154.204: OXY Negotiated Rate Agreement to be effective 11/1/2011.
*Filed Date:* 10/25/2011.
*Accession Number:* 20111025–5108.
*Comment Date:* 5 p.m. Eastern Time on Monday, November 7, 2011.

*Docket Numbers:* RP12–44–000.
*Applicants:* Algonquin Gas Transmission, LLC.
*Description:* Algonquin Gas Transmission, LLC submits tariff filing per 154.204: KeySpan 2011–11–01 releases to Repsol to be effective 11/1/2011.
*Filed Date:* 10/25/2011.
*Accession Number:* 20111025–5115.
*Comment Date:* 5 p.m. Eastern Time on Monday, November 7, 2011.

*Docket Numbers:* RP12–45–000.
*Applicants:* Natural Gas Pipeline Company of America LLC.
*Description:* Natural Gas Pipeline Company of America LLC submits tariff filing per 154.204: Twin Eagle Negotiated Rate Agreement to be effective 11/1/2011.
*Filed Date:* 10/25/2011.
*Accession Number:* 20111025–5117.
*Comment Date:* 5 p.m. Eastern Time on Monday, November 7, 2011.

*Docket Numbers:* RP12–46–000.
*Applicants:* CenterPoint Energy Gas Transmission Company.
*Description:* CenterPoint Energy Gas Transmission Company Annual Report of Linked Firm Service Penalty Revenue Credits for twelve month reporting period ending July 31, 2011.
*Filed Date:* 10/25/2011.
*Accession Number:* 20111025–5123.
*Comment Date:* 5 p.m. Eastern Time on Monday, November 7, 2011.

*Docket Numbers:* RP12–47–000.
*Applicants:* CenterPoint Energy Gas Transmission Company,
CenterPoint Energy Gas Transmission Company.
*Description:* Annual Report of Total Penalty Revenue Credits for twelve month reporting period ended July 31, 2011.
*Filed Date:* 10/25/2011.
*Accession Number:* 20111025–5124.
*Comment Date:* 5 p.m. Eastern Time on Monday, November 7, 2011.

*Docket Numbers:* RP12–48–000.
*Applicants:* Kinder Morgan Interstate Gas Transmission LLC.
*Description:* Kinder Morgan Interstate Gas Transmission LLC submits tariff filing per 154.204: Settlement—Fuel 2011–10–25 to be effective 6/1/2011.
*Filed Date:* 10/25/2011.
*Accession Number:* 20111025–5130.
*Comment Date:* 5 p.m. Eastern Time on Monday, November 7, 2011.

*Docket Numbers:* RP12–49–000.
*Applicants:* Algonquin Gas Transmission, LLC.
*Description:* Algonquin Gas Transmission, LLC submits tariff filing per 154.204: Non-conforming Agreements with NJRES and Sequent to be effective 11/1/2011.
*Filed Date:* 10/25/2011.
*Accession Number:* 20111025–5142.
*Comment Date:* 5 p.m. Eastern Time on Monday, November 7, 2011.

*Docket Numbers:* RP12–50–000.
*Applicants:* Midcontinent Express Pipeline LLC.
*Description:* Midcontinent Express Pipeline LLC submits tariff filing per 154.204: Negotiated Rate Filing—Sawgrass to be effective 10/25/2011.
*Filed Date:* 10/25/2011.
*Accession Number:* 20111025–5176.
*Comment Date:* 5 p.m. Eastern Time on Monday, November 7, 2011.

*Docket Numbers:* RP12–51–000.
*Applicants:* Gulf Crossing Pipeline Company LLC.
*Description:* Gulf Crossing Pipeline Company LLC submits tariff filing per 154.204: Newfield 18 to Tenaska 217 Cap Release Negotiated Rate Agreement Filing to be effective 11/1/2011.
*Filed Date:* 10/26/2011.
*Accession Number:* 20111026–5028.
*Comment Date:* 5 p.m. Eastern Time on Monday, November 7, 2011.

*Docket Numbers:* RP12–52–000.
*Applicants:* Gulf South Pipeline Company, LP.
*Description:* Gulf South Pipeline Company, LP submits tariff filing per 154.204: EOG 34687–7 Amendment to Negotiated Rate Agreement Filing to be effective 11/1/2011.
*Filed Date:* 10/26/2011.
*Accession Number:* 20111026–5029.
*Comment Date:* 5 p.m. Eastern Time on Monday, November 7, 2011.

*Docket Numbers:* RP12–53–000.
*Applicants:* Gulf South Pipeline Company, LP.

*Description:* Gulf South Pipeline Company, LP submits tariff filing per 154.204: QEP 37657–10 Amendment to Negotiated Rate Agreement Filing to be effective 11/1/2011.
*Filed Date:* 10/26/2011.
*Accession Number:* 20111026–5033.
*Comment Date:* 5 p.m. Eastern Time on Monday, November 7, 2011.

*Docket Numbers:* RP12–54–000.
*Applicants:* Gulf South Pipeline Company, LP.
*Description:* Gulf South Pipeline Company, LP submits tariff filing per 154.204: HK 37731 to Sequent 39267 Capacity Release Negotiated Rate Agreement Filing to be effective 11/1/2011.
*Filed Date:* 10/26/2011.
*Accession Number:* 20111026–5036.
*Comment Date:* 5 p.m. Eastern Time on Monday, November 7, 2011.

*Docket Numbers:* RP12–55–000.
*Applicants:* Gulf South Pipeline Company, LP.
*Description:* Gulf South Pipeline Company, LP submits tariff filing per 154.204: HK 37731 to Texla 39268 Capacity Release Negotiated Rate Agreement Filing to be effective 11/1/2011.
*Filed Date:* 10/26/2011.
*Accession Number:* 20111026–5037.
*Comment Date:* 5 p.m. Eastern Time on Monday, November 7, 2011.

*Docket Numbers:* RP12–56–000.
*Applicants:* Gulf South Pipeline Company, LP.
*Description:* Gulf South Pipeline Company, LP submits tariff filing per 154.204: HK 37731 to Texla 39269 Capacity Release Negotiated Rate Agreement Filing to be effective 11/1/2011.
*Filed Date:* 10/26/2011.
*Accession Number:* 20111026–5038.
*Comment Date:* 5 p.m. Eastern Time on Monday, November 7, 2011.

*Docket Numbers:* RP12–57–000.
*Applicants:* Gulf South Pipeline Company, LP.
*Description:* Gulf South Pipeline Company, LP submits tariff filing per 154.204: ONEOK 34951 to BG Energy 39280 Capacity Release Negotiated Rate Agreement Filing to be effective 11/1/2011.
*Filed Date:* 10/26/2011.
*Accession Number:* 20111026–5039.
*Comment Date:* 5 p.m. Eastern Time on Monday, November 7, 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:* RP11–1429–002.
*Applicants:* Trans-Union Interstate Pipeline, L.P.
*Description:* Trans-Union Interstate Pipeline, L.P. submits tariff filing per 154.203: Order 587–U Compliance Filing to Modify Tariff 09192011 to be effective 11/1/2010 under RP11–1429 Filing Type: 580.
*Filed Date:* 09/19/2011.
*Accession Number:* 20110919–5093.
*Comment Date:* 5 p.m. Eastern Time on Monday, October 30, 2011.

*Docket Numbers:* RP11–2510–001.
*Applicants:* Trailblazer Pipeline Company LLC.
*Description:* Trailblazer Pipeline Company LLC submits tariff filing per 154.203: Compliance Filing to be effective 9/1/2011.
*Filed Date:* 10/25/2011.
*Accession Number:* 20111025–5122.
*Comment Date:* 5 p.m. Eastern Time on Monday, November 7, 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 26, 2011.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2011–28190 Filed 10–31–11; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER11–4021–001; ER11–4022–001; ER11–4023–001.
*Applicants:* ISO New England Inc.
*Description:* Compliance Filing of Northeast Utilities Service Company and ISO–NE.
*Filed Date:* 10/21/2011.
*Accession Number:* 20111021–5218.
*Comment Date:* 5 p.m. Eastern Time on Monday, November 14, 2011.

*Docket Numbers:* ER11–4116–001.
*Applicants:* Michigan Electric Transmission Company, LLC.
*Description:* Michigan Electric Transmission Company, LLC submits tariff filing per 35: Compliance Filing to be effective 9/26/2011.
*Filed Date:* 10/24/2011.
*Accession Number:* 20111024–5037.
*Comment Date:* 5 p.m. Eastern Time on Monday, November 14, 2011.

*Docket Numbers:* ER11–4117–001.
*Applicants:* Michigan Electric Transmission Company, LLC.
*Description:* Michigan Electric Transmission Company, LLC submits tariff filing per 35: Compliance Filing to be effective 9/26/2011.
*Filed Date:* 10/24/2011.
*Accession Number:* 20111024–5038.
*Comment Date:* 5 p.m. Eastern Time on Monday, November 14, 2011.

*Docket Numbers:* ER11–4145–000.
*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:* 10/24/2011.
*Accession Number:* 20111024–5051.
*Comment Date:* 5 p.m. Eastern Time on Monday, November 14, 2011.

*Docket Numbers:* ER11–4146–000.
*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:* 10/21/2011.
*Accession Number:* 20111021–5041.
*Comment Date:* 5 p.m. Eastern Time on Monday, November 14, 2011.

*Docket Numbers:* ER11–4152–000.
*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:* 10/21/2011.
*Accession Number:* 20111021–5046.
*Comment Date:* 5 p.m. Eastern Time on Monday, November 14, 2011.

*Docket Numbers:* ER11–4153–000.
*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:* 10/24/2011.
*Accession Number:* 20111024–5052.
*Comment Date:* 5 p.m. Eastern Time on Monday, November 14, 2011.

*Docket Numbers:* ER11–4159–000.
*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:* 10/24/2011.
*Accession Number:* 20111024–5053.
*Comment Date:* 5 p.m. Eastern Time on Monday, November 14, 2011.

*Docket Numbers:* ER11–4196–000.
*Applicants:* Michigan Electric Transmission Company, Midwest Independent Transmission System Operator, Inc.
*Description:* Michigan Electric Transmission Company, LLC submits tariff filing per 35.19a(b): METC–Gratiot Refund Report to be effective N/A.
*Filed Date:* 10/24/2011.
*Accession Number:* 20111024–5032.
*Comment Date:* 5 p.m. Eastern Time on Monday, November 14, 2011.

*Docket Numbers:* ER12–162–001.
*Applicants:* Bishop Hill Energy II LLC.
*Description:* Bishop Hill Energy II LLC submits tariff filing per 35.17(b): Supplement to Market-Based Rate Application to be effective 12/21/2011.
*Filed Date:* 10/21/2011.
*Accession Number:* 20111021–5179.
*Comment Date:* 5 p.m. Eastern Time on Monday, November 14, 2011.

*Docket Numbers:* ER12–170–000.
*Applicants:* San Diego Gas & Electric Company.
*Description:* San Diego Gas & Electric Company submits tariff filing per 35.13(a)(2)(iii): SDGE CSolar LGIA to be effective 10/21/2011.
*Filed Date:* 10/24/2011.
*Accession Number:* 20111024–5000.
*Comment Date:* 5 p.m. Eastern Time on Monday, November 14, 2011.

*Docket Numbers:* ER12–171–000.
*Applicants:* PJM Interconnection, LLC.
*Description:* PJM Interconnection, LLC submits tariff filing per 35.13(a)(2)(iii): Queue No. X1–070; Original Service Agreement No. 3080 to be effective 9/22/2011.
*Filed Date:* 10/24/2011.
*Accession Number:* 20111024–5033.
*Comment Date:* 5 p.m. Eastern Time on Monday, November 14, 2011.

*Docket Numbers:* ER12–172–000.
*Applicants:* Michigan Electric Transmission Company, Midwest Independent Transmission System Operator, Inc.
*Description:* Michigan Electric Transmission Company, LLC submits tariff filing per 35.13(a)(2)(iii): Cancellation of METC–Gratiot E&P to be effective 10/25/2011.
*Filed Date:* 10/24/2011.
*Accession Number:* 20111024–5034.
*Comment Date:* 5 p.m. Eastern Time on Monday, November 14, 2011.

*Docket Numbers:* ER12–173–000.
*Applicants:* Fairless Energy, LLC.
*Description:* Fairless Energy, LLC submits tariff filing per 35: Compliance Filing—MBR Tariff Order of Affiliate Restrictions to be effective 10/24/2011.
*Filed Date:* 10/24/2011.
*Accession Number:* 20111024–5035.
*Comment Date:* 5 p.m. Eastern Time on Monday, November 14, 2011.

*Docket Numbers:* ER12–174–000.
*Applicants:* Citizens Choice Energy, LLC.
*Description:* Citizens Choice Energy, LLC submits tariff filing per 35.1: Market-Based Rate Tariff Baseline to be effective 10/24/2011.
*Filed Date:* 10/24/2011.
*Accession Number:* 20111024–5047.
*Comment Date:* 5 p.m. Eastern Time on Monday, November 14, 2011.

*Docket Numbers:* ER12–175–000.
*Applicants:* PJM Interconnection, LLC.
*Description:* PJM Interconnection, LLC submits tariff filing per 35.13(a)(2)(iii): Queue No. X1–072; Original Service Agreement No. 3081 to be effective 9/22/2011.
*Filed Date:* 10/24/2011.
*Accession Number:* 20111024–5048.
*Comment Date:* 5 p.m. Eastern Time on Monday, November 14, 2011.

*Docket Numbers:* ER12–176–000.
*Applicants:* PJM Interconnection, LLC.
*Description:* PJM Interconnection, LLC submits tariff filing per 35.13(a)(2)(iii): Queue No. W2–082; Original Service Agreement No. 3082 to be effective 9/22/2011.
*Filed Date:* 10/24/2011.
*Accession Number:* 20111024–5058.
*Comment Date:* 5 p.m. Eastern Time on Monday, November 14, 2011.

*Docket Numbers:* ER12–177–000.
*Applicants:* Geneva Roth Holding, LLC.
*Description:* Geneva Roth Holdings LLC submits notice of cancellation effective 11/1/11 under ER12–177.
*Filed Date:* 10/21/2011.
*Accession Number:* 20111024–0201.
*Comment Date:* 5 p.m. Eastern Time on Monday, November 14, 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 24, 2011.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2011–28191 Filed 10–31–11; 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:* EC12–14–000.
*Applicants:* Michigan Electric Transmission Company, LLC.
*Description:* Section 203 Application of Michigan Electric Transmission Company, LLC regarding City of Zeeland.
*Filed Date:* 10/21/2011.
*Accession Number:* 20111021–5182.
*Comment Date:* 5 p.m. Eastern Time on Monday, November 14, 2011.

*Docket Numbers:* EC12–15–000.
*Applicants:* Michigan Electric Transmission Company, LLC.
*Description:* 203 Application of Michigan Electric Transmission Company, LLC regarding Consumers.
*Filed Date:* 10/21/2011.
*Accession Number:* 20111021–5186.
*Comment Date:* 5 p.m. Eastern Time on Monday, November 14, 2011.

Take notice that the Commission received the following exempt wholesale generator filings:

*Docket Numbers:* EG11–131–000.
*Applicants:* Richland-Stryker Generation LLC.
*Description:* Supplement to Notice of Self-Certification of Exempt Wholesale Generator Status of Richland-Stryker Generation LLC.
*Filed Date:* 10/18/2011.
*Accession Number:* 20111018–5034.
*Comment Date:* 5 p.m. Eastern Time on Tuesday, November 08, 2011.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER11–1935–001.
*Applicants:* Madison Paper Industries.
*Description:* Notice of Non-Material Change in Status of Madison Paper Industries.
*Filed Date:* 10/21/2011.
*Accession Number:* 20111021–5146.

*Comment Date:* 5 p.m. Eastern Time on Monday, November 14, 2011.

*Docket Numbers:* ER11–3420–002.
*Applicants:* Gridway Energy Corp.
*Description:* Gridway Energy Corp. submits tariff filing per 35: Change in Status Notice to be effective 10/21/2011.
*Filed Date:* 10/21/2011.
*Accession Number:* 20111021–5096.
*Comment Date:* 5 p.m. Eastern Time on Monday, November 14, 2011.

*Docket Numbers:* ER12–164–001.
*Applicants:* Bishop Hill Energy III LLC.
*Description:* Bishop Hill Energy III LLC submits tariff filing per 35.17(b): Supplement to Market-Based Rate Application to be effective 12/21/2011.
*Filed Date:* 10/21/2011.
*Accession Number:* 20111021–5181.
*Comment Date:* 5 p.m. Eastern Time on Monday, November 14, 2011.

*Docket Numbers:* ER12–165–000.
*Applicants:* Midwest Independent Transmission System Operator, Inc.
*Description:* Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii): G746 GIA to be effective 12/21/2011.
*Filed Date:* 10/21/2011.
*Accession Number:* 20111021–5147.
*Comment Date:* 5 p.m. Eastern Time on Monday, November 14, 2011.

*Docket Numbers:* ER12–166–000.
*Applicants:* Kincaid Generation, LLC.
*Description:* Kincaid Generation, 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:* 20111021–5160.
*Comment Date:* 5 p.m. Eastern Time on Monday, November 14, 2011.

*Docket Numbers:* ER12–167–000.
*Applicants:* PJM Interconnection, LLC.
*Description:* PJM Interconnection, LLC submits tariff filing per 35.13(a)(2)(iii): DEOK Zone NITSAs—Service Agreements 3100 through 3111 to be effective 1/1/2012.
*Filed Date:* 10/21/2011.
*Accession Number:* 20111021–5161.
*Comment Date:* 5 p.m. Eastern Time on Monday, November 14, 2011.

*Docket Numbers:* ER12–168–000.
*Applicants:* State Line Energy, LLC.
*Description:* State Line 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:* 20111021–5175.
*Comment Date:* 5 p.m. Eastern Time on Monday, November 14, 2011.

*Docket Numbers:* ER12–169–000.
*Applicants:* WSPP Inc.
*Description:* WSPP Inc. submits tariff filing per 35.13(a)(2)(iii): Revisions to List of Members of WSPP Agreement to be effective 10/21/2011.
*Filed Date:* 10/21/2011.
*Accession Number:* 20111021–5191.
*Comment Date:* 5 p.m. Eastern Time on Monday, November 14, 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 24, 2011.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2011–28192 Filed 10–31–11; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #3

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER11–3957–002.
*Applicants:* Consumers Energy Company.
*Description:* Consumers Energy Company submits tariff filing per 35: Amended Facilities Agreement with MPLP to be effective 8/29/2011.
*Filed Date:* 10/24/2011.
*Accession Number:* 20111024–5070.
*Comment Date:* 5 p.m. Eastern Time on Monday, November 14, 2011.

*Docket Numbers:* ER12–161–001.
*Applicants:* Bishop Hill Energy LLC.
*Description:* Bishop Hill Energy LLC submits tariff filing per 35.17(b): Supplement to Market-Based Rate Application to be effective 12/21/2011.
*Filed Date:* 10/21/2011.
*Accession Number:* 20111021–5176.
*Comment Date:* 5 p.m. Eastern Time on Monday, November 14, 2011.

*Docket Numbers:* ER12–178–000.
*Applicants:* PPL Energy Supply, LLC.
*Description:* PPL Energy Supply, LLC submits tariff filing per 35.12: PPL Energy Supply, LLC MBR Application to be effective 10/24/2011.
*Filed Date:* 10/24/2011.
*Accession Number:* 20111024–5069.
*Comment Date:* 5 p.m. Eastern Time on Monday, November 14, 2011.

*Docket Numbers:* ER12–179–000.
*Applicants:* Midwest Independent Transmission System Operator, Inc.
*Description:* Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii): G611 Termination to be effective 12/24/2011.
*Filed Date:* 10/24/2011.
*Accession Number:* 20111024–5080.
*Comment Date:* 5 p.m. Eastern Time on Monday, November 14, 2011.

*Docket Numbers:* ER12–180–000.
*Applicants:* Southwest Power Pool, Inc.
*Description:* Southwest Power Pool, Inc. submits tariff filing per 35.13(a)(2)(iii): 2261 Alexander Wind Farm, LLC GIA to be effective 9/21/2011.
*Filed Date:* 10/24/2011.
*Accession Number:* 20111024–5086.
*Comment Date:* 5 p.m. Eastern Time on Monday, November 14, 2011.

*Docket Numbers:* ER12–181–000.
*Applicants:* Southern Electric Generating Company.
*Description:* Southern Electric Generating Company submits tariff filing per 35.13(a)(2)(iii): SEGCO 2011 PBOP Filing to be effective 1/1/2012.
*Filed Date:* 10/24/2011.
*Accession Number:* 20111024–5087.
*Comment Date:* 5 p.m. Eastern Time on Monday, November 14, 2011.

*Docket Numbers:* ER12–182–000.
*Applicants:* Mississippi Power Company.
*Description:* Mississippi Power Company submits tariff filing per 35.13(a)(2)(iii): Gulf States TFA and 2011 PBOP Filing to be effective 1/1/2011.
*Filed Date:* 10/24/2011.
*Accession Number:* 20111024–5088.
*Comment Date:* 5 p.m. Eastern Time on Monday, November 14, 2011.

*Docket Numbers:* ER12–183–000.
*Applicants:* Georgia Power Company.
*Description:* Georgia Power Company submits tariff filing per 35.13(a)(2)(iii): GPCo 2011 PBOP Filings to be effective 1/1/2011.
*Filed Date:* 10/24/2011.
*Accession Number:* 20111024–5098.
*Comment Date:* 5 p.m. Eastern Time on Monday, November 14, 2011.

*Docket Numbers:* ER12–184–000.

*Applicants:* New York State Electric & Gas Corporation.

*Description:* New York State Electric & Gas Corporation submits tariff filing per 35.13(a)(2)(iii): NYSEG and Delaware County Electric Cooperative Facilities Agremeent: 2011 Update to be effective 10/25/2011.

*Filed Date:* 10/24/2011.

*Accession Number:* 20111024–5099.

*Comment Date:* 5 p.m. Eastern Time on Monday, November 14, 2011.

*Docket Numbers:* ER12–185–000.

*Applicants:* New York State Electric & Gas Corporation.

*Description:* New York State Electric & Gas Corporation submits tariff filing per 35.13(a)(2)(iii): NYSEG and Village of Bath Facilities Agreement (Rate Schedule 72): 2011 Update to be effective 10/25/2011.

*Filed Date:* 10/24/2011.

*Accession Number:* 20111024–5100.

*Comment Date:* 5 p.m. Eastern Time on Monday, November 14, 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 24, 2011.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2011–28193 Filed 10–31–11; 8:45 am]

**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–SFUND–2011–0523; FRL–9485–7]**

## Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Continuous Release Reporting Regulations (CRRR) Under CERCLA 1980 (Renewal)

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

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

**DATES:** Additional comments may be submitted on or before December 1, 2011.

**ADDRESSES:** Submit your comments, referencing Docket ID No. EPA–HQ–SFUND–2011–0523, to (1) EPA online using *http://www.regulations.gov,* (our preferred method), by email to *superfund.docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Attention:* Desk Officer for EPA, 725 17th Street NW., Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Lynn M. Beasley, Regulation and Policy Development Division, Office of Emergency Operations, (5104A), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; *telephone number:* (202) 564–1965; *fax number:* (202) 564–2625; *email address: beasley.lynn@epa.gov.*

**SUPPLEMENTARY INFORMATION:** EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On June 28, 2011 (76 *FR* 37809), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–SFUND–2011–0523, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the Superfund Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Superfund Docket is (202) 566–0276.

Use EPA's electronic docket and comment system at *http://www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

*Title:* Continuous Release Reporting Regulations (CRRR) under CERCLA 1980 (Renewal).

*ICR numbers:* EPA ICR No. 1445.11, OMB Control No. 2050–0086.

*ICR Status:* This ICR is scheduled to expire on December 31, 2011. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

*Abstract:* Section 103(a) of CERCLA, as amended, requires the person in charge of a vessel or facility to immediately notify the National Response Center (NRC) of a hazardous substance release into the environment if the amount of the release equals or exceeds the substance's reportable quantity (RQ). The RQ of every hazardous substance can be found in Table 302.4 of 40 CFR 302.4.

Section 103(f)(2) of CERCLA provides facilities relief from this per-occurrence notification requirement if the hazardous substance release at or above the RQ is continuous and stable in quantity and rate. Under the Continuous Release Reporting Requirements (CRRR), to report such a release as a continuous release you must make an

initial telephone call to the NRC, submit an initial written report to the EPA Region, and, if the source and chemical composition of the continuous release does not change and the level of the continuous release does not significantly increase, submit a follow-up written report to the EPA Region one year after submission of the initial written report. If the source or chemical composition of the previously reported continuous release changes, notifying the NRC and EPA Region of a change in the source or composition of the release is required. Further, a significant increase in the level of the previously reported continuous release must be reported immediately to the NRC according to section 103(a) of CERCLA. Finally, any change in information submitted in support of a continuous release notification must be reported to the EPA Region.

The reporting of a hazardous substance release that is equal to or above the substance's RQ allows the Federal government to determine whether a Federal response action is required to control or mitigate any potential adverse effects to public health or welfare or the environment.

The continuous release of hazardous substance information collected under CERCLA section 103(f)(2) is also available to EPA program offices and other Federal agencies who use the information to evaluate the potential need for additional regulations, new permitting requirements for specific substances or sources, or improved emergency response planning. State and local government authorities and facilities subject to the CRRR use release information for purposes of local emergency response planning. Members of the public, who have access to release information through the Freedom of Information Act, may request release information for purposes of maintaining an awareness of what types of releases are occurring in different localities and what actions, if any, are being taken to protect public health and welfare and the environment.

*Burden Statement:* The annual public reporting and recordkeeping burden for this collection of information is estimated to average 10.2 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

*Respondents/Affected Entities:* The usage and release of hazardous substances are pervasive throughout industry. EPA expects a number of different industrial categories to report hazardous substance releases under the provisions of the CRRR. No one industry sector or group of sectors is disproportionately affected by the information collection burden.

*Estimated Number of Respondents:* 3,865.

*Frequency of Response:* On occasion.

*Estimated Total Annual Hour Burden:* 315,966.

*Estimated Total Annual Cost:* $15,456,936 includes $146,705 annualized capital or O&M costs.

*Changes in the Estimates:* There is an increase of 14,625 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This increase reflects EPA's use of data on the actual number of continuous release reports from several regions and applying a growth rate consistent with prior years reporting. The average annual percent increase in facilities in the previous ICR was approximately 7.5%. The same percent increase was assumed for this ICR. The unit burden hours per respondent information collection activity remains the same as the previous ICR.

Dated: October 25, 2011.

**John Moses,**

*Director, Collection Strategies Division.*

[FR Doc. 2011–28260 Filed 10–31–11; 8:45 am]

**BILLING CODE 6560–50–P**

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## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OECA–2011–0208; FRL–9485–6]**

## Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NESHAP for Pulp and Paper Production (Renewal)

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

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

**DATES:** Additional comments may be submitted on or before December 1, 2011.

**ADDRESSES:** Submit your comments, referencing docket ID number EPA–HQ–OECA–2011–0208, to: (1) EPA online using *http://www.regulations.gov* (our preferred method), or by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 2822IT, 1200 Pennsylvania Avenue NW., Washington, DC 20460; and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street NW., Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Learia Williams, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2223A, Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; *telephone number:* (202) 564–4113; *fax number:* (202) 564–0050; *email address: williams.learia@epa.gov.*

**SUPPLEMENTARY INFORMATION:** EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 9, 2011 (76 FR 26900), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to both EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2011–0208, which is available for public viewing online at *http://www.regulations.gov,* or in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the

Enforcement and Compliance Docket is (202) 566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov* to either submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

*Title:* NESHAP for Pulp and Paper Production (Renewal).

*ICR Numbers:* EPA ICR Number 1657.07, OMB Control Number 2060–0387.

*ICR Status:* This ICR is scheduled to expire on December 31, 2011. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

*Abstract:* The National Emissions Standards for Hazardous Air Pollutants (NESHAP) for Pulp and Paper Production were proposed on December 17, 1993, and promulgated on April 15, 1998.

This NESHAP covers emissions from the pulping process relies on the capture and destruction of hazardous air pollutants (HAP) by either burning them in a boiler or kiln or by introducing them into the wastewater treatment system. The HAPs captured from bleaching systems are controlled with a chlorine gas scrubber.

Pulp mill owners or operators (respondents) are required to submit initial notifications, maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Respondents are required to monitor and keep records of specific operating parameters for each control device and to perform and document periodic inspections of the closed vent and wastewater conveyance systems. In order to reduce the burden as much as possible, the compliance monitoring and recordkeeping requirements are designed to cover parameters that are already being monitored as part of the manufacturing process. All respondents must submit semiannual summary reports of monitored parameters, and they must submit an additional monitoring report during each quarter in which monitored parameters were outside the ranges established in the standard or during initial performance tests. A source identified to be out of compliance with the NESHAP will be required to submit quarterly reports until the Administrator is satisfied that the source has corrected its compliance problem.

Owners or operators of pulp and paper production facilities subject to the rule must maintain a file of these measurements, and retain the file for at least five years following the date of such measurements, maintenance reports, and records. All reports are sent to the delegated state or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA regional office. This information is being collected to assure compliance with 40 CFR part 63, subpart S, as authorized in section 112 and 114(a) of the Clean Air Act. The required information consists of emissions data and other information that have been determined to be private.

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 the EPA regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

*Burden Statement:* The annual public reporting and recordkeeping burden for this collection of information is estimated to average 111 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

*Respondents/Affected Entities:* Pulp and paper production.

*Estimated Number of Respondents:* 115.

*Frequency of Response:* Initially, occasionally, annually, and semiannually.

*Estimated Total Annual Hour Burden:* 35,358.

*Estimated Total Annual Cost:* $3,711,577, which includes $3,339,077 in labor costs, no capital/startup costs, and $372,500 in operation and maintenance (O&M) costs.

*Changes in the Estimates:* The adjustment decrease in burden from the most recently approved ICR is due to a more accurate estimate of existing and anticipated new sources. After consulting the Office of Air Quality Planning and Standards (OAQPS) and trade associations, and based on a recently completed research conducted by EPA, our data indicates that there are approximately 115 sources subject to the rule, as compared with the active ICR that shows 137 sources. No new facilities are expected to be constructed over the next three years of this ICR. The decline in the number of sources is mainly due to plant closures. The industry is undergoing widespread consolidation and corporate restructuring. However, there is an increase in cost per labor hours due to the updated labor rates.

Because there are no new sources with reporting requirements, no capital/startup costs are incurred. The only cost that is incurred is for the operation and maintenance (O&M) of the monitoring equipment.

Dated: October 25, 2011.

**John Moses,**

*Director, Collection Strategies Division.*

[FR Doc. 2011–28259 Filed 10–31–11; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OW–2011–0787; FRL–9483–8]**

## Draft Aquatic Life Ambient Water Quality Criteria for Carbaryl—2011

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

**ACTION:** Notice of availability of draft criteria.

**SUMMARY:** Pursuant to section 304(a) of the Clean Water Act (CWA), the Environmental Protection Agency (EPA) is announcing the availability of draft national recommended water quality criteria for the protection of aquatic life from effects of carbaryl (EPA–820–D–11–001). The draft criteria document incorporates the latest scientific knowledge on the toxicity of carbaryl to aquatic life. The aquatic life criteria are

developed based on EPA's *Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses (1985), (EPA/R–85–100).* EPA's recommended section 304(a) water quality criteria provides guidance to States and authorized Tribes in adopting water quality standards for protecting aquatic life and human health. These criteria are intended to protect aquatic life and do not evaluate human health toxicity data. EPA is soliciting scientific views on this document. EPA's recommended water quality criteria provide technical information for states and authorized tribes in adopting water quality standards, but by themselves have no binding legal effect.

**DATES:** Scientific views must be received on or before January 3, 2012. Scientific views postmarked after this date may not receive the same consideration.

**ADDRESSES:** Submit your scientific views, identified by Docket ID No. EPA–HQ–OW–2011–0787, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting scientific views.
- *Email: OW–Docket@epa.gov.*
- *Mail:* US Environmental Protection Agency; EPA Docket Center (EPA/DC) Water Docket, MC 2822T; 1200 Pennsylvania Avenue NW., Washington, DC 20460.
- *Hand Delivery:* EPA Docket Center, 1301 Constitution Ave NW., EPA West, Room 3334, Washington DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your scientific views to Docket ID No. EPA–HQ–OW–2011–0787. EPA's policy is that all scientific views 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.*

*Docket:* All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Office of Water Docket/EPA/DC, 1301 Constitution Ave, NW., EPA West, Room 3334, Washington DC. This Docket Facility is open from 8:30 a.m. until 4:30 p.m., E.S.T., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Office of Water is (202) 566–2426.

**FOR FURTHER INFORMATION CONTACT:** Diana Eignor, Health and Ecological Criteria Division (4304T), U.S. EPA, 1200 Pennsylvania Ave NW., Washington, DC 20460; (202) 566–1143; *eignor.diana@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. What are water quality criteria?

Water quality criteria are either narrative descriptions of water quality or scientifically derived numeric values that protect aquatic life or human health from the deleterious effects of pollutants in ambient water.

Section 304(a)(1) of the Clean Water Act requires EPA to develop and publish and, from time to time, revise, criteria for water quality accurately reflecting the latest scientific knowledge. Water quality criteria developed under section 304(a) are based solely on data and scientific judgments on the relationship between pollutant concentrations and environmental and human health effects. Section 304(a) criteria do not reflect consideration of economic impacts or the technological feasibility of meeting the chemical concentrations in ambient water.

Section 304(a) criteria provide guidance to States and authorized Tribes in adopting water quality standards that ultimately provide a basis for assessing water body health and controlling discharges or releases of pollutants. Under the CWA and its implementing regulations, States and authorized Tribes are to adopt water quality criteria to protect designated uses (*e.g.,* public water supply, aquatic life, recreational use, or industrial use). EPA's recommended water quality criteria do not substitute for the CWA or regulations, nor are they regulations themselves. Thus, EPA's recommended criteria do not impose legally binding requirements. States and authorized Tribes have the discretion to adopt, where appropriate, other scientifically defensible water quality criteria that differ from these recommendations.

## II. What is carbaryl and why are we concerned about it?

Carbaryl is a member of the N-methyl carbamate class of pesticides, which share a common mechanism of toxicity by affecting the nervous system via cholinesterase inhibition. Carbaryl has many trade names, but is most commonly known as Sevin®. It is is an insecticide, a molluscide, and is used to thin fruit in orchards. It is registered in the United States for controlling insect pests on over 115 agricultural and non-crop use applications, including home and garden uses (U.S. EPA 2007; U.S. EPA 2010). In a 2006 report, the U.S. Geological Survey National Water Quality Assessment Program reported carbaryl as the second most frequently found insecticide in water, with detections in approximately 50% of urban streams (U.S.G.S. 2006). EPA has previously developed 304(a) criteria for the other three currently registered insecticides found most frequently in U.S. waters.

## III. What are the draft carbaryl criteria?

EPA is today publishing draft national recommended water quality criteria for protecting aquatic life for carbaryl. These draft criteria were developed using EPA's *Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses* (1985), (EPA/R–85–100). The document has a new format that models the approach in the EPA's *Guidelines for Ecological Risk Assessment (EPA/630/R–95/002F).*

Toxicity data for developing the water quality criteria were obtained from peer-reviewed open literature studies and from studies submitted to the Office of Pesticide Programs for the registration and reregistration of pesticides. To ensure the quality of the information, the toxicity data and other information on the effects of carbaryl were subjected to both internal and external peer review.

The draft criteria statement is as follows: The available data for carbaryl, evaluated in accordance with EPA's guidelines for deriving aquatic life criteria (Stephan *et al.* 1985) [referenced in the criteria document] indicate that, freshwater aquatic animals would have an appropriate level of protection if the following are attained:

1. The one-hour average concentration of carbaryl does not exceed 2.1 µg/L more than once every three years on average, the criterion maximum concentration or CMC (acute criterion).

2. The four-day average concentration of carbaryl does not exceed 2.1 µg/L more than once every three years on average, the criterion continuous concentration or CCC (chronic criterion).

The available data for carbaryl indicates that, estuarine/marine aquatic animals would have an appropriate level of protection if the following is attained:

1. The one-hour average concentration of carbaryl does not exceed 1.6 µg/L more than once every three years on average (except where a locally important species may be more sensitive).

## IV. What is the relationship between the water quality criteria and state or tribal water quality standards?

Water quality standards consist of three principal elements: designated uses, water quality criteria to protect those uses, and antidegradation requirements, providing for protection of existing water uses and limitations on degradation of high quality waters. As part of the water quality standards triennial review process defined in Section 303(c)(1) of the CWA, the States and authorized Tribes are responsible for developing, maintaining and revising water quality standards. Section 303(c)(1) requires States and authorized Tribes to review and modify, if appropriate, their water quality standards at least once every three years.

States and authorized Tribes must adopt water quality criteria into their water quality standards that protect designated uses. States may develop their criteria based on EPA's recommended section 304(a) water quality criteria or other scientifically defensible methods. A State's criteria must contain sufficient parameters or constituents to protect the designated uses. Consistent with 40 CFR 131.21, new or revised water quality criteria adopted into law by States and authorized Tribes on or after May 30, 2000 are in effect for CWA purposes only after EPA approval.

States and authorized Tribes may develop site-specific criteria for particular waterbodies as appropriate, following EPA procedures described in the *Guidelines for Deriving Numerical Aquatic Site-Specific Water Quality Criteria by Modifying National Criteria* (USEPA, 1984f). A site-specific criterion is intended to come closer than the national criterion to providing the intended level of protection to the aquatic life at the site, usually by taking into account the biological and/or chemical conditions (*i.e.,* the species composition and/or water quality characteristics) at the site. If data in the national criterion document and/or from other sources indicated that the selected resident species range of sensitivity is *different* from that for the species in the national criterion document, States and authorized Tribes can use the *Resident Species Procedure* (Section 3.7.6 of the WQS Handbook). This procedure was first published in the 1983 *Water Quality Standards Handbook* (USEPA, 1983a) and expanded upon in the *Guidelines for Deriving Numerical Aquatic Site-Specific Water Quality Criteria by Modifying National Criteria* (USEPA, 1984f) and later detailed in the *''Interim Guidance on Determination and Use of Water Effect Ratio for Metals''* (EPA 1994).

## V. Where can I find more information about water quality criteria and water quality standards?

For more information about water quality criteria and Water Quality Standards refer to the following: *Water Quality Standards Handbook* (EPA 823–B94–005a; August 1994); *Advanced Notice of Proposed Rule Making* (ANPRM), (63FR36742; July 7, 1998); *Water Quality Criteria and Standards Plan—Priorities for the Future* (EPA 822–R–98–003; April 1998); *Guidelines and Methodologies Used in the Preparation of Health Effects Assessment Chapters of the Consent Decree Water Criteria Documents* (45FR79347; November 1980); *Methodology for Deriving Ambient Water Quality Criteria for the Protection of Human Health* (EPA–822–B–00–004; October 2000); *Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses* (EPA 822/R–85–100; 1985); *National Strategy for the Development of Regional Nutrient Criteria* (EPA 822–R–98–002; June 1998); and *EPA Review and Approval of State and Tribal Water Quality Standards* (65FR24641; April 27, 2000).

You can find these publications through EPA's National Service Center for Environmental Publications (NSCEP, previously NCEPI) or on the Office of Science and Technology's Home-page (*http://www.epa.gov/waterscience*).

## References

U.S. EPA. 2007. Risks of carbaryl use to the federally-listed California red legged frog. Office of Pesticide Programs, Washington, DC, *http://www.epa.gov/espp/litstatus/effects/redleg-frog/carbaryl/determination.pdf.*

U.S. EPA. 2010. Registration Review—Preliminary Problem Formulation for Ecological Risk and Environmental Fate, Endangered Species, and Drinking Water Assessments for Carbaryl. September 3, 2010. EPA–HQ–OPP–2010–0230–0004.

U.S.G.S. 2006. The Quality of our Nation's Waters: Pesticides in the Nation's Streams and Ground Water, 1992–2001. Circular 1291. U.S. Geological Survey. Reston, VA.

Dated: October 20, 2011.

**Nancy K. Stoner,**

*Acting Assistant Administrator, Office of Water.*

[FR Doc. 2011–28255 Filed 10–31–11; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–ORD–2011–053; FRL–9485–1]**

## External Peer Review Meeting for Draft Microbial Risk Assessment Guideline: Pathogenic Microorganisms With Focus on Food and Water

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

**ACTION:** Notice.

**SUMMARY:** The Agency is announcing that Eastern Research Group, Inc. (ERG), a contractor to the EPA, will convene an independent panel of experts to review the draft document, *Microbial Risk Assessment Guideline: Pathogenic Microorganisms with Focus on Food and Water.* EPA previously announced the release of the draft guidance for a 60 day comment period (76 FR 44586–44587). The public comment period ended on September 26, 2011; EPA intends to forward public comments to the contractor for distribution to members of the review panel. The

external review draft does not represent EPA policy.

The public may register to attend this peer review meeting as observers. Time will be set aside at the meeting for observers to give brief oral comments regarding the draft document. The draft document and appendix are available, via the Internet, on the Risk Assessment Forum web page (*http://www.epa.gov/raf/microbial.htm*). When finalizing the draft document, EPA intends to consider the comments from the external peer review meeting, along with public comments received in September. Public comments submitted during the public comment period ending September 26, 2011, may be viewed at *http://www.regulations.gov* under Docket ID No. EPA–HQ–ORD–2011–0532.

**DATES:** The peer review panel meeting on the draft document, *Microbial Risk Assessment Guideline: Pathogenic Microorganisms with Focus on Food and Water* will be held on Monday, November 7, 2011. The panel meeting begins at 8:30 a.m. and ends at 5 p.m. Eastern Standard Time.

**ADDRESSES:** The meeting will be held at the following address: L'Enfant Plaza Hotel, 480 L'Enfant Plaza, SW., Washington, DC 20024.

*Internet:* The draft document can be downloaded from *http://www.epa.gov/raf/microbial.htm.*

*Instructions:* To attend the peer review meeting as an observer, you must register no later than October 31, 2011. You may do this by calling ERG at (781) 674–7374 or toll free on (800) 803–2833 (ask for the MRA Peer Review coordinator, Laurie Waite); sending a facsimile to (781) 674–2906 (reference the MRA Peer Review Meeting and include your name, title, affiliation, full address and contact information); or sending an email to *meetings@erg.com* (reference the MRA Peer Review Meeting and include your name, title, affiliation, full address and contact information). You can also register via the Internet at *https://www2.ergweb.com/projects/conferences/peerreview/register-mra.htm.*

Space is limited, and registrations will be accepted on a first-come, first-served basis. There will be a limited amount of time for comments from the public at the peer review meeting. Please inform ERG if you wish to make oral comments during the meeting.

*Information on Services for Individuals with Disabilities:* The Agency welcomes public attendance at the MRA Peer Review Meeting, and will make every effort to accommodate persons with disabilities. For information on access or services for individuals with disabilities, contact ERG on (781) 674–7374 or toll free at (800) 803–2833 (ask for the MRA Peer Review coordinator, Laurie Waite); sending a facsimile to (781) 674–2906 (reference the ''MRA Peer Review Meeting'' and include your name and contact information); or sending an email to *meetings@erg.com* (reference the MRA Peer Review Meeting and include your name and contact information).

**FOR FURTHER INFORMATION CONTACT:** Dr. Michael W. Broder, Risk Assessment Forum, Office of the Science Advisor at the following address: U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Mail Code 8105R, Washington, DC 20460.

Dr. Broder's telephone number is (202) 564–3393. His email address is *broder.michael@epa.gov.*

*Internet:* The draft document can be downloaded from *http://www.epa.gov/raf/microbial.htm.*

**SUPPLEMENTARY INFORMATION:** The draft Microbial Risk Assessment Guideline was developed jointly by scientists from the U.S. Environmental Protection Agency and the U.S. Department of Agriculture, Food Safety and Inspection Service, with contributions from scientists in other federal agencies. The document addresses the full range of microbial risk assessment topics: definitions of the assessors' roles and responsibilities; planning and scoping; the four components of a risk assessment; and contains sections discussing risk management and communication, as well. The guideline highlights differences in the issues and processes between chemical and microbial risk assessment.

This document reflects the combined experience and expertise of microbial risk assessors from across the government, and will promote a consistent and more transparent approach to conducting microbial risk assessments.

Dated: October 24, 2011.

**Paul T. Anastas,**

*Science Advisor.*

[FR Doc. 2011–28305 Filed 10–31–11; 8:45 am]

**BILLING CODE 6560–50–P**

## FARM CREDIT ADMINISTRATION

### Market Access Agreement

**AGENCY:** Farm Credit Administration.

**ACTION:** Notice of Draft Second Amended and Restated Market Access Agreement; request for comments.

**SUMMARY:** The Farm Credit Administration (FCA or we) is publishing for comment the Draft Second Amended and Restated Market Access Agreement (Draft Second Restated MAA) proposed to be entered into by all of the banks of the Farm Credit System (System or FCS) and the Federal Farm Credit Banks Funding Corporation (Funding Corporation). This Draft Second Restated MAA is an update to and would replace the Amended and Restated MAA (Amended and Restated MAA) approved by the FCA on January 9, 2003, and published in the **Federal Register** on January 15, 2003 (68 FR 2037). The Draft Second Restated MAA sets forth the rights and responsibilities of each of the parties when the condition of a bank falls below pre-established financial thresholds.

**DATES:** You may send comments on or before December 1, 2011.

**ADDRESSES:** There are several methods for you to submit your comments. For accuracy and efficiency reasons, commenters are encouraged to submit comments by email or through the FCA's Web site. As facsimiles (faxes) are difficult for us to process and achieve compliance with section 508 of the Rehabilitation Act, we are no longer accepting comments submitted by fax. Regardless of the method you use, please do not submit your comment multiple times via different methods. You may submit comments by any of the following methods:

- *Email:* Send us an email at *reg-comm@fca.gov.*
- *FCA Web site: http://www.fca.gov.* Select ''Public Commenters,'' then ''Public Comments,'' and follow the directions for ''Submitting a Comment.''
- *Federal E–Rulemaking Web site: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Send mail to Gary K. Van Meter, Director, Office of Regulatory Policy, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

You may review copies of comments we receive at our office in McLean, Virginia, or on our Web site at *http://www.fca.gov.* Once you are in the Web site, select ''Public Commenters,'' then ''Public Comments,'' and follow the directions for ''Reading Submitted Public Comments.'' We will show your comments as submitted, but for technical reasons we may omit items such as logos and special characters. Identifying information that you provide, such as phone numbers and addresses, will be publicly available. However, we will attempt to remove

email addresses to help reduce Internet spam.

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:** System banks and the Funding Corporation entered into the original Market Access Agreement (original MAA) on September 1, 1994, to help control the risk of each System bank by outlining each party's respective rights and responsibilities in the event the condition of a System bank fell below certain financial thresholds. As part of the original MAA, System banks and the Funding Corporation agreed to periodic reviews of the terms of the MAA to consider whether any amendments were appropriate. The original MAA was updated by the parties in 2003 in the Amended and Restated MAA and received FCA approval following notice and request for public comments in the **Federal Register**.[1]

On December 3, 2010, the FCA Board approved amendments to the Amended and Restated MAA that would conform its provisions to the System banks' proposed Joint and Several Liability Reallocation Agreement (Reallocation Agreement) to ensure that the MAA provisions did not impede operation of the Reallocation Agreement; the amendments also provided that the MAA and the Reallocation Agreement are separate agreements, and invalidation of one does not affect the other. The FCA published these amendments in the **Federal Register**.[2] The proposed Reallocation Agreement is an agreement among the banks and the Funding Corporation that establishes a procedure for non-defaulting banks to pay maturing System-wide debt on behalf of defaulting banks prior to a statutory joint and several call by the FCA under section 4.4 of the Farm Credit Act of 1971, as amended (Act).[3] The FCA Board approved the proposed Reallocation Agreement on October 14, 2010, and notice of the approval was published in the **Federal Register**.[4] The System banks have approved the Reallocation Agreement but have not yet executed it.

The Amended and Restated MAA has a termination date of December 31, 2011. The System banks and the Funding Corporation have requested the FCA to approve the Draft Second Restated MAA at this time in order to have it approved by the parties and in place when the current agreement terminates. The FCA seeks public comment on the proposed agreement.

The Amended and Restated MAA establishes certain financial thresholds at which conditions are placed on the activities of a bank or restrictions are placed on a bank's access to participation in System-wide and consolidated obligations. The MAA establishes three categories, which are based on each bank's net collateral ratio, permanent capital ratio, and scores under the Contractual Inter-bank Performance Agreement, which is an agreement among the banks and the Funding Corporation that establishes certain financial performance criteria.

The proposed Second Restated MAA retains the same general framework and most of the provisions of the Restated and Amended MAA, updated as necessary. An important change is to section 1.05, which revises the level of the net collateral ratio that would place a bank in Category I. The revision takes into account that the FCA has increased the minimum net collateral ratio for some banks to an amount higher than the 103 percent stated in FCA regulation 12 CFR 615.5335. Revisions to the sections that refer to the Reallocation Agreement clarify that such agreement has not been executed. In addition, certain voting and quorum procedures in Article II and Article VI of the proposed Second Restated MAA will require consent or approval of all banks rather than a majority of banks; this change recognizes that there are now only five System banks and are likely to be only four System banks as of January 1, 2012.[5]

The Second Restated MAA, together with the recitals to the amendment, is as follows:

**Second Amended and Restated Market Access Agreement Among AgFirst Farm Credit Bank, AgriBank, FCB, CoBank, ACB, Farm Credit Bank of Texas, U.S. AgBank, FCB and Federal Farm Credit Banks Funding Corporation**

This Second Amended and Restated Market Access Agreement (the ''Restated MAA'') is entered into among AgFirst Farm Credit Bank, AgriBank, FCB, CoBank, ACB, the Farm Credit Bank of Texas, U.S. AgBank, FCB (collectively, the ''Banks'') and the Federal Farm Credit Banks Funding Corporation (''Funding Corporation'').

*Whereas,* the Banks and the Funding Corporation entered into that certain Market Access Agreement dated September 1, 1994 and effective as of November 23, 1994, (the ''Original Agreement'') for the reasons stated therein; and

*Whereas,* the Original Agreement was subsequently amended by that certain Amended and Restated Market Access Agreement, dated July 1, 2003, referred to herein as the ''First Restated MAA,'' for the reasons stated therein; and

*Whereas,* pursuant to Sections 7.04 and 7.05 of the First Restated MAA, the Banks and the Funding Corporation have reviewed the First Restated MAA to consider whether an extension and any amendments to it are appropriate; and

*Whereas,* representatives of the Banks and the Funding Corporation met various times in connection with such review and recommended an extension of the First Restated MAA and certain amendments for presentation to the Committee; and

*Whereas,* the Committee met various times in connection with the review and recommended an extension of the First Restated MAA and certain amendments for presentation to the Banks and the Funding Corporation; and

*Whereas,* the boards of directors of the Banks and of the Funding Corporation approved this Restated MAA in principle; and

*Whereas,* thereafter, this Restated MAA was submitted to FCA for approval and to the Insurance Corporation for an expression of support; and

*Whereas,* FCA published this Restated MAA in the **Federal Register** and sought comments thereon; and

*Whereas,* FCA approved this Restated MAA, subject to approval of this Restated MAA by the boards of directors of the Banks and the Funding Corporation, and a notice of such approval was published in the **Federal Register;** and

*Whereas,* the Insurance Corporation expressed its support of this Restated MAA; and

*Whereas,* the Parties are mindful of FCA's independent authority under Section 5.17(a)(10) of the Act to ensure the safety and soundness of Banks, FCA's independent authority under Sections 4.2 and 4.9 of the Act to approve the terms of specific issuances

[1] 68 FR 19539 (April 21, 2003).

[2] 75 FR 76729 (December 9, 2010).

[3] 12 U.S.C. 2155.

[4] 75 FR 64727 (October 20, 2010).

[5] CoBank, ACB and U.S. Agbank, FCB plan to merge as of January 1, 2012. The FCA has preliminarily approved the merger, and the boards and stockholders of both banks have voted to approve the merger.

of Debt Securities, the Insurance Corporation's independent authority under Section 5.61 of the Act to assist troubled Banks, and the Banks' independent obligations under Section 4.3(c) of the Act to maintain necessary collateral levels for Debt Securities; and

*Whereas,* the Banks are entering into this Restated MAA pursuant to, *inter alia,* Section 4.2(c) and (d) of the Act; and

*Whereas,* the Funding Corporation is prepared to adopt as the ''conditions of participation'' that it understands to be required by Section 4.9(b)(2) of the Act each Bank's compliance with the terms and conditions of this Restated MAA; and

*Whereas,* the Funding Corporation believes the execution and implementation of this Restated MAA will materially accomplish the objectives which it has concluded are appropriate for a market access program under Section 4.9(b)(2) of the Act; and

*Whereas,* prior to the adoption of the Original Agreement, the Funding Corporation adopted and maintained in place a Market Access and Risk Alert Program designed to fulfill what it understood to be its responsibilities under Section 4.9(b)(2) of the Act with respect to determining ''conditions of participation,'' which Program was discontinued by the Funding Corporation in accordance with the terms of the Original Agreement; and

*Whereas,* the Funding Corporation is entering into this Restated MAA pursuant to, *inter alia,* Section 4.9(b)(2) of the Act; and

*Whereas,* the Parties believe that the execution and implementation of this Restated MAA will accomplish the objectives intended to be achieved by the Original Agreement,

*Now therefore,* in consideration of the foregoing, the mutual promises and agreements herein contained, and other good and valuable consideration, receipt of which is hereby acknowledged, the Parties, intending to be legally bound hereby, agree as follows:

**Article I—Categories**

Section 1.01. *Scorekeeper.* The Scorekeeper, for purposes of this Restated MAA, shall be the Funding Corporation.

Section 1.02. *CIPA Oversight Body.* The CIPA Oversight Body, for purposes of this Restated MAA, shall be the same as the Oversight Body under Section 5.1 of CIPA.

Section 1.03. *CIPA Scores.* Net Composite Scores and Average Net Composite Scores, for purposes of this Restated MAA, shall be the same as those determined under Article II of CIPA and the Model referred to therein, as in effect on June 30, 2011, and as amended under CIPA or replaced by successor provisions under CIPA in the future, to the extent such future amendments or replacements are by agreement of all the Banks.

Section 1.04. *Net Collateral and Permanent Capital Ratios.* Each Bank shall report to the Scorekeeper within fifteen days after the end of each month its Net Collateral Ratio and Permanent Capital Ratio as of the last day of that month. Should any Bank later correct or revise, or be required to correct or revise, any past financial data in a way that would cause any Net Collateral Ratio or Permanent Capital Ratio previously reported hereunder to have been different, the Bank shall promptly report a revised Ratio to the Scorekeeper. Should the Scorekeeper consider it necessary to verify any Net Collateral Ratio or Permanent Capital Ratio, it shall so report to the Committee, or, if the Committee is not in existence, to the CIPA Oversight Body, and the Committee or the CIPA Oversight Body, as the case may be, may verify the Ratios as it deems appropriate, through reviews of Bank records by its designees (including experts or consultants retained by it) or otherwise. The reporting Bank shall cooperate in any such verification, and the other Banks shall provide such assistance in conducting any such verification as the Committee or the CIPA Oversight Body, as the case may be, may reasonably request.

Section 1.05. *Category I.* A Bank shall be in Category I if it (a) has an Average Net Composite Score of 50.0 or more, but less than 60.0, for the most recent calendar quarter for which an Average Net Composite Score is available, (b) has a Net Composite Score of 45.0 or more, but less than 60.0, for the most recent calendar quarter for which a Net Composite Score is available, (c) has a Net Collateral Ratio of 103.00% or more, but less than the greater of: (i) 104.00%, or (ii) 50 basis points above the minimum set by FCA for the last day of the most recent month, or (d) has a Permanent Capital Ratio of 7.00% or more, but less than 8.00%, for the period ending on the last day of the most recent month.

Section 1.06. *Category II.* A Bank shall be in Category II if it (a) Has an Average Net Composite Score of 35.0 or more, but less than 50.0, for the most recent calendar quarter for which an Average Net Composite Score is available, (b) has a Net Composite Score of 30.0 or more, but less than 45.0, for the most recent calendar quarter for which a Net Composite Score is available, (c) has a Net Collateral Ratio of 102.00% or more, but less than 103.00%, for the last day of the most recent month, (d) has a Permanent Capital Ratio of 5.00% or more, but less than 7.00%, for the period ending on the last day of the most recent month, or (e) is in Category I and has failed to provide information to the Committee as required by Article III within two Business Days after receipt of written notice from the Committee of such failure.

Section 1.07. *Category III.* A Bank shall be in Category III if it (a) has an Average Net Composite Score of less than 35.0 for the most recent calendar quarter for which an Average Net Composite Score is available, (b) has a Net Composite Score of less than 30.0 for the most recent calendar quarter for which a Net Composite Score is available, (c) has a Net Collateral Ratio of less than 102.00% for the last day of the most recent month, (d) has a Permanent Capital Ratio of less than 5.00% for the period ending on the last day of the most recent month, or (e) is in Category II and has failed to provide information to the Committee as required by Article III within two Business Days after receipt of written notice from the Committee of such failure.

Section 1.08. *Highest Category.* If a Bank would come within more than one Category by reason of the various provisions of Sections 1.05 through 1.07, it shall be considered to be in the highest-numbered Category for which it qualifies (*e.g.,* Category III rather than Category II).

Section 1.09. *Notice by Scorekeeper.* Within twenty days of the end of each month, after receiving the reports due under Section 1.04 within fifteen days of the end of the prior month, the Scorekeeper shall provide to all Banks, all Associations discounting with or otherwise receiving funding from a Bank that is in Category I, Category II or Category III, FCA, the Insurance Corporation, the Funding Corporation, and either the CIPA Oversight Body or, if it is in existence, the Committee a notice identifying the Banks, if any, that are in Categories I, II and III, or stating that no Banks are in such Categories.

**Article II—The Committee**

Section 2.01. Formation. A Monitoring and Advisory Committee (the ''Committee'') shall be formed at the instance of the CIPA Oversight Body within seven days of the date that it receives a notice from the Scorekeeper under Section 1.09 that any Bank is in Category I, Category II or Category III (unless such a Committee is already in existence). The Committee shall remain

in existence thereafter for so long as the most recent notice from the Scorekeeper under Section 1.09 indicates that any Bank is in Category I, Category II or Category III. If not already in existence, the Committee may also be formed (a) At the instance of the CIPA Oversight Body at any other time, in order to consider a Continued Access Request that has been submitted or is expected to be submitted, (b) for purposes of preparing the reports described in Section 7.05, and (c) as provided for in Section 8.04(b).

Section 2.02. *Composition.* The Committee shall be made up of two representatives of each Bank and two representatives of the Funding Corporation. One of the representatives of each Bank shall be that Bank's representative on the CIPA Oversight Body. The other representative of each Bank shall be an individual designated by the Bank's board of directors, who may be a member of the Bank's board of directors or a senior officer of the Bank, in the discretion of the Bank's board. One of the representatives of the Funding Corporation shall be an outside director of the Funding Corporation designated by the Funding Corporation board of directors. The other representative of the Funding Corporation shall be designated by the board of directors of the Funding Corporation from among the members of its board and/or its senior officers. The removal and replacement of the Committee members designated directly by Bank boards of directors and by the Funding Corporation shall be in the sole discretion of each Bank board and of the Funding Corporation, respectively. A replacement for a member of the CIPA Oversight Body shall automatically replace such member on the Committee.

Section 2.03. *Authority and Responsibilities.* The Committee shall have the authority and responsibilities specified in this Article II, in Sections 1.04, 3.01, 3.02, 3.05, 3.06, 4.02, 7.05, 8.04, and 8.08, and in Article VI, and such incidental powers as are necessary and appropriate to effectuating such authority and responsibilities.

Section 2.04. *Meetings.* Notwithstanding anything herein to the contrary, at all times, the Banks entitled to vote on Committee business shall be all Banks other than (i) Those in Category II and Category III, as indicated in the most recent notice from the Scorekeeper under Section 1.09, and (ii) in the case of a Bank requesting a Continued Access Decision, such Bank. The initial meeting of the Committee shall be held at the call of the Chairman of the CIPA Oversight Body or a majority of the Parties entitled to vote on Committee business. Thereafter, the Committee shall meet at such times and such places at the call of the Chairman of the Committee or a majority of the Parties entitled to vote on Committee business. For all voting and quorum purposes each Party entitled to vote on Committee business shall act through at least one of its representatives. Written notice of each meeting shall be given to each member by the Chairman or his or her designee not less than 48 hours prior to the time of the meeting. A meeting may be held without such notice upon the signing of a waiver of notice by all of the Parties entitled to vote on Committee business. All of the Parties entitled to vote on Committee business shall constitute a quorum for the conduct of business. A meeting may be held by a telephone conference arrangement or similar communication method allowing each speaker to be heard by all others in attendance at the same time.

Section 2.05. *Action Without a Meeting.* Action may be taken by the Committee without a meeting if each Bank and the Funding Corporation consent in writing to consideration of a matter without a meeting and all of the Parties entitled to vote on Committee business approve the action in writing, which writings shall be kept with the minutes of the Committee.

Section 2.06. *Voting.* The Funding Corporation and each Bank entitled to vote on Committee business shall have one vote on Committee business. Voting on Committee business (including recommendations on Continued Access Decisions, but not the ultimate vote on Continued Access Decisions, which is addressed in Article VI) shall be by unanimity of the Parties entitled to vote on Committee business that are present (physically, by telephone conference or similar communication method allowing each speaker to be heard by all others in attendance at the same time) through at least one representative. If a Bank or the Funding Corporation has two representatives present, they shall agree in casting the vote of the Bank or the Funding Corporation, and if they cannot agree on a particular matter, that Bank or the Funding Corporation shall not cast a vote on that matter, and, in determining unanimity, shall not be counted as a Party entitled to vote on that matter.

Section 2.07. *Officers.* The Committee shall elect from among its members a Chairman, a Vice Chairman, a Secretary and such other officers as it shall from time to time deem appropriate. The Chairman shall chair the meetings of the Committee and have such other duties as the Committee may delegate to him or her. The Vice Chairman shall perform such duties of the Chairman as the Chairman is unable or fails to perform, and shall have such other duties as the Committee may delegate to him or her. The Secretary shall keep the minutes and maintain the minute book of the Committee. Other officers shall have such duties as the Committee may delegate to them. Should the Chairman be a representative of either a Category II or Category III Bank, such individual will no longer be eligible to serve as Chairman. The Vice Chairman will thereafter perform the duties of Chairman, and if the Vice Chairman is unable, the Committee may elect a new Chairman from among its members.

Section 2.08. *Retention of Staff, Consultants, and Experts.* The Committee shall be authorized to retain staff, consultants, and experts as it deems necessary and appropriate in its sole discretion.

Section 2.09. *Expenses.* Any compensation of each member of the Committee for time spent on Committee business and for his or her out-of-pocket expenses, such as travel, shall be paid by the Party that designated that member to the Committee or to the CIPA Oversight Body. All other expenses incurred by the Committee shall be borne by the Banks and assessed by the Funding Corporation based on the formula then used by the Funding Corporation to allocate its operating expenses.

Section 2.10. *Custody of Records.* All information received by the Committee pursuant to this Restated MAA, and all Committee minutes, shall be lodged, while not in active use by the Committee, at the Funding Corporation, and shall be deemed records of the Funding Corporation for purposes of FCA examination. The Parties agree that documents in active use by the Committee may also be examined by FCA.

**Article III—Provision of Information**

Section 3.01. *Information To Be Provided By All Banks in Categories I, II, and III.* If a Bank is in Category I, Category II, or Category III, as indicated in the most recent notice from the Scorekeeper under Section 1.09, and if the prior monthly notice by the Scorekeeper did not indicate that the Bank was in any Category, then the Bank shall within thirty days of receipt of the latest notice provide to the Committee: (a) A detailed explanation of the causes of its being in that Category, (b) an action plan to improve its financial situation so that it is no longer in any of the three Categories, (c) a timetable for achieving that result, (d) at

the discretion of the Committee, the materials and information listed in Attachment 1 hereto (in addition to fulfilling the other obligations specified in Attachment 1 hereto), and (e) such other pertinent materials and information as the Committee shall, within seven days of receiving notice from the Scorekeeper, request in writing from the Bank. Such Bank shall summarize, aggregate, or analyze data, as well as provide raw data, in such manner as the Committee may request. Such information shall be promptly updated (without any need for a request by the Committee) whenever the facts significantly change, and shall also be updated or supplemented as the Committee so requests in writing of the Bank by such deadlines as the Committee may reasonably specify.

Section 3.02. *Additional Information To Be Provided By Banks in Categories II and III.* If a Bank is in Category II or Category III, as indicated in the most recent notice from the Scorekeeper under Section 1.09, and if the prior monthly notice by the Scorekeeper did not indicate that the Bank was in Category II or Category III, then the Bank shall within thirty days of receipt of the latest notice provide to the Committee, in addition to the information required by Section 3.01, at the discretion of the Committee, the materials and information listed in Attachment 2 hereto (in addition to fulfilling the other obligations specified in Attachment 2 hereto). Such information shall be promptly updated (without any need for a request by the Committee) whenever the facts significantly change, and shall also be updated or supplemented as the Committee so requests in writing of the Bank by such deadlines as the Committee may reasonably specify.

Section 3.03. *Documents or Information Relating to Communications With FCA or the Insurance Corporation.* Notwithstanding Sections 3.01 and 3.02, a Bank shall not disclose to the Committee any communications between the Bank and FCA or the Insurance Corporation, as the case may be, or documents describing such communications, except as consented to by, and subject to such restrictive conditions as may be imposed by, FCA or the Insurance Corporation, as the case may be. However, facts regarding the Bank's condition or plans that pre-existed a communication with FCA or the Insurance Corporation and then were included in such a communication are not barred from disclosure by this section. The Committee shall decide on a case-by-case basis whether to request copies of such communications and documents from FCA or the Insurance Corporation, as the case may be. Each Bank hereby consents to the disclosure of such communications and documents to the Committee if consented to by FCA or the Insurance Corporation, as the case may be. Nothing in this section shall preclude a Bank from making disclosures to the System Disclosure Agent necessary to allow the System Disclosure Agent to comply with its obligations under the securities laws or other applicable law or regulations with regard to disclosure to investors.

Section 3.04. *Sources of Information; Certification.* Information provided to the Committee under Sections 3.01 and 3.02 shall, to the extent applicable, be data used in the preparation of financial statements in accordance with generally accepted accounting principles, or data used in the preparation of call reports submitted to FCA pursuant to 12 CFR part 621, as amended from time to time, or any successor thereto. A Bank shall certify, through its chief executive officer or, if there is no chief executive officer, a senior executive officer, the completeness and accuracy of all information provided to the Committee under Sections 3.01 and 3.02.

Section 3.05. *Failure to Provide Information.* If a Bank fails to provide information to the Committee as and when required under Sections 3.01 and 3.02, and does not correct such failure within two Business Days of receipt of the written notice by the Committee of the failure, then the Committee shall so advise the Scorekeeper.

Section 3.06. *Provision of Information to Banks.* Any information provided to the Committee under Sections 3.01 and 3.02 shall be provided by the Committee to any Bank upon request. A Bank shall not have the right under this Restated MAA to obtain information directly from another Bank.

Section 3.07. *Cessation of Obligations.* A Bank's obligation to provide information to the Committee under Section 3.01 shall cease as soon as the Bank is no longer in Category I, Category II, or Category III, as indicated in the most recent notice from the Scorekeeper under Section 1.09. A Bank's obligation to provide to the Committee information under Section 3.02 shall cease as soon as the Bank is no longer in Category II or Category III, as indicated in the most recent notice from the Scorekeeper under Section 1.09.

**Article IV—Restrictions on Market Access**

Section 4.01. *Final Restrictions.* As of either,

(i) The tenth day after a Bank receives a notification from the Scorekeeper that it is in Category II, as indicated in the most recent notice from the Scorekeeper under Section 1.09, if it has not by said tenth day submitted a Continued Access Request to the Committee; or

(ii) If the Bank has submitted a Continued Access Request to the Committee by the tenth day after its receipt of notice from the Scorekeeper that it is in Category II, the seventh day following the day a submitted Continued Access Request is denied, a Bank in Category II, as indicated in the most recent notice from the Scorekeeper under Section 1.09, (a) shall be permitted to participate in issues of Debt Securities only to the extent necessary to roll over the principal (net of any original issue discount) of maturing debt, and (b) shall comply with the Additional Restrictions.

Section 4.02. *Category II Interim Restrictions.* From the day that a Bank receives a notice from the Scorekeeper that it is in Category II until: (a) Ten days thereafter, if the Bank does not by that day submit a Continued Access Request to the Committee, or (b) if the Bank by such tenth day after it has received a notice from the Scorekeeper that it is in Category II does submit a Continued Access Request to the Committee, the seventh day following the day that notice is received by the Bank that the Continued Access Request is granted or denied, the Bank (i) May participate in issues of Debt Securities only to the extent necessary to roll over the principal (net of any original issue discount) of maturing debt unless the Committee, taking into account the criteria in Section 6.03, shall specifically authorize participation to a greater extent, and (ii) shall comply with the Additional Restrictions. Notwithstanding the foregoing, the Category II Interim Restrictions shall not go into effect if a Continued Access Request has already been granted in anticipation of the formal notice that the Bank is in Category II.

Section 4.03. *FCA Action.* The Final Restrictions and the Category II Interim Restrictions shall go into effect without the need for case-by-case approval by FCA.

Section 4.04. *Cessation of Restrictions.* The Final Restrictions and the Category II Interim Restrictions shall cease as soon as the Bank is no longer in Category II, as indicated in the most recent notice from the Scorekeeper under Section 1.09. The Bank shall continue, however, to be subject to such other obligations under this Restated MAA as may apply to it by reason of its being in another Category.

Section 4.05. *Relationship to the Joint and Several Liability Reallocation*

*Agreement*. A Category II Bank shall not be subject to the Final Restrictions and Category II Interim Restrictions, to the extent that the Final Restrictions and Category II Interim Restrictions would prohibit such Category II Bank from issuing debt required to fund such Category II Bank's liabilities and obligations under the Joint and Several Liability Reallocation Agreement, if and when the Joint and Several Liability Reallocation Agreement is in effect among the Parties.

**Article V—Prohibition of Market Access**

Section 5.01. *Final Prohibition*. As of either,

(i) The tenth day after a Bank receives a notification from the Scorekeeper that it is in Category III, as indicated in the most recent notice from the Scorekeeper under Section 1.09, if it has not by said tenth day submitted a Continued Access Request to the Committee; or

(ii) If the Bank has submitted a Continued Access Request to the Committee by the tenth day after its receipt of notice from the Scorekeeper that it is in Category III, the seventh day following the day a submitted Continued Access Request is denied, a Bank in Category III, as indicated in the most recent notice from the Scorekeeper under Section 1.09, (a) Shall be prohibited from participating in issues of Debt Securities, and (b) shall comply with the Additional Restrictions.

Section 5.02. *Category III Interim Restrictions*. From the day that a Bank receives a notice from the Scorekeeper that it is in Category III until: (a) Ten days thereafter, if the Bank does not by that day submit a Continued Access Request to the Committee, or (b) if the Bank by such tenth day after it has received a notice from the Scorekeeper that it is in Category III does submit a Continued Access Request to the Committee, the seventh day following the day that notice is received by the Bank that the Continued Access Request is granted or denied, the Bank (i) May participate in issues of Debt Securities only to the extent necessary to roll over the principal (net of any original issue discount) of maturing debt, and (ii) shall comply with the Additional Restrictions. Notwithstanding the foregoing, the Category III Interim Restrictions shall not go into effect if a Continued Access Request has already been granted in anticipation of the formal notice that the Bank is in Category III.

Section 5.03. *FCA Action*. The Category III Interim Restrictions shall go into effect without the need for case-by-case approval by FCA. The Parties agree that the Final Prohibition shall go into effect without the need for approval by FCA; *provided, however,* that FCA may override the Final Prohibition, for such time period up to 60 days as FCA may specify (or, if FCA does not so specify, for 60 days), by so ordering before the date upon which the Final Prohibition becomes effective pursuant to Section 5.01, and may renew such an override once only, for such time period up to 60 additional days as FCA may specify (or, if FCA does not so specify, for 60 days), by so ordering before the expiration of the initial override period. If the Final Prohibition is overridden by FCA, the Category III Interim Restrictions shall remain in effect.

Section 5.04. *Cessation of Restrictions*. The Final Prohibition and the Category III Interim Restrictions shall cease as soon as the Bank is no longer in Category III, as indicated in the most recent notice from the Scorekeeper under Section 1.09. The Bank shall continue, however, to be subject to such other obligations under this Restated MAA as may apply to it by reason of its being in another Category.

Section 5.05. *Relationship to the Joint and Several Liability Reallocation Agreement*. A Category III Bank shall not be subject to the Final Prohibition or Category III Interim Restrictions, to the extent that the Final Prohibition or Category III Interim Restrictions would prohibit such Category III Bank from issuing debt required to fund such Category III Bank's liabilities and obligations under the Joint and Several Liability Reallocation Agreement, if and when the Joint and Several Liability Reallocation Agreement is in effect among the Parties.

**Article VI—Continued Access Decisions**

Section 6.01. *Process*. The process for action on Continued Access Requests shall be as follows:

(a) *Submission of Request*. A Bank may submit a Continued Access Request for consideration by the Committee at any time, including (i) Prior to formal notice from the Scorekeeper that it is in Category II or Category III, if the Bank anticipates such notice, and (ii) prior to the tenth day after a Bank receives a notification from the Scorekeeper that it is in Category II or the tenth day after a Bank receives a notification from the Scorekeeper that it is in Category III.

(b) *Committee Recommendation*. After a review of the Request, the supporting information and any other pertinent information available to the Committee, the Committee shall arrive at a recommendation regarding the Request (including, if the recommendation is to grant the Request, recommendations as to the expiration date of the Continued Access Decision and as to any conditions to be imposed on the Decision). The Funding Corporation, drawing upon its expertise and specialized knowledge, shall provide to the Committee all pertinent information in its possession (and the Banks authorize the Funding Corporation to provide such information to the Committee for its use as provided herein, and, to that limited extent only, waive their right to require the Funding Corporation to maintain the confidentiality of such information). The Committee shall send its recommendation and a statement of the reasons therefor, including a description of any considerations that were expressed for and against the recommendation by members of the Committee during its deliberations, together with the Request, the supporting information, a report of how the members of the Committee voted on the recommendation, a report by the Funding Corporation concerning its position on the recommendation, and any other material information that was considered by the Committee, to all Banks and the Funding Corporation by a nationally recognized overnight delivery service within fourteen days after receiving the Request. If the Committee fails to act within such fourteen-day period, the Continued Access Request shall be deemed forwarded to all Banks entitled to vote thereon for their consideration. If the Committee has failed to act, the Funding Corporation shall send to all Banks, within two days following the deadline for Committee action, a report concerning the position of the Funding Corporation on the Continued Access Request.

(c) *Vote on the Request*. Unless otherwise expressly stated herein, the Banks entitled to vote on the Request shall be all Banks other than those in Category II and Category III, as indicated in the most recent notice from the Scorekeeper under Section 1.09, and other than the Bank requesting the Continued Access Decision. Within ten days of receiving the Committee's recommendation and the accompanying materials (or, if the Committee failed to act within fourteen days, within ten days following the fourteenth day), the board of directors of each Bank entitled to vote on the Request, or its designee, after review of the recommendation, the accompanying materials, the report of the Funding Corporation, and any other pertinent information, shall vote to grant or deny the Request (as modified or supplemented by any

recommendations of the Committee as to the expiration date of the Continued Access Decision and as to conditions to be imposed on the Decision), and shall provide written notice of its vote to the Committee. If the Committee has recommended in favor of a Continued Access Decision, the vote of a Bank shall be either to accept or reject the Committee's recommendation, including the recommended expiration date and conditions; if the Committee has recommended against a Continued Access Decision or has failed to act, the vote of a Bank shall be either to grant the Continued Access Request on the terms requested by the requesting Bank, or to deny it. Failure to vote within the ten-day period shall be considered a ''no'' vote. A Continued Access Request shall be granted only upon a 100% Vote within the ten-day period, and shall be considered denied if a 100% Vote is not forthcoming by that day.

(d) *Notice*. The Committee shall promptly provide written notice to the Parties, FCA and the Insurance Corporation of the granting or denial of the Continued Access Request, and, if the Continued Access Request was granted, of all the particulars of the Continued Access Decision.

Section 6.02. *Provision of Information to FCA and the Insurance Corporation*. FCA and the Insurance Corporation shall be advised by the Committee of the submission of a Continued Access Request, shall be provided by the Committee with appropriate materials relating to the Request, and shall be advised by the Committee of the recommendation made by the Committee concerning the Request.

Section 6.03. *Criteria*. The Committee, in arriving at its recommendation on a Continued Access Request, and the voting Banks, in voting on a Continued Access Request, shall consider (a) The present financial strength of the Bank in issue, (b) the prospects for financial recovery of the Bank in issue, (c) the probable costs of particular courses of action to the Banks and the Insurance Fund, (d) any intentions expressed by the Insurance Corporation with regard to assisting or working with the Bank in issue, (e) any existing lending commitments and any particular high-quality new lending opportunities of the Bank, (f) seasonal variations in the borrowing needs of the Bank, (g) whether the Bank's independent public accountants have included a Going Concern Qualification in the most recent combined financial statements of the Bank and its constituent Associations, and (h) any other matters deemed pertinent.

Section 6.04. *Expiration Date.* A Continued Access Decision shall have such expiration date as the Committee recommends and is approved by a 100% Vote. If the Committee recommends against or fails to act on a Continued Access Request, and it is subsequently approved by a 100% Vote, the expiration date of the Continued Access Decision shall be the earlier of the date requested by the Bank or 180 days from the date the Request is granted. A Continued Access Decision may be terminated prior to that date, or renewed for an additional term, upon a new recommendation by the Committee and 100% Vote.

Section 6.05. *Conditions.* A Continued Access Decision shall be subject to such conditions as the Committee recommends and are approved by a 100% Vote. If specifically approved by a 100% Vote, administration of the details of the conditions and ongoing refinement of the conditions to take account of changing circumstances can be left to the Committee or such subcommittee as it may establish for that purpose. Among the conditions that may be imposed on a Continued Access Decision are (a) A requirement of remedial action by the Bank, failing which the Continued Access Decision will terminate, (b) a requirement of other appropriate conduct on the part of the Bank (such as compliance with the Additional Restrictions), failing which the Continued Access Decision will terminate, and (c) specific restrictions on continued borrowing by the Bank, such as a provision allowing a Bank in Category II to borrow only for specified types of business in addition to rolling over the principal of maturing debt, or allowing such a Bank only to roll over interest on maturing debt in addition to rolling over the principal of maturing debt, or a provision allowing a Bank in Category III to roll over a portion of its maturing debt. The Committee shall be responsible for monitoring and determining compliance with conditions, and shall promptly advise the Parties of any failure by a Bank to comply with conditions. The Committee's determination with respect to compliance with conditions shall be final, until and unless overturned or modified in arbitration pursuant to Section 7.08.

Section 6.06. *FCA Action.* The Parties agree that a Continued Access Decision shall go into effect without the need for approval by FCA, but that FCA may override the Continued Access Decision, for such time period as FCA may specify (or, if FCA does not so specify, until a new Continued Access Decision is made pursuant to a recommendation of the Committee and a 100% Vote, in which case it is again subject to override by FCA), by so ordering at any time.

Section 6.07. *Notice to FCA of Intent to File Continued Access Request.* A Bank that receives notice that it is in Category III shall advise FCA, within ten days of receiving such notice, whether it intends to file a Continued Access Request.

**Article VII—Other**

Section 7.01. *Conditions Precedent.* This Restated MAA shall go into effect on January 1, 2012, *provided, however,* that on or before January 15, 2012 each Party has executed a certificate in substantially the form of Attachment 3 hereto that all of the following conditions precedent have been satisfied: (a) The delivery to the Banks of an opinion by an outside law firm reasonably acceptable to all of the Parties and in substantially the form of Attachment 4 hereto, (b) the delivery to the Funding Corporation of an opinion by an outside law firm reasonably acceptable to all of the Parties and in substantially the form of Attachment 5 hereto, (c) adoption by each of the Banks and the Funding Corporation of a resolution in substantially the form of Attachment 6 hereto, (d) action by the Insurance Corporation, through its board, expressing its support for this Restated MAA, and (e) action by FCA, through its board, approving this Restated MAA pursuant to Section 4.2(c) and Section 4.2(d) of the Act, and (without necessarily expressing any view as to the proper interpretation of Section 4.9(b)(2) of the Act) approving this Restated MAA pursuant to Section 4.9(b)(2) of the Act insofar as such approval may be required, which action shall (i) Indicate that the entry into and compliance with this Restated MAA by the Funding Corporation fully satisfy such obligations as the Funding Corporation may have with respect to establishing ''conditions of participation'' for market access under Section 4.9(b)(2), and (ii) contain no reservations or other conditions or qualifications except for those which may be specifically agreed to by the Funding Corporation's board of directors and the other Parties.

Upon execution of its certificate, each Party shall forward a copy to the Funding Corporation, attn. General Counsel, which shall advise all other Parties when a complete set of certificates is received.

If this Restated MAA becomes effective in accordance with this Section 7.01, the First Restated MAA shall be amended and restated by this Restated MAA as of that date without further

action of the Parties. If any term, provision, covenant or restriction of this Restated MAA is held by a court of competent jurisdiction or other authority to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions of this Restated MAA shall remain in full force and effect and shall in no way be affected, impaired or invalidated. If any term, provision, covenant or restriction of this Restated MAA that purports to amend a term, provision, covenant or restriction of the Original Agreement or the First Restated MAA is held by a court of competent jurisdiction or other authority to be invalid, void or unenforceable, such term, provision, covenant or restriction of the Original Agreement or the First Restated MAA shall be considered to have continued and to be continuing in full force and effect at all times since this Restated MAA has purported to be in effect. The Parties agree that notwithstanding the occurrence of any of the foregoing events they will treat, to the maximum extent permitted by law, all actions theretofore taken pursuant to this Restated MAA as valid and binding actions of the Parties.

Section 7.02. *Representations and Warranties.* Each Party represents and warrants to the other Parties that (a) It has duly executed and delivered this Restated MAA, (b) its performance of this Restated MAA in accordance with its terms will not conflict with or result in the breach of or violation of any of the terms or conditions of, or constitute (or with notice or lapse of time or both constitute) a default under any order, judgment or decree applicable to it, or any instrument, contract or other agreement to which it is a party or by which it is bound, (c) it is duly constituted and validly existing under the laws of the United States, (d) it has the corporate and other authority, and has obtained all necessary approvals, to enter into this Restated MAA and perform all of its obligations hereunder, and (e) its performance of this Restated MAA in accordance with its terms will not conflict with or result in the breach of or violation of any of the terms or conditions of, or constitute (or with notice or lapse of time or both constitute) a default under its charter (with respect to the Banks), or its bylaws.

Section 7.03. *Additional Covenants.*

(a) Each Bank agrees to notify the other Parties and the Scorekeeper if, at any time, it anticipates that within the following three months it will come to be in Category I, Category II or Category III, or will move from one Category to another.

(b) Whenever a Bank is subject to Final Restrictions, a Final Prohibition, Category II Interim Restrictions, Category III Interim Restrictions, or a Continued Access Decision, the Committee shall promptly so notify the Funding Corporation, and the Funding Corporation shall take all necessary steps to ensure that the Bank participates in issues of Debt Securities only to the extent permitted thereunder. The Funding Corporation may rely on the determination of the Committee as to whether a Bank has complied with a condition to a Continued Access Decision.

(c) Each Bank agrees that it will not at any time that it is in Category I, Category II or Category III, as indicated in the most recent notice from the Scorekeeper under Section 1.09, and will not without twelve months' prior notice to all other Banks and the Funding Corporation at any other time, either (i) Withdraw, or (ii) modify, in a fashion that would impede the issuance of Debt Securities, the funding resolution it has adopted pursuant to Section 4.4(b) of the Act. Should a violation of this covenant be asserted, and should the Bank deny same, the funding resolution shall be deemed still to be in full effect, without modification, until arbitration of the matter is completed, and each Bank, by entering into this Restated MAA, consents to emergency injunctive relief to enforce this provision. Nothing in this Restated MAA shall be construed to restrict any Party's ability to take the position that a Bank's withdrawal or modification of its funding resolution is not authorized by law.

(d) Each Bank agrees that it will not at any time that it is in Category I, Category II or Category III, as indicated in the most recent notice from the Scorekeeper under Section 1.09, and will not without twelve months' prior notice to all other Banks and the System Disclosure Agent at any other time, fail to report information to the System Disclosure Agent pursuant to the Disclosure Program for the issuance of Debt Securities and for the System Disclosure Agent to have a reasonable basis for making disclosures pursuant to the Disclosure Program. Should the System Disclosure Agent assert a violation of this covenant, and should the Bank deny same, the Bank shall furnish such information as the System Disclosure Agent shall request until arbitration of the matter is completed, and each Bank, by entering into this Restated MAA, consents to emergency injunctive relief to enforce this provision. Nothing in this Restated MAA shall be construed to restrict the ability of the System Disclosure Agent to comply with its obligations under the securities laws or other applicable law or regulations with regard to disclosure to investors.

(e) Without implying that suit may be brought on any other matter, each Bank and the Funding Corporation specifically agree not to bring suit to challenge this Restated MAA or to challenge any Final Prohibition, Final Restrictions, Category II Interim Restrictions, Category III Interim Restrictions, Continued Access Decision, denial of a Continued Access Request or recommendation of the Committee with respect to a Continued Access Request arrived at in accordance with this Restated MAA. This provision shall not be construed to preclude judicial actions under the U.S. Arbitration Act, 9 U.S.C. sections 1–15, to enforce or vacate arbitration decisions rendered pursuant to Section 7.08, or for an order that arbitration proceed pursuant to Section 7.08.

(f) The Funding Corporation agrees that it will not reinstitute the Market Access and Risk Alert Program, or adopt a similar such program for so long as both (i) This Restated MAA is in effect and (ii) Section 4.9(b)(2) of the Act is not amended in a manner which would require, nor is there any other change in applicable law or regulations which would require, the Funding Corporation to establish ''conditions of participation'' different from those contained in this Restated MAA. Should the condition described in (ii) no longer apply and the Funding Corporation adopt a market access program, this Restated MAA shall be deemed terminated. All Banks reserve the right to argue, if the conditions described in clauses (i) or (ii) of the preceding sentence should no longer apply and the Funding Corporation should adopt such a program, that any such program adopted by the Funding Corporation is contrary to law, either because Section 4.9(b)(2) of the Act does not authorize such a program, or for any other reason, and the entry by any Bank into this Restated MAA shall not be construed as waiving such right.

(g) It is expressly agreed that the Original Agreement, FCA approval of the Original Agreement, the First Restated MAA and FCA approval of this Restated MAA do not provide any grounds for challenging FCA or Insurance Corporation actions with respect to the creation of or the conduct of receiverships or conservatorships. Without limiting the preceding statement, each Bank specifically and expressly agrees and acknowledges that it cannot, and agrees that it shall not,

attempt to challenge FCA's appointment of a receiver or conservator for itself or any other System institution or FCA's or the Insurance Corporation's actions in the conduct of any receivership or conservatorship (i) On the basis of this Restated MAA or FCA's approval of this Restated MAA; or (ii) on the grounds that Category II Interim Restrictions, Final Restrictions, Category III Interim Restrictions, or Final Prohibitions were or were not imposed, whether by reason of FCA's or the Insurance Corporation's action or inaction or otherwise. The Banks jointly and severally agree that they shall indemnify and hold harmless FCA and the Insurance Corporation against all costs, expenses, and damages, including without limitation, attorneys' fees and litigation costs, resulting from any such challenge by any Party.

Section 7.04. *Termination.* This Restated MAA shall terminate upon the earliest of (i) December 31, 2025, (ii) an earlier date if so agreed in writing by 100% Vote of the Banks, or (iii) in the event that all Banks shall be in either Category II or Category III. Commencing a year before December 31, 2025, the Parties shall meet to consider its extension. Except as provided in Section 7.03(f), it is understood that the termination of this Restated MAA shall not affect (i) Any rights and obligations of the Funding Corporation under Section 4.9(b)(2) of the Act, and (ii) any Bank's rights pursuant to any Final Restrictions, a Final Prohibition, Category II Interim Restrictions, Category III Interim Restrictions, or a Continued Access Decision then-in-effect.

Section 7.05. *Periodic Review.* Commencing every third anniversary of the effective date of this Restated MAA, beginning January 1, 2015, and at such more frequent intervals as the Parties may agree, the Banks and the Funding Corporation, through their boards of directors, shall conduct a formal review of this Restated MAA and consider whether any amendments to it are appropriate. In connection with such review, the Committee shall report to the boards on the operation of the Restated MAA and recommend any amendments it considers appropriate.

Section 7.06. *Confidentiality.* The Parties may disclose this Restated MAA and any amendments to it and any actions taken pursuant to this Restated MAA to restrict or prohibit borrowing by a Bank. All other information relating to this Restated MAA shall be kept confidential and shall be used solely for purposes of this Restated MAA, except that, to the extent permitted by applicable law and regulations, such information may be disclosed by (a) The System Disclosure Agent under the Disclosure Program, (b) a Bank, upon coordination of such disclosure with the System Disclosure Agent, as the Bank deems appropriate for purposes of the Bank's disclosures to borrowers or shareholders; (c) a Bank as deemed appropriate for purposes of disclosure to transacting parties (subject, to the extent the Bank reasonably can obtain such agreement, to such a transacting party's agreeing to keep the information confidential) of material information relating to that Bank, or (d) any Party in order to comply with legal or regulatory obligations. Notwithstanding the preceding sentence, the Parties shall make every effort, to the extent consistent with legal requirements, securities disclosure obligations and other business necessities, to preserve the confidentiality of information provided to the Committee by a Bank and designated as ''Proprietary and Confidential.'' Any expert or consultant retained in connection with this Restated MAA shall execute a written undertaking to preserve the confidentiality of any information received in connection with this Restated MAA. Notwithstanding the foregoing, nothing in this Restated MAA shall prevent Parties from disclosing information to FCA or the Insurance Corporation.

Section 7.07. *Amendments.* This Restated MAA may be amended only by the written agreement of all the Parties.

Section 7.08. *Dispute Resolution.* All disputes between or among Parties relating to this Restated MAA shall be submitted to final and binding arbitration pursuant to the U.S. Arbitration Act, 9 U.S.C. sections 1–15, *provided, however,* that any recommendation by the Committee regarding a Continued Access Request (including, if the recommendation is to grant the Request, recommendations as to the expiration date of the Continued Access Decision and as to any conditions to be imposed on the Decision), and any vote by a Bank on a Continued Access Request, shall be final and not subject to arbitration. Arbitrations shall be conducted under the Commercial Arbitration Rules of the American Arbitration Association before a single arbitrator. An arbitrator shall be selected within fourteen days of the initiation of arbitration by any Party, and the arbitrator shall render a decision within thirty days of his or her selection, or as otherwise agreed to by the parties thereto.

Section 7.09. *Governing Law.* This Restated MAA shall be governed by and construed in accordance with the Federal laws of the United States of America, and, to the extent of the absence of Federal law, in accordance with the laws of the State of New York excluding any conflict of law provisions that would cause the law of any jurisdiction other than New York to be applied; *provided, however,* that in the event of any conflict between the U.S. Arbitration Act and applicable Federal or New York law, the U.S. Arbitration Act shall control.

Section 7.10. *Notices.* Any notices required or permitted under this Restated MAA shall be in writing and shall be deemed given if delivered in person, by email, by fax or by a nationally recognized overnight courier, in each case addressed as follows, unless such address is changed by written notice hereunder:

To AgFirst Farm Credit Bank: AgFirst Farm Credit Bank, Farm Credit Bank Building, 1401 Hampton Street, Columbia, SC 29201, *Attention:* President and Chief Executive Officer, *Fax:* (803) 254–1776, *Email:* [OMITTED].

To AgriBank, FCB: AgriBank, FCB, 375 Jackson Street, St. Paul, MN 55101, *Attention:* President and Chief Executive Officer, *Fax:* (651) 282–8494, *Email:* [OMITTED].

To CoBank, ACB: CoBank, ACB, 5500 South Quebec Street, Greenwood Village, CO 80111, *Attention:* President and Chief Executive Officer, *Fax:* (303) 740–4002, *Email:* [OMITTED].

To the Farm Credit Bank of Texas: Farm Credit Bank of Texas, 4801 Plaza on the Lake Drive, Austin, TX 78746, *Attention:* President and Chief Executive Officer, *Fax:* (512) 465–0775, *Email:* [OMITTED].

To U.S. AgBank, FCB: U.S. AgBank, FCB, Farm Credit Bank Building, 245 North Waco, Wichita, KS 67202, *Attention:* President and Chief Executive Officer, *Fax:* (316) 266–5126, *Email:* [OMITTED].

To Federal Farm Credit Banks Funding Corporation: Federal Farm Credit Banks Funding Corporation, 10 Exchange Place, Suite 1401, Jersey City, NJ 07302, *Attention:* President and Chief Executive Officer, *Fax:* (201) 200–8109, *Email:* [OMITTED].

To the Farm Credit System Insurance Corporation: Farm Credit System Insurance Corporation, 1501 Farm Credit Drive, McLean, Virginia 22102, *Attention:* Chairman, *Fax:* (703) 790–9088, *Email:* [OMITTED].

To the Farm Credit Administration: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090, *Attention:* Chairman,

*Fax:* (703) 734–5784, *Email:* [OMITTED].

To the CIPA Oversight Body: At such address, fax number and email address as shall be supplied to the Parties from time to time by the Chairman of the CIPA Oversight Body.

To the Committee: At such address, fax number and email address as shall be supplied by the Committee, which the Committee shall promptly transmit to each Party.

Any notice sent by the courier shall be deemed given one Business Day after depositing with the overnight courier. Any notice given in person, by email, or by fax shall be deemed given instantaneously.

Section 7.11. *Headings; Conjunctive/Disjunctive; Singular/Plural.* The headings of any article or section of this Restated MAA are for convenience only and shall not be used to interpret any provision of the Restated MAA. Uses of the conjunctive include the disjunctive, and vice versa, unless the context clearly requires otherwise. Uses of the singular include the plural, and vice versa, unless the context clearly requires otherwise.

Section 7.12. *Successors and Assigns.* Except as provided in the definitions of ''Bank'' and ''Banks'' in Article IX, this Restated MAA shall inure to the benefit of and be binding upon the successors and assigns of the Parties, including entities resulting from the merger or consolidation of one or more Banks.

Section 7.13. *Counterparts.* This Restated MAA, and any document provided for hereunder, may be executed in one or more counterparts. Transmission by facsimile or other form of electronic transmission of an executed counterpart of this Restated MAA shall be deemed to constitute due and sufficient delivery of such counterpart.

Section 7.14. *Waiver.* Any provision of this Restated MAA may be waived, but only if such waiver is in writing and is signed by all Parties to this Restated MAA.

Section 7.15. *Entire Agreement.* Except as provisions of CIPA are cited in this Restated MAA (which provisions are expressly incorporated herein by reference), this Restated MAA sets forth the entire agreement of the Parties and supersedes all prior understandings or agreements, oral or written, among the Parties with respect to the subject matter hereof.

Section 7.16. *Relation to CIPA.* This Restated MAA and CIPA are separate agreements, and invalidation of one does not affect the other. Should CIPA be invalidated or terminated, the Parties will take the necessary steps to maintain those aspects of CIPA that are referred to in Sections 1.01, 1.02 and 1.03 of this Restated MAA, and to replace the CIPA Oversight Body for purposes of continued administration of this Restated MAA.

Section 7.17. *Third Parties.* Except as provided in Sections 2.10, 3.03, 7.03(g), 7.21 and 7.22, this Restated MAA is for the benefit of the Parties and their respective successors and assigns, and no rights are intended to be, or are, created hereunder for the benefit of any third party.

Section 7.18. *Time Is Of The Essence.* Time is of the essence in interpreting and performing this Restated MAA.

Section 7.19. *Statutory Collateral Requirement.* Nothing in this Restated MAA shall be construed to permit a Bank to participate in issues of Debt Securities or other obligations if it does not satisfy the collateral requirements of Section 4.3(c) of the Act. For purposes of this Section, ''Bank'' shall include any System bank in conservatorship or receivership.

Section 7.20. *Termination of System Status.* Nothing in this Restated MAA shall be construed to preclude a Bank from terminating its status as a System institution pursuant to Section 7.10 of the Act, or from at that time withdrawing, as from that time forward, the funding resolution it has adopted pursuant to Section 4.4(b) of the Act. A Bank that terminates its System status shall cease to have any rights or obligations under this Restated MAA, except that it shall continue to be subject to Article VIII with respect to claims accruing through the date of such termination of System status.

Section 7.21. *Restrictions Concerning Subsequent Litigation.* It is expressly agreed by the Banks that (a) Characterization or categorization of Banks, (b) information furnished to the Committee or other Banks, and (c) discussions or decisions of the Banks or Committee under this Restated MAA shall not be used in any subsequent litigation challenging FCA's or the Insurance Corporation's action or inaction.

Section 7.22. *Effect of this Agreement.* Neither this Restated MAA nor FCA approval hereof shall in any way restrict or qualify the authority of FCA or the Insurance Corporation to exercise any of the powers, rights, or duties granted by law to FCA or the Insurance Corporation.

Section 7.23. *Relationship to the Joint and Several Liability Reallocation Agreement.* This Restated MAA and the Joint and Several Liability Reallocation Agreement are separate agreements, and invalidation of one does not affect the other.

**Article VIII—Indemnification**

Section 8.01. *Definitions.* As used in this Article VIII:

(a) ''Indemnified Party'' means any Bank, the Funding Corporation, the Committee, the Scorekeeper, or any of the past, present or future directors, officers, stockholders, employees or agents of the foregoing.

(b) ''Damages'' means any and all losses, costs, liabilities, damages and expenses, including, without limitation, court costs and reasonable fees and expenses of attorneys expended in investigation, settlement and defense (at the trial and appellate levels and otherwise), which are incurred by an Indemnified Party as a result of or in connection with a claim alleging liability to any non-Party for actions taken pursuant to or in connection with this Restated MAA. Except to the extent otherwise provided in this Article VIII, Damages shall be deemed to have been incurred by reason of a final settlement or the dismissal with prejudice of any such claim, or the issuance of a final nonappealable order by a court of competent jurisdiction which ultimately disposes of such a claim, whether favorably or unfavorably.

Section 8.02. *Indemnity.* To the extent consistent with governing law, the Banks, jointly and severally, shall indemnify and hold harmless each Indemnified Party against and in respect of Damages, *provided, however,* that an Indemnified Party shall not be entitled to indemnification under this Article VIII in connection with conduct of such Indemnified Party constituting gross negligence, willful misconduct, intentional tort or criminal act, or in connection with civil money penalties imposed by FCA. In addition, the Banks, jointly and severally, shall indemnify an Indemnified Party for all costs and expenses (including, without limitation, fees and expenses of attorneys) incurred reasonably and in good faith by an Indemnified Party in connection with the successful enforcement of rights under any provision of this Article VIII.

Section 8.03. *Advancement of Expenses.* The Banks, jointly and severally, shall advance to an Indemnified Party, as and when incurred by the Indemnified Party, all reasonable expenses, court costs and attorneys' fees incurred by such Indemnified Party in defending any proceeding involving a claim against such Indemnified Party based upon or alleging any matter that constitutes, or if sustained would constitute, a matter

in respect of which indemnification is provided for in Section 8.02, so long as the Indemnified Party provides the Banks with a written undertaking to repay all amounts so advanced if it is ultimately determined by a court in a final nonappealable order or by agreement of the Banks and the Indemnified Party that the Indemnified Party is not entitled to be indemnified under Section 8.02.

Section 8.04. *Assertion of Claim.*

(a) Promptly after the receipt by an Indemnified Party of notice of the assertion of any claim or the commencement of any action against him, her or it in respect of which indemnity may be sought against the Banks hereunder (an ''Assertion''), such Indemnified Party shall apprise the Banks, through a notice to each of them, of such Assertion. The failure to so notify the Banks shall not relieve the Banks of liability they may have to such Indemnified Party hereunder, except to the extent that failure to give such notice results in material prejudice to the Banks.

(b) Any Bank receiving a notice under paragraph (a) Shall forward it to the Committee (which, if not in existence, shall be formed at the instance of such Bank to consider the matter). The Banks, through the Committee, shall be entitled to participate in, and to the extent the Banks, through the Committee, elect in writing on thirty days' notice, to assume, the defense of an Assertion, at their own expense, with counsel chosen by them and satisfactory to the Indemnified Party. Notwithstanding that the Banks, through the Committee, shall have elected by such written notice to assume the defense of any Assertion, such Indemnified Party shall have the right to participate in the investigation and defense thereof, with separate counsel chosen by such Indemnified Party, but in such event the fees and expenses of such separate counsel shall be paid by such Indemnified Party and shall not be subject to indemnification by the Banks unless (i) The Banks, through the Committee, shall have agreed to pay such fees and expenses, (ii) the Banks shall have failed to assume the defense of such Assertion and to employ counsel satisfactory to such Indemnified Party, or (iii) in the reasonable judgment of such Indemnified Party, based upon advice of his, her or its counsel, a conflict of interest may exist between the Banks and such Indemnified Party with respect to such Assertion, in which case, if such Indemnified Party notifies the Banks, through the Committee, that such Indemnified Party elects to employ separate counsel at the Banks' expense, the Banks shall not have the right to assume the defense of such Assertion on behalf of such Indemnified Party. Notwithstanding anything to the contrary in this Article VIII, neither the Banks, through the Committee, nor the Indemnified Party shall settle or compromise any action or consent to the entering of any judgment (x) without the prior written consent of the other, which consent shall not be unreasonably withheld, and (y) without obtaining, as an unconditional term of such settlement, compromise or consent, the delivery by the claimant or plaintiff to such Indemnified Party of a duly executed written release of such Indemnified Party from all liability in respect of such Assertion, which release shall be satisfactory in form and substance to counsel to such Indemnified Party. The Funding Corporation shall not be entitled to vote on actions by the Committee under this paragraph (b) or Section 8.08.

Section 8.05. *Remedies; Survival.* The indemnification, rights and remedies provided to an Indemnified Party under this Article VIII shall be (i) In addition to and not in substitution for any other rights and remedies to which any of the Indemnified Parties may be entitled, under any other agreement with any other Person, or otherwise at law or in equity, and (ii) provided prior to and without regard to any other indemnification available to any Indemnified Party. This Article VIII shall survive the termination of this Restated MAA.

Section 8.06. *No Rights in Third Parties.* This Restated MAA shall not confer upon any Person other than the Indemnified Party any rights or remedies of any nature or kind whatsoever under or by reason of the indemnification provided for in this Article VIII.

Section 8.07. *Subrogation; Insurance.* Upon the payment by the Banks to an Indemnified Party of any amounts for which an Indemnified Party shall be entitled to indemnification under this Article VIII, if the Indemnified Party shall also have the right to recover such amount under any commercial insurance, the Banks shall be subrogated to such rights to the extent of the indemnification actually paid. Where coverage under such commercial insurance may exist, the Indemnified Party shall promptly file and diligently pursue a claim under said insurance. Any amounts paid pursuant to such claim shall be refunded to the Banks to the extent the Banks have provided indemnification payments under this Article VIII, *provided, however,* that recovery under such insurance shall not be deemed a condition precedent to the indemnification obligations of the Banks under this Article VIII.

Section 8.08. *Sharing in Costs.* The Banks shall share in the costs of any indemnification payment hereunder as the Committee shall determine.

**Article IX—Definitions**

The following definitions are used in this Restated MAA:

''Act'' means the Farm Credit Act of 1971, 12 U.S.C. section 2001, *et seq.,* as amended from time to time, or any successors thereto.

The ''Additional Restrictions'' are that a Bank (a) Shall manage its asset/liability mix so as not to increase, and, to the extent possible, so as to reduce or eliminate, any Interest-Rate Sensitivity Deduction in its Net Composite Score, and (b) shall not increase the dollar amount of any liabilities, or take any action giving rise to a lien or pledge on its assets, senior to its liability on Debt Securities other than (i) Tax liabilities and secured liabilities arising in the ordinary course of business through activities other than borrowing, such as mechanic's liens or judgment liens, and (ii) secured liabilities, or an action giving rise to such a lien or pledge, incurred in the ordinary course of business as the result of issuing secured debt or entering into repurchase agreements, *provided, however,* that such debt issuances and agreements may be undertaken to the extent that the proceeds therefrom are used to repay the principal of outstanding Debt Securities and the value of the collateral securing the debt issuances or the agreements (computed in the same manner as provided under Section 4.3(c) of the Act) does not exceed the amount of principal so repaid.

''Associations'' means agricultural credit associations, federal land bank associations, federal land credit associations and production credit associations.

''Average Net Composite Score'' is defined in Section 1.03.

''Bank'' means a bank (including its consolidated subsidiaries) of the Farm Credit System, other than (except where noted) any bank in conservatorship or receivership (and its consolidated subsidiaries).

''Banks'' means the banks (including their consolidated subsidiaries) of the Farm Credit System, other than (except where noted) any banks in conservatorship or receivership (and their consolidated subsidiaries).

''Business Day'' means any day other than a Saturday, Sunday or Federal holiday.

''Business Plan'' means the business plan required under 12 CFR 618.8440, as amended from time to time, or any successors thereto.

''Category'' means Category I, Category II, or Category III, as the circumstances require.

''Category I'' is defined in Section 1.05.

''Category II'' is defined in Section 1.06.

''Category II Interim Restrictions'' means the requirements set forth in Section 4.02.

''Category III'' is defined in Section 1.07.

''Category III Interim Restrictions'' means the requirements set forth in Section 5.02.

''CIPA'' means that certain Amended and Restated Contractual Interbank Performance Agreement among the Banks of the Farm Credit System and the Federal Farm Credit Banks Funding Corporation, the Scorekeeper, dated as of June 30, 2011, as amended from time to time, or any successor thereto.

''CIPA Oversight Body'' is defined in Section 1.02.

''Collateral'' is defined as in Section 4.3(c) of the Act and the regulations thereunder, as amended from time to time, or any successors thereto.

The ''Committee'' is defined in Section 2.01.

''Continued Access Decision(s)'' means a decision, subject to the procedures, terms and conditions described in Article VI, that Final Restrictions or a Final Prohibition not go into effect, or be lifted.

''Continued Access Request'' means a request for a Continued Access Decision.

''Days'' means calendar days, unless the term Business Days is used.

''Debt Securities'' means Systemwide and consolidated obligations issued through the Funding Corporation, within the meaning of Sections 4.2(c), 4.2(d) and 4.9 of the Act.

''Disclosure Program'' means the program established, pursuant to resolutions of the Banks and the Funding Corporation adopted in 1987 and last substantively revised in 1994, for disclosure at the Systemwide level of financial and other information in connection with the issuance of Debt Securities, as amended from time to time, or any successor thereto.

''FCA'' means the Farm Credit Administration.

''Final Prohibition'' means the requirements set forth in Section 5.01.

''Final Restrictions'' means the requirements set forth in Section 4.01.

''First Restated MAA'' means that certain Amended and Restated Market Access Agreement, dated July 1, 2003, among the Banks and the Funding Corporation.

''Funding Corporation'' means the Federal Farm Credit Banks Funding Corporation.

''Going Concern Qualification'' means a qualification expressed pursuant to Statement of Auditing Standards No. 59, ''The Auditor's Consideration of an Entity's Ability to Continue As a Going Concern.''

''Insurance Corporation'' means the Farm Credit System Insurance Corporation.

''Insurance Fund'' means the Farm Credit Insurance Fund maintained by the Insurance Corporation pursuant to Section 5.60 of the Act.

''Interest-Rate Sensitivity Deduction'' is defined as in Article II of CIPA, and the Model referred to therein, as amended from time to time, or any successor thereto.

''Joint and Several Liability Reallocation Agreement'' means that certain Joint and Several Liability Reallocation Agreement among the Banks and the Funding Corporation.

''Liquidity Deficiency Deduction'' is defined as in Article II of CIPA, and the Model referred to therein, as amended from time to time, or any successor thereto.

''Model'' means the term Model as it is defined in the CIPA.

''Net Collateral'' means a Bank's collateral as defined in 12 CFR 615.5050, as amended from time to time, or any successors thereto (except that eligible investments as described in 12 CFR 615.5140, as amended from time to time, or any successors thereto, are to be valued at their amortized cost), less an amount equal to that portion of the allocated investments of affiliated Associations that is not counted as permanent capital by the Bank.

''Net Collateral Ratio'' means a Bank's Net Collateral divided by Bank-only total liabilities (*i.e.,* the total liabilities used to compute the net collateral ratio defined in 12 CFR 615.5301(d), as amended from time to time or any successors thereto).

''Net Composite Score'' is defined in Section 1.03.

''100% Vote'' means an affirmative vote, through each voting Bank's board of directors or its designee, of all Banks that are entitled to vote on a matter.

''Original Agreement'' means that certain Market Access Agreement, dated September 1, 1994 and effective as of November 23, 1994, among the Banks and the Funding Corporation.

''Parties'' mean the parties to this Restated MAA. A bank in conservatorship or receivership is not a party to this Restated MAA.

''Permanent Capital'' is defined as in Section 4.3A(a)(1) of the Act and the regulations thereunder, as amended from time to time, or any successors thereto.

''Permanent Capital Ratio'' means a Bank's Permanent Capital as a percentage of its Risk-Adjusted Asset Base.

''Person'' means any human being, partnership, association, joint venture, corporation, legal representative or trust, or any other entity.

''Ratio(s)'' means either the Net Collateral Ratio, or Permanent Capital Ratio, as the circumstances require.

''Risk-Adjusted Asset Base'' is defined as in 12 CFR 615.5210(e), as amended from time to time, or any successor thereto.

''Scorekeeper'' is defined in Section 1.01.

''System'' means the Farm Credit System.

''System Disclosure Agent'' means the Funding Corporation or such other disclosure agent as all Banks shall unanimously agree upon, to the extent permitted by law or regulation. For purposes of this definition, ''Banks'' shall include any System bank in conservatorship or receivership.

Date: October 27, 2011.

**Mary Alice Donner,**

*Acting Secretary, Farm Credit Administration Board.*

[FR Doc. 2011–28250 Filed 10–31–11; 8:45 am]

BILLING CODE 6705–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### Information Collections Being Reviewed by the Federal Communications Commission Under Delegated Authority

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Federal Communications Commission (FCC), as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act (PRA) of 1995. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall

have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

**DATES:** Written PRA comments should be submitted on or before January 3, 2012. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all PRA comments to the Federal Communications Commission via email to *PRA@fcc.gov* and *Cathy.Williams@fcc.gov.*

**FOR FURTHER INFORMATION CONTACT:** For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060–0310.

*Title:* Community Cable Registration, FCC Form 322.

*Form Number:* FCC Form 322.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business and other for-profit entities; not-for-profit institutions.

*Number of Respondents:* 601.

*Estimated Time per Response:* 30 minutes.

*Frequency of Response:* One time and on occasion reporting requirements.

*Total Annual Burden:* 301 hours.

*Total Annual Costs:* $36,060.

*Obligation to Respond:* Required to obtain or retain benefits. The statutory authority for this collection of information is contained in Sections 154(i), 303, 308, 309 and 621 of the Communications Act of 1934, as amended.

*Nature and Extent of Confidentiality:* There is no need for confidentiality with this collection of information.

*Privacy Impact Assessment(s):* No impacts.

*Needs and Uses:* Cable operators are required to file FCC Form 322 with the Commission prior to commencing operation of a community unit. FCC Form 322 identifies biographical information about the operator and system as well as a list of broadcast channels carried on the system. This form replaces the requirement that cable operators send a letter containing the same information.

*OMB Control Number:* 3060–0331.

*Title:* Aeronautical Frequency Notification, FCC Form 321.

*Form Number:* FCC Form 321.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit entities; not-for-profit institutions.

*Number of Respondents and Responses:* 3,174 respondents; 3,174 responses.

*Estimated Time per Response:* 0.67 hours (40 minutes).

*Frequency of Response:* One-time and on occasion reporting requirements.

*Total Annual Burden:* 2,127.

*Total Annual Costs:* $190,440.

*Obligation to Respond:* Required to obtain or retain benefits. The statutory authority for this collection of information is contained in Sections 154(i), 301, 303, 308, 309 and 621 of the Communications Act of 1934, as amended.

*Nature and Extent of Confidentiality:* There is no need for confidentiality with this collection of information.

*Privacy Impact Assessment(s):* No impact(s).

*Needs and Uses:* The FCC Form 321 is the means by which multichannel video programming distributors obtain authority to commence operation of a system on frequencies used by aeronautical services. The information is used to protect aeronautical radio communications from interference.

*OMB Control Number:* 3060–0341.

*Title:* Section 73.1680, Emergency Antennas.

*Form Number:* Not applicable.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit entities; not-for-profit institutions.

*Number of Respondents and Responses:* 142 respondents; 142 responses.

*Estimated Time per Response:* 1 hour.

*Frequency of Response:* On occasion reporting requirement.

*Total Annual Burden:* 142 hours.

*Total Annual Costs:* $28,400.

*Obligation to Respond:* Required to obtain or retain benefits. The statutory authority for this collection of information is contained in Section 154(i) of the Communications Act of 1934, as amended.

*Nature and Extent of Confidentiality:* There is no need for confidentiality with this collection of information.

*Privacy Impact Assessment(s):* No impact(s).

*Needs and Uses:* 47 CFR 73.1680 requires that licensees of AM, FM or TV stations submit an informal request to the FCC (within 24 hours of commencement of use) to continue operation with an emergency antenna. An emergency antenna is one that is erected for temporary use after the authorized main and auxiliary antennas are damaged and cannot be used. FCC staff uses the data to ensure that interference is not caused to other existing stations.

*OMB Control Number:* 3060–0569.

*Title:* Section 76.975, Commercial leased access dispute resolution.

*Form Number:* Not applicable.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit; State, Local or Tribal Government.

*Number of Respondents and Responses:* 60 respondents; 60 responses.

*Estimated Time per Response:* 4 to 40 hours.

*Frequency of Response:* Third party disclosure requirement; On occasion reporting requirement.

*Obligation to Respond:* Required to obtain or retain benefits. The statutory authority for this collection of information is contained in 154(i) and 612 of the Communications Act of 1934, as amended.

*Nature and Extent of Confidentiality:* There is no need for confidentiality with this collection of information.

*Total Annual Burden:* 1,320 hours.

*Total Annual Cost:* $24,000.

*Privacy Act Impact Assessment:* No impact(s).

*Needs and Uses:* 47 CFR 76.975 permits any person aggrieved by the failure or refusal of a cable operator to make commercial channel capacity available or to charge rates for such capacity in accordance with the provisions of Title VI of the Communications Act of 1934 may file a petition for relief with the Commission.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary, Office of the Secretary, Office of Managing Director.*

[FR Doc. 2011–28194 Filed 10–31–11; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### Information Collection Being Reviewed by the Federal Communications Commission

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Federal Communications Commission (FCC), as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act (PRA) of 1995. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

**DATES:** Written PRA comments should be submitted on or before January 3, 2012. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all PRA comments to the Federal Communications Commission via email to *PRA@fcc.gov* and *Cathy.Williams@fcc.gov*.

**FOR FURTHER INFORMATION CONTACT:** For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060–0208.

*Title:* Section 73.1870, Chief Operators.

*Form Number:* Not applicable.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business and other for-profit; Not-for-profit institutions.

*Number of Respondents and Responses:* 18,498 respondents; 36,996 responses.

*Estimated Time per Response:* 0.166–26 hours.

*Frequency of Response:* Recordkeeping requirement; Third party disclosure requirement.

*Total Annual Burden:* 484,019 hours.

*Total Annual Costs:* None.

*Obligation to Respond:* Required to obtain or retain benefits. The statutory authority for this collection of information is contained in Sections 154(i) of the Communications Act of 1934, as amended.

*Nature and Extent of Confidentiality:* There is no need for confidentiality with this collection of information.

*Privacy Impact Assessment(s):* No impact(s).

*Needs and Uses:* 47 CFR Section 73.1870 requires that the licensee of an AM, FM, or TV broadcast station designate a chief operator of the station. Section 73.1870(b)(3) requires that this designation must be in writing and posted with the station license. Section 73.1870(c)(3) requires that the chief operator, or personnel delegated and supervised by the chief operator, review the station records at least once each week to determine if required entries are being made correctly, and verify that the station has been operated in accordance with FCC rules and the station authorization. Upon completion of the review, the chief operator must date and sign the log, initiate corrective action which may be necessary and advise the station licensee of any condition which is repetitive. The posting of the designation of the chief operator is used by interested parties to readily identify the chief operator. The review of the station records is used by the chief operator, and FCC staff in investigations, to ensure that the station is operating in accordance with its station authorization and the FCC rules and regulations.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary, Office of the Secretary, Office of Managing Director.*

[FR Doc. 2011–28195 Filed 10–31–11; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Update to Notice of Financial Institutions for Which the Federal Deposit Insurance Corporation Has Been Appointed Either Receiver, Liquidator, or Manager

**AGENCY:** Federal Deposit Insurance Corporation.

**ACTION:** Update Listing of Financial Institutions in Liquidation.

**SUMMARY:** Notice is hereby given that the Federal Deposit Insurance Corporation (Corporation) has been appointed the sole receiver for the following financial institutions effective as of the Date Closed as indicated in the listing. This list (as updated from time to time in the **Federal Register**) may be relied upon as ''of record'' notice that the Corporation has been appointed receiver for purposes of the statement of policy published in the July 2, 1992 issue of the **Federal Register** (57 FR 29491). For further information concerning the identification of any institutions which have been placed in liquidation, please visit the Corporation Web site at *http://www.fdic.gov/bank/individual/failed/banklist.html* or contact the Manager of Receivership Oversight in the appropriate service center.

Dated: October 24, 2011.

Federal Deposit Insurance Corporation.

**Pamela Johnson,**

*Regulatory Editing Specialist.*

INSTITUTIONS IN LIQUIDATION

[In alphabetical order]

| FDIC Ref. No. | Bank name | City | State | Date closed |
|---|---|---|---|---|
| 10405 | Community Banks of Colorado | Greenwood Village | CO | 10/21/2011 |
| 10406 | Community Capital Bank | Jonesboro | GA | 10/21/2011 |
| 10407 | Decatur First Bank | Decatur | GA | 10/21/2011 |
| 10408 | Old Harbor Bank | Clearwater | FL | 10/21/2011 |

[FR Doc. 2011–28245 Filed 10–31–11; 8:45 am]

**BILLING CODE 6714–01–P**

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 16, 2011.

A. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) P.O. Box 442, St. Louis, Missouri 63166–2034:

1. *Billy M. Cary Qualified Terminable Interest Property Trust, with Michael E. Cary, both in Huntingdon, Tennessee, and Mark E. Cary,* Memphis, Tennessee; as trustees, to gain control of Carroll Financial Services, Inc., Huntingdon, Tennessee, and thereby indirectly acquire control of Carroll Bank and Trust, Huntington, Tennessee.

Board of Governors of the Federal Reserve System, October 27, 2011.

**Jennifer J. Johnson,**

*Secretary of the Board.*

[FR Doc. 2011–28269 Filed 10–31–11; 8:45 am]

**BILLING CODE 6210–01–P**

## FEDERAL RESERVE SYSTEM

### Notice of Proposals To Engage in or To Acquire Companies Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo,* or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 16, 2011.

A. Federal Reserve Bank of Atlanta (Chapelle Davis, Assistant Vice President) 1000 Peachtree Street, NE., Atlanta, Georgia 30309:

1. *CenterState Banks, Inc.,* Davenport, Florida; to acquire R4ALL, Inc., Davenport, Florida, and thereby engage in making, acquiring, brokering, or servicing loans, or other extensions of credit, pursuant to section 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, October 27, 2011.

**Jennifer J. Johnson,**

*Secretary of the Board.*

[FR Doc. 2011–28268 Filed 10–31–11; 8:45 am]

**BILLING CODE 6210–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

**[Document Identifier 4040–0001; 30-day Notice]**

### Agency Information Collection Request; 30-Day Public Comment Request

**AGENCY:** Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed information collection request for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, email your request, including your address, phone number, OMB number, and OS document identifier, to *ed.calimag@hhs.gov*, or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be directed to the OS Paperwork Clearance Officer at the above e-mail address within 30 days.

*Proposed Project:* SF–424 Research and Related Form Extension—OMB No. 4040–0001.

*Office: Grants.gov.*

**Abstract**

The SF–424 Research and Related form (R&R) is an OMB approved collection (4040–0001). We propose revising the collection to include changes adopted by the cross-agency R&R working group. This working group established the original proposed collection of 4040–0001 in 2004. The form instructions will also be revised.

This collection will be utilized by up to 26 Federal grant-making agencies. The 4040–0001 collection expires on June 30, 2011. We are requesting a three-year clearance of this collection. The 4040–0001 proposed collection encompasses the following forms:

SF 424 (R&R) Application for Federal Assistance (Cover);
R&R Personal Data;
R&R Senior/Key Person Profile;
R&R Senior/Key Person Profile (Expanded);
R&R Other Project Information;
SBIR/STTR Information;
R&R Budget (up to 5 years);
R&R Budget (up to 10 years);
R&R Federal/Non-Federal Budget (up to 5 years);
R&R Federal/Non-Federal Budget (up to 10 years);
R&R Subaward Budget Attachment(s) Form (up to 10 attachments);
5 Year R&R Subaward Budget Attachment(s) Form (up to 30 attachments);
10 Year R&R Subaward Budget Attachment(s) Form (up to 10 attachments);
10 Year R&R Subaward Budget Attachment(s) Form (up to 30 attachments).

There are four requested changes to the SF 424 (R&R) Application for Federal Assistance (Cover): (1) Addition of a new field numbered 4.C and titled

''Previous Grants.gov Tracking Number''; (2) Modification of an existing section ''Person to be contacted on matters involving this application'' to include the following fields (* to indicate Mandatory fields): Position/Title, Street1*, Street2, City*, County/Parish, State*, Province, Country*, ZIP/Postal Code*; (3) Update current field label for Item 18 from ''SF LLL or other Explanatory Documentation'' to ''SF LLL (Disclosure of Lobbying Activities) or Other Explanatory Documentation''; (4) Addition of a new optional field numbered 21 entitled ''Cover Letter Attachment''.

There are four requested changes to the R&R Other Project Information form: (1) Addition of yes/no question ''1.b Is this a Clinical Trial?''; (2) Addition of a new field titled ''3.a Areas of Research''; (3) Change existing field label for 4.a from ''Does this project have an actual or potential impact on the environment?'' to ''Does this Project Have an Actual or Potential Impact—positive or negative—on the environment?''; (4) Change existing field label for 4.b from ''If yes, please explain'' to ''If yes, please explain—Enter an explanation for the actual or potential impact (whether positive or negative) on the environment.''

These changes to the instructions will increase data quality and clarity for the collection. Agencies will not be required to collect all of the information in the proposed data set. The agency will identify the data that must be provided by applicants through instructions that will accompany the application forms.

ESTIMATED ANNUALIZED BURDEN TABLE

| Form | Type of respondent | Number of annual respondents | Number of responses per respondent | Average burden on respondent per response in hours | Total burden hours |
|---|---|---|---|---|---|
| SF–424 R&R | Grant Applicant | 97,581 | 1 | 60 | 5,854,860 |
| Total | | 97,581 | 1 | 60 | 5,854,860 |

Comments were received in response to the 60-day **Federal Register** Notice (April 28, 2011, Volume 76, Number 82, pp. 23816–23817). The requested changes will be modified to accommodate the received responses.

**Keith A. Tucker,**

*Office of the Secretary, Paperwork Reduction Act Clearance Officer.*

[FR Doc. 2011–28276 Filed 10–31–11; 8:45 am]

**BILLING CODE 4151–AE–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

**[Document Identifier OMB No. 0990–0376; 60-day Notice]**

## Agency Information Collection Request; 60-Day Public Comment Request

**AGENCY:** Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed information collection request for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, email your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov,* or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be directed to the OS Paperwork Clearance Officer at the above email address within 60 days.

*Proposed Project:* Generic Clearance for Communications Testing for Comprehensive Communication Campaign for HITECH Act—Revision—OMB No. 0990–0376—Office of the National Coordinator for Health Information Technology.

*Abstract:* As part of the Health Information Technology for Economic and Clinical Health Act (HITECH Act) of 2009, ONC is proposing to conduct a nationwide communication campaign to meet the Congressional mandate to educate the public about privacy and security of electronically exchanged personal health information. ONC requires formative and process information about different segments of the public to conduct the campaign effectively. Data collection will occur continuously through the 24 months of the campaign and be used to inform campaign strategies, messages, materials and Web sites. Due to the growing use of mobile devices in exchanging personal health information electronically, ONC is proposing a revision of the currently approved collection to increase focus group burden hours and explore consumer attitudes and preferences regarding the communication of personal health information electronically using mobile devices. Additionally, an increase in burden hours is necessary to understand attitudes and preferences regarding how privacy and security information is presented to consumers electronically. ONC is collaborating with the HHS Office of Civil Rights to oversee the education and communication activities to build approval for HIT adoption and meaningful use, educate the public about privacy and security and increase participation in health information exchange.

Electronic health information exchange promises an array of potential benefits for individuals and the U.S. health care system through improved health care quality, safety, and efficiency. At the same time, this environment also poses new challenges and opportunities for protecting health information, including methods for individuals to engage with their health care providers and affect how their health information may be exchanged.

ESTIMATED ANNUALIZED BURDEN TABLE

| Forms | Type of respondent | Number of respondents | Number of responses per respondent | Average burden (in hours) per response | Total burden hours |
|---|---|---|---|---|---|
| Focus Group | General Public | 621 | 1 | 1.5 | 932 |
| Focus Group screening | General Public | 5544 | 1 | 10/60 | 924 |
| Web usability testing | General Public | 144 | 1 | 1.5 | 216 |
| Web usability screening | General Public | 2160 | 1 | 10/60 | 360 |
| Self-Administered Surveys | General Public | 2000 | 1 | 15/60 | 500 |
| Self-Administered survey screening | General Public | 8000 | 1 | 10/60 | 1333 |
| Omnibus Surveys | General Public | 2000 | 1 | 10/60 | 333 |
| Cognitive testing | General Public | 25 | 1 | 2 | 50 |
| Focus Group | Health Professional | 288 | 1 | 1.5 | 432 |
| Screening | Health Professional | 4320 | 1 | 10/60 | 720 |
| Web usability testing | Health Professional | 144 | 1 | 1.5 | 216 |
| Screening | Health Professional | 2160 | 1 | 10/60 | 360 |
| Self-Administered Surveys | Health Professional | 2000 | 1 | 15/60 | 500 |
| Screening | Health Professional | 8000 | 1 | 10/60 | 1333 |
| Omnibus Surveys | Health Professional | 2000 | 1 | 10/60 | 333 |
| In-Depth Interviews | Health Professional | 100 | 1 | 45/60 | 75 |
| Screening | Health Professional | 1000 | 1 | 10/60 | 167 |
| Total (Overall) | | 40,506 | | | 8,784 |

**Keith A. Tucker,**

*Office of the Secretary, Paperwork Reduction Act Clearance Officer.*

[FR Doc. 2011–28284 Filed 10–31–11; 8:45 am]

**BILLING CODE 4150–45–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Healthcare Research and Quality

### Common Formats for Patient Safety Data Collection and Event Reporting

**AGENCY:** Agency for Healthcare Research and Quality (AHRQ), HHS.

**ACTION:** Notice of Availability—New Common Format.

**SUMMARY:** The Patient Safety and Quality Improvement Act of 2005, 42 U.S.C. 299b–21 to b–26, (Patient Safety Act) provides for the formation of Patient Safety Organizations (PSOs), which collect, aggregate, and analyze confidential information regarding the quality and safety of health care delivery. The Patient Safety Act (at 42 U.S.C. 299b–23) authorizes the collection of this information in a standardized manner, as explained in the related Patient Safety and Quality Improvement Final Rule, 42 CFR part 3 (Patient Safety Rule), published in the **Federal Register** on November 21, 2008: 73 FR 70731–70814. AHRQ coordinates the development of a set of common definitions and reporting formats (Common Formats) that allow health care providers to voluntarily collect and submit standardized information regarding patient safety events. The purpose of this notice is to announce the availability of a new beta version Common Format for Venous Thromboembolism (VTE) for public review and comment.

**DATES:** Ongoing public input.

**ADDRESSES:** The new beta version of the Common Format for Venous Thromboembolism (VTE), version dated October 2011, and the remaining Common Formats, can be accessed electronically at the following HHS Web site: *http://www.PSO.AHRQ.gov/index.html.*

**FOR FURTHER INFORMATION CONTACT:** Susan Grinder, Center for Quality Improvement and Patient Safety, AHRQ, 540 Gaither Road, Rockville, MD 20850; Telephone (toll free): (866) 403–3697; Telephone (local): (301) 427–1111; TTY (toll free): (866) 438–7231; TTY (local): (301) 427–1130; Email: *PSO@AHRQ.hhs.gov.*

**SUPPLEMENTARY INFORMATION:**

### Background

The Patient Safety Act and Patient Safety Rule establish a framework by which doctors, hospitals, skilled nursing facilities, and other health care providers may voluntarily report information regarding patient safety events and quality of care. Both the Patient Safety Act and Patient Safety Rule, including any relevant guidance, can be accessed electronically at: *http://www.PSO.AHRQ.gov/regulations/regulations.htm.*

AHRQ develops and maintains the Common Formats in order to facilitate standardized data collection and improve the safety and quality of health care delivery. Since the initial release of the Common Formats in August 2008, AHRQ regularly revises the formats based upon public comment. Earlier this year, AHRQ released the beta version of the Skilled Nursing Facilities format, as announced in the **Federal Register** on March 7, 2011: 76 FR 12358–12359. With this release, AHRQ had made available Common Formats for two settings of care—acute care hospitals and skilled nursing facilities. The new beta version of the Common Format for Venous Thromboembolism (VTE), which includes Deep Vein Thrombosis (DVT) and Pulmonary Embolism (PE), will apply to both settings of care.

### Definition of Common Formats

The term ''Common Formats'' refers to the common definitions and reporting formats that allow health care providers to collect and submit standardized information regarding patient safety events. The Common Formats are not intended to replace any current mandatory reporting system, collaborative/voluntary reporting system, research-related reporting system, or other reporting/recording system; rather the formats are intended to enhance the ability of health care providers to report information that is standardized both clinically and electronically.

The scope of Common Formats applies to all patient safety concerns including:

- Incidents—patient safety events that reached the patient, whether or not there was harm,

• Near misses or close calls—patient safety events that did not reach the patient, and

• Unsafe conditions—circumstances that increase the probability of a patient safety event.

The Common Formats include two general types of formats, generic and event-specific. The generic Common Formats pertain to all patient safety concerns. The three generic formats are: Healthcare Event Reporting Form, Patient Information Form, and Summary of Initial Report. The event-specific Common Formats pertain to frequently-occurring and/or serious patient safety events. When used as designed, the Common Formats allow collection of information on all harms to patients: ''All-cause harm.''

The VTE format includes a description of the patient safety events to be reported (event description), and a sample patient safety aggregate report. The Venous Thromboembolism (VTE) Common Format is available at the PSO Privacy Protection Center (PPC) *Web site: https://www.psoppc.org/web/patientsafety.*

**Commenting on Venous Thromboembolism (VTE) Common Format**

To allow for greater participation by the private sector in the subsequent development of the Common Formats, AHRQ engaged the National Quality Forum (NQF), a non-profit organization focused on health care quality, to solicit comments and advice to guide the further refinement of the Common Formats. The NQF began this process with feedback on AHRQ's 0.1 Beta release of the Common Formats in 2008. Based upon the expert panel's feedback, AHRQ, in conjunction with an interagency Federal Patient Safety Work Group (PSWG), revises and refines the Common Formats.

The Agency is specifically interested in obtaining feedback from both the private and public sectors on this new beta VTE format to guide their improvement. Information on how to comment and provide feedback on the Common Formats, including the Venous Thromboembolism (VTE) beta version, is available at the National Quality Forum (NQF) Web site for Common Formats: *http://www.Quality.forum.org/projects/commonformats.aspx.*

**Common Formats Development**

In anticipation of the need for Common Formats, AHRQ began their development in 2005 by creating an inventory of functioning private and public sector patient safety reporting systems. This inventory provides an evidence base that informs construction of the Common Formats. The inventory includes systems from the private sector, including prominent academic settings, hospital systems, and international reporting systems (*e.g.,* the United Kingdom and the Commonwealth of Australia). In addition, virtually all major Federal patient safety reporting systems are included, such as those from the Centers for Disease Control and Prevention (CDC), the Food and Drug Administration (FDA), the Department of Defense (DoD), and the Department of Veterans Affairs (VA).

Since February 2005, AHRQ has coordinated the PSWG to assist AHRQ with developing and maintaining the Common Formats. The PSWG includes major health agencies and offices within the HHS—CDC, Centers for Medicare & Medicaid Services, FDA, Health Resources and Services Administration, the Indian Health Service, the National Institutes of Health, the National Library of Medicine, Office of Healthcare Quality, Office of the National Coordinator for Health Information Technology (ONC), the Office of Public Health and Science, the Substance Abuse and Mental Health Services Administration—as well as the DoD and the VA.

The PSWG assists AHRQ with assuring the consistency of definitions/formats with those of relevant government agencies as refinement of the Common Formats continues. When developing Common Formats, AHRQ first reviews existing patient safety event reporting systems from a variety of health care organizations. Working with the PSWG and Federal subject matter experts, AHRQ drafts and releases beta versions of the Common Formats for public review and comment. To the extent practicable, the Common Formats are also aligned with World Health Organization (WHO) concepts, framework, and definitions contained in their draft International Classification for Patient Safety (ICPS).

The process for updating and refining the formats will continue to be an iterative one. Future versions of the Common Formats will be developed for ambulatory settings, such as ambulatory surgery centers and physician and practitioner offices. More information on the Common Formats can be obtained through AHRQ's PSO *Web site: http://www.PSO.AHRQ.gov/index.html.*

Dated: October 20, 2011.

**Carolyn M. Clancy,**

*Director.*

[FR Doc. 2011–27892 Filed 10–31–11; 8:45 am]

BILLING CODE 4160–90–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[60Day–12–12AL]**

### Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer at (404) 639–5960 or send comments to Daniel Holcomb, CDC Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an email to *omb@cdc.gov*.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

**Proposed Project**

The National Hospital Care Survey (NHCS): Ambulatory Care Pretest—New—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

Section 306 of the Public Health Service (PHS) Act (42 U.S.C. 242k), as amended, authorizes that the Secretary of Health and Human Services (DHHS), acting through NCHS, shall collect statistics on the extent and nature of illness and disability of the population of the United States. This one-year clearance request seeks approval to pre-test: (1) Data collection from hospital ambulatory departments including emergency departments (ED), outpatient departments (OPD), and ambulatory surgery locations (ASLs) through the

National Hospital Care Survey (NHCS) (OMB No. 0920–0212); (2) new questions on drug-related ED visits; and (3) new questions on colorectal cancer screening in ambulatory surgery visits.

In 2012, a pretest of 30 hospitals will collect data using methods approved for the National Hospital Ambulatory Medical Care Survey (NHAMCS) (OMB No. 0920–0278) data collection. The proposed pretest will test the data collection procedures involved in integrating the NHAMCS into the NHCS. NHAMCS has provided data annually since 1992 concerning the nation's use of hospital emergency and outpatient departments, and since 2009, on hospital-based ASLs. If the pretest is successful, NHAMCS will be integrated into NHCS in order to increase the wealth of data on health care utilization in hospitals across episodes of care and to allow for linkages to other data sources such as the National Death Index and data from Centers for Medicare and Medicaid Services (CMS).

The data items to be collected from the recruited hospitals in the pretest will include facility level data items such as visit volume, number of treatment areas, and information on electronic health record systems. Facility level data will be collected through in-person interviews and recorded on computerized survey instruments, at the hospital-level and at the ambulatory unit level. It is anticipated that each hospital will have approximately four ambulatory units.

Patient level data items will include basic demographic information, name, address, social security number (if available), and medical record number (if available), and characteristics of the patients including admission and discharge dates, reason for visit, diagnoses, diagnostic services, procedures, medications, providers seen, and disposition. Patient visit data will be abstracted by field representatives of the data collection agent. A targeted number of patient visits will be sampled from each department depending on the type of department—approximately 100 across ambulatory units in the ED, 200 across ambulatory units in the OPD, and 100 across ambulatory units in ASLs.

Secondly, the pretest will collect specific information on drug-related visits to the ED. This endeavor, funded by the Center for Behavioral Health Statistics & Quality (CBHSQ) of the Substance Abuse & Mental Health Administration (SAMHSA), will assess the feasibility of integrating the Drug Abuse Warning Network (DAWN) (OMB No. 0930–0078) into the emergency department component of the NHCS. In each of the 30 pretest hospitals with an emergency department, a sample of all patient visits will be abstracted; for each drug-related visit within this sample, additional drug-related data will be abstracted. The only burden to the respondent at the patient visit level will be due to pulling and refiling of approximately 133 medical records at each ambulatory unit.

Finally, the pretest will assess the feasibility of obtaining information on colorectal cancer screening during ambulatory surgery visits where a colonoscopy is performed. The endeavor is sponsored jointly by the National Center for Chronic Disease Prevention and Promotion (NCCDPHP) and the National Cancer Institute (NCI). The questions will be added to the Ambulatory Surgery Patient Record form and will be completed for patients that have a colonoscopy performed at the sampled visit.

Potential users of the NHCS ambulatory data include, but are not limited to CDC, Congressional Research Office, Office of the Assistant Secretary for Planning and Evaluation (ASPE), American Health Care Association, Centers for Medicare & Medicaid Services (CMS), Bureau of the Census, state and local governments, and nonprofit organizations. There is no cost to respondents other than their time to participate.

ESTIMATED ANNUALIZED BURDEN TABLE

| Type of respondent | Form | Number of respondents | Number of responses per respondent | Avg. burden per response (in hrs) | Total burden hours |
|---|---|---|---|---|---|
| Hospital Chief Executive Officer | Hospital Induction Interview | 30 | 1 | 1 | 30 |
| Ancillary Service Executive | Ambulatory Unit Induction | 120 | 1 | 15/60 | 30 |
| Medical Record Clerk | Pulling and Refiling Records | 120 | 133 | 1/60 | 266 |
| Total | | | | | 326 |

Dated: October 26, 2011.

**Daniel Holcomb,**

*Reports Clearance Officer, Office of the Chief Science Officer, Centers for Disease Control and Prevention.*

[FR Doc. 2011–28218 Filed 10–31–11; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Initial Review

The meeting announced below concerns Emerging Infections Programs, Funding Opportunity Announcement (FOA) CK12–1202, initial review.

*Correction:* The notice was published in the **Federal Register** on September 13, 2011, Volume 76, Number 177, Page 56461. The place should read as follows:

*Place:* Sheraton Gateway Hotel Atlanta Airport, 1900 Sullivan Road, Atlanta, Georgia 30337, *Telephone:* (770) 997–1100.

*Contact Person For More Information:* Amy Yang, Ph.D., Scientific Review Officer, CDC, 1600 Clifton Road NE., Mailstop E60, Atlanta, Georgia 30333, *Telephone:* (404) 498–2733.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: October 25, 2011.

**Elaine L. Baker,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 2011–28221 Filed 10–31–11; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Advisory Council for the Elimination of Tuberculosis (ACET)

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 committee:

*Times and Dates:*

8:30 a.m.–5:30 p.m., December 6, 2011.
8:30 a.m.–2:30 p.m., December 7, 2011.

*Place:* Corporate Square, Building 8, 1st Floor Conference Room, Atlanta, Georgia 30333, telephone (404) 639–8317.

*Status:* Open to the public, limited only by the space available. The meeting room accommodates approximately 100 people.

*Purpose:* This council advises and makes recommendations to the Secretary of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding the elimination of tuberculosis. Specifically, the Council makes recommendations regarding policies, strategies, objectives, and priorities; addresses the development and application of new technologies; and reviews the extent to which progress has been made toward eliminating tuberculosis.

*Matters to be Discussed:* Agenda items include issues pertaining to the future directions of tuberculosis control and elimination in the United States: (1) STOP TB USA; (2) Institute of Medicine Report; and (3) The Restructuring of United States Tuberculosis Program (TRUST); Update on ACET Workgroups; and other related tuberculosis issues.

Agenda items are subject to change as priorities dictate.

*Contact Person For More Information:* Margie Scott-Cseh, Centers for Disease Control and Prevention, 1600 Clifton Road NE., M/S E–07, Atlanta, Georgia 30333, telephone (404) 639–8317.

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. 2011–28219 Filed 10–31–11; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2011–N–0766]**

### Agency Information Collection Activities; Proposed Collection; Comment Request; Survey of ''Health Care Providers' Responses to Medical Device Labeling''

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for public comment in response to the notice. This notice solicits comments on this proposed information collection ''Health Care Providers' Responses to Medical Device Labeling.''

**DATES:** Submit either electronic or written comments on the collection of information by January 3, 2012.

**ADDRESSES:** Submit electronic comments on the collection of information to *http://www.regulations.gov.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Daniel Gittleson, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, (301) 796–5156, *Daniel.Gittleson@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

**Survey of ''Health Care Providers' Responses to Medical Device Labeling''—21 CFR Part 801 (OMB Control Number 0910–New)**

The purpose of this study is to determine the most effective device labeling format and inform an FDA's regulatory approach on standardized device labeling. Building upon the research methodology and success of the approach FDA used to evaluate drug labeling, we propose to ask health care providers (HCPs) to evaluate the quality of labeling (*e.g.* instructions for use, directions) for a medical device and to report the degree to which they could follow those instructions, how useful the information is, and how well organized the information is. This work will allow FDA to assess whether HCPs find the format and content of device labeling clear, understandable, useful, and user-friendly. Findings will provide evidence to inform FDA's regulatory approach to standardizing medical device labeling across the United States.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

| Respondents | Number of respondents | Number of responses per respondent | Total annual responses | Average burden per response | Total hours |
|---|---|---|---|---|---|
| **Interviews** | | | | | |
| Physicians | 6 | 1 | 6 | 1 | 6 |
| Advanced practice nurses (NPs) and registered nurses | 9 | 1 | 9 | 1 | 9 |
| Medical technicians | 9 | 1 | 9 | 1 | 9 |
| Subtotal | 24 | 1 | 24 | 1 | 24 |
| **Survey** | | | | | |
| Physicians | 120 | 1 | 120 | .5 | 60 |
| Advanced practice nurses (NPs) and registered nurses | 240 | 1 | 240 | .5 | 120 |
| Medical technicians | 240 | 1 | 240 | .5 | 120 |
| Total | | | | | 324 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: October 26, 2011.

**Leslie Kux,**

*Acting Assistant Commissioner for Policy.*

[FR Doc. 2011–28241 Filed 10–31–11; 8:45 am]

**BILLING CODE 4160–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2011–N–0554]**

### Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Veterinary Feed Directive

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

**DATES:** Fax written comments on the collection of information by December 1, 2011.

**ADDRESSES:** To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, *Attn:* FDA Desk Officer, *fax:* (202) 395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0363. Also include the FDA docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Juanmanuel Vilela, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, (301) 796–7651, *juanmanuel.vilela@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

**Veterinary Feed Directive—21 CFR Part 558 (OMB Control Number 0910–0363)—(Extension)**

With the passage of the Animal Drug Availability Act of 1996 (ADAA) (Pub. L. 104–250), the Congress enacted legislation establishing a new class of restricted feed use drugs, veterinary feed directive (VFD) drugs, which may be distributed without involving State pharmacy laws. Although controls on the distribution and use of VFD drugs are similar to those for prescription drugs regulated under section 503(f) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 353(f)), the implementing VFD regulation (21 CFR 558.6) is tailored to the unique circumstances relating to the distribution of medicated feeds. The content of the VFD is spelled out in the regulation. All distributors of medicated feed containing VFD drugs must notify FDA of their intent to distribute, and records must be maintained of the distribution of all medicated feeds containing VFD drugs. The VFD regulation ensures the protection of public health while enabling animal producers to obtain and use needed drugs as efficiently and cost-effectively as possible.

In the **Federal Register** of August 3, 2011(76 FR 46818), FDA published a 60-day notice requesting public comment on the proposed collection of information. FDA received no comments that pertained to the information collection burden estimates.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

| 21 CFR section | Number of respondents | Number of responses per respondent | Total annual responses | Average burden per response | Total hours |
|---|---|---|---|---|---|
| 558.6(a)(3) through (a)(5) | 15,000 | 25 | 375,000 | .25 | 93,750 |
| 558.6(d)(1)(i) through (d)(1)(iii) | 300 | 1 | 300 | .25 | 75 |
| 558.6(d)(1)(iv) | 20 | 1 | 20 | .25 | 5 |
| 558.6(d)(2) | 1,000 | 5 | 5,000 | .25 | 1,250 |
| 514.1(b)(9) | 1 | 1 | 1 | 3 | 3 |

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]—Continued

| 21 CFR section | Number of respondents | Number of responses per respondent | Total annual responses | Average burden per response | Total hours |
|---|---|---|---|---|---|
| Total | | | | | 95,083 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

| 21 CFR section | Number of Record-keepers | Number of records per recordkeeper | Total annual records | Average burden per recordkeeping | Total hours |
|---|---|---|---|---|---|
| 558.6(c)(1) through (c)(4) | 112,500 | 10 | 1,125,000 | .0167 | 18,788 |
| 558.6(e)(1) through (e)(4) | 5,000 | 75 | 375,000 | .0167 | 6,263 |
| Total | | | | | 25,051 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The estimate of the times required for record preparation and maintenance is based on Agency communication with industry and Agency records and experience.

Dated: October 27, 2011.

**Leslie Kux,**

*Acting Assistant Commissioner for Policy.*

[FR Doc. 2011–28240 Filed 10–31–11; 8:45 am]

BILLING CODE 4160–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2011–N–0770]**

### Cosmetic Microbiological Safety Issues; Public Meeting

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of public meeting; request for comments and opening of a docket.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing a public meeting entitled ''Cosmetic Microbiological Safety Issues.'' The purpose of the public meeting is to provide stakeholders an opportunity to present information regarding cosmetic microbiological safety and to suggest areas for the possible development of FDA guidance documents. FDA is seeking information regarding microbiological testing of cosmetics; types of preservative systems and how to test their efficacy; the identity and prevalence of microorganisms, including antibiotic-resistant strains, that pose specific health risks in finished products; routes of exposure to microorganisms and the corresponding infective doses; product and packaging characteristics that affect microbial growth and risk of infection; particular subpopulations that may be at greater risk of infection when using different cosmetic products; the occurrence of adverse events associated with microbial contamination of cosmetics; and any other issues relevant to the microbiological safety of cosmetics.

**DATES:** Submit either electronic or written comments to FDA's Division of Dockets Management by January 30, 2012. See also ''How to Participate in the Meeting'' in the **SUPPLEMENTARY INFORMATION** section of this document for important meeting registration deadlines.

**ADDRESSES:** See Table 1 of this document for meeting location and other information regarding registration for this meeting.

**FOR FURTHER INFORMATION CONTACT:** For questions about registering for the meeting, to register orally, or to submit a notice of participation by mail, fax, or *email:* Courtney Treece, Planning Professionals, Ltd., 1210 W. McDermott, suite 111, Allen, TX 75013, (704) 258–4983. *Fax:* (469) 854–6992, *ctreece@planningprofessionals.com.*

For questions about the meeting, to request an opportunity to make public comments, to submit the full text, comprehensive outline, or summary of an oral presentation, or to request special accommodations due to a disability: Juanita Yates, Center for Food Safety and Applied Nutrition, Food and Drug Administration, (240) 402–1731, *Juanita.Yates@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Background

FDA regulates cosmetics under the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 301 *et seq.*) and, for products marketed on a retail basis to consumers, under the Fair Packaging and Labeling Act (FPLA) (15 U.S.C. 1451 *et seq.*). The law requires that cosmetics be neither adulterated under section 601 of the FD&C Act (21 U.S.C. 361) nor misbranded under section 602 of the FD&C Act (21 U.S.C. 362). That is, they must be safe for consumers under labeled or customary conditions of use and they must be properly labeled. FDA has issued regulations addressing certain aspects of cosmetic safety and labeling (see 21 CFR parts 700, 701, and 740). FDA has also issued guidance regarding certain aspects of cosmetic safety and labeling, including the ''Good Manufacturing Practice (GMP) Guidelines/Inspection Checklist'' (available at *http://www.fda.gov/Cosmetics/GuidanceComplianceRegulatoryInformation/GoodManufacturingPracticeGMPGuidelinesInspectionChecklist/default.htm*), the ''Cosmetic Labeling Manual'' (available at *http://www.fda.gov/Cosmetics/CosmeticLabelingLabelClaims/CosmeticLabelingManual/default.htm*), and other cosmetic guidance documents (available at *http://www.fda.gov/Cosmetics/GuidanceComplianceRegulatoryInformation/GuidanceDocuments/default.htm*).

FDA has not yet issued specific guidance regarding cosmetic microbiological safety. FDA has presented its preferred laboratory procedures for microbiological analyses of foods and cosmetics in its Bacteriological Analytical Manual (BAM). Chapter 23 of the BAM concerns microbiological methods for cosmetics (available at *http://www.fda.gov/Food/ScienceResearch/LaboratoryMethods/BacteriologicalAnalyticalManualBAM/ucm073598.htm*).

Microbial contamination of cosmetic products is of concern to FDA because of the potential for serious adverse events. Cosmetics intended to be used in the area of the eye are of particular concern. Eye-area cosmetics that contain pathogenic microorganisms have the potential to cause serious eye infections which can, in some cases, result in partial or total loss of vision. In addition, contaminated alcohol-free mouthwash has caused outbreaks of serious bacterial illness among hospitalized patients. Other microbially contaminated cosmetic product types, such as skin lotions, also have the potential to cause significant irritation or infection.

A variety of factors can affect the microbiological safety of cosmetic products. Microbial contaminants can be introduced during manufacturing, packaging, or repacking. Microbial growth can be supported by certain product characteristics, such as high water content. Microorganisms can also be introduced by consumers during use. Certain forms of cosmetic product packaging may serve to limit or prevent the introduction of microorganisms. Preservative systems are intended to protect consumers from microorganisms introduced during manufacturing and while using a product, but inadequate preservative systems may fail to do so. Some microorganisms are known to be pathogenic, that is, they are capable of causing injury or illness, while others are not. Certain microorganisms may pose little risk to most consumers, but may pose significant risks to vulnerable consumers, such as those with compromised immune systems.

FDA believes that guidance on factors and practices to promote the microbiological safety of cosmetics would benefit consumers and industry. FDA is contemplating developing such guidance and is seeking information about microbiological safety of cosmetics. This public meeting is intended to provide stakeholders the opportunity to present information regarding microbiological testing of cosmetics; types of preservative systems and how to test their efficacy; the identity and prevalence of microorganisms, including antibiotic-resistant strains, that pose specific health risks in finished products; routes of exposure to microorganisms and the corresponding infective doses; product and packaging characteristics that affect microbial growth and risk of infection; particular subpopulations that may be at greater risk of infection when using different cosmetic products; the occurrence of adverse events associated with microbial contamination of cosmetics; and any other issues relevant to the microbiological safety of cosmetics.

## II. Purpose and Format of the Meeting

If you wish to present at the meeting scheduled for November 30, 2011, please register at *http://www.fda.gov/Food/NewsEvents/WorkshopsMeetingsConferences/default.htm* by November 10, 2011. If you wish to attend the meeting but not give a presentation, please register at *http://www.fda.gov/Food/NewsEvents/WorkshopsMeetingsConferences/default.htm* by November 21, 2011. FDA is holding the public meeting on cosmetic microbiological safety issues to receive input from the public to support the development of guidance. The meeting format will include introductory presentations by FDA, followed by the opportunity for stakeholders to make presentations or offer remarks. Listening to our stakeholders is the primary purpose of this meeting. In order to meet this goal, FDA will provide multiple opportunities for individuals to actively express their views by making presentations at the meeting and submitting written comments to FDA's Division of Dockets Management within 60 days of this meeting.

## III. How To Participate in the Meeting

Stakeholders will have an opportunity to provide oral comments. Due to limited space and time, FDA encourages all persons who wish to attend the meeting to register in advance. Interested persons and organizations who desire an opportunity to make an oral presentation during the time allotted for public comment at the meeting, are encouraged to register in advance and to provide the specific topic or issue to be addressed and the approximate desired length of their presentation. Depending on the number of requests for such oral presentations, there may be a need to limit the time of each oral presentation (*e.g.,* 3 minutes each). If time permits, individuals or organizations that did not register in advance may be granted the opportunity for such an oral presentation. FDA would like to maximize the number of stakeholders who make a presentation at the meeting and will do our best to accommodate all persons who wish to make a presentation or express their views at the meeting. FDA encourages persons and groups who have similar interests to consolidate their information for presentation through a single representative. After reviewing the presentation requests, FDA will notify each participant before the meeting of the amount of time available and the approximate time their presentation is scheduled to begin. Stakeholders will also have an opportunity to submit electronic or written comments to the docket following the meeting, but no later than January 30, 2012.

There is no fee to register for the public meeting and registration will be on a first-come, first-served basis. Early registration is recommended because seating is limited.

Table 1 of this document provides information on participating in the meeting and on submitting comments to the docket.

TABLE 1—INFORMATION ON PARTICIPATION IN THE MEETING AND ON SUBMITTING COMMENTS

| | Date | Electronic address | Address (non-electronic) | Other information |
|---|---|---|---|---|
| Date of Public Meeting .. | November 30, 2011, from 9 a.m. to 5:30 p.m. EST. | Individuals who wish to participate in person are asked to pre-register at *http://www.fda.gov/Food/NewsEvents/WorkshopsMeetingsConferences/default.htm.* | L'Enfant Plaza Hotel, 480 L'Enfant Plaza Southwest, Washington, DC, 20024–2253. | Registration begins at 8 a.m. |
| Advance Registration .... | Register by November 21, 2011. | *http://www.fda.gov/Food/NewsEvents/WorkshopsMeetingsConferences/default.htm.* | FDA encourages the use of electronic registration if possible. | Registration to attend the meeting will also be accepted onsite on the day of the meeting, as space permits. Registration information may be posted without change to *http://www.regulations.gov* including any personal information provided. |
| Request special accommodations due to disability. | Register by November 21, 2011. | Juanita Yates, e-mail: *Juanita.Yates@fda.hhs.gov.* | Juanita Yates, 240–402–1731. | |

TABLE 1—INFORMATION ON PARTICIPATION IN THE MEETING AND ON SUBMITTING COMMENTS—Continued

| | Date | Electronic address | Address (non-electronic) | Other information |
|---|---|---|---|---|
| Make a request for oral presentation. | Submit a request by November 10, 2011. | *http://www.fda.gov/Food/News Events/WorkshopsMeetingsConferences/default.htm.* | ..... | Requests made on the day of the meeting to make an oral presentation will be granted as time permits. Information on requests to make an oral presentation may be posted without change to *http://www.regulations.gov,* including any personal information provided. |
| Provide a brief description of the oral presentation and any written material for the presentation. | By November 21, 2011 | *http://www.fda.gov/Food/ NewsEvents/WorkshopsMeetings Conferences/default.htm.* | ..... | Written material associated with an oral presentation should be submitted in Microsoft PowerPoint, Microsoft Word, or Adobe Portable Document Format (PDF) and may be posted without change to *http:// www.regulations.gov,* including any personal information provided. |
| Submit electronic or written comments. | Submit comments by January 30, 2012. | Federal eRulemaking Portal: *http:// www.regulations.gov.* Follow the instructions for submitting comments. | Fax: 301–827–6870, Mail/Hand delivery/ Courier (for paper, disk, or CD–ROM submissions): Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. | All comments must include the Agency name and the docket number corresponding to the Cosmetic Microbiological Safety Issues; Public Meeting. All received comments may be posted without change to *http:// www.regulations.gov,* including any personal information provided. FDA encourages the submission of electronic comments by using the Federal eRulemaking Portal. For additional information on submitting comments, see the ''Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document. |

## IV. Comments

Regardless of attendance at the public meeting, interested persons may submit to the Division of Dockets management (see Table 1 of this document) either electronic or written comments for consideration at or after the meeting in addition to, or in place of, a request for an opportunity to make an oral presentation. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be viewed in the Division of Dockets Management at the address provided in Table 1 of this document between 9 a.m. and 4 p.m., Monday through Friday.

## V. References

We have placed hard copies of the following references on display in the Division of Dockets Management (see **ADDRESSES**). You may view them between 9 a.m. and 4 p.m., Monday through Friday. (FDA has verified the Web site addresses, but FDA is not responsible for any subsequent changes to Web sites after this document publishes in the **Federal Register**.)

1. FDA, ''Good Manufacturing Practice (GMP) Guidelines/Inspection Checklist,'' available at *http:// www.fda.gov/Cosmetics/Guidance ComplianceRegulatoryInformation/ GoodManufacturingPracticeGMP GuidelinesInspectionChecklist/ default.htm.*

2. FDA, ''Cosmetic Labeling Manual,'' available at *http://www.fda.gov/ Cosmetics/CosmeticLabelingLabel Claims/CosmeticLabelingManual/ default.htm.*

3. FDA, ''Guidance Documents,'' available at *http://www.fda.gov/ Cosmetics/GuidanceCompliance RegulatoryInformation/Guidance Documents/default.htm.*

4. FDA, Bacteriological Analytical Manual, chapter 23, ''Microbiological Methods for Cosmetics,'' available at *http://www.fda.gov/Food/Science Research/LaboratoryMethods/ BacteriologicalAnalyticalManualBAM/ ucm073598.htm.*

## VI. Transcripts

Please be advised that as soon as a transcript is available, it will be accessible at *http://www.regulations.gov* and at FDA's Web site under ''Cosmetics.'' It may also be viewed at the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. A transcript will also be available in either hardcopy or on CD–ROM, after the submission of a Freedom of Information request. Written requests are to be sent to Division of Freedom of Information (ELEM–1029), Food and Drug Administration, 12420 Parklawn Dr., Element Bldg., Rockville, MD 20857.

Dated: October 26, 2011.

**Leslie Kux,**

*Acting Assistant Commissioner for Policy.*

[FR Doc. 2011–28238 Filed 10–31–11; 8:45 am]

BILLING CODE 4160–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2011–N–0754]**

### Pediatric Medical Devices; Public Workshop; Request for Comments

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of public workshop; request for comments.

The Food and Drug Administration (FDA) is announcing a public workshop entitled ''Using Scientific Research Data to Support Pediatric Medical Device Claims: A Public Dialogue.'' The purpose of the public workshop is to receive public comment on the use of scientific research data, including published scientific literature, to support and establish pediatric indications for medical devices.

The topics to be discussed are: The ways scientific research data can be used to support pediatric effectiveness claims for medical devices and pediatric device approvals or clearance; the scientific and regulatory limitations and issues of using existing scientific research data to support pediatric effectiveness claims and pediatric indication approvals for medical devices; and methods to overcome the pitfalls and data gaps, including statistical approaches and modeling.

*Date and Time:* The public workshop will be held on December 5, 2011, from 8:30 a.m. to 5 p.m. EST.

*Location:* The public workshop will be held at the FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room (rm. 1503), Silver Spring, MD 20993–0002.

*Contact Person:* Carol Krueger, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 5437, Silver Spring, MD 20993–0002, (301) 796–3241, *Carol.Krueger@fda.hhs.gov.*

*Registration:* Registration is free and on a first-come, first-served basis. Persons interested in attending this workshop must register online by 5 p.m. on November 28, 2011. Early registration is recommended because facilities are limited and, therefore, FDA may limit the number of participants from each organization. If time and space permits, onsite registration on the day of the public workshop will be provided beginning at 7:30 a.m. If you need special accommodations due to a disability, please contact Cynthia Garris (*email: Cynthia.Garris@fda.hhs.gov* or (301) 796–5861) no later than November 28, 2011.

To register for the public workshop, please visit the following *Web site: http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm* (or go the FDA Medical Devices News & Events—Workshops & Conferences calendar and select this public workshop from the posted events list). Please provide complete contact information for each attendee, including name, title, affiliation, address, email, and telephone number. Those without Internet access should contact Carol Krueger to register (see *Contact Person*). Registrants will receive confirmation after they have been accepted. You will be notified if you are on a waiting list.

*Streaming Web Cast of the Public Workshop:* This workshop will also be Web cast. Persons interested in viewing the Web cast must register online by 5 p.m. on November 28, 2011. Early registration is recommended because Web cast connections are limited. Organizations are requested to register all participants but to view using one connection per location. Web cast participants will be sent technical system requirements after registration and will be sent connection access information after November 28th. If you have never attended a Connect Pro event before, test your connection at *https://collaboration.fda.gov/common/help/en/support/meeting_test.htm.* To get a quick overview of the Connect Pro program, visit *http://www.adobe.com/go/connectpro_overview.* (FDA has verified the Web site addresses in this document, but FDA is not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.)

*Workshop Format:* This workshop is structured as topic-focused breakout sessions, intended to foster constructive dialogue between stakeholders with diverse perspectives. Moderators of each small group will summarize the group discussion and present it to the participants.

*Comments:* FDA is holding this public workshop to obtain information on a number of questions regarding factors affecting approval or clearance of devices for use with a pediatric population. In order to permit the widest possible opportunity to obtain public comment, FDA is soliciting written or electronic comments on all aspects of the workshop topics. The deadline for submitting comments related to this public workshop is January 5, 2012.

Regardless of attendance at the public workshop, interested persons may submit either electronic or written comments. Submit electronic comments to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. It is necessary to send only one set of comments. It is no longer necessary to send two copies of mailed comments. Please identify written comments with the docket number found in brackets in the heading of this document. In addition, when responding to specific questions as outlined in section II of this document, please identify the question you are addressing. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday and will be posted to the docket at *http://www.regulations.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Background

In 2007, Congress passed the Pediatric Medical Device Safety and Improvement Act (the Act). The Act addresses pediatric device needs by providing financial incentives for development, production, approval and distribution of new devices for rare and unmet pediatric needs; allowing for a pediatric device approval pathway that permits extrapolation of adult effectiveness data to support a pediatric indication based on similar course of the disease or condition or a similar effect of the device; and providing grants to pediatric device consortia that provide technical support and assistance to pediatric device innovators.

This workshop will support FDA's efforts to define pathways for approving pediatric device indications by leveraging available scientific research data. An important, but not the only, focus will be a discussion of how to determine when it is appropriate to use, and how to use, existing scientific research data to determine pediatric effectiveness based on a similar course of a disease or condition or a similar effect of a device on adults and similar extrapolation between pediatric subpopulations.

The demand by health care professionals and consumers for safe and effective pediatric medical devices continues to steadily increase. Pediatric medical devices treat or diagnose diseases and conditions occurring from birth through the 21st year of life. Some devices are designed specifically for pediatric use, while others are adopted from specific adult device applications or produced for more general use.

Designing pediatric medical devices can be challenging; children are often smaller and more active than adults, body structures and functions change throughout childhood, and children may be long-term device users—bringing new concerns about device longevity and long-term exposure to implanted materials. The current medical device market for children has a higher demand than supply. FDA is committed to supporting the development and availability of safe and effective pediatric medical devices.

Through this effort, FDA and stakeholders will take steps to increase awareness of a path for approval of pediatric devices that uses certain literature. FDA can advance this goal by collaborating with stakeholders, including medical device and health care industries, and the health care provider and consumer communities.

## II. Topics for Discussion at the Public Workshop

The public workshop will be organized to discuss the following topic areas:

A. The use of existing scientific research data to support pediatric effectiveness claims for medical devices and pediatric device approvals or clearance,

B. The scientific and regulatory limitations and issues with the use of existing scientific research data, and

C. The methods to overcome the pitfalls and data gaps, including statistical approaches and modeling.

## III. Transcripts

Please be advised that as soon as a transcript is available, it will be

accessible at *http://www.regulations.gov.* It may be viewed at the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. A transcript will also be available in either hardcopy or on CD–ROM, after submission of a Freedom of Information request. Written requests are to be sent to Division of Freedom of Information (ELEM–1029), Food and Drug Administration, 12420 Parklawn Dr., Element Bldg., Rockville, MD 20857. A link to the transcripts will also be available on the Internet at *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm* (select this public workshop from the posted events list), approximately 45 days after the public workshop.

Dated: October 26, 2011.

**Nancy K. Stade,**

*Deputy Director for Policy, Center for Devices and Radiological Health.*

[FR Doc. 2011–28244 Filed 10–31–11; 8:45 am]

**BILLING CODE 4160–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2011–N–0238]**

### Preventive Controls for Registered Human Food and Animal Food/Feed Facilities; Reopening of the Comment Period

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice; reopening of the comment period.

**SUMMARY:** The Food and Drug Administration (FDA) is reopening the comment period for the notice, published in the **Federal Register** of May 23, 2011 (76 FR 29767), entitled ''Preventive Controls for Registered Human Food and Animal Food/Feed Facilities; Request for Comments.'' In that document, FDA opened a docket and requested information about preventive controls and other practices used by facilities to identify and address hazards associated with specific types of food and specific processes. The Agency is taking this action in response to a request for an extension to allow interested persons additional time to submit comments.

**DATES:** Submit either electronic or written comments by December 20, 2011.

**ADDRESSES:** Submit electronic comments to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Jenny Scott, Center for Food Safety and Applied Nutrition (HFS–300), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, (240) 402–2166; or Kim Young, Center for Veterinary Medicine (HFV–230), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, (240) 276–9207.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

In the **Federal Register** of May 23, 2011 (76 FR 29767), FDA published a notice with a 90-day comment period to obtain information about preventive controls and other practices used by facilities to identify and address hazards associated with specific types of food and specific processes. Information obtained will assist FDA in the development of guidance on preventive controls for food facilities that manufacture, process, pack, or hold human food or animal food/feed (including pet food).

The Agency has received a request for an extension of the comment period for this notice. FDA has considered the request and is extending the comment period for the notice entitled ''Preventive Controls for Registered Human Food and Animal Food/Feed Facilities; Request for Comments'' until December 20, 2011. The Agency believes that this extension allows adequate time for interested persons to submit comments without significantly delaying action by the Agency.

#### II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: October 26, 2011.

**Leslie Kux,**

*Acting Assistant Commissioner for Policy.*

[FR Doc. 2011–28239 Filed 10–31–11; 8:45 am]

**BILLING CODE 4160–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2011–N–0002]**

### Request for Notification From Industry Organizations Interested in Participating in the Selection Process for Nonvoting Industry Representatives and Request for Nominations for Nonvoting Industry Representatives on Public Advisory Panels

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is requesting that any industry organizations interested in participating in the selection of nonvoting industry representatives to serve on certain device panels of the Medical Devices Advisory Committee (MDAC) in the Center for Devices and Radiological Health (CDRH) notify FDA in writing. FDA is also requesting nominations for a nonvoting industry representative(s) to serve on certain device panels of the MDAC in the CDRH. A nominee may either be self-nominated or nominated by an organization to serve as a nonvoting industry representative. Nominations will be accepted for current vacancies effective with this notice.

**DATES:** Any industry organizations interested in participating in the selection of an appropriate nonvoting member to represent industry interests must send a letter stating that interest to FDA by December 1, 2011, for vacancies listed in this notice. Concurrently, nomination materials for prospective candidates should be sent to FDA by December 1, 2011.

**ADDRESSES:** All letters of interest and nominations should be submitted in writing to Margaret Ames (see **FOR FURTHER INFORMATION CONTACT**).

**FOR FURTHER INFORMATION CONTACT:** Margaret Ames, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 5234, Silver Spring, MD 20993, (301) 796–5960, *Fax:* (301) 847–8505, *email: margaret.ames@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:** Section 520(f)(3) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360j(f)(3)), as amended by the Medical Device Amendments of 1976, provides that each medical device panel include one nonvoting member to represent the interests of the medical device

manufacturing industry. The Agency is requesting nominations for nonvoting industry representatives to certain panels identified in the following paragraphs.

**I. Functions of MDAC**

(1) Review and evaluate data on the safety and effectiveness of marketed and investigational devices and make recommendations for their regulation, (2) advise the Commissioner of Food and Drugs (the Commissioner) regarding recommended classification or reclassification of these devices into one of three regulatory categories, (3) advise on any possible risks to health associated with the use of devices, (4) advise on formulation of product development protocols, (5) review premarket approval applications for medical devices, (6) review guidelines and guidance documents, (7) recommend exemption to certain devices from the application of portions of the FD&C Act, (8) advise on the necessity to ban a device, (9) respond to requests from the Agency to review and make recommendations on specific issues or problems concerning the safety and effectiveness of devices, and (10) make recommendations on the quality in the design of clinical studies regarding the safety and effectiveness of marketed and investigational devices.

*A. Clinical Chemistry and Clinical Toxicology Devices Panel*

Reviews and evaluates data concerning the safety and effectiveness of marketed and investigational in vitro devices for use in clinical laboratory medicine, including clinical toxicology, clinical chemistry, endocrinology, and oncology, and makes appropriate recommendations to the Commissioner.

*B. Ear, Nose, and Throat Devices Panel*

Reviews and evaluates data concerning the safety and effectiveness of market and investigational ear, nose, and throat devices, and makes appropriate recommendations to the Commissioner.

*C. Medical Devices Dispute Resolution Panel*

Provides advice to the Center Director on complex or contested scientific issues between FDA and medical device sponsors, applicants, or manufacturers relating to specific products, marketing applications, regulatory decisions and actions by FDA, and Agency guidance and policies. The panel makes recommendations on issues that are lacking resolution, are highly complex in nature, or result from challenges to Agency decisions or actions.

*D. Microbiology Devices Panel*

Reviews and evaluates data concerning the safety and effectiveness of marketed and investigational in vitro devices for use in clinical laboratory medicine, including microbiology, virology, and infectious disease, and makes appropriate recommendations to the Commissioner.

*E. Molecular and Clinical Genetics Devices Panel*

Reviews and evaluates data concerning the safety and effectiveness of marketed and investigational in vitro devices for use in clinical laboratory medicine, including clinical and molecular genetics, and makes appropriate recommendations to the Commissioner.

*F. Orthopaedic and Rehabilitation Devices Panel*

Reviews and evaluates data concerning the safety and effectiveness of marketed and investigational orthopaedic and rehabilitation devices, and makes appropriate recommendations to the Commissioner.

*G. Radiological Devices Panel*

Reviews and evaluates data concerning the safety and effectiveness of marketed and investigational diagnostic or therapeutic radiological and nuclear medicine devices and makes appropriate recommendations to the Commissioner.

*II. Qualifications*

Persons nominated for the device panels should be full-time employees of firms that manufacture products that would come before the panel, or consulting firms that represent manufacturers or have similar appropriate ties to industry.

*III. Selection Procedure*

Any industry organization interested in participating in the selection of an appropriate nonvoting member to represent industry interests should send a letter stating that interest to the FDA contact (see **FOR FURTHER INFORMATION CONTACT**) within 30 days of publication of this document (see **DATES**). Within the subsequent 30 days, FDA will send a letter to each organization that has expressed an interest, attaching a complete list of all such organizations and a list of all nominees along with their current resumes. The letter will also state that it is the responsibility of the interested organizations to confer with one another and to select a candidate, within 60 days after the receipt of the FDA letter, to serve as the nonvoting member to represent industry interests for a particular device panel. The interested organizations are not bound by the list of nominees in selecting a candidate. However, if no individual is selected within the 60 days, the Commissioner will select the nonvoting member to represent industry interests.

**IV. Application Procedure**

Individuals may self nominate and/or an organization may nominate one or more individuals to serve as a nonvoting industry representative. Contact information, a current curriculum vitae, and the name of the committee of interest should be sent to the FDA contact person (see **FOR FURTHER INFORMATION CONTACT**) within 30 days of publication of this document (see **DATES**). FDA will forward all nominations to the organizations expressing interest in participating in the selection process for the panel. (Persons who nominate themselves as nonvoting industry representatives will not participate in the selection process).

FDA has a special interest in ensuring that women, minority groups, individuals with physical disabilities, and small businesses are adequately represented on its advisory committees and, therefore, encourages nominations for appropriately qualified candidates from these groups. Specifically, in this document, nominations for nonvoting representatives of industry interests are encouraged from the device manufacturing industry.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: October 26, 2011.

**Jill Hartzler Warner,**

*Acting Associate Commissioner for Special Medical Programs.*

[FR Doc. 2011–28224 Filed 10–31–11; 8:45 am]

**BILLING CODE 4160–01–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2011–N–0002]**

### Request for Notification From Industry Organizations Interested in Participating in the Selection Process for Nonvoting Industry Representatives and Request for Nominations for Nonvoting Industry Representatives on the National Mammography Quality Assurance Advisory Committees

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is requesting that any industry organization interested in participating in the selection of nonvoting industry representatives to serve on the National Mammography Quality Assurance Advisory Committee (NMQAAC) in the Center for Devices and Radiological Health notify FDA in writing. A nominee may either be self-nominated or nominated by an organization to serve as a nonvoting industry representative. Nominations will be accepted for current vacancies effective with this notice.

**DATES:** Any industry organizations interested in participating in the selection of an appropriate nonvoting member to represent industry interests must send a letter stating that interest to FDA by December 1, 2011, for the vacancies listed in this notice. Concurrently, nomination materials for prospective candidates should be sent to FDA by December 1, 2011.

**ADDRESSES:** All letters of interest and nominations should be submitted in writing to Margaret J. Ames (see **FOR FURTHER INFORMATION CONTACT**).

**FOR FURTHER INFORMATION CONTACT:** Margaret J. Ames, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 5234, Silver Spring, MD 20993, (301) 796–5960, email: *margaret.ames@fda.hhs.gov*.

**SUPPLEMENTARY INFORMATION:**

The Mammography Quality Standards Reauthorization Act of 2004 (Pub. L. 108–365) requires the addition of at least two industry representatives with expertise in mammography equipment to the NMQAAC. The Agency is requesting nominations for nonvoting industry representatives on the NMQAAC.

## I. NMQAAC

Advise FDA on: (1) Developing appropriate quality standards and regulations for mammography facilities; (2) developing appropriate standards and regulations for bodies accrediting mammography facilities under this program; (3) developing regulations with respect to sanctions; (4) developing procedures for monitoring compliance with standards; (5) establishing a mechanism to investigate consumer complaints; (6) reporting new developments concerning breast imaging which should be considered in the oversight of mammography facilities; (7) determining whether there exists a shortage of mammography facilities in rural and health professional shortage areas and determining the effects of personnel on access to the services of such facilities in such areas; (8) determining whether there will exist a sufficient number of medical physicists after October 1, 1999; and (9) determining the costs and benefits of compliance with these requirements.

## II. Qualifications

Persons nominated for membership as an industry representative on the NMQAAC must meet the following criteria: (1) Demonstrate expertise in mammography equipment and (2) be able to discuss equipment specifications and quality control procedures affecting mammography equipment. The industry representative must be able to represent the industry perspective on issues and actions before the advisory committee, serve as liaison between the committee and interested industry parties, and facilitate dialogue with the advisory committee on mammography equipment issues.

## III. Selection Procedure

Any industry organization interested in participating in the selection of appropriate nonvoting members to represent industry interests should send a letter stating that interest to the FDA contact (see **FOR FURTHER INFORMATION CONTACT**) within 30 days of publication of this document (see **DATES**). Within the subsequent 30 days, FDA will send a letter to each organization that has expressed an interest, attaching a complete list of all such organizations and a list of all nominees along with their current resumes. The letter will also state that it is the responsibility of the interested organizations to confer with one another and to select candidates, within 60 days after the receipt of the FDA letter, to serve as nonvoting members to represent industry interests for the committee. The interested organizations are not bound by the list of nominees in selecting candidates. However, if no individual is selected within the 60 days, the Commissioner of Food and Drugs will select the nonvoting members to represent industry interests.

## IV. Application Procedure

Individuals may self nominate and/or an organization may nominate one or more individuals to serve as a nonvoting industry representative. Contact information, a current curriculum vitae, and the name of the committee of interest should be sent to the FDA contact person (see **FOR FURTHER INFORMATION CONTACT**) within 30 days of publication of this document (see **DATES**). FDA will forward all nominations to the organizations expressing interest in participating in the selection process for the committee. (Persons who nominate themselves as nonvoting industry representatives will not participate in the selection process).

FDA has a special interest in ensuring that women, minority groups, individuals with physical disabilities, and small businesses are adequately represented on its advisory committees and, therefore, encourages nominations for appropriately qualified candidates from these groups. Specifically, in this document, nominations for nonvoting representatives of industry interests are encouraged from the mammography manufacturing industry.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: October 26, 2011.

**Jill Hartzler Warner,**

*Acting Associate Commissioner for Special Medical Programs.*

[FR Doc. 2011–28223 Filed 10–31–11; 8:45 am]

**BILLING CODE 4160–01–P**

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## 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 Special Emphasis Panel; NIGMS Conference Grants.

*Date:* November 15, 2011.

*Time:* 12 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Natcher Building, 45 Center Drive, Room 3AN18A, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* C. Craig Hyde, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical

Sciences, National Institutes of Health, 45 Center Drive, Room 3AN18A, Bethesda, MD 20892, (301) 435–3825, *hydec@nigms.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, CellBiology 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 26, 2011.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2011–28299 Filed 10–31–11; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review 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:* Center for Scientific Review Special Emphasis Panel; Academic Enhancements Applications (R15).

*Date:* November 9, 2011.

*Time:* 2:45 p.m. to 5:45 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

*Contact Person:* David J. Remondini, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2210, MSC 7890, Bethesda, MD 20892, (301) 435–1038, *remondid@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(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. 2011–28297 Filed 10–31–11; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Mental Health Special Emphasis Panel, Mental Health Services Conflicts Panel.

*Date:* November 14, 2011.

*Time:* 3 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

*Contact Person:* Aileen Schulte, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6140, MSC 9608, Bethesda, MD 20892–9608, (301) 443–1225, *aschulte@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* National Institute of Mental Health Special Emphasis Panel, Center Programs for Research HIV/AIDS & MH.

*Dates:* November 29, 2011.

*Time:* 8 a.m. to 12 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

*Contact Person:* Francois Boller, MD, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6142, MSC 9606, Bethesda, MD 20892–9606, (301) 443–1513, *bollerf@mail.nih.gov.*

*Name of Committee:* National Institute of Mental Health Special Emphasis Panel, Novel Neuroaids Therapeutics: Integrated Preclinical Program.

*Date:* November 29, 2011.

*Time:* 1 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

*Contact Person:* Francois Boller, MD, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6142, MSC 9606, Bethesda, MD 20892–9606, (301) 443–1513, *bollerf@mail.nih.gov.*

*Name of Committee:* National Institute of Mental Health Special Emphasis Panel, Aging and HIV-Associated Neurodegeneration.

*Date:* December 1, 2011.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The Dupont Hotel, 1500 New Hampshire Avenue NW., Washington, DC 20036.

*Contact Person:* David W. Miller, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6140, MSC 9608, Bethesda, MD 20892–9608, (301) 443–9734, *millerda@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: October 25, 2011.

**Jennifer S. Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2011–28291 Filed 10–31–11; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of 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 Child Health and Human Development Special Emphasis Panel, Hypoxia in Development: Injury and Adaptation Mechanisms.

*Date:* November 22, 2011.

*Time:* 2 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

*Contact Person:* Peter Zelazowski, Ph.D., Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5b01, Bethesda, MD 20892, (301) 435–6902, *peter.zelazowski@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: October 26, 2011.

**Jennifer S. Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2011–28290 Filed 10–31–11; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; 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:* Center for Scientific Review Special Emphasis Panel, PAR 10–021: AIDS-Science Track Award for Research Transition.

*Date:* November 15, 2011.

*Time:* 2 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Marriott-Wardman, 2660 Woodley Road NW., Washington, DC 20008.

*Contact Person:* Jose H. Guerrier, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, (301) 435–1137, *guerriej@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 26, 2011.

**Jennifer S. Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2011–28288 Filed 10–31–11; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of 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 Child Health and Human Development Special Emphasis Panel, Molecular and Cellular Controls of Placental Metabolism.

*Date:* November 21, 2011.

*Time:* 2 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

*Contact Person:* Peter Zelazowski, Ph.D., Scientific Review Officer, Division Of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5b01, Bethesda, MD 20892, (301) 435–6902, *peter.zelazowski@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: October 26, 2011.

**Jennifer S. Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2011–28286 Filed 10–31–11; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5480–N–110]**

### Notice of Submission of Proposed Information Collection to OMB Application for Displacement/ Relocation Assistance for Person

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Application for displacement/ relocation for person (families, individuals, businesses, nonprofit organizations and farms) displaced by certain HUD programs. Periodically, HUD reviews a random sample of the Agency files to assure that persons did received the relocation payments to which they are entitled.

**DATES:** *Comments Due Date:* December 1, 2011.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2506–0016) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; email *OIRA-Submission@omb.eop.gov, fax*: (202) 395–5806.

**FOR FURTHER INFORMATION CONTACT:** Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410;

email Colette Pollard at *Colette.Pollard@hud.gov;* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

**SUPPLEMENTARY INFORMATION:** This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (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; (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 collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This notice also lists the following information:

*Title of Proposal:* Application for Displacement/Relocation Assistance for Person.

*OMB Approval Number:* 2506–0016.

*Form Numbers:* HUD–40054, HUD–40055, HUD–40056, HUD–40057, HUD–40058, HUD 40058–S, HUD–40061, HUD–40072, HUD 40030.

**Description of the Need for the Information and its Proposed Use**

Application for displacement/relocation for person (families, individuals, businesses, nonprofit organizations and farms) displaced by certain HUD programs. Periodically, HUD reviews a random sample of the Agency files to assure that persons did received the relocation payments to which they are entitled.

*Frequency of Submission:* On occasion.

| | Number of respondents | Annual responses | × | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|
| Reporting Burden | 37,800 | 1.634 | | 0.906 | | 56,000 |

*Total Estimated Burden Hours:* 56,000.

*Status:* Extension without change of a currently approved collection.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: October 26, 2011.

**Colette Pollard,**

*Departmental Reports Management Officer, Office of the Chief Information Officer.*

[FR Doc. 2011–28295 Filed 10–31–11; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5480–N–109]**

## Notice of Submission of Proposed Information Collection to OMB; Energy Innovation Fund—Multifamily Energy Pilot Program

**AGENCY:** Office of the Chief Information Officer, HUD

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This information is collected from applicants for a new pilot program seeking innovative proposals for increasing the energy efficiency of Multifamily Housing.

**DATES:** *Comments Due Date:* December 1, 2011.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0599) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; email *OIRA-Submission@omb.eop.gov, fax:* (202) 395–5806.

**FOR FURTHER INFORMATION CONTACT:** Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov;* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

**SUPPLEMENTARY INFORMATION:** This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (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; (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 collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This notice also lists the following information:

*Title of Proposal:* Energy Innovation Fund—Multifamily Energy Pilot Program.

*OMB Approval Number:* 2502–0599.

*Form Numbers:* SFLLL, HUD–2880, SF424 Supp, SF424, 2993, HUD–424–CB.

*Description of the Need for the Information and Its Proposed Use:*

This information is collected from applicants for a new pilot program seeking innovative proposals for increasing the energy efficiency of Multifamily Housing.

*Frequency of Submission:* Annually.

| | Number of respondents | Annual responses | × | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|
| Reporting Burden | 383 | 1.310 | | 4.922 | | 2,471 |

*Total Estimated Burden Hours:* 2,471.

*Status:* Extension without change of a currently approved collection.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: October 26, 2011.

**Colette Pollard,**

*Departmental Reports Management Officer, Office of the Chief Information Officer.*

[FR Doc. 2011–28296 Filed 10–31–11; 8:45 am]

BILLING CODE 4210–67–P

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5547–D–01]**

## Delegation Authority for the Office of the Chief Information Officer

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Notice of Delegation of Authority.

**SUMMARY:** Through this notice, the Secretary of HUD delegates to the Chief Information Officer (CIO) all authority and responsibility for the Department's information technology (IT) and authority to serve as the Department's Senior Information Technology Executive.

**DATES:** Effective Date: October 20, 2011.

**FOR FURTHER INFORMATION CONTACT:** Juanita Galbreath, Deputy Chief Information Officer for Cyber Security and Privacy, Office of the Chief Information Officer, Department of Housing and Urban Development, 451 7th Street SW., Room 4164, Washington, DC 20410, telephone number (202) 708–0306 (this is not a toll-free number). Persons with hearing or speech impairments may access this number by calling the toll-free Federal Relay Service at 1–(800) 877–8339.

**SUPPLEMENTARY INFORMATION:**

### Section A. Authority

The Secretary of HUD hereby delegates to the CIO responsibility for the management of the Department's information technology resources. In carrying out such duties and responsibilities, the CIO shall be responsible for meeting the requirements of Section 5125 of the Clinger-Cohen Act (40 U.S.C. 11315), which established the position of the Chief Information Officer. Additional responsibilities of the CIO derive from the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), the Privacy Act of 1974 (5 U.S.C. 552(a)), and the E-Government Act of 2002. The CIO shall, among other duties;

1. Ensure compliance by all HUD program offices with the prompt, efficient, and effective implementation of Information Resources Management responsibilities.

2. Ensure compliance by all HUD program offices with the prompt, efficient, and effective reduction of information collection burdens on the public.

3. Provide advice and other assistance to the Secretary of HUD and other senior management personnel of HUD to ensure that information technology (IT) is acquired and information resources are managed effectively and efficiently.

4. Manage the Department's Privacy Act and Computer Matching Programs, particularly ensuring that personally identifiable information collected by HUD is used and maintained according to the provisions of the Privacy Act of 1974.

5. Promote the effective and efficient design and operation of all major IT processes for HUD, including improvements to work processes of the Department. Monitor and evaluate the performance of IT programs of HUD based on applicable performance measurements, and advise the Secretary of HUD and IT Governance/Oversight Boards regarding whether to continue, modify, or terminate a program or project.

6. Serve as a member of the executive branch Chief Information Officers Council, participate in its functions, and monitor the Department's implementation of IT standards promulgated by the Secretary of Commerce.

7. Serve as a representative to the Interagency Committee on Government Information established under Section 207(c) of the E-Government Act.

8. Perform any additional duties that are assigned to the CIO by applicable law, including Office of Management and Budget (OMB) regulations and circulars.

9. Consistent with the roles and responsibilities of IT Governance/Oversight Boards, design, implement, and maintain HUD process for maximizing the value and assessing and managing the risks of IT acquisitions, in accordance with Section 5122 of the Clinger-Cohen Act.

10. Monitor the Department's compliance with the policies, procedures, and guidance in OMB Circular A–130 (or equivalent guidance), and recommend or take appropriate corrective action in instances of failures to comply and, as required by the Circular, report to the OMB Director.

11. To meet the objectives of the Government Paperwork Elimination Act (Pub. L. 105–277), the CIO must ensure that the Department's methods for use and acceptance of electronic signatures are compatible with the relevant policies and procedures issued by the OMB Director.

12. The CIO will work with the Office of Public Affairs (OPA) and the Office of General Counsel (OGC) to ensure that a publicly accessible HUD Web site includes all information required to be published in the **Federal Register** under paragraphs (1) and (2) of Section 552(a) of Title 5 of the United States Code (Freedom of Information Act).

13. In consultation with OMB, OGC, and other agencies, as appropriate, the CIO will coordinate with the appropriate HUD offices to ensure that the Department implements Sections 206(c) and 206(d) of the E-Government Act (electronic rulemaking submissions and electronic dockets).

14. To ensure that the Department carries out the E-Government Act's requirements for privacy impact analyses, as well as related OMB policies and guidance, the CIO will:

(a) In coordination with OGC, oversee the Department's preparation of privacy impact assessments;

(b) Ensure that HUD privacy impact assessments are provided to OMB for each information system for which funding is requested; and

(c) In coordination with OGC and OPA, ensure that, if practicable and appropriate, HUD privacy impact assessments are made available to the public.

15. The CIO will have ultimate responsibility for ensuring that the Department fulfills its responsibilities under Title III of the E-Government Act, the Federal Information Security Management Act, by:

(a) Consistent with 44 U.S.C. 3544, designating a senior Department official who will report to the CIO and have responsibility for departmentwide information security as his or her primary duty, including the following responsibilities:

(b) Developing and maintaining an OMB-approved departmentwide information security program consistent with the requirements of 44 U.S.C. 3544(b), 44 U.S.C. 3543, and 40 U.S.C. 11331.

16. Consistent with Section 207(d) of the E–Government Act, the CIO will ensure that the Department complies with all OMB policies relating to the categorization of information.

17. In coordination with OGC and OPA, the CIO will ensure that privacy notices posted on HUD Web sites

comply with OMB guidance (see Section 208(c) of the E-Government Act).

**Section B. Authority Excepted**

The authority delegated in this document does not include the authority to sue or be sued or to issue or waive regulations.

**Section C. Authority To Redelegate**

The CIO is authorized to redelegate to employees of HUD any of the authority delegated under Section A above.

**Section D. Authority Superseded**

There are no previous redelegations of authority.

The Secretary may revoke the authority authorized herein, in whole or part, at any time.

**Authority:** Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: October 20, 2011.

**Shaun Donovan,**

*Secretary.*

[FR Doc. 2011–28301 Filed 10–31–11; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5547–D–02]**

### Order of Succession for the Office of the Chief Information Officer

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Notice of Order of Succession.

**SUMMARY:** In this notice, the Chief Information Officer (CIO) for the Department of Housing and Urban Development designates the Order of Succession for the Office of the Chief Information Officer. This Order of Succession supersedes all prior Orders of Succession for the Office of the Chief Information Officer.

**DATES:** *Effective Date:* October 20, 2011.

**FOR FURTHER INFORMATION CONTACT:** Juanita Galbreath, Deputy Chief Information Officer for Cyber Security and Privacy, Office of the Chief Information Officer, Department of Housing and Urban Development, 451 7th Street SW., Room 4164, Washington, DC 20410, telephone number (202) 708–0306 (this is not a toll free number). Persons with hearing or speech impairments may access this number by calling the toll free Federal Relay Service at 1–(800) 877–8339.

**SUPPLEMENTARY INFORMATION:** The CIO for the Department of Housing and Urban Development is issuing this Order of Succession of officials authorized to perform the functions and duties of the CIO when, by reason of absence, disability, or vacancy in office, the CIO is not available to exercise the powers or perform the duties of the office. This Order of Succession is subject to the provisions of the Federal Vacancies Reform Act of 1998 (5 U.S.C. 3345–3349d). This publication supersedes the Order of Succession notice of all prior Orders of Succession for the Office of the Chief Information Officer.

Accordingly, the CIO designates the following Order of Succession:

**Section A. Order of Succession**

Subject to the provisions of the Federal Vacancies Reform Act of 1998, during any period when, by reason of absence, disability, or vacancy in office, the Chief Information Officer for the Department of Housing and Urban Development is not available to exercise the powers or perform the duties of the Chief Information Officer, the following officials within the Office of the Chief Information Officer are hereby designated to exercise the powers and perform the duties of the Office:

(1) Deputy Chief Information Officer;

(2) Deputy Chief Information Officer, for IT Operations;

(3) Deputy Chief Information Officer, for Cyber Security and Privacy;

(4) Deputy Chief Information Officer, for Business and IT Modernization.

These officials shall perform the functions and duties of the office in the order specified herein, and no official shall serve unless all the other officials, whose position titles precede his/hers in this order, are unable to act by reason of absence, disability, or vacancy in office.

**Section B. Authority Superseded**

This Order of Succession supersedes all prior Orders of Succession for the Office of the Chief Information Officer.

**Authority:** Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: October 20, 2011.

**Jerry E. Williams,**

*Chief Information Officer.*

[FR Doc. 2011–28302 Filed 10–31–11; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[F–22853; LLAK–965000–L14100000–HY0000–P]**

### Alaska Native Claims Selection

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Decision Approving Lands for Conveyance.

**SUMMARY:** As required by 43 CFR 2650.7(d), notice is hereby given that the Bureau of Land Management (BLM) will issue an appealable decision to Bering Straits Native Corporation. The decision will approve the conveyance of the surface and subsurface estates in certain lands pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*). The lands are located east of Teller, Alaska, and contain 47.87 acres. Notice of the decision will also be published four times in the *Nome Nugget.*

**DATES:** Any party claiming a property interest in the lands affected by the decision may appeal the decision within the following time limits:

1. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who fail or refuse to sign their return receipt, and parties who receive a copy of the decision by regular mail which is not certified, return receipt requested, shall have until December 1, 2011 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

3. Notices of appeal transmitted by electronic means, such as facsimile or email, will not be accepted as timely filed.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

**ADDRESSES:** A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

**FOR FURTHER INFORMATION CONTACT:** The BLM by phone at (907) 271–5960 or by email at *ak.blm.conveyance@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 BLM during normal business hours. In addition, the FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the BLM. The

BLM will reply during normal business hours.

**Dina L. Torres,**

*Land Transfer Resolution Specialist, Branch of Land Transfer Adjudication II.*

[FR Doc. 2011–28262 Filed 10–31–11; 8:45 am]

**BILLING CODE 4310–JA–P**

## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

**[CACA 43949, LLCA930000, L14300000.ET0000]**

## Notice of Proposed Withdrawal, Transfer of Jurisdiction, and Notice of Public Meeting; California

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice; Correction.

**SUMMARY:** The Bureau of Land Management (BLM) published a notice in the **Federal Register** on December 31, 2003, (68 FR 75628) that contained an erroneous legal description. This correction also supersedes and replaces the correction made on November 17, 2010 (75 FR 70288).

*Correction*

On page 75628 in the second column, line 12, the acreage is corrected to read 3,385 acres of public lands for use as a mountain warfare training facility.

On page 75628 in the second column, lines 56 and 57, correct the legal description to read: sec. 24, lots 4, 5, 20, 22, 24, 26, and SW¼SW¼; and sec. 25, all;

On page 75628 in the third column, line 2, the acreage is corrected to read 3,385 acres in San Diego County.

**FOR FURTHER INFORMATION CONTACT:** Heather Fullerton, Realty Specialist, BLM, California State Office, 2800 Cottage Way, Suite W–1834, Sacramento, California 95825, or phone (916) 978–4634.

**Tom Pogacnik,**

*Deputy State Director for Natural Resources.*

[FR Doc. 2011–28261 Filed 10–31–11; 8:45 am]

**BILLING CODE 4310–40–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation Nos. 731–TA–865–867 (Second Review)]**

## Stainless Steel Butt-Weld Pipe Fittings from Italy, Malaysia, and The Philippines; Institution of Five-Year Reviews Concerning the Antidumping Duty Orders on Stainless Steel Butt-Weld Pipe Fittings From Italy, Malaysia, and the Philippines

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission hereby gives notice that it has instituted reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty orders on stainless steel butt-weld pipe fittings from Italy, Malaysia, and the Philippines would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is December 1, 2011. Comments on the adequacy of responses may be filed with the Commission by January 13, 2012. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207), as most recently amended at 74 FR 2847 (January 16, 2009).

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

**FOR FURTHER INFORMATION CONTACT:** Mary Messer ((202) 205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing it's Internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

**SUPPLEMENTARY INFORMATION:**

*Background.*— On February 23, 2001, the Department of Commerce (''Commerce'') issued antidumping duty orders on imports of stainless steel butt-weld pipe fittings from Italy, Malaysia, and the Philippines (66 FR 11257). Following five-year reviews by Commerce and the Commission, effective December 11, 2006, Commerce issued a continuation of the antidumping duty orders on imports of stainless steel butt-weld pipe fittings from Italy, Malaysia, and the Philippines (71 FR 71530). The Commission is now conducting second reviews to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

*Definitions.*—The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

(2) The *Subject Countries* in these reviews are Italy, Malaysia, and the Philippines.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determinations and its full five-year review determinations, the Commission defined the *Domestic Like Product* as all finished and unfinished stainless steel butt-weld pipe fittings having an outside diameter (based on nominal pipe size) of less than 14 inches, coextensive with Commerce's scope. Commerce specifically excluded from the scope definition cast fittings; threaded, grooved, and bolted fittings; and fittings made from any material other than stainless steel.

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 12–5–260, expiration date June 30, 2014. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determinations, the Commission defined the *Domestic Industry* as all domestic producers of stainless steel butt-weld pipe fittings, although one domestic producer was excluded from the domestic industry under the related parties provision. In its full first five-year review determinations, the Commission defined the *Domestic Industry* as all domestic producers of stainless steel butt-weld pipe fittings.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

*Participation in the reviews and public service list.*—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register.** The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation. The Commission's designated agency ethics official has advised that a five-year review is not considered the ''same particular matter'' as the corresponding underlying original investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 73 FR 24609 (May 5, 2008). This advice was developed in consultation with the Office of Government Ethics. Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Carol McCue Verratti, Deputy Agency Ethics Official, at (202) 205–3088.

*Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.*—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the reviews. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

*Certification.*—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

*Written submissions.*—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is December 1, 2011. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is January 13, 2012. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

*Inability to provide requested information.*—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determinations in the reviews.

*Information to be Provided in Response to this Notice of Institution:* If you are a domestic producer, union/worker group, or trade/business association; import/export *Subject Merchandise* from more than one *Subject Country;* or produce *Subject Merchandise* in more than one *Subject Country,* you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent *Subject Country.* As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in these reviews by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in each *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2005.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2010, except as noted (report quantity data in pounds and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (i.e., the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s); and

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s).

(e) the value of (i) Net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country(ies),* provide the following information on your firm's(s=) operations on that product during calendar year 2010 (report quantity data in pounds and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s=) imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from each *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from each *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country(ies),* provide the following information on your firm's(s=) operations on that product during calendar year 2010 (report quantity data in pounds and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in each *Subject Country* accounted for by your firm's(s=) production; and

(b) Capacity (quantity) of your firm to produce the *Subject Merchandise* in each *Subject Country* (*i.e.,* the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in each *Subject Country* after 2005, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in each *Subject Country,* and such merchandise from other countries.

(13) (Optional) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

**Authority:** These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: October 24, 2011.

**James R. Holbein,**

*Secretary to the Commission.*

[FR Doc. 2011–27937 Filed 10–31–11; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 731–TA–472 (Third Review)]**

## Silicon Metal From China; Institution of a Five-Year Review Concerning the Antidumping Duty Order on Silicon Metal From China

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on silicon metal from China would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is December 1, 2011. Comments on the adequacy of responses may be filed with the Commission by January 13, 2012. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207), as most recently amended at 74 FR 2847 (January 16, 2009).

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

**FOR FURTHER INFORMATION CONTACT:** Mary Messer (202) 205–3193, Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing it Internet s server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

**SUPPLEMENTARY INFORMATION:**

*Background.*—On June 10, 1991, the Department of Commerce (''Commerce'') issued an antidumping duty order on imports of silicon metal from China (56 FR 26649). Following first five-year reviews by Commerce and the Commission, effective February 16, 2001, Commerce issued a continuation of the antidumping duty order on imports of silicon metal from China (66 FR 10669). Following second five-year reviews by Commerce and the Commission, effective December 21, 2006, Commerce issued a continuation of the antidumping duty order on imports of silicon metal from China (71 FR 76636). The Commission is now conducting a third review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

*Definitions.*—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determination, the Commission defined the *Domestic Like Product* as silicon metal, regardless of grade, having a silicon content of at least 96.00 percent but less than 99.99 percent of silicon by weight, and excluding semiconductor grade silicon, corresponding to Commerce's scope. In its full first and second five-year review determinations, the Commission defined the *Domestic Like Product* as all silicon metal, regardless of grade, corresponding to Commerce's current scope of the order.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission defined the *Domestic Industry* as all producers of the *Domestic Like Product.* In its full first and second five-year review determinations, the Commission defined the *Domestic Industry* as all domestic producers of silicon metal.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

*Participation in the review and public service list.*—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation. The Commission's designated agency ethics official has advised that a five-year review is not considered the ''same particular matter'' as the corresponding underlying original investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 73 FR 24609 (May 5, 2008). This advice was developed in consultation with the Office of Government Ethics. Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Carol McCue Verratti, Deputy

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 12–5–259, expiration date June 30, 2014. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

Agency Ethics Official, at (202) 205–3088.

*Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.*—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register.** Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

*Certification.*—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

*Written submissions.*—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is December 1, 2011. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is January 13, 2012. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

*Inability to provide requested information.*—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

*Information to be Provided in Response to this Notice of Institution:* As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2005.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2010, except as noted (report quantity data in short tons and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (*i.e.,* the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating

income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2010 (report quantity data in short tons and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2010 (report quantity data in short tons and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Subject Merchandise* in the *Subject Country* (i.e., the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* after 2005, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country,* and such merchandise from other countries.

(13) (Optional) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

**Authority:** This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: October 24, 2011.

**James R. Holbein,**

*Secretary to the Commission.*

[FR Doc. 2011–27932 Filed 10–31–11; 8:45 am]

**BILLING CODE 7020–02–P**

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

**[Docket No. OSHA–2010–0047]**

### Bloodborne Pathogens Standard; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Request for public comments.

**SUMMARY:** OSHA solicits public comments concerning its proposal to extend OMB approval of the information collection requirements specified in the Bloodborne Pathogens Standard (29 CFR 1910.1030). The information collection requirements specified in the Bloodborne Pathogens Standard provide employers and workers with means to provide protection from adverse health effects associated with occupational exposure to bloodborne pathogens.

**DATES:** Comments must be submitted (postmarked, sent, or received) by January 3, 2012.

**ADDRESSES:**

*Electronically:* You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

*Facsimile:* If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

*Mail, hand delivery, express mail, messenger, or courier service:* When using this method, you must submit a copy of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2010–0047, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–2625, 200 Constitution Avenue NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., E.T.

*Instructions:* All submissions must include the Agency name and OSHA docket number for the Information Collection Request (ICR) (OSHA–2010–0047). All comments, including any personal information you provide, are placed in the public docket without change and may be made available online at *http://www.regulations.gov.*

For further information on submitting comments, see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.

*Docket:* To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You also may contact Theda Kenney at the address below to obtain a copy of the ICR.

**FOR FURTHER INFORMATION CONTACT:** Theda Kenney or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2222.

**SUPPLEMENTARY INFORMATION:**

## I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

The collections of information contained in the Standard include a written exposure control plan, documentation of workers' hepatitis B vaccinations and post- exposure evaluations and follow-up medical visits, training, related recordkeeping and a sharps injury log. Information generated in accordance with these provisions provides the employer and the worker with means to provide protection from the adverse health effects associated with occupational exposure to bloodborne pathogens.

As required by the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3506(c)(2)(A)), OSHA published a notice in the **Federal Register** on December 8, 2010 (75 FR 76492, Docket No. OSHA–2010–0047) requesting public comment on its proposed extension of the information collection requirements contained in the existing Standard on Bloodborne Pathogens (the Standard; 29 CFR 1910.1030). The notice was part of a preclearance consultation program intended to provide those interested parties the opportunity to comment on OSHA's request for an extension by the Office of Management and Budget (OMB) of a previous approval of the information collection requirements in the Standard. The Agency received three comments on the proposed extension.

However, as a result of the SIP–III final rule published on June 8, 2011 (76 FR 33590), the ''transfer of records'' requirement contained in the Standard (formerly 29 CFR 1910.1030(n)(4)(ii)) was revoked. In accordance with the PRA, prior to issuance of the final rule, OSHA submitted a revised ICR to OMB on May 27, 2011, requesting approval to remove this requirement. There were no burden hours and costs associated with this provision. On August 11, 2011, OMB issued a Notice of Action (NOA) indicating approval of the request.

The NOA instructed OSHA to publish a second notice in the **Federal Register** to solicit comments on its proposal to extend OMB's approval of the information collection requirements. In response to the NOA, the Agency is publishing a second **Federal Register** notice requesting comments on the revised ICR. The Agency will respond to any previous or new comments submitted on the proposed extension and submit the final ICR to OMB.

## II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions to protect workers, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

## III. Proposed Actions

OSHA is requesting that OMB extend its approval of the information collection requirements contained in the Bloodborne Pathogens Standard (29 CFR 1910.1030). The Agency is requesting that it retain its current estimate of 14,518,778 burden hours. The Agency will summarize the comments submitted in response to this notice and will include this summary in the request to OMB.

*Type of Review:* Extension of a currently approved collection.

*Title:* Bloodborne Pathogens Standard (29 CFR 1910.1030).

*OMB Number:* 1218–0180.

*Affected Public:* Business or other for-profit organizations; Not-for-profit institutions; Federal, State, Local, or Tribal Governments.

*Number of Respondents:* 666,933.

*Frequency:* On occasion.

*Total Responses:* 26,171,202.

*Average Time per Response:* Time per response varies from 5 minutes (.08 hour) to maintain records to 1.5 hours for workers to receive training or medical evaluations.

*Estimated Total Burden Hours:* 14,518,778.

*Estimated Cost (Operation and Maintenance):* $34,342,534.

## IV. Public Participation—Submission of Comments on this Notice and Internet

*Access to Comments and Submissions*

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for the ICR (Docket No. OSHA–2010–0047). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or a facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name,

date, and docket number, so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger or courier service, please contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information, such as social security numbers and date of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (*e.g.,* copyrighted material) is not publicly available to read or download through this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available at the Web site's ''User Tips'' link.

Contact the OSHA Docket Office for information about materials not available through the Web site and for assistance in using the Internet to locate docket submissions.

## V. Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 4–2010 (75 FR 55355).

Signed at Washington, DC, on October 27, 2011.

**David Michaels,**

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

[FR Doc. 2011–28265 Filed 10–31–11; 8:45 am]

**BILLING CODE 4510–26–P**

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

**[Docket No. OSHA–2011–0008]**

### Standard on Commercial Diving Operations; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Request for public comments.

**SUMMARY:** OSHA solicits public comments concerning its proposal to extend OMB approval of the information collection requirements specified in the Commercial Diving Operations Standard (29 CFR part 1910, subpart T).

**DATES:** Comments must be submitted (postmarked, sent, or received) by January 3, 2012.

**ADDRESSES:** *Electronically:* You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

*Facsimile:* If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

*Mail, hand delivery, express mail, messenger, or courier service:* When using this method, you must submit your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2011–0008, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–2625, 200 Constitution Avenue NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., E.T.

*Instructions:* All submissions must include the Agency name and OSHA docket number (OSHA–2011–0008) for the Information Collection Request (ICR). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov*. For further information on submitting comments see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION.**

*Docket:* To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You also may contact Theda Kenney at the address below to obtain a copy of the ICR.

**FOR FURTHER INFORMATION CONTACT:** Theda Kenney or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2222.

**SUPPLEMENTARY INFORMATION:**

## I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

As required by the Paperwork Reduction Act of 1995 (the PRA–95) (44 U.S.C. 3506(c)(2)(A)), OSHA published a notice in the **Federal Register** on March 16, 2011 (76 FR 14432, Docket No. OSHA–2011–0008) requesting public comment on its proposed extension of the information collection requirements referenced in the existing Standard on Commercial Diving Operations (29 CFR part 1910, Subpart

T, ''the Standard''). The notice was part of a preclearance consultation program intended to provide those interested parties the opportunity to comment on OSHA's request for an extension by OMB of a previous approval of the information collection requirements in the Standard. The Agency received nine comments in response to its notice.

However, as a result of the Standards Improvement Project—Phase III (SIP–III) final rule published on June 8, 2011 (76 FR 33590), the provision that required employers to ''transfer records'' to NIOSH when they ceased to do business (formerly 29 CFR 1910.440(b)(5)) was revoked. In accordance with the PRA–95, prior to issuance of the final rule, on May 27, 2011, OSHA submitted a revised Information Collection Request (ICR) to OMB requesting approval to remove this requirement and the associated burden hours and costs. On August 11, 2011, OMB issued a Notice of Action (NOA) indicating approval of the request.

In addition, the NOA instructed the Department of Labor to publish a second notice in the **Federal Register** to solicit comments on its proposal to extend OMB's approval of the information collection requirements. In response, this notice fulfills the NOA instructions. The Agency will respond to any comments submitted in response to this notice and submit the final ICR to OMB.

The Standard applies to diving and related support operations conducted by employers involved in general industry, construction, ship repairing, shipbuilding, shipbreaking, and longshoring, and specifies equipment and procedures that prevent injury and death among workers exposed to hazards associated with diving and diving support operations.

The Standard contains a number of paperwork requirements. Following is a list of provisions containing these requirements.

Section 1910.401(b), Sections 1910.410(a)(3) and (a)(4), Section 1910.420(a), Section 1910.421(b), Section 1910.421(f), Section 1910.421(h), Section 1910.422(e), Sections 1910.423(b)(1)(ii) through (b)(2), Section 1910.423(d), Section 1910.423(e), Sections 1910.430(a), (b)(4), (c)(1)(iii), (c)(3)(i), (f)(3)(ii), and (g)(2), and Sections 1910.440(a)(2) and (b).

## II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions to protect workers, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

## III. Proposed Actions

OSHA is requesting that it retain OMB approval of its current burden hour estimate of 205,096 hours. The Agency will summarize any comments submitted in response to this notice and will include this summary in the request to OMB.

*Type of Review:* Extension of a currently approved collection.

*Title:* Commercial Diving Operations (29 CFR part 1910, subpart T).

*OMB Number:* 1218–0069.

*Affected Public:* Business or other for-profits; Not-for-profit institutions; Federal Government; State, Local or Tribal Governments.

*Number of Respondents:* 3,000.

*Frequency:* On occasion; Annually.

*Total Responses:* 4,002,965.

*Average Time per Response:* Varies from 3 minutes (.05 hour) to replace the safe practices manual to 1 hour to develop a new manual.

*Estimated Total Burden Hours:* 205,096.

*Estimated Cost (Operation and Maintenance):* $0.

## IV. Public Participation—Submission of Comments on This Notice and Internet

*Access to Comments and Submissions*

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for this Information Collection Request (ICR) (Docket No. OSHA–2011–0008). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or a fax submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger or courier service, please contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information, such as social security numbers and dates of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (*e.g.,* copyrighted material) is not publicly available to read or download through this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available at the Web site's ''User Tips'' link. Contact the OSHA Docket Office for information about materials not available through the Web site, and for assistance in using the Internet to locate docket submissions.

## V. Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 4–2010 (75 FR 55355).

Signed at Washington, DC, on October 27, 2011.

**David Michaels,**

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

[FR Doc. 2011–28267 Filed 10–31–11; 8:45 am]

BILLING CODE 4510–26–P

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## DEPARTMENT OF LABOR

### Office of Workers' Compensation Programs

### Division of Longshore and Harbor Workers' Compensation; Proposed Renewal of Existing Collection; Comment Request

**ACTION:** Notice.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce

paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995. (PRA95) [44 U.S.C. 3506(c)(2)(A)] This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Office of Workers' Compensation Programs (OWCP) is soliciting comments concerning the proposed collection: Notice of Final Payment or Suspension of Compensation Benefits (LS–208). A copy of the proposed information collection request can be obtained by contacting the office listed below in the **ADDRESSES** section of this Notice.

**DATES:** Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before January 3, 2012.

**ADDRESSES:** Mr. Vincent Alvarez, U.S. Department of Labor, 200 Constitution Ave. NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0372, fax (202) 693–2447, Email *Alvarez.Vincent@dol.gov.* Please use only one method of transmission for comments (mail, fax, or Email).

**SUPPLEMENTARY INFORMATION:**

## I. Background

The Office of Workers' Compensation Programs (OWCP) administers the Longshore and Harbor Workers' Compensation Act (LHWCA). The Act provides benefits to workers injured in maritime employment on the navigable waters of the United States or in an adjoining area customarily used by an employer in loading, unloading, repairing, or building a vessel. In addition, several acts extend the Longshore Act's coverage to certain other employees.

Under Section 914(g) of the Longshore Act, the employer or its insurance carrier must file a report of the compensation paid to a claimant at the time final payment is made. The Act requires that the form must be filed within sixteen days of the final payment of compensation with the District Director in the compensation district in which the injury occurred. The form requests information regarding the beginning and ending dates of compensation payments, compensation rates, reason payments were terminated and types and amount of compensation payments. Filing of the report is mandatory, and failure to do so is subject to a civil penalty. This information collection is currently approved for use through January 31, 2012.

## II. Review Focus

The Department of Labor is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility and clarity of the information to be collected; and

* Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

## III. Current Actions

The Department of Labor seeks the extension of approval of this information collection in order to carry out its responsibility to meet the statutory requirements to provide compensation or death benefits under the Act to workers covered by the Act.

*Agency:* Office of Workers' Compensation Programs.

*Type of Review:* Extension.

*Title:* Notice of Final Payment or Suspension of Compensation Benefits.

*OMB Number:* 1240–0041.

*Agency Number:* LS–208.

*Affected Public:* Business or other for-profit.

*Total Respondents:* 600.

*Total Annual Responses:* 21,000.

*Estimated Total Burden Hours:* 5,250.

*Estimated Time per Response:* 15 minutes.

*Frequency:* On occasion.

*Total Burden Cost (capital/startup):* $0.

*Total Burden Cost (operating/maintenance):* $16,590.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: October 26, 2011.

**Vincent Alvarez,**

*Agency Clearance Officer, Office of Workers' Compensation Programs, U.S. Department of Labor.*

[FR Doc. 2011–28233 Filed 10–31–11; 8:45 am]

**BILLING CODE 4510–CF–P**

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## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice (11–108)]**

## NASA Advisory Council; Charter Renewal

**AGENCY:** National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of renewal and amendment of the charter of the NASA Advisory Council.

**SUMMARY:** Pursuant to sections 14(b)(1) and 9(c) of the Federal Advisory Committee Act (Pub. L. 92–463), and after consultation with the Committee Management Secretariat, General Services Administration, the NASA Administrator has determined that renewal and amendment of the charter of the NASA Advisory Council is in the public interest in connection with the performance of duties imposed on NASA by law. The renewed charter is for a two-year period ending October 25, 2013. It is identical to the previous charter in all respects except it removes references that are no longer applicable, and updates the listing of committees to reflect the recent merger of the Exploration Committee and Space Operations Committee to become the Human Exploration and Operations Committee.

**FOR FURTHER INFORMATION CONTACT:** Ms. Marla King, NASA Advisory Council Administrative Officer, Advisory Committee Management Division, Office of International and Interagency Relations, (202) 358–1148, National Aeronautics and Space Administration Headquarters, Washington, DC 20546–0001.

Dated: October 26, 2011.

**P. Diane Rausch,**

*Advisory Committee Management Officer, National Aeronautics and Space Administration.*

[FR Doc. 2011–28275 Filed 10–31–11; 8:45 am]

**BILLING CODE 7510–13–P**

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**AGENCY:** National Archives and Records Administration (NARA).

**ACTION:** Notice.

**SUMMARY:** NARA is giving public notice that the agency has submitted to OMB for approval the information collection described in this notice. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

**DATES:** Written comments must be submitted to OMB at the address below on or before December 1, 2011 to be assured of consideration.

**ADDRESSES:** Send comments to Mr. Nicholas A. Fraser, Desk Officer for NARA, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; *fax:* (202) 395–5167; or electronically mailed to *Nicholas_A._Fraser@omb.eop.gov*.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number (301) 837–1694 or fax number (301) 713–7409.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. NARA published a notice of proposed collection for this information collection on August 24, 2011 (76 FR 52991 and 52992). No comments were received. NARA has submitted the described information collection to OMB for approval.

In response to this notice, comments and suggestions should address one or more of the following points: (a) Whether the proposed information collection is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology; and (e) whether small businesses are affected by this collection. In this notice, NARA is soliciting comments concerning the following information collection:

*Title:* Request Pertaining to Military Records.

*OMB number:* 3095–0029.

*Agency form number:* SF 180.

*Type of review:* Regular.

*Affected public:* Veterans, their authorized representatives, state and local governments, and businesses.

*Estimated number of respondents:* 1,028,769.

*Estimated time per response:* 5 minutes.

*Frequency of response:* On occasion (when respondent wishes to request information from a military personnel record).

*Estimated total annual burden hours:* 85,731 hours.

*Abstract:* The authority for this information collection is contained in 36 CFR 1233.18. In accordance with rules issued by the Department of Defense (DOD) and Department of Homeland Security (DHS, US Coast Guard), the National Personnel Records Center (NPRC) of the National Archives and Records Administration (NARA) administers military service records of veterans after discharge, retirement, and death. When veterans and other authorized individuals request information from or copies of documents in military service records, they must provide in forms or in letters certain information about the veteran and the nature of the request. Federal agencies, military departments, veterans, veterans' organizations, and the general public use Standard Forms (SF) 180, Request Pertaining to Military Records, in order to obtain information from military service records stored at NPRC. Veterans and next-of-kin of deceased veterans can also use eVetRecs (*http://www.archives.gov/research_room/vetrecs/*) to order copies.

Dated: October 24, 2011.

**Michael L. Wash,**

*Executive for Information Services/CIO.*

[FR Doc. 2011–28235 Filed 10–31–11; 8:45 am]

BILLING CODE 7515–01–P

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**AGENCY:** National Archives and Records Administration (NARA).

**ACTION:** Notice.

**SUMMARY:** NARA is giving public notice that the agency has submitted to OMB for approval the information collection described in this notice. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

**DATES:** Written comments must be submitted to OMB at the address below on or before December 1, 2011 to be assured of consideration.

**ADDRESSES:** Send comments to Mr. Nicholas A. Fraser, Desk Officer for NARA, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; *fax:* (202) 395–5167; or electronically mailed to *Nicholas_A._Fraser@omb.eop.gov.*

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number (301) 837–1694 or fax number (301) 713–7409.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. NARA published a notice of proposed collection for this information collection on August 3, 2011 (76 FR 46855 and 46856). No comments were received. NARA has submitted the described information collection to OMB for approval.

In response to this notice, comments and suggestions should address one or more of the following points: (a) Whether the proposed information collection is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology; and (e) whether small businesses are affected by this collection. In this notice, NARA is soliciting comments concerning the following information collection:

*Title:* Researcher Application.

*OMB number:* 3095–0016.

*Agency form number:* NA Form 14003.

*Type of review:* Regular.

*Affected public:* Individuals or households, business or other for-profit, not-for-profit institutions, Federal, State, Local or Tribal Government.

*Estimated number of respondents:* 18,487.

*Estimated time per response:* 8 minutes.

*Frequency of response:* On occasion.

*Estimated total annual burden hours:* 2,465 hours.

*Abstract:* The information collection is prescribed by 36 CFR 1254.8. The collection is an application for a research card. Respondents are individuals who wish to use original archival records in a NARA facility. NARA uses the information to screen individuals, to identify which types of records they should use, and to allow further contact.

Dated: October 24, 2011.

**Michael L. Wash,**

*Executive for Information Services/CIO.*

[FR Doc. 2011–28231 Filed 10–31–11; 8:45 am]

BILLING CODE 7515–01–P

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### Information Security Oversight Office

### National Industrial Security Program Policy Advisory Committee (NISPPAC)

**AGENCY:** Information Security Oversight Office, National Archives and Records Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act (5 U.S.C. app 2) and implementing regulation 41 CFR 101–6, announcement is made for the following committee meeting to discuss National Industrial Security Program policy matters.

**DATES:** The meeting will be held on November 16, 2011 from 10 a.m. to 12 p.m.

**ADDRESSES:** National Archives and Records Administration, 700 Pennsylvania Avenue NW., Archivist's Reception Room, Room 105, Washington, DC 20408.

**SUPPLEMENTARY INFORMATION:** This meeting will be open to the public. However, due to space limitations and access procedures, the name and telephone number of individuals planning to attend must be submitted to the Information Security Oversight Office (ISOO) no later than Friday, November 11, 2011. ISOO will provide additional instructions for gaining access to the location of the meeting.

**FOR FURTHER INFORMATION CONTACT:** David O. Best, Senior Program Analyst, ISOO, National Archives Building, 700 Pennsylvania Avenue NW., Washington, DC 20408, telephone number (202) 357–5123, or at *david.best@nara.gov.* Contact ISOO at *ISOO@nara.gov* and the NISPPAC at *NISPPAC@nara.gov.*

Dated: October 20, 2011.

**Mary Ann Hadyka,**

*Committee Management Officer.*

[FR Doc. 2011–28236 Filed 10–31–11; 8:45 am]

BILLING CODE 7515–01–P

## NATIONAL CREDIT UNION ADMINISTRATION

### Agency Information Collection Activities: Submission to OMB for an Extension of a Currently Approved Collection; Comment Request

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Request for comment.

**SUMMARY:** The NCUA is submitting the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). This information collection is published to obtain comments from the public.

**DATES:** Comments will be accepted until January 3, 2012.

**ADDRESSES:** Interested parties are invited to submit written comments to the NCUA or OMB contacts listed below:

*NCUA Contact:* Tracy Crews, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, Fax No. (703) 837–2861, *Email: OCIOMail@ncua.gov.*

*OMB Contact: Attn:* Desk Officer for the National Credit Union Administration (NCUA), Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or a copy of the information collection request should be directed to Tracy Crews at the National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, or at (703) 518–6444.

**SUPPLEMENTARY INFORMATION:** Proposal for the following collection of information:

*Title:* Large Credit Union Financials and Board Packages.

*OMB Number:* 3133–0179.

*Form Number:* None.

*Type of Review:* Extension of a currently approved collection.

*Description:* The region needs the information to effectively monitor financial trends and emerging issues of federally insured credit unions (FICUs) $1 billion or greater between onsite visitations. These institutions present greater risk to the NCUSIF due to their asset size and complexity.

*Respondents:* Federally insured credit unions (FICUs) with $1 billion or greater in assets.

*Estimated No. of Respondents/Record keepers:* 35.

*Estimated Burden Hours per Response:* ½ hour (30 minutes).

*Frequency of Response:* Monthly.

*Estimated Total Annual Burden Hours:* 210 hours.

*Estimated Total Annual Cost:* 0.

By the National Credit Union Administration Board on October 26, 2011.

**Mary Rupp,**

*Secretary of the Board.*

[FR Doc. 2011–28180 Filed 10–31–11; 8:45 am]

BILLING CODE 7535–01–P

## NATIONAL LABOR RELATIONS BOARD

### Sunshine Act Meetings: November 2011

**TIME AND DATES:**

**All meetings are held at 2:30 p.m.**

Tuesday, November 1;
Wednesday, November 2;
Thursday, November 3;
Tuesday, November 8;
Wednesday, November 9;
Thursday, November 10;
Tuesday, November 15;
Wednesday, November 16;
Thursday, November 17;
Tuesday, November 22;
Wednesday, November 23;
Tuesday, November 29;
Wednesday, November 30.

**PLACE:** Board Agenda Room, No. 11820, 1099 14th St. NW., Washington DC 20570.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Pursuant to § 102.139(a) of the Board's Rules and Regulations, the Board or a panel thereof will consider ''the issuance of a subpoena, the Board's participation in a civil action or proceeding or an arbitration, or the initiation, conduct, or disposition * * * of particular representation or unfair labor practice proceedings under section 8, 9, or 10 of the [National Labor Relations] Act, or any court proceedings collateral or ancillary thereto.'' See also 5 U.S.C. 552b(c)(10).

**CONTACT PERSON FOR MORE INFORMATION:** Lester A. Heltzer, Executive Secretary, (202) 273–1067.

Dated: October 27, 2011.

**Lester A. Heltzer,**

*Executive Secretary.*

[FR Doc. 2011–28358 Filed 10–28–11; 11:15 am]

BILLING CODE 7545–01–P

## NATIONAL SCIENCE FOUNDATION

### Notice of Permit Modification Issued Under the Antarctic Conservation Act of 1978

**AGENCY:** National Science Foundation.

**ACTION:** Notice of permit issued under the Antarctic Conservation of 1978, Public Law 95–541.

**SUMMARY:** The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

**FOR FURTHER INFORMATION CONTACT:** Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

**SUPPLEMENTARY INFORMATION:** On September 22, 2011, the National Science Foundation published a notice in the **Federal Register** of a permit application received. The permit was issued on October 27, 2011 to:

Sam Feola; Permit No. 2012–009.

**Nadene G. Kennedy,**

*Permit Officer.*

[FR Doc. 2011–28215 Filed 10–31–11; 8:45 am]

BILLING CODE 7555–01–P

## NATIONAL TRANSPORTATION SAFETY BOARD

### Sunshine Act Meeting

**TIME AND DATE:** 9:30 a.m., Tuesday, November 8, 2011.

**PLACE:** NTSB Conference Center, 429 L'Enfant Plaza SW., Washington, DC 20594.

**STATUS:** The one item is open to the public.

**MATTER TO BE CONSIDERED:** 8352 Railroad Accident Report—Miami International Airport, Automated People Mover Train Collision with Passenger Terminal Wall Miami, Florida, November 28, 2008.

**NEWS MEDIA CONTACT:** *Telephone:* (202) 314–6100.

The press and public may enter the NTSB Conference Center one hour prior to the meeting for set up and seating.

Individuals requesting specific accommodations should contact Rochelle Hall at (202) 314–6305 by Friday, November 4, 2011.

The public may view the meeting via a live or archived webcast by accessing a link under ''News & Events'' on the NTSB home page at *http://www.ntsb.gov.*

**FOR MORE INFORMATION CONTACT:** Candi Bing, (202) 314–6403 or by Email at *bingc@ntsb.gov.*

Dated: October 28, 2011.

**Candi R. Bing,**

*Federal Register Liaison Officer.*

[FR Doc. 2011–28412 Filed 10–28–11; 4:15 pm]

BILLING CODE 7533–01–P

## NUCLEAR REGULATORY COMMISSION

**[NRC–2011–0252]**

### Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

#### Background

Pursuant to section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from October 6, 2011 to October 19, 2011. The last biweekly notice was published on October 18, 2011 (76 FR 64388).

*Addresses:* Please include Docket ID NRC–2011–0252 in the subject line of your comments. Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site *http://www.regulations.gov.* Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

You may submit comments by any one of the following methods.

- *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2011–0252. Address questions about NRC dockets to Carol Gallagher (301) 492–3668; email *Carol.Gallagher@nrc.gov.*
- *Mail comments to:* Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
- *Fax comments to:* RADB at (301) 492–3446.

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

- *NRC's Public Document Room (PDR):* The public may examine and have copied, for a fee, publicly available documents at the NRC's PDR, O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* Publicly available documents created or received at the NRC are accessible electronically through ADAMS in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of the NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, (301) 415–4737, or by email to *pdr.resource@nrc.gov.*
- *Federal Rulemaking Web Site:* Public comments and supporting materials related to this notice can be found at *http://www.regulations.gov* by searching on Docket ID: NRC–2011–0252.

#### Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in Title 10 of the *Code of Federal Regulations* (10 CFR), 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a

margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules, Announcements and Directives Branch (RADB), TWB–05–B01M, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be faxed to the RADB at (301) 492–3446. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. NRC regulations are accessible electronically from the NRC Library on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the Internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at (301) 415–1677, to request (1) A digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or

representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in NRC's ''Guidance for Electronic Submission,'' which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through EIE, users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email at *MSHD.Resource@nrc.gov,* or by a toll-free call at (866) 672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, *Attention:* Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/*, unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Non-timely filings will not be entertained absent a determination by the presiding officer that the petition or request should be granted or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

For further details with respect to this license amendment application, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available documents created or received at the NRC are available online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff at 1 -(800) –397–4209, (301) 415–4737, or by email to *pdr.resource@nrc.gov.*

*Dominion Energy Kewaunee, Inc. (DEK), Docket No. 50–305, Kewaunee Power Station (KPS), Kewaunee County, Wisconsin*

*Date of amendment request:* May 9, 2011.

*Description of amendment request:* The proposed amendment would revise the KPS current licensing basis (CLB) regarding the manner in which service water is supplied to the component cooling heat exchangers by the main return valves and the bypass flow control valves.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of any accident previously evaluated?

*Response:* No.

The proposed amendment would modify the KPS current licensing basis by changing the automatic function of providing service water flow to the component cooling heat exchangers, from being provided by control

of the main service water return valves to being provided by the service water bypass flow control valves. The probability of occurrence of previously evaluated accidents is not affected, since the affected equipment is used to mitigate certain design basis accidents (DBA's) and does not contribute to the initiation of any previously evaluated accidents.

As a result of a physical plant modification, manual action is now required to open the service water main return valves to the component cooling heat exchangers for initiation of the sump recirculation phase of LOCA mitigation. These valves were previously designed to open upon receipt of an SI signal. However, automatic action to supply service water during the immediate injection phase of a postulated accident continues to be in place following this modification without any adverse functional impact. This automatic action is performed by the bypass flow control valves (*i.e.,* the temperature control valves) in the same manner as previously performed by the main return valves. The bypass flow control valves automatically supply required cooling water flow, consistent with existing analyses for the injection phase of the postulated accident. The service water main return valves are only needed to be opened during the subsequent recirculation phase of safety injection (SI) for LOCA mitigation. Transition to the recirculation phase of SI cooling previously was, and currently remains, achieved by a series of manual actions. Adding an additional step to the procedure controlling this transition does not significantly impact the probability of correctly performing this activity. Since the required automatic function is maintained, and the additional manual action required to perform injection to recirculation phase realignment is simple, this change does not significantly increase the probability of a malfunction of a component important to safety.

Therefore, the proposed amendment does not involve a significant increase in the consequences of a previously evaluated accident.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any previously evaluated?

*Response:* No.

The proposed amendment changes the manner in which service water is supplied to the component cooling heat exchangers immediately after a DBA involving an SI signal. Previously, service water was automatically supplied to the component cooling heat exchangers through the service water main return valves. This design has been changed, and currently service water is supplied to the component cooling heat exchangers through the service water bypass flow control valves. No physical changes are being made to any other portion of the plant, so no new accident causal mechanisms are being introduced. The proposed change does not result in any new mechanisms that could initiate damage to the reactor or its principal safety barriers (*i.e.,* fuel cladding, reactor coolant system, or primary containment).

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in the margin of safety?

*Response:* No.

The proposed amendment does not affect the inputs or assumptions of any of the design basis analyses that demonstrate the integrity of the fuel cladding, reactor coolant system, or containment during accident conditions. The automatic function of supplying required cooling water to the component cooling heat exchangers at the onset of a postulated accident is not being changed. Removal of the automatic opening signal from the service water main return valves will require that these valves be manually opened during the latter stages of the postulated accident when aligning for containment sump recirculation cooling. However, aligning for containment sump recirculation cooling had previously credited a series of manual actions within the analyses for the design basis accident. The added step of opening the service water main return valves does not significantly impact the ability of operators to perform this alignment. Furthermore, by reducing the initial excess supply of cooling water (via lower capacity valves) to the component cooling system heat exchangers, additional cooling water is available to the containment fan coil units for mitigating the postulated accident and the margin to two-phase flow in the affected cooling system is improved. Thus, DEK considers that the proposed changes will increase overall effectiveness of the engineered safety features' response to postulated accidents involving initiation of an SI signal.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Lillian M. Cuoco, Senior Counsel, Dominion Resources Services, Inc., Counsel for Dominion Energy Kewaunee, Inc., 120 Tredegar Street, Richmond, VA 23219.

*NRC Branch Chief:* Robert J. Pascarelli.

*Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska*

*Date of amendment request:* January 5, 2011, as supplemented by letter dated October 6, 2011.

*Description of amendment request:* The proposed amendment would revise the Technical Specification (TS) 3.4.3, ''Safety/Relief Valves (SRVs) and Safety Valves (SVs).'' The proposed amendment would reduce the number of SRVs required to be OPERABLE for over-pressure protection (OPP) from eight to seven.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

The number of SRVs installed in the plant and their configuration are not being changed by this amendment. Since there are no changes to any physical configuration of the SRVs nor to their lift setpoints, no new accident initiators are introduced. The plant will continue to be operated in the same manner as before and will respond to accidents in the same manner as before. Only the number of SRVs required to be operable is being changed. Therefore, the proposed change does not result in a significant increase in the probability of an accident previously evaluated.

The change does, in fact, reduce the number of SRVs originally assumed to be operable in design basis accident mitigation calculations. The General Electric Hitachi (GEH) analysis has shown that reducing the number of SRVs required to be operable from eight to six continues to preserve substantial margin to OPP and ATWS [anticipated transient without scram] limits. With one SRV inoperable, i.e. reducing the number of required operable SRVs from eight to seven, the reduction in margin is well within the safety design bases of the nuclear pressure relief system. Therefore, the functioning of fewer SRVs continues to accomplish the required pressure relief for the analyzed transients and events.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

The proposed amendment does not change the design function or operation of the SRVs. The change does not create the possibility of a new or different kind of accident since there is no credible new failure mechanism, malfunction, or accident initiator not considered in the design and licensing bases.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

*Response:* No.

The safety margins affected by this proposed change are the OPP pressure relief margin to Reactor Coolant System Pressure Boundary design pressure and the ATWS pressure relief margin to the American Society of Mechanical Engineers Level 'C' Service Limit. The GEH analysis performed to support this change demonstrates the margin between maximum pressure rise,

upon SRV actuation, and the OPP limit continues to be substantial. For ATWS with one SRV inoperable, available remaining margin to the Level C Service limit is still sufficient to ensure maximum pressure and required steam flows are within analysis success criteria. The analysis success criteria are, in turn, below the accident and transient limits. The change does not exceed a design basis or safety limit, and it does not significantly reduce the margin of safety. Thus, the margin reduction for one SRV inoperable is not significant.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Mr. John C. McClure, Nebraska Public Power District, Post Office Box 499, Columbus, NE 68602–0499.

*NRC Branch Chief:* Michael T. Markley.

*Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska*

*Date of amendment request:* March 26, 2011.

*Description of amendment request:* The proposed amendment would revise several Technical Specification (TS) pages to correct formatting errors and typographical errors, including pages within TS 3.1.3, ''Control Rod OPERABILITY,'' TS 3.1.4, ''Control Rod Scram Times,'' TS 3.3.1.1, ''Reactor Protection System (RPS) Instrumentation,'' TS 3.3.5.1, ''Emergency Core Cooling System (ECCS) Instrumentation,'' TS 3.3.6.1, ''Primary Containment Isolation Instrumentation,'' TS 3.3.6.2, ''Secondary Containment Isolation Instrumentation,'' TS 3.3.8.1, ''Loss of Power (LOP) Instrumentation,'' TS 3.3.8.2, ''Reactor Protection System (RPS) Electric Power Monitoring,'' TS 3.5.1, ''ECCS—Operating,'' TS 3.5.2, ''ECCS—Shutdown,'' TS 3.6.1.1, ''Primary Containment,'' TS 3.6.4.3, ''Standby Gas Treatment (SGT) System,'' TS 3.7.4, ''Control Room Emergency Filter (CREF) System,'' TS 3.8.1, ''AC [Alternating Current] Sources—Operating,'' TS 3.8.3, ''Diesel Fuel Oil, Lube Oil, and Starting Air,'' TS 5.2, ''Organization,'' TS 5.5, ''Programs and Manuals,'' and TS 5.5, ''Programs and Manuals''). In addition, the amendment would revise TS 5.5.6, ''Inservice Testing Program,'' to remove an expired one-time exception of the 5-year frequency requirement for setpoint testing of safety valve MSRV–70ARV.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

The proposed changes correct formatting and typographical errors and [remove] an expired one-time exception. Administrative and editorial changes such as these are not an initiator of any accident previously evaluated. As a result, the probability of an accident previously evaluated is not affected. The consequences of an accident with the incorporation of these administrative and editorial changes are not different than the consequences of the same accident without these changes. As a result, the consequences of an accident previously evaluated are not affected by these changes.

Based on the above, it is concluded that the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

The proposed changes do not modify the plant design, nor do the proposed changes alter the operation of the plant or equipment involved in either routine plant operation or in the mitigation of the design basis accidents. The proposed changes are editorial or administrative only.

Based on the above, it is concluded that the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

*Response:* No.

The proposed changes consist of administrative and editorial changes to correct formatting and typographical errors and to remove an expired one-time exception. The changes do not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined. The safety analysis acceptance criteria are not affected by these changes. The proposed changes will not result in plant operation in a configuration outside of the design basis.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Mr. John C. McClure, Nebraska Public Power District, Post Office Box 499, Columbus, NE 68602–0499.

*NRC Branch Chief:* Michael T. Markley.

*Southern Nuclear Operating Company, Inc., Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia*

*Date of amendment request:* September 1, 2011.

*Description of amendment request:* The proposed amendment would revise Technical Specification Limiting Conditions for Operation 3.7.9 ''Ultimate Heat Sink.'' The proposed changes involve changing the criteria for Nuclear Service Cooling Water (NSCW) tower three and four fan operation. These proposed changes include an increase in the wet bulb temperature limit for three fan operation and addition of a Condition that allows a 7-day Completion Time for a specific situation.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

The proposed changes do not significantly increase the probability or consequences of an accident previously evaluated in the Final Safety Analysis Report (FSAR). The Ultimate Heat Sink is not an initiator to any analyzed accident sequence. Operation in accordance with the proposed technical specification will continue to ensure that the Ultimate Heat Sink remains capable of performing its safety function and that all analyzed accidents will continue to be mitigated as previously analyzed. The proposed technical specification changes will not initiate any accident; therefore, the probability or consequences of an accident have not been increased.

Therefore, these changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

The proposed changes do not create the possibility of a new or different kind of accident than any accident already evaluated in the FSAR. No new accident scenarios, failure mechanisms or limiting single failures are introduced as result of the proposed

changes. The changes have no adverse effects on any safety-related system.

Therefore, all accident analyses criteria continue to be met and these changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

*Response:* No.

Based on the operability of the required NSCW cooling tower fans, the accident analysis assumptions continue to be met with enactment of the proposed changes. The system's design and operation are not affected by the proposed changes. The safety analysis acceptance criteria are not altered by the proposed changes nor is there a change to any Safety Analysis Limit. Finally, the proposed compensatory measures will provide further assurance that no significant reduction in safety margin will occur. The proposed changes provide reasonable assurance that the NSCW system will continue to perform its intended safety functions.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Mr. Arthur H. Domby, Troutman Sanders, NationsBank Plaza, Suite 5200, 600 Peachtree Street, NE., Atlanta, Georgia 30308–2216.

*NRC Branch Chief:* Gloria Kulesa.

*STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas*

*Date of amendment request:* August 23, 2011.

*Description of amendment request:* The proposed amendment would revise the application of Risk-Managed Technical Specifications (RMTS) to Technical Specification (TS) 3.7.7, ''Control Room Makeup and Cleanup Filtration System.'' The proposed change would correct a potential misapplication of the Configuration Risk Management Program (CRMP) that is currently allowed by the TSs.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

The proposed change allows the Configuration Risk Management Program (CRMP) to be applied to Technical Specification (TS) 3.7.7, ''Control Room Makeup and Cleanup Filtration Systems'' for the condition where one train of the Control Room Makeup and Cleanup Filtration System is inoperable only due to the unavailability of cooling. The change deletes application of the CRMP where more than one train of CRHVAC is inoperable. Some action steps are re-numbered as an administrative change.

The change does not involve a significant increase in the probability of an accident previously evaluated because the change does not involve a change to the plant or its modes of operation. In addition, the risk-informed configuration management program will be applied to effectively manage the availability of required structures, systems, and components to assure there is no significant increase in the probability of an accident.

This proposed change does not increase the consequences of an accident because the design-basis mitigation function of the affected systems is not changed and the risk-informed configuration management program will be applied to effectively manage the availability of structures, systems, and components required to mitigate the consequences of an accident.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

The proposed change allows the Configuration Risk Management Program (CRMP) to be applied to TS 3.7.7, ''Control Room Makeup and Cleanup Filtration Systems'' for the condition where one train of the Control Room Makeup and Cleanup Filtration System is inoperable only due to the unavailability of cooling. The change deletes application of the CRMP where more than one train of CRHVAC is inoperable. Some action steps are renumbered as an administrative change.

The proposed change will not alter the plant configuration (no new or different type of equipment will be installed) or require any unusual operator actions. The proposed change will not alter the way any structure, system, or component functions, and will not significantly alter the manner in which the plant is operated. The response of the plant and the operators following an accident will not be different. In addition, the proposed change does not introduce any new failure modes.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction to a margin of safety?

*Response:* No.

The proposed change allows the Configuration Risk Management Program (CRMP) to be applied to TS 3.7.7, ''Control Room Makeup and Cleanup Filtration Systems'' for the condition where one train of the Control Room Makeup and Cleanup Filtration System is inoperable only due to the unavailability of cooling. The change deletes application of the CRMP where more than one train of CRHVAC is inoperable. Some action steps are renumbered as an administrative change.

The CRMP implements a risk-informed configuration risk management program in a manner to assure that adequate margins of safety are maintained. Application of the configuration risk management program to TS 3.7.7 complements the risk assessment required by the Maintenance Rule and effectively manages the risk for limiting condition for operation when the Control Room Makeup and Cleanup Filtration Systems are inoperable.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

*Attorney for licensee:* A. H. Gutterman, *Esq.,* Morgan, Lewis & Bockius, 1111 Pennsylvania Avenue NW., Washington, DC 20004.

*NRC Branch Chief:* Michael T. Markley.

*Tennessee Valley Authority, Docket No. 50–390, Watts Bar Nuclear Plant (WBN), Unit 1, Rhea County, Tennessee*

*Date of amendment request:* October 5, 2011.

*Description of amendment request:* The proposed amendment would revise facility operating license NPF–90 to remove license condition 2.G. This license condition describes reporting requirements of other requirements in Section 2.C of the facility operating license. The proposed change is consistent with the Nuclear Regulatory Commission (NRC)-approved change notice published in the **Federal Register** on November 4, 2005 (70 FR 67202), announcing the availability of this improvement through the consolidated line item improvement process. The **Federal Register** Notice included a model safety evaluation and model no significant hazards consideration (NSHC) determination, relating to the elimination of the license condition involving reporting of violations of other requirements (typically in License Conditions 2.C) in the operating license of some commercial nuclear power plants. The licensee affirmed the applicability of the model NSHC determination in its application dated October 5, 2011.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No

The proposed change involves the deletion of a reporting requirement. The change does not affect plant equipment or operating practices and therefore does not significantly increase the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

The proposed change is administrative in that it deletes a reporting requirement. The change does not add new plant equipment, change existing plant equipment, or affect the operating practices of the facility. Therefore, the change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

*Response:* No.

The proposed change deletes a reporting requirement. The change does not affect plant equipment or operating practices and therefore does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A, Knoxville, Tennessee 37902.

*NRC Branch Chief:* Stephen J. Campbell.

*Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri*

*Date of amendment request:* June 30, 2011.

*Description of amendment request:* The proposed amendment would revise Technical Specification (TS) 3.6.6, ''Containment Spray and Cooling Systems.'' Specifically, the amendment would revise Surveillance Requirement (SR) 3.6.6.3 for verifying the minimum required containment cooling train cooling water flow rate. Rather than require verifying each containment cooling train has a cooling water flow rate greater than or equal to 2200 gallons per minute (gpm), TS SR 3.6.6.3 would be revised to require verification that the flow rate is capable of being ''within limits'' for achieving the heat removal rate assumed in the Callaway Plant safety analyses. This change is supported by a change in the TS Bases for SR 3.6.6.3 to indicate where the flow rate limits are specified as well as to note that these limits provide assurance that the heat removal rate assumed in the Callaway Plant safety analyses will be achieved. The reason for the proposed change to TS SR 3.6.6.3 is to ensure that the surveillance verifies each containment cooling train has a flow rate capable of removing $141.4 \times 10^6$ Btu per hour as assumed in the Callaway Plant safety analyses of record. The assumed heat removal rate does not vary; however, the cooling water flow rate does change based on changing system conditions/parameters (*e.g.,* tube plugging and tube fouling) and, therefore, the cooling water flow rate should not be quantified in the TS.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

The proposed changes for verifying the minimum required containment cooling train cooling water flow rate have no impact on the frequency of occurrence of any of the accidents evaluated in the FSAR [Final Safety Analysis Report]. Changing from a specific flow rate to a flow rate ''within limits'' based on current system parameters has no impact on the likelihood of occurrence of a loss of coolant accident (LOCA), steam line break (SLB), plant transient, loss of offsite power (LOOP), or any such accident because the precursors for such accidents do not involve containment cooling. The failure or malfunction of a containment cooling train (due, for example, to an inadequate cooling flow rate) is not itself an initiator or precursor of any accident previously evaluated.

The CtCS [containment cooling system] and CSS [containment spray system] provide complementary methods of containment atmosphere cooling to limit post accident pressure and temperature in containment to less than the design values. They are designed to ensure that the heat removal capability required during the post accident period can be attained. Changing the limit for the minimum required CtCS cooling train flow from a specified value to ''within limits'' appropriately accounts for changes in system conditions while still requiring the heat removal rate specified in the accident analysis to be met. Consequently, the proposed changes do not involve a change in the required performance of the CtCS and therefore do not adversely affect the accident mitigation function of the CtCS.

The CtCS, operating in conjunction with the containment ventilation systems, is also designed to limit the ambient containment air temperature during normal unit operation to less than the limit specified in LCO [Limiting Condition of Operation] 3.6.5, ''Containment Air Temperature.'' This temperature limitation ensures that the containment temperature does not exceed the initial temperature conditions assumed for the DBAs [design basis accidents]. The proposed change does not impact the capability of the CtCS to maintain containment temperature to within this initial temperature condition for DBAs.

The proposed changes will not affect accident initiators or precursors nor alter the design assumptions, conditions, and configuration of the facility or the manner in which the plant is operated and maintained. The manner in which the ESW [essential service water] system is flow balanced to ensure adequate cooling water flow to all loads required for accident mitigation, including the containment coolers, will not be changed and is in fact supported by the proposed changes. In general, therefore, the proposed changes will not alter or prevent the ability of structures, systems, and components (SSCs) to perform their intended functions to mitigate the consequences of an initiating event within the assumed acceptance limits.

All accident analysis acceptance criteria will continue to be met with the proposed changes. The proposed changes will not affect the source term, containment isolation, or radiological release assumptions used in evaluating the radiological consequences of an accident previously evaluated. The proposed changes will not alter any assumptions or change any mitigation actions in the radiological consequence evaluations in the FSAR. Consequently, the applicable radiological dose acceptance criteria will continue to be met.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response: No.*

There are no proposed changes in the method by which any safety-related plant SSC performs its safety function. The proposed changes will not affect the normal method of plant operation or change any operating parameters. No equipment design or performance requirements will be affected, including the design and performance requirements for the CtCS and ESW system. The proposed changes will not alter any assumptions made in the safety analyses.

No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures will be introduced as a result of this amendment. There will be no adverse effect or challenges imposed on any safety-related system as a result of this amendment.

Therefore, the proposed changes do not create the possibility of a new or different [kind of] accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

*Response: No.*

The margin of safety is related to the confidence in the ability of the fission product barriers to perform their design functions during and following an accident. These barriers include the fuel cladding, the reactor coolant system, and the containment system. The proposed change will have no effect on those plant systems necessary to assure the accomplishment of protection functions. There will be no impact on the overpower limit, departure from nucleate boiling ratio (DNBR) limits, heat flux hot channel factor (FQ), nuclear enthalpy rise hot channel factor (FΔH), loss of coolant accident peak cladding temperature (LOCA PCT), peak local power density, or any other limit or margin of safety. The applicable radiological dose consequence acceptance criteria will continue to be met since the proposed changes have no impact on the radiological consequences of any design basis accident.

With respect to the containment, and as already noted, changing the limit for the minimum required CtCS cooling train flow from a specified value to ''within limits'' appropriately accounts for changes in system conditions/parameters while still requiring the heat removal rate specified in the accident analysis to be met. Consequently, the CtCS function for limiting post-accident pressure and temperature in the containment building is not adversely affected, and the margins between the calculated peak accident pressure and temperature in the containment and the corresponding containment design limits are unchanged.

The proposed changes do not eliminate any surveillance or alter the frequency of surveillances required by the Technical Specifications. None of the acceptance criteria for any accident analysis will be changed.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* John O'Neill, Esq., Pillsbury Winthrop Shaw Pittman LLP, 2300 N Street, NW., Washington, DC 20037.

*NRC Branch Chief:* Michael T. Markley.

## Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) The applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available documents created or received at the NRC are accessible online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1–(800) 397–4209, (301) 415–4737 or by email to *pdr.resource@nrc.gov.*

*Dominion Nuclear Connecticut, Inc., et al., Docket No. 50–423, Millstone Power Station, Unit No. 3, New London County, Connecticut*

*Date of application for amendment:* January 20, 2011.

*Brief description of amendment:* The amendment revises the Millstone Power Station, Unit No. 3 Technical Specification (TS) 6.8.4.g, ''Steam Generator (SG) Program,'' to exclude a portion of the tubes below the top of the steam generator tubesheet from periodic steam generator tube inspections during Refueling Outage 14 and the subsequent operating cycle. The amendment also revises the reporting criteria in MPS3 TS 6.9.1.7, ''Steam Generator Tube Inspection Report,'' to remove reference to previous one-time alternate repair criteria and add reporting requirements specific to temporary alternate repair criteria.

*Date of issuance:* October 7, 2011.

*Effective date:* As of the date of issuance and shall be implemented within 30 days from the date of issuance and prior to Mode 5 startup.

*Amendment No.:* 252.

*Renewed Facility Operating License No. NPF–49:* Amendment revised the License and Technical Specifications.

*Date of initial notice in* ***Federal Register:*** July 5, 2011 (76 FR 39136). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 7, 2011.

*No significant hazards consideration comments received:* No.

*Exelon Generation Company, LLC, Docket No. 50–461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois*

*Date of application for amendment:* October 28, 2010, as supplemented by letters dated April 8, 2011 and July 1, 2011.

*Brief description of amendment:* The amendment revised Technical Specification (TS) 3.8.1, ''AC Sources Operating,'' by removing mode restrictions to perform certain Surveillance Requirements for the Division 3 High Pressure Core Spray emergency diesel generator.

*Date of issuance:* October 17, 2011.

*Effective date:* As of the date of issuance and shall be implemented within 60 days.

*Amendment No.:* 197.

*Facility Operating License No. NPF–62:* The amendment revised the Technical Specifications and License.

*Date of initial notice in* ***Federal Register***: January 25, 2011 (76 FR 4385). The April 8, 2011, and July 1, 2011, supplements contained clarifying information and did not change the NRC staff's initial proposed finding of no significant hazards consideration.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 17, 2011.

*No significant hazards consideration comments received:* No.

*NextEra Energy Point Beach, LLC, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin*

*Date of application for amendments:* June 23, 2011.

*Brief description of amendments:* The amendments removed the Table of Contents from the Technical Specifications and placed them under licensee control. The Table of Contents is not being eliminated. Responsibility for maintenance and issuance of the Table of Contents will transfer from the U.S. Nuclear Regulatory Commission to NextEra Energy Point Beach, LLC.

*Date of issuance:* October 11, 2011.

*Effective date:* This license amendment is effective as of the date of issuance and shall be implemented within 90 days from date of issuance.

*Amendment Nos.:* 245 (for Unit 1) and 249 (for Unit 2).

*Renewed Facility Operating License Nos. DPR–24 and DPR–27:* Amendments revised the Renewed Facility Operating License and Technical Specifications.

*Date of initial notice in* **Federal Register**: July 26, 2011 (76 FR 44617).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 11, 2011.

*No significant hazards consideration comments received:* No.

**Notice of Issuance of Amendments to Facility Operating Licenses and Final Determination of No Significant Hazards Consideration and Opportunity for a Hearing (Exigent Public Announcement or Emergency Circumstances)**

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) The application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available documents created or received at the NRC are accessible online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1–(800) 397–4209, (301) 415–4737 or by email to *pdr.resource@nrc.gov.*

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland, and electronically on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If there are problems in accessing the document, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737, or by email to *pdr.resource@nrc.gov.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact.[1] Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Each contention shall be given a separate numeric or alpha designation within one of the following groups:

1. Technical—primarily concerns/issues relating to technical and/or health and safety matters discussed or referenced in the applications.

2. Environmental—primarily concerns/issues relating to matters discussed or referenced in the environmental analysis for the applications.

3. Miscellaneous—does not fall into one of the categories outlined above.

As specified in 10 CFR 2.309, if two or more petitioners/requestors seek to co-sponsor a contention, the petitioners/requestors shall jointly designate a representative who shall have the authority to act for the petitioners/requestors with respect to that contention. If a requestor/petitioner seeks to adopt the contention of another sponsoring requestor/petitioner, the requestor/petitioner who seeks to adopt the contention must either agree that the sponsoring requestor/petitioner shall act as the representative with respect to that contention, or jointly designate with the sponsoring requestor/petitioner a representative who shall have the authority to act for the petitioners/requestors with respect to that contention.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at (301) 415–1677, to request (1) A digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E–Submittal server are detailed in NRC's ''Guidance for Electronic Submission,'' which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through EIE, users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The

[1] To the extent that the applications contain attachments and supporting documents that are not publicly available because they are asserted to contain safeguards or proprietary information, petitioners desiring access to this information should contact the applicant or applicant's counsel and discuss the need for a protective order.

E-Filing system also distributes an email notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html*, by email at *MSHD.Resource@nrc.gov*, or by a toll-free call at (866) 672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/*, unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

*FirstEnergy Nuclear Operating Company, et al., Docket No. 50–440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio*

*Date of amendment request:* October 11, 2011, supplemented by letters dated October 13, 16 and 17, 2011.

*Description of amendment request:* This amendment revised Technical Specification (TS) 3.8.1, ''AC [Alternating Current] Sources—Operating,'' to clarify that a delayed access circuit is temporarily qualified, until December 12, 2011, as one of two required offsite circuits between the offsite transmission network and the onsite Class 1E AC electric power distribution system.

*Date of issuance:* October 17, 2011.

*Effective date:* As of its date of issuance and shall be implemented within 30 days of the date of issuance.

*Amendment No.:* 160.

*Facility Operating License No. NPF–58:* Amendment revised the technical specifications.

*Public comments requested as to proposed no significant hazards consideration (NSHC)*: No.

The Commission's related evaluation of the amendment, finding of emergency circumstances, state consultation, and final NSHC determination are contained in a safety evaluation dated October 17, 2011.

*Attorney for licensee:* David W. Jenkins, Attorney, FirstEnergy Corporation, Mail Stop A–GO–15, 76 South Main Street, Akron, OH 44308.

*NRC Branch Chief:* Jacob I. Zimmerman.

Dated at Rockville, Maryland, this 24th day of October, 2011.

For the Nuclear Regulatory Commission.

**Michele Evans,**

*Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

[FR Doc. 2011–28162 Filed 10–31–11; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

**[NRC–2011–0006]**

## Sunshine Act Meetings

**DATE:** Weeks of October 31, November 7, 14, 21, 28, December 5, 2011.

**PLACE:** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Public and Closed.

**Week of October 31, 2011**

*Tuesday, November 1, 2011*

8:55 a.m. Affirmation Session (Public Meeting) (Tentative)

a. Final Rule: U.S. Advanced Boiling-Water Reactor Aircraft Impact Design Certification Amendment (RIN 3150–AI84) (Tentative).

This meeting will be Web cast live at the Web address—*http://www.nrc.gov*.

9 a.m. Briefing on the Fuel Cycle Oversight Program (Public Meeting) (Contact: Margie Kotzalas, (301) 492–3550)

This meeting will be webcast live at the Web address—*http://www.nrc.gov*.

**Week of November 7, 2011—Tentative**

There are no meetings scheduled for the week of November 7, 2011.

**Week of November 14, 2011—Tentative**

There are no meetings scheduled for the week of November 14, 2011.

**Week of November 21 2011—Tentative**

There are no meetings scheduled for the week of November 21, 2011.

**Week of November 28, 2011—Tentative**

*Tuesday, November 29, 2011*

9:30 a.m. Meeting with the Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting)

(Contact: Tanny Santos, (301) 415–7270).

This meeting will be Webcast live at the Web address—*http://www.nrc.gov*.

**Thursday, December 1, 2011**

9:30 a.m. Briefing on Equal Employment Opportunity (EEO) and Small Business Programs (Public Meeting).

(Contact: Barbara Williams, (301) 415–7388).

This meeting will be Webcast live at the Web address—*http://www.nrc.gov*.

**Week of December 5 2011—Tentative**

There are no meetings scheduled for the week of December 5, 2011.

* * * * *

*The schedule for Commission meetings is subject to change on short

notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Rochelle Bavol, (301) 415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html*.

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify Bill Dosch, Chief, Work Life and Benefits Branch, at (301) 415–6200, TDD: (301) 415–2100, or by email at *william.dosch@nrc.gov*. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 ((301) 415–1969), or send an email to *darlene.wright@nrc.gov*.

Dated: October 27, 2011.

**Rochelle Bavol,**

*Policy Coordinator, Office of the Secretary.*

[FR Doc. 2011–28384 Filed 10–28–11; 4:15 pm]

**BILLING CODE 7590–01–P**

## OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

### Proposed Information Collection; Comment Request

**AGENCY:** Occupational Safety and Health Review Commission.

**ACTION:** Notice.

**SUMMARY:** The Occupational Safety and Health Review Commission (OSHRC) invites the public and other Federal agencies to comment on a proposed information collection concerning the OSHRC Settlement Part program. OSHRC will submit the proposed information collection request to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

**DATES:** Written comments must be submitted on or before January 3, 2012.

**ADDRESSES:** Submit all written comments, identified by the title ''Paperwork Reduction Act Information Collection,'' by mail or hand delivery to John X. Cerveny, Deputy Executive Secretary, Occupational Safety and Health Review Commission, 1120 20th Street, NW., Washington, DC 20036–3457, by fax to (202) 606–5050, or by email to *pracomments@oshrc.gov.*

**FOR FURTHER INFORMATION CONTACT:** Requests for information or copies of the proposed information collection instrument should be directed to John X. Cerveny, Deputy Executive Secretary, Occupational Safety and Health Review Commission, 1120 20th Street NW., Ninth Floor, Washington, DC 20036–3457; Telephone (202) 606–5706; *email address: pracomments@oshrc.gov.*

**SUPPLEMENTARY INFORMATION:** OSHRC's Settlement Part program, codified at 29 CFR 2200.120, is designed to encourage settlements on contested citations issued by the U.S. Department of Labor's Occupational Safety and Health Administration (OSHA) and to reduce litigation costs. The program requires employers who receive job safety or health citations that include proposed penalties of $100,000 or more in total to participate in formal settlement talks presided over by an OSHRC Administrative Law Judge. If settlement efforts fail, the case would continue under OSHRC's conventional proceedings, usually before a judge other than the one who presided over the settlement proceedings.

To ensure the continued success of the program, OSHRC proposes to collect information from Settlement Part participants about their experiences with the program. The participants would be employers and Department of Labor personnel, Authorized Employee Representatives and their representatives, including attorneys, who have personally participated in cases from February 15, 2011 through February 14, 2012. The proposed information collection instrument is a written survey consisting of a series of multiple-choice questions that are intended to take a respondent no more than 30 minutes to complete. The respondents may skip any questions that they do not feel comfortable answering, and are permitted to comment further on their experiences at the end of the questionnaire.

OSHRC will submit the proposed information collection to the Office of Management and Budget for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). OSHRC invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of the agency's functions, 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 information collection on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology. Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection; they also will become a matter of public record.

*OMB Control Number:* Not applicable, new request.

*Form Number:* Not applicable.

*Type of Review:* Regular submission (new information collection).

*Title:* Survey of Participants in OSHRC Settlement Part Program.

*Description:* Information collection required to evaluate the Review Commission's Settlement Part process.

*Affected Public:* Employer and Department of Labor (OSHA) personnel (settlement decision makers), Authorized Employee Representatives, and their representatives, including attorneys, who have personally participated in cases subject to Mandatory and Voluntary Settlement proceedings under 29 CFR 2200.120 from February 15, 2011 through February 14, 2012.

*Estimated Number of Respondents:* 300.

*Estimated Time per Response:* 30 minutes.

*Estimated Total Reporting Burden:* 150 hours.

Dated: October 26, 2011.

**Debra Hall,**

*Acting Executive Director.*

[FR Doc. 2011–28304 Filed 10–31–11; 8:45 am]

**BILLING CODE 7600–01–P**

## POSTAL REGULATORY COMMISSION

**[Docket No. CP2012–1; Order No. 919]**

### New Postal Product

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission is noticing a recently-filed Postal Service request to enter into an additional Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 agreement. This document invites public comments on the request and

addresses several related procedural steps.

**ADDRESSES:** Submit comments electronically by accessing the ''Filing Online'' link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *https://www.prc.gov/prc-pages/filing-online/login.aspx.* Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

**FOR FURTHER INFORMATION CONTACT:** Stephen L. Sharfman, General Counsel, at (202) 789–6820 (case-related information) or *DocketAdmins@prc.gov* (electronic filing assistance).

**SUPPLEMENTARY INFORMATION:**

I. Introduction
II. Notice of Filing
III. Ordering Paragraphs

## I. Introduction

On October 17, 2011, the Postal Service filed a notice, pursuant to 39 CFR 3015.5, that it has entered into an additional Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 agreement.[1] The Notice concerns the inbound portion of a bilateral agreement for inbound competitive services with Australian Postal Corporation (Australia Post Agreement) that the Postal Service seeks to add to the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product.

In Order No. 546, the Commission approved the Inbound Competitive Multi-Service Agreement with Foreign Postal Operators 1 product and a functionally equivalent agreement, Koninklijke TNT Post BV and TNT Post Pakketservice Benelux BV (TNT Agreement). The Postal Service asserts that its filing demonstrates that the Australia Post Agreement fits within the Mail Classification Schedule (MCS) language in Governors' Decision No. 10–3 originally filed in Docket Nos. MC2010–34 and CP2010–95. Notice at 3–4. Additionally, it contends that the Australia Post Agreement is functionally equivalent to the agreement filed in Docket No. CP2010–95. *Id.* at 3. In Order No. 840, the Commission approved the functionally equivalent Norway Post Agreement and the designation of the TNT agreement as the baseline agreement for functional equivalency analyses of the Inbound Competitive Multi-Service Agreement with Foreign Postal Operators 1 product.[2]

In support of its Notice, the Postal Service filed four attachments as follows:

- Attachment 1—a redacted copy of the Australia Post Agreement;
- Attachment 2—a certified statement required by 39 CFR 3015.5(c)(2);
- Attachment 3—a redacted copy of Governors' Decision No. 10–3 that establishes prices and classifications for Inbound Competitive Multi-Service Agreements with Foreign Postal Operators agreements, proposed MCS language, formulas for prices, certification of the Governors' vote and certification of compliance with 39 U.S.C. 3633(a); and
- Attachment 4—an application for non-public treatment of materials to maintain redacted portions of the agreement and supporting documents under seal.

*Australia Post Agreement.* The Postal Service filed the instant agreement pursuant to 39 CFR 3015.5 and in accordance with Order No. 546. The Australia Post Agreement covers the delivery of inbound Air Parcel Post (Air CP) and Express Mail Services (EMS). *Id.* at 3. The Postal Service states that the parties intend for the rates to become effective January 1, 2012, and to remain in effect for 2 years. *Id.* at 4, Attachment 1 at 1. The Agreement may be terminated without cause with 30 days notice. *Id.* Attachment 1 at 6.

*Functional equivalence.* The Postal Service contends that the Australia Post Agreement to deliver inbound Air CP and EMS in the United States is functionally equivalent to the agreement to deliver inbound Air CP and EMS in the TNT Agreement. *Id.* at 3. The Postal Service asserts that the Australia Post Agreement is similar in both products and cost characteristics to the TNT Agreement. *Id.* at 5. It states that the TNT Agreement includes similar terms and conditions, *e.g.,* is an agreement with a foreign postal operator and conforms to a common description. *Id.* The Postal Service identifies differences that distinguish the instant agreement from the TNT Agreement. *Id.* at 5–7. These distinctions include different foreign postal operators, detailed content restrictions, customs inspection, intellectual property, co-branding and licensing, joint business development initiatives, rate tables, development of Accounting Business Rules and other differences. *Id.*

The Postal Service contends that the Australia Post Agreement and the TNT Agreement incorporate the same cost attributes and methodology and the relevant cost and market characteristics. *Id.* at 7. Despite some differences, the Postal Service asserts that the Australia Post Agreement is functionally equivalent to the TNT Agreement previously filed. *Id.*

In its Notice, the Postal Service maintains that certain portions of the agreement, prices, and related financial information should remain under seal. *Id.* at 4, Attachment 4.

The Postal Service concludes that the Australia Post Agreement complies with 39 U.S.C. 3633 and is functionally equivalent to the TNT Agreement. *Id.* at 7. Therefore, it requests that the Commission add the Australia Post Agreement to the Inbound Competitive Multi-Service Agreement with Foreign Postal Operators 1 product. *Id.* at 8.

## II. Notice of Filing

The Commission establishes Docket No. CP2012–1 for consideration of matters raised by the Postal Service's Notice.

The Commission appoints James F. Callow to serve as Public Representative in this docket.

*Comments.* Interested persons may submit comments on whether the Postal Service's filings in the captioned docket are consistent with the policies of 39 U.S.C. 3632, 3633 or 39 CFR part 3015. Comments are due no later than October 31, 2011. The public portions of this filing can be accessed via the Commission's Web site (*http://www.prc.gov*).

## III. Ordering Paragraphs

*It is ordered:*

1. The Commission establishes Docket No. CP2012–1 for consideration of the matters raised in this docket.

2. Pursuant to 39 U.S.C. 505, James F. Callow is appointed to serve as officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

3. Comments by interested persons in this proceeding are due no later than October 31, 2011.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

[1] Notice of United States Postal Service of Filing Functionally Equivalent Inbound Competitive Multi-Service Agreement with a Foreign Postal Operator, October 17, 2011 (Notice); *see also* Docket Nos. MC2010–34 and CP2010–95, Order Adding Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 to the Competitive Product List and Approving Included Agreement, September 29, 2010 (Order No. 546).

[2] *See* Docket No. CP2011–69, Order Concerning an Additional Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 Negotiated Service Agreement, September 7, 2011 (Order No. 840).

By the Commission.

**Shoshana M. Grove,**

*Secretary.*

[FR Doc. 2011–28123 Filed 10–31–11; 8:45 am]

**BILLING CODE 7710–FW–P**

## POSTAL REGULATORY COMMISSION

**[Docket No. A2012–17; Order No. 918]**

## Post Office Closing

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** This document informs the public that an appeal of the closing of the Venice, California post office has been filed. It identifies preliminary steps and provides a procedural schedule. Publication of this document will allow the Postal Service, petitioners, and others to take appropriate action.

**DATES:** November 1, 2011: Administrative record due (from Postal Service); November 14, 2011, 4:30 p.m., Eastern Time: Deadline for notices to intervene.

*See* the Procedural Schedule in the **SUPPLEMENTARY INFORMATION** section for other dates of interest.

**ADDRESSES:** Submit comments electronically by accessing the ''Filing Online'' link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *https://www.prc.gov/prc-pages/filing-online/login.aspx.* Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

**FOR FURTHER INFORMATION CONTACT:** Stephen L. Sharfman, General Counsel, at (202) 789–6820 (case-related information) or *DocketAdmins@prc.gov* (electronic filing assistance).

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, pursuant to 39 U.S.C. 404(d), on October 17, 2011, the Commission received a petition for review and application for suspension of the Postal Service's determination to close the Venice post office in Venice, California. The petition for review was filed online on October 17, 2011 by Venice Stakeholders Association and Mark Ryavec (Petitioners). The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2012–17 to consider Petitioners' appeal. If Petitioners would like to further explain his position with supplemental information or facts, Petitioners may either file a Participant Statement on PRC Form 61 or file a brief with the Commission no later than November 21, 2011.

*Issues apparently raised.* Petitioners contend that: (1) The Postal Service failed to consider the effect of the closing on the community (*see* 39 U.S.C. 404(d)(2)(A)(i)); (2) failure of the Postal Service to follow procedures required by law regarding closures (*see* 39 U.S.C. 404(d)(5)(B)); and (3) that there are factual errors contained in the Final Determination.

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above, or that the Postal Service's determination disposes of one or more of those issues. The deadline for the Postal Service to file the applicable administrative record with the Commission is November 1, 2011. *See* 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service to this notice is November 1, 2011.

*Application for Suspension of Determination.* In addition to his Petition, Mark Ryavec requests an application for suspension of the Postal Service's determination (*see* 39 CFR 3001.114). Commission rules allow for the Postal Service to file an answer to such application within 10 days after the application is filed. The Postal Service shall file an answer to the application no later than October 27, 2011.

*Availability; Web site posting.* The Commission has posted the appeal and supporting material on its Web site at *http://www.prc.gov.* Additional filings in this case and participants' submissions also will be posted on the Commission's Web site, if provided in electronic format or amenable to conversion, and not subject to a valid protective order. Information on how to use the Commission's Web site is available online or by contacting the Commission's webmaster via telephone at (202) 789–6873 or via electronic mail at *prc-webmaster@prc.gov.*

The appeal and all related documents are also available for public inspection in the Commission's docket section. Docket section hours are 8 a.m. to 4:30 p.m., eastern time, Monday through Friday, except on Federal government holidays. Docket section personnel may be contacted via electronic mail at *prc-dockets@prc.gov* or via telephone at (202) 789–6846.

*Filing of documents.* All filings of documents in this case shall be made using the Internet (Filing Online) pursuant to Commission rules 9(a) and 10(a) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained. *See* 39 CFR 3001.9(a) and 3001.10(a). Instructions for obtaining an account to file documents online may be found on the Commission's Web site or by contacting the Commission's docket section at *prc-dockets@prc.gov* or via telephone at (202) 789–6846.

The Commission reserves the right to redact personal information which may infringe on an individual's privacy rights from documents filed in this proceeding.

*Intervention.* Persons, other than Petitioners and respondent, wishing to be heard in this matter are directed to file a notice of intervention. *See* 39 CFR 3001.111(b). Notices of intervention in this case are to be filed on or before November 14, 2011. A notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site unless a waiver is obtained for hardcopy filing. *See* 39 CFR 3001.9(a) and 3001.10(a).

*Further procedures.* By statute, the Commission is required to issue its decision within 120 days from the date it receives the appeal. *See* 39 U.S.C. 404(d)(5). A procedural schedule has been developed to accommodate this statutory deadline. In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service or other participants to submit information or memoranda of law on any appropriate issue. As required by the Commission rules, if any motions are filed, responses are due 7 days after any such motion is filed. *See* 39 CFR 3001.21.

*It is ordered:*

1. The Postal Service shall file an answer to the application for suspension of the Postal Service's determination no later than October 27, 2011.

2. The Postal Service shall file the applicable administrative record regarding this appeal no later than November 1, 2011.

3. Any responsive pleading by the Postal Service to this notice is due no later than November 1, 2011.

4. The procedural schedule listed below is hereby adopted.

5. Pursuant to 39 U.S.C. 505, James F. Callow is designated officer of the Commission (Public Representative) to represent the interests of the general public.

6. The Secretary shall arrange for publication of this notice and order in the **Federal Register**.

By the Commission.

Chairman Goldway not participating.

**Shoshana M. Grove,**

*Secretary.*

PROCEDURAL SCHEDULE

| | |
|---|---|
| October 17, 2011 | Filing of Appeal. |
| October 27, 2011 | Deadline for the Postal Service to file answer responding to application for suspension. |
| November 1, 2011 | Deadline for the Postal Service to file the applicable administrative record in this appeal. |
| November 1, 2011 | Deadline for the Postal Service to file any responsive pleading. |
| November 14, 2011 | Deadline for notices to intervene (*see* 39 CFR 3001.111(b)). |
| November 21, 2011 | Deadline for Petitioners' Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)). |
| December 12, 2011 | Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)). |
| December 27, 2011 | Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)). |
| January 3, 2012 | Deadline for motions by any party requesting oral argument; the Commission will schedule oral argument only when it is a necessary addition to the written filings (*see* 39 CFR 3001.116). |
| February 14, 2012 | Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)). |

[FR Doc. 2011–28122 Filed 10–31–11; 8:45 am]

**BILLING CODE 7710–FW–P**

## POSTAL REGULATORY COMMISSION

**[Docket No. R2012–3; Order No. 921]**

## Postal Service Price Adjustment

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission is noticing a recently-filed Postal Service request to establish price adjustments for market dominant products by amounts which, on average, are at or below the statutory price cap of 2.133 percent for each class of mail. This notice addresses procedural steps associated with this filing.

**DATES:** November 7, 2011: Comments are due.

**ADDRESSES:** Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Commenters who cannot submit their views electronically should contact the person identified in **FOR FURTHER INFORMATION CONTACT** by telephone for advice on alternatives to electronic filing.

**FOR FURTHER INFORMATION CONTACT:** Stephen L. Sharfman, General Counsel, *stephen.sharfman@prc.gov* or (202) 789–6820.

**SUPPLEMENTARY INFORMATION:**

I. Overview
II. The Commission's Role
III. Summary by Class of Mail
IV. Preferred Mail and Worksharing Discounts
V. MCS Schedule
VI. Administrative Actions
VII. Ordering Paragraphs

### I. Overview

*A. Index-Based Price Changes for Market Dominant Classes of Mail*

On October 18, 2011, the Postal Service filed an Adjustment Notice pursuant to 39 U.S.C. 3622 and 39 CFR part 3010.[1] The Adjustment Notice presents the Postal Service's plans to adjust prices for market dominant products by amounts which, on average, are at or below the statutory price cap of 2.133 percent for each class of mail. Adjustment Notice at 3. The planned adjustments affect both domestic and international market dominant products.

The Postal Service notes that the most recently available data from the Bureau of Labor Statistics provides the Postal Service with inflation-based price adjustment authority of 2.133 percent.[2] *Id.* at 3. The following table presents class-specific averages.

TABLE 1—2012 PRICE CHANGE PERCENTAGE BY CLASS OF MAIL

| Market dominant class | Planned percentage change |
|---|---|
| First-Class Mail | 2.133 |
| Standard Mail | 2.124 |
| Periodicals | 2.133 |
| Package Services | 2.133 |
| Special Services | −0.663 |

*Id.* at 5.

The Adjustment Notice states that the overall average for Special Services is a result of large price reductions for Delivery Confirmation and Confirm services. *Id.* at 26. In addition, price adjustments for products within other classes may vary from the average, sometimes substantially. These variances typically reflect several considerations consistent with the Postal Service's pricing flexibility under the Postal Accountability and Enhancement Act (PAEA) of 2006.

*Classification changes.* The Adjustment Notice identifies a wide range of classification changes. Some involve reformatting and minor editorial revisions. Others concern product transfers approved in prior Commission proceedings. *Id.* at 50–52.

*Effective date.* The Postal Service plans to implement its planned price and classification changes for Mailing Services on January 22, 2012 at 12:01 a.m. *Id.* at 1. It notes this is a departure from past practice, but says it is consistent with the implementation date for planned rate changes for its competitive Shipping Services. *Id.* at 9.

*B. Context and Format of Adjustment Notice*

The Adjustment Notice includes a brief introductory section, three enumerated parts, and three attachments. The Postal Service also submitted separate workpapers supporting the planned changes. The introductory section includes the Postal Service's certification, in accordance with rule 3010.14(a)(3), that it will provide widespread notice of the planned adjustments prior to the planned implementation date. *Id.* at 1. It identifies Scott J. Davis as the Postal Service official who will respond to queries from the Commission. *Id.* at 2.

Part I presents a discussion of compliance with the price cap. *Id.* at 2–6. Part II discusses prices in detail, including workshare discounts. It also explains the consistency of the prices with the objectives and factors of 39 U.S.C. 3622 and the preferential pricing requirements of 39 U.S.C. 3626. *Id.* at 6–50. Part III describes related Mail Classification Schedule (MCS) changes. *Id.* at 50–52.

Attachment A presents MCS changes in legislative format and includes schedules of the new prices. Attachment B presents workshare discounts and related information. Attachment C contains the Postal Service's price cap calculation. This includes, in conformance with rule 3010.22(b), an adjustment to the moving average because less than 12 months have passed since the most recent price change (filed on January 13, 2011).

The workpapers are designated as follows:

*First Class Mail:* USPS–R2012–3/1.

*First Class Mail International:* USPS–R2012–3/NP1.

*Standard Mail:* USPS–R2012–3/2.

*Periodicals:* USPS–R2012–3/3.

*Package Services:* USPS–R2012–3/4.

*Special Services:* USPS–R2012–3/5.

Each set of workpapers includes a preface which provides an overview, a discussion of any necessary adjustments to the billing determinants for the four quarters ending Q3 FY 2011, and an explanation of the revenue calculations.

*Basis for adjustments.* The Adjustment Notice was filed under the PAEA's revised approach to postal pricing. In brief, this approach generally limits increases at the class level to an annual price cap, although the Postal Service may elect, but is not required, to draw on unused pricing authority generated as a result of previous adjustments. In this case, the Postal Service elects not to draw on that authority. It is, instead, relying only on the price cap authority. However, the Postal Service's approach to Standard Mail and Special Services in this case adds to the unused pricing authority from previous cases. The following table identifies the total unused pricing authority that will be available following the changes in this case.

TABLE 2—POSTAL SERVICE'S CALCULATION OF TOTAL UNUSED PRICING AUTHORITY AVAILABLE FOLLOWING DOCKET NO. R2012–3

| Class | Total unused pricing authority (%) |
|---|---|
| First-Class Mail | −0.530 |
| Standard Mail | −0.463 |

[1] United States Postal Service Notice of Market-Dominant Price Adjustment, October 18, 2011. (Adjustment Notice). This is a Type 1–A adjustment under Commission rules.

[2] Specifically, the U.S. Department of Labor's Consumer Price Index for All Urban Consumers, U.S. All Items (the ''CUUROOOOSA0) series.

TABLE 2—POSTAL SERVICE'S CALCULATION OF TOTAL UNUSED PRICING AUTHORITY AVAILABLE FOLLOWING DOCKET NO. R2012–3—Continued

| Class | Total unused pricing authority (%) |
|---|---|
| Periodicals | −0.562 |
| Package Services | −0.551 |
| Special Services | 2.324 |

*Id.* at 6 (adapted from the Table 4 in the Adjustment Notice).

*II. The Commission's Role*

This marks the fourth time the Commission will review index-based changes for market dominant classes under authority established in the PAEA. The filing of the Adjustment Notice triggers a PAEA requirement that the Commission establish a formal docket to review, within 45 days, the consistency of the Postal Service's planned adjustments with the price cap and related requirements. The Commission must also provide public notice that the Postal Service has filed a price adjustment case; publish the notice in the **Federal Register**; appoint an officer of the Commission (Public Representative) to represent the interests of the general public, and provide a 20-day public comment period.

Issuance of this Notice and Order (Order) allows the Commission to fulfill these obligations. This Order provides an overview of the Postal Service's plans. Interested persons may obtain more detail by reference to the Adjustment Notice, the related workpapers, and review of subsequent errata, if any.

**III. Summary by Class of Mail**

*A. First-Class Mail*

The following table identifies the Postal Service's planned percentage price changes for its First-Class Mail products.

TABLE 3—FIRST-CLASS MAIL PRICE CHANGES

| First-class mail product | Percent change (%) |
|---|---|
| Single-Piece Letters and Cards | 2.468 |
| Presort Letters and Cards | 1.580 |
| Flats | 1.605 |
| Parcels | 10.882 |
| International* | 4.679 |
| Overall | 2.133 |

*Id.* at 12.

*The first-ounce First-Class Mail price.* The price of a stamp for the first-ounce of single-piece letter mail, including the Forever stamp, increases by one cent under the Postal Service's plan, going from 44 cents to 45 cents. *Id.*

*Single-Piece Letters and Cards.* The overall increase of 2.468 percent for Single-Piece Letters and Cards includes a 3 cent increase in the price for Single-Piece Cards. *Id.*

*Presort Letters and Cards.* The Postal Service acknowledges that the overall increase for this product is below the overall average for First-Class Mail, and explains its rationale for this outcome. *Id.* at 13. It presents a comparison of First-Class Mail First-Ounce Prices. *Id.* at 14, Table 6.

In an effort to retain certain types of volume, the Postal Service proposes to expand the lightest weight step (currently, one ounce) for First-Class Mail Automation and Nonautomation Presort Letters by increasing the maximum qualifying weight of an automation letter from 1 ounce to 2 ounces. This ''free ounce'' will be available only to pieces weighing 2 ounces or less. A 3-ounce piece will pay for additional ounces the traditional way. *Id.* at 15. The Postal Service presents the percentage price change First-Class Automation Letters/2-ounce Pieces. *Id.* at 16, Table 7.

*Flats.* The Postal Service notes, among other things, that prices for Nonautomation Presort and Mixed ADC Automation flats will increase by less than 1 percent. *Id.* ADC, 3-digit, and 5-digit automation flats increase at a higher percentage than the overall increase in Flats, as well as the overall increase in First-Class Mail. *Id.*

*Parcels (including Keys and Identification Devices).* The Postal Service acknowledges that the 10.8 percent increase for parcels is higher than the overall increase for this class, but asserts that it expects this to improve the cost coverage for the parcels that remain in the market dominant stream. *Id.* at 17. It notes that as a result of Docket No. MC2011–22, Commercial Base and Commercial Plus parcels are now classified as competitive, and that its January 2012 prices for these parcels will be provided in a notice filed later this fall. *Id.* at 16. The Retail portion of single-piece parcels remains in the market dominant First-Class Mail class. *Id. See also id.* at 12–13.

*International.* The Postal Service increases Outbound Single-Piece First Class Mail International (FCMI) by 4.9 percent overall. *Id.* at 17. The rationale for an increase for FCMI Letters ''significantly above'' the First-Class Mail average is to address cost coverage problems. *Id.* For FCMI Letters, Flats, and Parcels, the overall increases are 6.6 percent, 3.7 percent, and 4.0 percent. *Id.*

*B. Standard Mail*

The following table presents the Postal Service's planned changes for Standard Mail products.

TABLE 4—STANDARD MAIL PRICE CHANGES

| Standard mail product | Percent change (%) |
|---|---|
| Letters | 1.867 |
| Flats | 2.209 |
| Parcels | 2.864 |
| High Density/Saturation Letters | 2.298 |
| High Density/Saturation Flats and Parcels | 2.878 |
| Carrier Route Letters, Flats and Parcels | 2.425 |
| Overall | 2.124 |

*Id.* at 18.

The Postal Service attributes its lower-than-average increase for Standard Letters to above-cap increases for Flats and Parcels; a price increase for Detached Address Labels (DALs); and a price reduction for nonprofit letters that was needed to achieve the required nonprofit to commercial revenue per-piece ratio. *Id.*

The Standard Mail price adjustment also reflects classification changes to the Postal Service's NFMs/Parcels product. This involves restructuring parcels offerings to address the different needs of fulfillment parcels and marketing parcels. *Id.* at 19. The restructuring, in brief, involves a transfer of commercial machinable and irregular parcels to the competitive product list, in accordance with the Commission's conditional approval in Docket No. MC2010–36. *Id.* at 19–20. It also involves eliminating the NFMs category and replacing it with a new Marketing Parcels category. *Id.* at 21. Additional details about these classification changes are provided in the Postal Service's filing. *See id.* at 21–22.

*DALs used with Flats.* The Postal Service is increasing the surcharge for DALs used with Flats from 1.7 cents per piece to 5.0 cents and dividing DALs into two categories. *Id.* at 22. One category is for labels with advertising; the other is for labels with no advertising. *Id.* at 22–23.

*DALs used with Parcels.* The Postal Service is eliminating the surcharge for DALs used with parcels based on its belief that DALs eliminate the need to keep bulky parcels sequenced before

and during the delivery operation. *Id.* at 23.

*C. Periodicals*

The following table presents the Postal Service's planned changes for the Periodicals class.

TABLE 5—PERIODICALS PRICE CHANGES

| Periodicals product | Percent change (%) |
|---|---|
| Outside County | 2.136 |
| Within County | 2.054 |
| Overall | 2.133 |

*Id.* at 23.

The Postal Service asserts, among other things, that this price change ''refines price relationships to encourage efficiency and containerization, while limiting the price increases for individual publications.'' *Id.* It is adding one rate cell for Origin Mixed Area Distribution Center (ADC) pallets to allow mailers who enter mail at origin to be more efficient by using origin-entered mixed ADC pallets. *Id.* at 24. It says this will encourage palletization rather than sacking where feasible. Workpaper USPS–R2012–3/3 provides more details. *Id.*

*D. Package Services*

The following table presents the Postal Service's planned percentage changes for the Package Services class.

TABLE 6—PACKAGE SERVICES PRICE CHANGES

| Package services product | Percentage change |
|---|---|
| Single-Piece Parcel Post | 2.472 |
| Bound Printed Matter Flats | 0.504 |
| Bound Printed Matter Parcels | 1.886 |
| Media Mail and Library Mail | 2.581 |
| Inbound Surface Parcel Post | 1.958 * |
| Overall | 2.133 |

* Prices for Inbound Surface Parcel Post (at UPU rates) are determined by the Universal Postal Union and are not under the Postal Service's control. These prices are adjusted by the Postal Operations Council. *Id.* at 24 n.11.

*Id.*

The Postal Service identifies its overall goal in Package Services as improving product profitability. *Id.* The Postal Service characterizes the adjustment for Single-Piece Parcel Post as slightly larger than average for the class, but not as high as for Media/Library Mail, reflecting the fact that this product does not cover cost, but has a higher cost coverage than Media/Library Mail. *Id.* The Postal Service is eliminating the 3-cent barcode discount for Media Mail, Library Mail, and Bound Printed Matter. It asserts that this discount will become obsolete when all mail will be required to have a barcode. Also, the Postal Service says this discount is unnecessary with the mandatory requirement of the Intelligent Mail Package barcode for commercial customers in 2013. *Id.*

*Package Intercept.* The Postal Service is adding Package Intercept service as an optional feature for First-Class Mail, Standard Mail, and Package Services. *Id.* at 26. It anticipates proposing this service as a new competitive product in the market-dominant section of the MCS, but includes the related changes in the market-dominant section of the MCS filed in this docket for administrative ease. *Id.*

*Bound Printed Matter.* For BPM Flats, the price increase is lower than products with lower cost coverage, given the Postal Service's assessment that this product ''already has healthy cost coverage'' and the need to offset higher price increases for lower-performing products. *Id.* at 25. The Postal Service says this continues the shape-based de-averaging that began in Docket No. R2011–1 and reflects the lower costs of processing and delivery flats relative to parcels. *Id.*

*E. Special Services*

The Adjustment Notice does not present a table of percentage price increases for the products in this class. The Postal Service asserts that it designed fee increases to be close to the cap percentage for most of them, while maintaining consistency with historical rounding constraints that simplify transactions for customers.[3] *Id.* The Postal Service states that the overall increase for Special Services is −0.663 percent due to its plan to include Delivery Confirmation as an integral part of several parcel offerings at no additional fee. *Id.* The Special Services workpapers provide information on price changes and resulting percentage changes. *See* USPS–R2012–3/5.

The Postal Service presents a detailed discussion of planned changes to individual products within Special Services. For more information refer to the Adjustment Notice and workpaper USPS–R2012–3/5. *Id.* at 26–29.

[3] The Postal Service identifies these products as: Ancillary Services; International Ancillary Services; Address Management Services; Caller Service; Change-of-Address Credit Card Authentication; Confirm; International Reply Coupon Service; International Business Reply Mail Service; Money Orders; Post Office Box Service; Stamp Fulfillment Services; and Customized Postage. *Id.* at 26.

## IV. Preferred Mail and Worksharing Discounts

*Preferred mail.* The Adjustment Notice includes the Postal Service's explanation that it implemented section 3626 pricing requirements in the same manner as in the Docket No. R2011–2 price change, and notes the Commission concluded the Postal Service's interpretation of section 3626 is appropriate. *Id.* at 29. The Postal Service identifies each of the preferred products or components (Within County Periodicals, Nonprofit and Classroom Periodicals, Science of Agriculture Periodicals advertising pounds, Nonprofit Standard Mail, and Library Mail) and describes how the planned adjustments comport with applicable statutory factors. *Id.* at 29–31.

*Consistency with 39 U.S.C. 3627 and 3629.* The Adjustment Notice observes that neither of these sections are implicated by the price change, as the Postal Service does not seek to alter free rates (section 3627) or change the eligibility requirements for nonprofit rates.

*Workshare discounts.* The Adjustment Notice includes the Postal Service's justification and explanation, in accordance with rules 3010.14(b)(5) and (6), for workshare discounts that exceed 100 percent of avoided costs or that are substantially below 100 percent. It is presented by class and, where appropriate, by individual product. *Id.* at 31–50.

## V. MCS Schedule

The Adjustment Notice, in conformance with rule 3010.14(b)(9), identifies numerous changes to the MCS. *See id.* at 50–52.

## VI. Administrative Actions

The Commission hereby establishes a formal docket, captioned Docket No. R2012–3, Notice of Price Adjustment, to conduct the review of the Postal Service's planned price adjustments mandated in 39 U.S.C. 3622. It already has posted the Adjustment Notice on the Commission's Web site (*http://www.prc.gov*), and has made the Adjustment Notice available for copying and inspection during the agency's regular business hours of 8 a.m. to 4:30 p.m. weekdays, except Federal holidays. Additional Postal Service and Commission filings in this docket, as well as written comments or filings by others, will also be posted on the Commission's Web site and made available for inspection and copying at the Commission during the business hours referred to above.

*Public comment period.* The Commission's rules provide a period of

20 days from the date of the Postal Service's filing for public comment. 39 CFR 3010.13(a)(5). Comments by interested persons are due no later than November 7, 2011.

Commission rule 3010.13(b) further provides that public comments are to focus primarily on whether the planned price adjustments comply with the following mandatory requirements under the PAEA:

(1) Whether the planned rate adjustments measured using the formula established in section 3010.23(b) are at or below the annual limitation established in section 3010.11; and

(2) whether the planned rate adjustments measured using the formula established in section 3010.23(b) are at or below the limitations established in section 3010.28.

*Participation and designated filing method.* Participation in some Commission proceedings requires interested persons to file notices of intervention prior to, or in conjunction with, submitting other documents. This approach does not apply in this type of case. Instead, interested persons are to submit comments electronically via the Commission's Filing Online system, unless a waiver is obtained. Instructions for obtaining an account to file documents online may be found on the Commission's Web site (*http://www.prc.gov*), or by contacting the Commission's Docket Section staff at (202) 789–6846.

Persons without access to the Internet or otherwise unable to file documents electronically may request a waiver of the electronic filing requirement by filing a motion for waiver with the Commission. The motion may be filed along with any comments the person may wish to submit in this docket. Persons requesting a waiver may file hardcopy documents with the Commission either by mailing or by hand delivery to the Office of the Secretary, Postal Regulatory Commission, 901 New York Avenue NW., Suite 200, Washington, DC 20268–0001 during regular business hours by the date specified for such filing. Any person needing assistance in requesting a waiver may contact the Docket Section at (202) 789–6846. Hardcopy documents will be scanned and posted on the Commission's Web site.

*Official publication.* The Commission directs the Secretary to arrange for prompt publication of this order in the **Federal Register**.

*Appointment of Public Representative.* In conformance with 39 U.S.C. 505, the Commission appoints Cassandra L. Hicks to represent the interests of the general public in this proceeding.

VII. Ordering Paragraphs

*It is ordered:*

1. The Commission establishes Docket No. R2012–3 to consider planned price adjustments in rates and fees for market dominant postal products and services identified in the Postal Service's October 18, 2011 Adjustment Notice.

2. Comments by interested persons on the planned price adjustments are due no later than November 7, 2011.

3. Pursuant to 39 U.S.C. 505, the Commission appoints Cassandra L. Hicks to represent the interests of the general public in this proceeding.

4. The Commission directs the Secretary of the Commission to arrange for prompt publication of this notice in the **Federal Register**.

By the Commission.

**Shoshana M. Grove,**

*Secretary.*

[FR Doc. 2011–28214 Filed 10–31–11; 8:45 am]

BILLING CODE 7710–FW–P

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–65631; File No. SR–MSRB–2011–19]**

## Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of a Proposed Rule Change Consisting of Amendments to Rule G–16 on Periodic Compliance Examination and Rule G–9 on Preservation of Records

October 26, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 13, 2011, the Municipal Securities Rulemaking Board (''Board'' or ''MSRB'') 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 MSRB. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSRB is filing with the SEC a proposed rule change consisting of amendments to Rule G–16, on periodic compliance examination, in order to permit the examination of brokers, dealers, and municipal securities dealers (''dealers'') that are members of the Financial Industry Regulatory Authority (''FINRA'') at least once each four calendar years, rather than at least once each two calendar years as currently prescribed by Rule G–16. Further, the MSRB is filing with the SEC a proposed rule change consisting of amendments to Rule G–9, on preservation of records, which would require dealers to retain certain records for four years, rather than three years as currently prescribed by Rule G–9.

The text of the proposed rule change is available on the MSRB's Web site at *http://www.msrb.org/Rules-and-Interpretations/SEC–Filings/2011–Filings.aspx,* at the MSRB's principal office, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB 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 Board has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of the proposed rule change is to facilitate the modernization of the examination process for dealers and to permit greater flexibility in the administration of periodic compliance examinations in order to focus more closely on those dealers that, by virtue of various identified factors, pose the greatest risk to investors and other market participants, as well as to the municipal securities market on a systemic basis.

Periodic examinations of regulated entities are an important component of the regulatory oversight process. Examinations are intended to detect wrongful conduct, including violations of the federal securities laws and self-regulatory organization rules. Pursuant to Section 15B(b)(2)(E) of the Securities Exchange Act of 1934 (the '' Exchange Act''), MSRB rules must provide for the periodic examination of municipal securities brokers, municipal securities dealers, or municipal advisors (''regulated entities'') to determine

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

compliance with Section 15B of the Exchange Act, the rules and regulations thereunder, and MSRB rules. The same provision requires that the MSRB specify the minimum scope and frequency of the examinations and that the examination rules be designed to avoid unnecessary regulatory duplication or undue regulatory burden for any regulated entity.

Section 15B(c)(7) of the Exchange Act provides that the periodic examination of regulated entities shall be conducted by (a) A registered securities association in the case of dealers that are members of the registered securities association, (b) the appropriate regulatory agency (''bank regulators'') in the case of dealers that are not members of a registered securities association, and (c) the SEC, or its designee, in the case of municipal advisors. There is one securities association registered with the SEC—FINRA. Approximately 1,800 MSRB registered dealers are members of and examined by FINRA, with the remaining dealers registered with the SEC as municipal securities dealers and examined primarily by the various federal bank regulators.

Rule G–16 currently provides that, at least once every two calendar years, dealers must be examined in accordance with Section 15B of the Exchange Act, in order to determine whether the dealers are in compliance with all MSRB rules and applicable provisions of the Exchange Act. Separately, FINRA examines its members pursuant to a risk-based approach at least every four calendar years. In order to comply with Rule G–16, FINRA and the MSRB agreed to a protocol allowing for a questionnaire to be completed by certain firms every two calendar years. These dealers are typically less active in the municipal securities market and, therefore, pose less overall risk to market participants. The questionnaire, entitled the Alternative Municipal Examination (''AME'') module, was implemented in 1998, after review by SEC and MSRB staff.

The AME is used as an off-site examination for low-risk dealers that: (a) Conduct a limited municipal securities business; (b) do not conduct a public finance business; and (c) are not otherwise identified as high risk firms for regulatory purposes. The AME is necessarily general and not tailored to the specific business of any one firm. It relies on each responding dealer to self report rule violations and to certify that the information provided is truthful and accurate.

After many years of experience with the AME, the MSRB and FINRA believe that a more risk-based examination protocol should be implemented and that Rule G–16 should be amended to allow for up to a four year examination cycle for FINRA-member firms, consistent with FINRA's requirement for cycle examinations of all other FINRA members. This would also allow FINRA to integrate the municipal securities cycle examination program more closely with its overall cycle examination program, and redeploying staff resources from administering the AME to participating in the risk-based examination program would foster more meaningful oversight. Moreover, over the last few years, there have been significant advances in information technology, particularly with the development of the MSRB's Real-time Transaction Reporting System and Electronic Municipal Market Access system. These advancements in information technology and transparency have enabled FINRA to develop robust automated surveillance reviews of municipal securities transactions. FINRA is now able to review municipal securities transactions and other activity remotely, in order to identify potential MSRB rule violations by dealers. These tools permit FINRA staff to conduct near real-time surveillance of certain municipal securities activities.

It is also apparent that the municipal securities business has changed dramatically over the last few years. The industry has consolidated and a small number of large firms account for the majority of public finance business. The top five underwriters accounted for over 50 percent, by par amount, of primary offerings in 2010 and 2011.[3] The top 10 underwriters accounted for over 70 percent of the underwritings, by par amount, in 2010 and 2011, and the top 200 accounted for almost 100 percent of the underwritings, by par amount, in 2010 and 2011. According to data gathered by the MSRB, the top 10 dealers executed approximately 55 percent of all municipal securities transactions reported to the MSRB in 2010 and 2011. The top 50 dealers executed approximately 80 percent of all such transactions in 2010 and 2011, and the top 200 dealers executed approximately 96 percent of all such transactions. By par amount, the top 200 dealers executed approximately 98 percent of all municipal securities transactions reported to the MSRB in 2010 and 2011. The remaining approximately 1,600 firms are less active in the municipal securities market, engage solely in the sale of interests in 529 College Savings Plans, or effect municipal securities transactions primarily as an accommodation to their customers. Generally, these firms are not engaged in financial advisory activities or municipal securities underwriting, research, or trading. They, therefore, do not pose systemic risk to the market in these areas.

With input from the MSRB, consistent with Section 15B(b)(4) of the Exchange Act, FINRA is enhancing its risk assessment approach to rank dealers by certain risk factors, as well as by size and scope of business, to determine their examination cycle frequencies, which under the proposed rule change would range from one to four years, rather than every two years as currently prescribed by Rule G–16. It is anticipated that, based on the analysis of the various identified risks and related factors, those firms that represent higher risks, as well as firms that pose a systemic threat based on the scope and scale of their underlying municipal securities activities, would be examined on an annual basis. Other firms would be examined less frequently, every two to four years, depending on the risk ranking and size of their municipal securities business and the firm's overall business model. At a minimum, all firms would be examined at least once every four calendar years. Cycle examination frequencies for dealers would be re-assessed at least on an annual basis. FINRA would continue to conduct off-site surveillance of municipal securities activity and ''cause'' examinations as needed. ''Cause'' examinations are event-driven and typically initiated as a result of customer complaints, regulatory tips, and other information sources identified by FINRA via its regulatory oversight process.

The MSRB believes that using quantitative and qualitative criteria to rank dealers by appropriately identified risk measures and size no less frequently than on an annual basis provides better protection for investors, municipal entities, and other market participants, since FINRA's resources will be focused on those firms that pose the greatest risk to investors, municipal entities and the market. Such firms will be subject to in-depth examinations tailored to the specific municipal securities activities they conduct.

Finally, the MSRB has proposed a rule change requiring dealers that are FINRA members to retain certain records for four years, rather than for three years, under Rule G–9 in order to ensure that the records are available at

[3] All 2011 figures are through September 2011. Underwriting statistics are provided by Thomson Reuters.

those firms that are examined every four calendar years.

2. Statutory Basis

The MSRB has adopted the proposed rule change pursuant to Section 15B(b)(2)(E) of the Exchange Act, which provides that the MSRB's rules shall:

> provide for the periodic examination in accordance with subsection (c)(7) of municipal securities brokers, municipal securities dealers, and municipal advisors to determine compliance with applicable provisions of this title, the rules and regulations thereunder, and the rules of the Board. Such rules shall specify the minimum scope and frequency of such examinations and shall be designed to avoid any unnecessary regulatory duplication or undue regulatory burdens for any such municipal securities broker, municipal securities dealer, or municipal advisor.

Section 15B(c)(7) of the Exchange Act further provides that periodic examinations of dealers shall be conducted by a registered securities association, in the case of dealers that are members of such association. FINRA is currently the only registered securities association.

The proposed rule change will accomplish this mandate by providing FINRA with the flexibility to establish a risk-based examination program for municipal securities that is consistent with its other examination programs. By conforming the municipal securities examination program to FINRA's other examination programs and integrating the municipal securities examination program into FINRA's overall examination protocol, the new program should reduce regulatory duplication and undue burden on dealers that are FINRA members by fostering an integrated regulatory examination protocol and targeting those firms for more frequent examinations that pose a greater risk to investors and other market participants and have a greater impact on the marketplace.

With input from the MSRB, consistent with Section 15B(b)(4) of the Exchange Act, FINRA is enhancing its risk assessment approach to rank dealers by certain risk factors, as well as by size and scope of business, to determine their examination cycle frequencies, which under the proposed rule change would range from one to four years, rather than every two years as currently prescribed by Rule G–16. It is anticipated that, based on the analysis of the various identified risks and related factors, those firms that represent higher risks, as well as firms that pose a systemic threat based on the scope and scale of their underlying municipal securities activities, would be examined on an annual basis. Other firms would be examined less frequently, every two to four years, depending on the risk ranking and size of their municipal securities business and the firm's overall business model. At a minimum, all firms would be examined at least once every four calendar years. Cycle examination frequencies for dealers would be re-assessed at least on an annual basis. FINRA would continue to conduct off-site surveillance of municipal securities activity and ''cause'' examinations as needed. ''Cause'' examinations are event-driven and typically initiated as a result of customer complaints, regulatory tips, and other information sources identified by FINRA via its regulatory oversight process.

The MSRB believes that using quantitative and qualitative criteria to rank dealers by appropriately identified risk measures and size no less frequently than on an annual basis provides better protection for investors, municipal entities, and other market participants, since FINRA's resources will be focused on those firms that pose the greatest risk to investors, municipal entities and the market. Such firms will be subject to in-depth examinations tailored to the specific municipal securities activities they conduct. The risk-based examination protocol is consistent with Sections 15B(b)(2)(E) and 15B(c)(7) of the Exchange Act in that the examinations by FINRA would be tailored to each individual regulated entity to determine compliance with MSRB rules and applicable federal law and would be designed to avoid any unnecessary regulatory duplication or undue regulatory burdens.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Board does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. The change would provide FINRA with greater flexibility to carry out the periodic compliance examinations of its members mandated by Sections 15B(b)(2)(E) and 15B(c)(7) of the Exchange Act, in accordance with a risk-based approach that is based on the risk posed by regulated entities to investors and the marketplace and the impact of the regulated entity's municipal securities business on the marketplace. All such regulated entities that pose greater risk and have a higher impact on the municipal securities market would be inspected more frequently, and all such regulated entities that pose less risk to the market and have a lower impact on the municipal securities market would be inspected less frequently. All dealers that are members of FINRA would be examined at least every four calendar years.

*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 on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or

(ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Exchange 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–MSRB–2011–19 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–MSRB–2011–19. 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, 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 MSRB's offices.

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–MSRB–2011–19 and should be submitted on or before November 22, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[4]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2011–28243 Filed 10–31–11; 8:45 am]

**BILLING CODE 8011–01–P**

[4] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–65626; File No. SR–NYSEAMEX–2011–82]**

## Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing of Proposed Rule Change Expanding the Scope of Potential ''Users'' of Its Co-Location Services To Include Any Market Participant That Requests To Receive Co-Location Services Directly From the Exchange and Amending Its Price List To Establish a Fee for Users That Host Their Customers at the Exchange's Data Center

October 26, 2011.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on October 14, 2011, NYSE Amex LLC (the ''Exchange'' or ''NYSE Amex'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

### I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to expand the scope of potential ''Users'' of its co-location services to include any market participant that requests to receive co-location services directly from the Exchange. In addition, the Exchange proposes to amend its Price List to establish a fee for Users that host their customers at the Exchange's data center. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com*.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange operates a data center in Mahwah, New Jersey from which it provides co-location services to Users.[4] For purposes of its co-location services, the term ''User'' currently includes any ''ATP Holder,'' as that term is defined in NYSE Amex Options Rule 900.2NY(4) and any ''Sponsored Participant,'' as that term is defined in NYSE Amex Options Rule 900.2NY(77).[5] The Exchange proposes to expand the scope of potential Users of its co-location services to include any market participant that requests to receive co-location services directly from the Exchange.[6] Under the proposed rule change, Users could therefore include ATP Holders, Sponsored Participants, non-ATP Holder broker-dealers and vendors. The Exchange anticipates that the potential additional Users would provide, for example, hosting, service bureau, technical support, risk management, order routing and market data delivery services to their customers while the User is co-located in the Exchange's data center.[7] As is the case with all Exchange co-location arrangements, neither a User, nor any of its customers, would be permitted to submit orders directly to the Exchange unless such User or customer is an ATP Holder or a Sponsored Participant. All existing co-location terms, conditions, facilities, services, and applicable fees would apply to these potential new Users.

The Exchange also proposes to amend its Fee Schedule to establish a fee applicable to Users that provide hosting services to their customers (''Hosted Users'') at the Exchange's data center. ''Hosting'' would be a service offered by a User to a Hosted User and could include, for example, a User supporting its Hosted User's technology, whether hardware or software, through the User's co-location space. Specifically, the Exchange proposes to charge each User a fee of $500.00 per month for each Hosted User that the User hosts in the Exchange's data center. Users would independently set fees for their Hosted Users and the Exchange would not receive a share of any such fees.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[8] in general, and furthers the objectives of Section 6(b)(4)[9] and 6(b)(5) of the Act,[10] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in

[4] *See* Securities Exchange Act Release No. 63274 (November 8, 2010), 75 FR 69722 (November 15, 2010) (SR–NYSEAmex–2010–101).

[5] *Id.* at note 7.

[6] As is the case today, prospective Users must agree to, and be capable of satisfying, any applicable co-location fees, requirements, terms and conditions established from time to time by the Exchange.

[7] The Exchange anticipates that a User's customer(s) could include, under certain circumstances, other Users of the Exchange's co-location services.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78f(b)(5).

general, to protect investors and the public interest.

The Exchange's proposal to expand the scope of potential Users of its co-location services to include any market participant that requests to receive co-location services directly from the Exchange would increase access to the Exchange's co-location facilities by allowing additional types of Users to use those facilities. In this regard, co-location services would be offered by the Exchange to these additional types of Users, as is the case today for existing Users, in a manner that would not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms and conditions established from time to time by the Exchange.

Additionally, the proposed hosting fee would be applied uniformly for comparable services provided by the Exchange and would not unfairly discriminate between similarly situated Users of co-location services. In this regard, the proposed hosting capability and related fee would be applicable to all interested Users that provide hosting services. In addition, the Exchange believes that the proposed hosting fee is reasonable in that it is designed to defray applicable expenses incurred or resources expended by the Exchange related to such services, including, but not limited to, configuration of Users' connections to their Hosted User customers and subsequent monitoring thereof by Exchange staff.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve or disapprove such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEAMEX–2011–82 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–NYSEAMEX–2011–82. 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 office of NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAMEX–2011–82, and should be submitted on or before November 22, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2011–28203 Filed 10–31–11; 8:45 am]

BILLING CODE 8011–01–P

[11] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–65629; File No. SR–NYSE–2011–53]**

## Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change Expanding the Scope of Potential ''Users'' of Its Co-Location Services To Include Any Market Participant That Requests To Receive Co-Location Services Directly From the Exchange and Amending Its Price List To Establish a Fee for Users That Host Their Customers at the Exchange's Data Center

October 26, 2011.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on October 14, 2011, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change**

The Exchange proposes to expand the scope of potential ''Users'' of its co-location services to include any market participant that requests to receive co-location services directly from the Exchange. In addition, the Exchange proposes to amend its Price List to establish a fee for Users that host their customers at the Exchange's data center. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com*.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange operates a data center in Mahwah, New Jersey from which it provides co-location services to Users.[4] For purposes of its co-location services, the term ''User'' currently includes member organizations, as that term is defined in NYSE Rule 2(b), and Sponsored Participants, as that term is defined in NYSE Rule 123B.30(a)(ii)(B).[5] The Exchange proposes to expand the scope of potential Users of its co-location services to include any market participant that requests to receive co-location services directly from the Exchange.[6] Under the proposed rule change, Users could therefore include member organizations, Sponsored Participants, non-member broker-dealers and vendors. The Exchange anticipates that the potential additional Users would provide, for example, hosting, service bureau, technical support, risk management, order routing and market data delivery services to their customers while the User is co-located in the Exchange's data center.[7] As is the case with all Exchange co-location arrangements, neither a User, nor any of its customers, would be permitted to submit orders directly to the Exchange unless such User or customer is a member organization or a Sponsored Participant. All existing co-location terms, conditions, facilities, services, and applicable fees would apply to these potential new Users.

The Exchange also proposes to amend its Price List to establish a fee applicable to Users that provide hosting services to their customers (''Hosted Users'') at the Exchange's data center. ''Hosting'' would be a service offered by a User to a Hosted User and could include, for example, a User supporting its Hosted User's technology, whether hardware or software, through the User's co-location space. Specifically, the Exchange proposes to charge each User a fee of $500.00 per month for each Hosted User that the User hosts in the Exchange's data center. Users would independently set fees for their Hosted Users and the Exchange would not receive a share of any such fees.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[8] in general, and furthers the objectives of Section 6(b)(4)[9] and 6(b)(5) of the Act,[10] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange's proposal to expand the scope of potential Users of its co-location services to include any market participant that requests to receive co-location services directly from the Exchange would increase access to the Exchange's co-location facilities by allowing additional types of Users to use those facilities. In this regard, co-location services would be offered by the Exchange to these additional types of Users, as is the case today for existing Users, in a manner that would not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms and conditions established from time to time by the Exchange.

Additionally, the proposed hosting fee would be applied uniformly for comparable services provided by the Exchange and would not unfairly discriminate between similarly situated Users of co-location services. In this regard, the proposed hosting capability and related fee would be applicable to all interested Users that provide hosting services. In addition, the Exchange believes that the proposed hosting fee is reasonable in that it is designed to defray applicable expenses incurred or resources expended by the Exchange related to such services, including, but not limited to, configuration of Users' connections to their Hosted User customers and subsequent monitoring thereof by Exchange staff.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve or disapprove such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2011–53 on the subject line.

[4] *See* Securities Exchange Act Release No. 62960 (September 21, 2010), 75 FR 59310 (September 27, 2010) (SR–NYSE–2010–56).

[5] *Id.* at note 7.

[6] As is the case today, prospective Users must agree to, and be capable of satisfying, any applicable co-location fees, requirements, terms and conditions established from time to time by the Exchange.

[7] The Exchange anticipates that a User's customer(s) could include, under certain circumstances, other Users of the Exchange's co-location services.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78f(b)(5).

*Paper Comments*

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2011–53. 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 office of NYSE. 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–NYSE–2011–53, and should be submitted on or before November 22, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2011–28205 Filed 10–31–11; 8:45 am]

**BILLING CODE 8011–01–P**

[11] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–65633; File No. SR–CHX–2011–29]**

## Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Order Approving a Proposed Rule Change To Change the Status of Exchange-Registered Institutional Broker Firms

October 26, 2011.

### I. Introduction

On September 14, 2011, the Chicago Stock Exchange, Inc. (''CHX'' or the ''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 change the status of Exchange-registered Institutional Broker firms (''Institutional Brokers''). The proposed rule change was published for comment in the **Federal Register** on September 26, 2011.[3] The Commission received no comment letters on the proposal. This order approves the proposed rule change.

### II. Description of the Proposal

Institutional Brokers are an elective sub-category of Exchange Participants who are subject to the obligations of Article 17 of the CHX rules. Typically, Institutional Brokers provide manual order handling and execution services for other broker-dealers or institutional clients. Institutional Brokers are the successors to the floor brokers that operated within the Exchange's previous floor-based, auction trading model. That model was eliminated as part of the Exchange's transition to its New Trading Model, which features an electronic limit order matching system as its core trading facility.[4] In approving the Exchange's New Trading Model, the Commission stated:

Institutional brokers would be deemed to be participants operating on the Exchange, although they would not effect transactions from a physical trading floor (since the Exchange will no longer have a physical trading floor) and could trade from any location. A customer order would be deemed to be on the Exchange when received by an institutional broker, but would not have priority in the Matching System until it is entered into the system.[5]

Due to certain changes in the function of Institutional Brokers,[6] CHX proposes to treat Institutional Brokers as no longer always operating on the Exchange. Pursuant to CHX's proposal, an order that is sent to an Institutional Broker shall not be deemed to be ''on the Exchange'' unless and until the Institutional Broker enters it into the Exchange's Matching System.[7] Correspondingly, the Exchange proposes to delete certain references to Institutional Brokers and/or their activity as being ''on the Exchange'' in Article 11, Rule 3(e) and in Article 17, Rule 3(a) and in Interpretation and Policy .01 thereto.

The Exchange also proposes to delete Article 20, Rule 7 (Clearing the Matching System), which requires Institutional Brokers to attempt to execute trades on the Exchange before routing the order to another destination, except if the Institutional Broker is trading for its own account or its customer specifically requests otherwise. Currently, Institutional Brokers are not permitted to execute transactions directly in the over-the-counter (''OTC'') marketplace because, as discussed above, orders directed to them are deemed on the Exchange.[8] In light of the proposed elimination of the on-Exchange designation of all Institutional Broker orders, CHX also proposes to modify Article 17, Rule 1 to permit Institutional Brokers to effect transactions both on the Exchange and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 65354 (September 19, 2011), 76 FR 59476 (''Notice'').

[4] The Exchange replaced its traditional auction marketplace with its New Trading Model beginning in 2006. *See* Securities Exchange Act Release No. 54550 (September 29, 2006), 71 FR 59563 (October 10, 2006) (SR–CHX–2006–05).

[5] *Id.* 71 FR at 59567.

[6] Until fairly recently, CHX permitted Institutional Brokers to execute trades outside the Exchange's core trading facility, the Matching System, and those trades were still considered to be on the Exchange. Utilizing a functionality known as the Validated Cross, Institutional Brokers executed cross transactions based upon the state of the national market and orders residing in the Matching System at the time the parties agreed to the execution, rather than as of the entry of all essential terms into the electronic systems used by Institutional Brokers to handle and execute such transactions. *See, e.g.,* CHX Market Regulation Department Information Memorandum MR–07–9 (December 6, 2007). In December 2010, the Exchange eliminated the Validated Cross functionality and ability of Institutional Brokers to execute transactions on the CHX otherwise than through the Matching System. *See* Securities Exchange Act Release No. 63564 (December 16, 2010), 75 FR 80870 (December 23, 2010) (SR–CHX–2010–25). Given this change, the Exchange states there is no longer any meaningful reason to treat Institutional Brokers as operating on the Exchange and the proposed Interpretation and Policy .04 reflects that determination. *See* Notice, 76 FR at 59477.

[7] *See* New Interpretation and Policy .04 to Rule 3 of Article 17.

[8] *See* CHX Market Regulation Department Information Memorandum MR–11–09 (July 14, 2011), available on the Exchange's public Web site, *http://www.chx.com.*

in other market centers, which would include the OTC marketplace, subject to the rules of the appropriate self-regulatory organization (''SRO'').[9]

## III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[10] Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[11] in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transaction in securities, to remove impediments and perfect the mechanisms of a free and open market, and, in general, to protect investors and the public interest.

The Commission notes that, due to the elimination of the Validated Cross functionality, an Institutional Broker can only execute an order on the Exchange by submitting an order into the Matching System, which is the means all other Exchange participants execute orders on the Exchange.[12] The Commission believes that it is appropriate and consistent with the Act for Institutional Brokers to no longer be deemed to be a participant operating on the Exchange, and that a customer order received by an Institutional Broker should not be deemed to be on the Exchange unless and until such order is entered into the Matching System. Allowing an Institutional Broker to execute transactions other than on the Exchange and eliminating the requirement to clear the Matching System before sending customer orders to other trading centers, should permit an Institutional Broker to more effectively compete with other broker-dealers and serve the interests of their customers and investors.[13]

## IV. Conclusion

*It Is Therefore Ordered,* pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–CHX–2011–29) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2011–28228 Filed 10–31–11; 8:45 am]

**BILLING CODE 8011–01–P**

[9] Currently, the SRO for the OTC marketplace is FINRA.

[10] 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).

[11] 15 U.S.C. 78f(b)(5).

[12] *See supra* note 6.

[13] The Commission notes that it approved separately changes to CHX's rules governing the clearing of Institutional Brokers' transactions effected other than on CHX. *See* Securities Exchange Act Release No. 65615 (October 24, 2011) (SR–CHX–2010–17).

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–65630; File No. SR–C2–2011–030]**

## Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Close Trading at 3 p.m. Chicago Time on the Last Day of Trading of Expiring P.M.-Settled S&P 500 Options

October 26, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 17, 2011, the C2 Options Exchange, Incorporated (the ''Exchange'' or ''C2'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] 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

Prior to the commencement of the listing and trading on C2 of Standard & Poor's 500 Index (''S&P 500'') options with third-Friday-of-the-month (''Expiration Friday'') expiration dates for which the exercise settlement value will be based on the index value derived from the closing prices of component securities (''PM-settled''),[5] the Exchange proposes to close trading at 3 p.m. Chicago time (all times referenced herein to be Chicago time) on the last day of trading of expiring P.M.-settled S&P 500 options. Non-expiring P.M.-settled S&P 500 options will continue to trade until 3:15 p.m. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's Office of the Secretary, and at the Commission.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

On September 2, 2011, the Commission approved a rule change filed by the Exchange to permit, on a pilot basis, the listing and trading on C2 of PM-settled S&P 500 options.[6] The Exchange now proposes, prior to the commencement of trading of such products, to close trading at 3 p.m. on the last day of trading of expiring P.M.-settled S&P 500 options. Non-expiring P.M.-settled S&P 500 options will continue to trade until 3:15 p.m.

The S&P 500 is a capitalization-weighted index of 500 stocks from a broad range of industries. The component stocks are weighted according to the total market value of their outstanding shares. The impact of a component's price change is proportional to the issue's total market share value, which is the share price times the number of shares outstanding. These are summed for all 500 stocks and divided by a predetermined base value. The base value for the S&P 500 is adjusted to reflect changes in capitalization resulting from, among

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] Listing and trading of P.M.-settled S&P 500 options has already commenced, but the Exchange intends to have this change in place prior to the first Expiration Friday for such products. *See* email from Jeff Dritz, Attorney, C2, to Sara Hawkins, Special Counsel, Division of Trading and Markets, Commission on October 20, 2011.

[6] *See* Securities Exchange Act Release No. 34–65256 (September 2, 2011), 76 FR 55969 (September 9, 2011) (SR–C2–2011–008).

other things, mergers, acquisitions, stock rights, and substitutions.[7]

PM-settled S&P 500 options will have a $100 multiplier, and the minimum trading increment would be $0.05 for options trading below $3.00 and $0.10 for all other series. Strike price intervals will be set no less than 5 points apart. Expiration processing would occur on Saturday following the Expiration Friday. The product will have European-style exercise, and because it is based on the S&P 500 index, there will be no position limits.[8]

PM-settled S&P 500 options will be priced in the market based on corresponding futures values. The primary listing markets for the component securities that comprise the S&P 500 close trading in those securities at 3 p.m. The primary listing exchanges for the component securities disseminate an official closing price of the component securities, which is used by S&P to calculate the exercise settlement value of the S&P 500. C2 believes that, under normal trading circumstances, the primary listing markets have sufficient bandwidth to prevent any data queuing that would cause any trades that are executed prior to the closing time from being reported after 3 p.m. Despite the fact that the exercise settlement value will be fixed at or soon after 3 p.m., trading in expiring PM-settled S&P 500 options would continue, under current rules, for an additional fifteen minutes until 3:15 p.m. and will not be priced on corresponding futures values, but rather the known cash value. At the same time, the prices of non-expiring PM-settled S&P 500 options series will continue to move and be priced in response to changes in corresponding futures prices.

A potential pricing divergence could occur between 3 and 3:15 p.m. on the final trading day in expiring PM-settled S&P 500 options (*e.g.,* switch from pricing off of futures to cash). Further, in a wholly electronic marketplace, the switch from pricing off of futures to cash can be a difficult and risky switchover for liquidity providers. As a result, without closing expiring contracts at 3 p.m., it is foreseeable that market-makers would react by widening spreads in order compensate for the additional risk. Therefore, the Exchange believes that, in order to mitigate potential investor confusion and the potential for increased costs to investors, it is appropriate to cease trading in expiring PM-settled S&P 500 options contracts at 3 p.m. The Exchange does not believe that the proposed change will impact volatility on the underlying cash market at the close on Expiration Friday.

The proposed change is identical in nature to two effective rule changes filed by Chicago Board Options Exchange, Incorporated (''CBOE'').[9] In those filings, CBOE changed the close of trading hours from 3:15 p.m. to 3 p.m. on the last day of trading in expiring End-of-Week (''EOW''), End-of-Month (''EOM'') and Quarterly Index (''QIX'') Expirations.[10] In the current situation, the Exchange merely proposes to apply the precedent established regarding those PM-settled products to expiring PM-settled S&P 500 options contracts.

Given the fact that the Commission approved the listing and trading of PM-settled S&P 500 options on a pilot basis and that such pilot program is scheduled to end on November 2, 2012, the rule change proposed herein would also terminate on November 2, 2012 (unless the pilot period for the listing and trading of PM-settled S&P 500 options were to be extended or the program made permanent).

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act[11] and the rules and regulations thereunder and, in particular, the requirements of Section 6(b) of the Act.[12] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[13] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. Preventing continued trading on a product after the exercise settlement value has been fixed eliminates potential confusion and thereby protects investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

C2 does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule 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 if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission,[14] the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[15] and Rule 19b–4(f)(6) thereunder.[16]

At any time within 60 days of the filing of such 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 No. SR–C2–2011–030 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission,

[7] *See supra* note 6.

[8] *See supra* note 6.

[9] *See* Securities Exchange Act Release No. 34–64243 (April 7, 2011), 75 FR 20771 (April 13, 2011) (SR–CBOE–2011–038) and Securities Exchange Act Release No. 34–59676 (April 1, 2009), 74 FR 16018 (April 8, 2009) (SR–CBOE–2009–020).

[10] *See supra* note 9.

[11] 15 U.S.C. 78s(b)(1).

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] The Exchange has satisfied this requirement.

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6).

100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–C2–2011–030. 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, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the C2. 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–C2–2011–030 and should be submitted on or before November 22, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2011–28227 Filed 10–31–11; 8:45 am]

**BILLING CODE 8011–01–P**

[17] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–65637; File No. SR–CME–2011–12]**

## Self-Regulatory Organizations; Chicago Mercantile Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change To Expand Its OTC FX Swaps Clearing Offering

October 26, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 17, 2011, the Chicago Mercantile Exchange Inc. (''CME'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I and II below, which items have been prepared primarily by CME. The Commission is publishing this Notice and Order to solicit comments on the proposed rule change from interested persons and to approve the proposed rule change on an accelerated basis.

### I. Self-Regulatory Organization's Statement of Terms of Substance of the Proposed Rule Change

The proposed rule changes amend current CME rules to expand its cleared-only, foreign currency (''FX'') swaps offering to support the introduction of (1) Twenty-six new foreign FX currency derivatives for over-the counter (''OTC'') cash settlement; and (2) eleven new FX non-deliverable forward transaction currency pairs for traditional, OTC cash settlement. Both types of new FX derivatives products will be offered as cleared-only products.

The text of the proposed rule change is available on CME's Web site at *http://www.cmegroup.com,* at the principal office of CME, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CME included statements concerning the purpose 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 III below. CME 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 Purpose of, and Statutory Basis for, the Proposed Rule Change*

CME currently offers clearing for certain U.S. Dollar/Chilean Peso (''USD/CLP'') spot, forward and swap contracts that are executed between two counterparties on an over-the-counter (''OTC'') basis. These products, described in CME Rule 274H, are listed for clearing-only; after two counterparties submit qualifying transactions to CME, the transactions are novated to the CME Clearing House. For purposes of CME Rules, the minimum-fluctuations currency is the Chilean peso and the clearing-unit currency is the U.S. dollar.

CME's proposed rule changes are intended to amend certain rules to support the introduction of additional cleared-only OTC foreign currency derivatives. More specifically, the proposed filing would add: (1) Twenty-six new foreign exchange (''FX'') currency derivatives for over-the counter (''OTC'') cash settlement; and (2) eleven new FX non-deliverable forward (''NDF'') transaction currency pairs for traditional, OTC cash settlement. As mentioned above, both categories of new FX derivatives products will be offered as cleared-only products.

The twenty-six new FX pairs are branded as CME WM/Reuters spot, forward and swap products. They include the following currency pairs: GBP/USD; USD/CAD; USD/JPY; USD/CHF; AUD/USD; USD/MXN; NZD/USD; USD/ZAR; EUR/USD; USD/NOK; USD/SEK; USD/CZK; USD/HUF; USD/PLN; USD/ILS; USD/TRY; USD/DKK; EUR/GBP; EUR/JPY; EUR/CHF; AUD/JPY; CAD/JPY; EUR/AUD; USD/HKD; USD/SGD; and USD/THB. Although the twenty-six new OTC CME WM/Reuters currency pairs are capable of being physically deliverable, they may also be cash settled in U.S. dollars to the OTC FX benchmark WM/Reuters London FX Closing Spot Rate (4 p.m. London time).

The eleven new NDF FX pairs are very similar to CME's current USD/CLP product. These cash-settled OTC products will include the following currency pairs: USD/BRL; USD/RMB; USD/RUB; USD/COP; USD/PEN; USD/KRW; USD/INR; USD/MYR; USD/IDR; USD/TWD; and USD/PHP. Like the current CME USD/CLP product, the USD versus BRL, RMB, RUB, COP, PEN, KRW, INR, MYR, IDR, TWD and PHP products are offered as NDF-style contracts financially or cash settled in U.S. dollars with positions held in clearing at the original trade price marked to the applicable standard OTC NDF settlement rate option (many are central bank determined/sanctioned rates). For example, final settlements for USD/BRL spot transactions are concluded based on the difference between (1) The spot exchange rate of Brazilian real per U.S. dollar ''Central Bank of Brazil PTAX offered rate'' as reported for the valid value date for cash settlement by Banco Central do Brasil for the formal exchange market, and (2) the original trade price for each transaction, and (3) the result divided by the BRL per USD spot exchange rate to convert notional BRLs to USDs. Cash settlement of cleared only transactions

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

occurs on a net basis at the customer account level.

OTC FX transactions that are executed bilaterally through brokers, ECNs or other FX trading platforms, when submitted to CME Clearing, are novated for purposes of clearing and application of financial safeguards, bookkeeping, trade processing, and final delivery or cash settlement. These contracts will be carried in CME's OTC sequestered account class.

CME Clearing uses the SPAN system to establish performance bond or ''margin'' requirements for FX spot, forwards and swaps. Initial performance bond requirements are established at levels that are consistent with observed levels of volatility in the particular currency pairing and generally aligned with initial margin levels applied to current CME FX futures and option contracts, where applicable. CME Clearing collects and pays in cash between the counterparties each day. CME Clearing will accept as collateral cash or any other instruments currently designated as approved collateral for posting for performance bonds. In order to calculate variation requirements, settlement prices will be established for each contract and for each delivery date referencing data collected from a variety of market sources.

CME notes that it has also submitted the proposed rule changes that are the subject of this filing to its primary regulator, the Commodity Futures Trading Commission (''CFTC'').

CME believes the proposed rule changes are consistent with the requirements of the Exchange Act including Section 17A of the Exchange Act because they involve clearing of swaps and thus relate solely to CME's swaps clearing activities pursuant to its registration as a derivatives clearing organization under the Commodity Exchange Act (''CEA'') and do not significantly affect any securities clearing operations of the clearing agency or any related rights or obligations of the clearing agency or persons using such service. CME further notes that the policies of the CEA with respect to clearing are comparable to a number of the policies underlying the Exchange Act, such as promoting market transparency for over-the-counter derivatives markets, promoting the prompt and accurate clearance of transactions and protecting investors and the public interest. The proposed rule changes accomplish those objectives by offering investors clearing for an expanded range of FX OTC swap products.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

CME does not believe that the proposed rule change will have any impact, or impose any burden, on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

CME has not solicited, and does not intend to solicit, comments regarding this proposed rule change. CME has not received any unsolicited written comments from interested parties.

**III. 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 may be submitted by using 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–CME–2011–12 on the subject line.
- Paper comments should be sent 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–CME–2011–12. 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, 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 CME. 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–CME–2011–12 and should be submitted on or before November 22, 2011.

**IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change**

In its filing, CME requested that the Commission approve this request on an accelerated basis, for good cause shown. CME has articulated three reasons for granting this request on an accelerated basis. One, the products covered by this filing, and CME's operations as a derivatives clearing organization for such products, are regulated by the CFTC under the CEA. Two, the proposed rule changes relate solely to FX swap products and therefore relate solely to its swaps clearing activities and do not significantly relate to CME's functions as a clearing agency for security-based swaps. Three, not approving this request on an accelerated basis will have a significant impact on the swap clearing business of CME as a designated clearing organization.

Section 19(b) of the Act [3] directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. The Commission finds that the proposed rule change is consistent with the requirements of the Act, in particular the requirements of Section 17A of the Act,[4] and the rules and regulations thereunder applicable to CME. Specifically, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act which requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of derivative agreements, contracts, and transactions because it should allow CME to enhance its services in clearing foreign currency derivative products, thereby promoting the prompt and accurate clearance and settlement of derivative agreements, contracts, and transactions.[5]

The Commission finds good cause for accelerating approval because: (i) The proposed rule change does not

[3] 15 U.S.C. 78s(b).

[4] 15 U.S.C. 78q–1. In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78q–1(b)(3)(F).

significantly affect any securities clearing operations of the clearing agency (whether in existence or contemplated by its rules) or any related rights or obligations of the clearing agency or persons using such service; (ii) CME has indicated that not providing accelerated approval would have a significant impact on the foreign currency derivative products clearing business of CME as a designated clearing organization; and (iii) the activity relating to the non-security clearing operations of the clearing agency for which the clearing agency is seeking approval is subject to regulation by another regulator.

**V. Conclusion**

*It is therefore ordered,* pursuant to Section 19(b)(2) [6] of the Act, that the proposed rule change (SR–CME–2011–12) is approved on an accelerated basis.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[7]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2011–28213 Filed 10–31–11; 8:45 am]

**BILLING CODE 8010–01–P**

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–65636; File No. SR–CME–2011–14]**

## Self-Regulatory Organizations; Chicago Mercantile Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change To Amend the Performance Bond Regime Applicable to Certain Cleared Only OTC FX Swaps

October 26, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 18, 2011, the Chicago Mercantile Exchange Inc. (''CME'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I and II below, which items have been prepared primarily by CME. The Commission is publishing this Notice and Order to solicit comments on the proposed rule change from interested persons and to approve the proposed rule change on an accelerated basis.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

**I. Self-Regulatory Organization's Statement of Terms of Substance of the Proposed Rule Change**

CME proposes to amend certain rules related to its existing Cleared OTC US Dollar/Chilean Peso (''USD/CLP'') foreign currency (''FX'') contracts. The USD/CLP FX contracts are comprised of spot, forward and swap transactions, and are also referred to as non-deliverable forwards (''NDFs''). The proposed rule changes would change the performance bond regime that applies to CME's USD/CLP NDF from a ''collateralization mark-to-market'' to a ''cash mark-to-market'' performance bond method.

The text of the proposed rule change is available at the CME's Web site at *http://www.cmegroup.com*, at the principal office of CME, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, CME included statements concerning the purpose 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 III below. CME 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 Purpose of, and Statutory Basis for, the Proposed Rule Change*

CME currently offers USD/CLP NDFs as a cleared-only product. These USD/CLP NDFs feature a ''collateralization mark to market'' performance bond regime. CME desires to adopt a new performance bond regime that applies to the USD/CLP NDF product. The new requirements would instead feature a ''cash mark to market'' performance bond method. This change is intended to bring the USD/CLP NDF product in line with CME's anticipated launch of a suite of new OTC FX cleared-only currency pairs (which will be included as part of a separate regulatory filing.[3]) These new products will collectively feature the ''cash mark to market'' methodology when they are eventually offered for clearing, with the first in a phased roll-out of the new FX pairs to be offered currently planned for October 31, 2011.

CME Clearing has deployed the SPAN margining system to establish performance bond or ''margin'' requirements for OTC USD/CLP NDFs. Initial performance bond requirements are established at levels that are consistent with observed levels of volatility in the particular currency pairing and generally aligned with initial margin levels applied to current CME FX futures and option contracts, where applicable, which is not the current case with the cleared OTC CLP/CLP products, where there is no USD/CLP futures contract. These risk components of the clearing system are unchanged with implementation of ''cash mark to market'' rather than ''collateralization mark to market''. However, it should be noted that the administration of the new margin regime will require a daily mark-to-market on a cash basis, similar to traded FX futures. Variation margins may be satisfied with the posting of appropriate amounts of collateral, where CME Clearing collects and pays in cash between the counterparties each day.

CME Clearing will accept as collateral cash or any other instruments currently designated as approved collateral for posting for performance bonds. In order to calculate variation requirements, settlement prices are established for each contract and for each delivery date referencing data collected from a variety of market sources.

Pursuant to Commodity Futures Trading Commission (''CFTC'') regulations, the changes in the applicable performance bond regime have been interpreted by CME as being subject to CFTC Regulation 40.6(d), requiring a self certification filing to the CFTC, although no change to text of the CME rulebook is required. As such, the changes that are the subject of this filing and that are necessary to establish the new ''cash mark to market'' performance bond regime are changes to CME operational procedures only. CME notes that it has already certified the proposed changes that are the subject of this filing to its primary regulator, the CFTC.

CME believes the proposed changes are consistent with the requirements of the Exchange Act including Section 17A of the Exchange Act because they involve clearing of swaps and thus relate solely to the CME's swaps clearing activities pursuant to its registration as a derivatives clearing organization under the Commodity Exchange Act (''CEA'') and do not significantly affect any securities clearing operations of the clearing agency or any related rights or obligations of the clearing agency or persons using such service. CME further notes that the policies of the CEA with respect to clearing are comparable to a number of the policies underlying the

[3] *See* Exchange Act Release No. 34–65637 (Oct. 26, 2011).

Exchange Act, such as promoting market transparency for over-the-counter derivatives markets, promoting the prompt and accurate clearance of transactions and protecting investors and the public interest. The proposed rule changes accomplish those objectives by offering investors clearing for a range of FX OTC swap products.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

CME does not believe that the proposed rule change will have any impact, or impose any burden, on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

CME has not solicited, and does not intend to solicit, comments regarding this proposed rule change. CME has not received any unsolicited written comments from interested parties.

**III. 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 may be submitted by using 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–CME–2011–14 on the subject line.
- Paper comments should be sent 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–CME–2011–14. 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, 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 CME. 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–CME–2011–14 and should be submitted on or before November 22, 2011.

**IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change**

In its filing, CME requested that the Commission approve this request on an accelerated basis, for good cause shown. CME has articulated three reasons for granting this request on an accelerated basis. One, the products covered by this filing, and CME's operations as a derivatives clearing organization for such products, are regulated by the CFTC under the CEA. Two, the proposed rule changes relate solely to FX swap products and therefore relate solely to its swaps clearing activities and do not significantly relate to CME's functions as a clearing agency for security-based swaps. Three, not approving this request on an accelerated basis will have a significant impact on the swap clearing business of CME as a designated clearing organization.

Section 19(b) of the Act [4] directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. The Commission finds that the proposed rule change is consistent with the requirements of the Act, in particular the requirements of Section 17A of the Act,[5] and the rules and regulations thereunder applicable to CME. Specifically, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act which requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of derivative agreements, contracts, and transactions because it should allow CME to enhance its services in clearing foreign currency contracts, thereby promoting the prompt and accurate clearance and settlement of derivative agreements, contracts, and transactions.[6]

The Commission finds good cause for accelerating approval because: (i) The proposed rule change does not significantly affect any securities clearing operations of the clearing agency (whether in existence or contemplated by its rules) or any related rights or obligations of the clearing agency or persons using such service; (ii) CME has indicated that not providing accelerated approval would have a significant impact on the foreign currency contracts clearing business of CME as a designated clearing organization; and (iii) the activity relating to the non-security clearing operations of the clearing agency for which the clearing agency is seeking approval is subject to regulation by another regulator.

**V. Conclusion**

*It is therefore ordered,* pursuant to Section 19(b)(2) [7] of the Act, that the proposed rule change (SR–CME–2011–14) is approved on an accelerated basis.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[8]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2011–28209 Filed 10–31–11; 8:45 am]

**BILLING CODE 8011–01–P**

[4] 15 U.S.C. 78s(b).

[5] 15 U.S.C. 78q–1. In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–65635; File No. SR–CME–2011–15]**

## Self-Regulatory Organizations; Chicago Mercantile Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change To Amend Its Rules Relating to Interest Rate Swaps Clearing

October 26, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 19, 2011, the Chicago Mercantile Exchange Inc. (''CME'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I and II

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

below, which items have been prepared primarily by CME. The Commission is publishing this Notice and Order to solicit comments on the proposed rule change from interested persons and to approve the proposed rule change on an accelerated basis.

**I. Self-Regulatory Organization's Statement of Terms of Substance of the Proposed Rule Change**

The text of the proposed rule change is below. *Italicized* text indicates additions; [bracketed] text indicates deletions.

* * * * *

**CHICAGO MERCANTILE EXCHANGE INC. RULEBOOK**

**Rule 100—Rule 8G06—No Change**

* * * * *

Rule 8G07. IRS FINANCIAL SAFEGUARDS AND GUARANTY FUND DEPOSIT

1. (i) The Clearing House shall establish a financial safeguards package to support IRS clearing, and each IRS Clearing Member shall make an IRS Guaranty Fund deposit with the Clearing House. An IRS Clearing Member's deposit to the IRS Guaranty Fund and assessments against it pursuant to these Rules may be used to cover losses incurred by the Clearing House if a defaulted IRS Clearing Member's assets, including amounts available pursuant to any guarantee from an Affiliate of an IRS Clearing Member, available to the Clearing House are insufficient to cover such loss, regardless of the cause of default. The Clearing House shall calculate the requirements for the IRS financial safeguards package, which shall be composed of:

(a) A funded portion, determined by the Clearing House using stress test methodology equal to the theoretical two largest IRS Clearing Member losses produced by such stress test or such other methodology determined by the IRS Risk Committee (such amount, plus any additional funds required to be deposited by IRS Clearing Members as a result of the minimum contribution requirement below, the ''IRS Guaranty Fund''), and

(b) an unfunded portion, determined by the Clearing House using stress test methodology equal to the theoretical third and fourth largest IRS Clearing Member losses produced by such stress test (and assuming for purposes of the model that already-defaulted IRS Clearing Members will fail to contribute) or such other methodology determined by the IRS Risk Committee. Upon a default, after application of the IRS Guaranty Fund, each IRS Clearing Member (excluding any insolvent or defaulted IRS Clearing Member) shall be subject to assessment of its previously-assigned proportionate share of such amount (collectively the ''IRS Assessments'').

(ii) Each IRS Clearing Member's minimum contribution to the IRS Guaranty Fund shall be the greater of:

(a) such IRS Clearing Member's proportionate share of the share of the theoretical two largest IRS Clearing Member losses described in paragraph (i) above, each clearing member's relative portion being based on the 90-day trailing average of its aggregate performance bond requirements and average gross notional open interest outstanding at the Clearing House (or such other shorter time interval determined by the IRS Risk Committee); or

(b) *(x)* $50,000,000 *for a non-Affiliated IRS Clearing Member or (y) $25,000,000 for each Affiliated IRS Clearing Member, where one Affiliated IRS Clearing Member provides its primary clearing services for customers as a FCM with any proprietary business of such FCM only incidental to providing such clearing service for customers and the other Affiliated IRS Clearing Member only provides IRS clearing services through its proprietary account for itself and its Affiliates. An ''Affiliated IRS Clearing Member'' shall mean an IRS Clearing Member with an Affiliate that is also an IRS Clearing Member.*

* * * * *

**Rule 8G07(2)—End—No Change**

**II. Self-Regulatory Organization's Statement of Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, CME included statements concerning the purpose 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 III below. CME 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 Purpose of, and Statutory Basis for, the Proposed Rule Change*

CME proposes to make certain rule changes that affect the minimum guaranty fund requirements for Interest Rate Swap (''IRS'') Clearing Members at CME. The text of current CME Rule 8G07 provides that the minimum guaranty fund requirement for an IRS Clearing Member is $50,000,000. The proposed rule changes would amend Rule 8G07 to provide that, in instances where two separate IRS Clearing Members are affiliated, the minimum IRS Guaranty Fund requirement for each firm would be $25,000,000. This proposed change would be subject to the condition that only one of the affiliated IRS Clearing Members provide IRS clearing services only through the IRS proprietary account, and the other affiliated IRS Clearing Member provides its primary clearing services for customers as a FCM with any proprietary business of such FCM only incidental to providing such clearing service for customers. Each of the affiliated IRS Clearing Members would be required independently to meet capital and other requirements of clearing membership as set forth in the CME Rules.

To accommodate the changes discussed above, CME would also make corresponding changes to its Manual of Operations for CME Cleared Interest Rate Swaps, including revisions to operational processing times and processes, IRS Guaranty Fund calculations and IRS assessments allocations and amendment to the default management auction process requiring only IRS Clearing Members with open positions in a currency to bid for a defaulted IRS Clearing Member's portfolio in such currency.

CME notes that it has also submitted the proposed rule changes that are the subject of this filing to its primary regulator, the Commodity Futures Trading Commission (''CFTC''). The text of the CME rule proposed amendments is in Section I above, with additions italicized and deletions in brackets.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

CME does not believe that the proposed rule change will have any impact, or impose any burden, on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

CME has not solicited, and does not intend to solicit, comments regarding this proposed rule change. CME has not received any unsolicited written comments from interested parties.

**III. 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 may be submitted by using 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–CME–2011–15 on the subject line.

• Paper comments should be sent 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–CME–2011–15. 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, 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 CME. 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–CME–2011–15 and should be submitted on or before November 22, 2011.

## IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

In its filing, CME requested that the Commission approve this request on an accelerated basis, for good cause shown. CME has articulated three reasons for granting this request on an accelerated basis. One, the products covered by this filing, and CME's operations as a derivatives clearing organization for such products, are regulated by the CFTC under the CEA. Two, the proposed rule changes relate solely to interest rate swap clearing and therefore relate solely to its swaps clearing activities and do not significantly relate to CME's functions as a clearing agency for security-based swaps. Three, not approving this request on an accelerated basis will have a significant impact on the swap clearing business of CME as a designated clearing organization.

Section 19(b) of the Act [3] directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. The Commission finds that the proposed rule change is consistent with the requirements of the Act, in particular the requirements of Section 17A of the Act,[4] and the rules and regulations thereunder applicable to CME. Specifically, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act which requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of derivative agreements, contracts, and transactions because it should allow CME to enhance its services in clearing interest rate swaps, thereby promoting the prompt and accurate clearance and settlement of derivative agreements, contracts, and transactions.[5]

The Commission finds good cause for accelerating approval because: (i) The proposed rule change does not significantly affect any securities clearing operations of the clearing agency (whether in existence or contemplated by its rules) or any related rights or obligations of the clearing agency or persons using such service; (ii) CME has indicated that not providing accelerated approval would have a significant impact on the swap clearing business of CME as a designated clearing organization; and (iii) the activity relating to the non-security clearing operations of the clearing agency for which the clearing agency is seeking approval is subject to regulation by another regulator.

## V. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(2) [6] of the Act, that the proposed rule change (SR–CME–2011–15) is approved on an accelerated basis.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[7]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2011–28208 Filed 10–31–11; 8:45 am]

**BILLING CODE 8011–01–P**

[3] 15 U.S.C. 78s(b).

[4] 15 U.S.C. 78q–1. In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78q–1(b)(3)(F).

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–65634; File No. SR–CME–2011–11]**

## Self-Regulatory Organizations; Chicago Mercantile Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish a Fee Waiver Program Applicable to Its OTC Credit Default Swap Index Clearing Offering

October 26, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 17, 2011, Chicago Mercantile Exchange Inc. (''CME'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II and III below, which items have been prepared primarily by CME. CME filed the proposed rule change pursuant to Section 19(b)(3)(A) [3] of the Act and Rule 19b–4(f)(4)(ii) [4] thereunder.

### I. Self-Regulatory Organization's Statement of Terms of Substance of the Proposed Rule Change

The text of the proposed rule change is below. *Italicized text* indicates additions; [bracketed] text indicates deletions.

* * * * *

*FEE WAIVER PROGRAM FOR OTC CREDIT DEFAULT SWAP CLEARING*

*Program Purpose.*

*The purpose of this Program is to encourage market participants to increase their OTC clearing activity for the product listed below.*

*Product Scope*

*OTC Credit Default Swap Clearing (''Product'').*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(4)(ii).

*Eligible Participants*

*All market participants including CME CDS Clearing Members and their customers are eligible. The fee incentives described below will be automatically applied to all cleared trades in the Product.*

*Program Term*

*Start date is October 31, 2011. End date is December 31, 2011.*

*Hours*

*The incentives will apply to transactions cleared in the Product.*

*Program Incentives*

*Fee Waivers. All market participants that clear the Product will have their clearing fees waived.*

* * * * *

## II. Self-Regulatory Organization's Statement of Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CME included statements concerning the purpose 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. CME 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 Purpose of, and Statutory Basis for, the Proposed Rule Change*

CME proposes to implement a fee waiver program that will apply to OTC credit default swap index clearing at CME (the ''Program''). The Program will be a general fee waiver that would apply equally to all market participants, including CDS Clearing Members and their customers. The Program by its terms would become operative on October 31, 2011 and extend through December 31, 2011.

In July 2011, CME lifted certain volume caps applicable to its OTC credit default swap index clearing business that were initially implemented in December, 2009. CME followed up with a launch of a broader set of credit default swap index products available for clearing in September, 2011. CME expects that the combination of its recently expanded breadth of products, the termination of the volume caps and the establishment of the Program will encourage customers to place more volume into the system to ensure readiness and help build open interest in credit default swap index products prior to implementation of the upcoming centralized clearing mandate.

The proposed rule changes that are the subject of this filing are related to fees and therefore will become effective immediately. However, the Program will become operative as of October 31, 2011. CME has also certified the proposed rule changes that are the subject of this filing to its primary regulator, the Commodity Futures Trading Commission (''CFTC''), and CME expects that those certified proposed rule changes will become effective on October 31, 2011. The text of the proposed rule amendments is in Section 1 of this notice, with additions italicized and deletions in brackets.

The proposed CME rule amendments establish or change a member due, fee or other charge imposed by CME under Section 19(b)(3)(A)(ii) of the Securities Exchange Act of 1934 and Rule 19b–4(f)(ii) thereunder. CME believes that the proposed rule change is consistent with the requirements of the Securities Exchange Act of 1934 and the rules and regulations thereunder and, in particular, to 17A(b)(3)(iv),[5] in that it provides for the equitable allocation of reasonable dues, fees and other charges among participants. CME notes that it operates in a highly competitive market in which market participants can readily direct business to competing venues. CME further notes that the proposed change is non-discriminatory in that it is equally applicable to all market participants.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The proposed rule change does not impose any burden on competition.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

CME has not solicited, and does not intend to solicit, comments regarding this proposed rule change. CME has not received any unsolicited written comments from interested parties.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change was filed pursuant to Section 19(b)(3)(A)(ii) of the Act and paragraph (f)(ii) of Rule 19b–4 and became effective on filing. At any time within 60 days of the filing of such 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 may be submitted by using 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–CME–2011–11 on the subject line.
- Paper comments should be sent 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–CME–2011–11. 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, 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 CME. 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–CME–2011–11 and should be submitted on or before November 22, 2011.

[5] The Commission notes that the correct citation is Section 19(b)(3)(A).

[6] 17 CFR 200.30–3(a)(12).

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[6]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2011–28207 Filed 10–31–11; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–65632; File No. SR–FICC–2011–08]**

## Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Proposed Rule Change To Expand the Applicability of the Fails Charge to Agency Debt Securities Transactions

October 26, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder[2] notice is hereby given that on October 20, 2011, the Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared primarily by FICC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to expand the applicability of the fails charge to Agency debt securities transactions.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FICC 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. FICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[3]

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The Treasury Markets Practices Group (the ''TMPG''), a group of market participants active in the Treasury securities market sponsored by the Federal Reserve Bank of New York (the ''FRBNY''), has been addressing the persistent settlement fails in Agency debt securities transactions that have arisen, in part, due to low interest rates.

To encourage market participants to resolve fails promptly, the TMPG recommends expanding the applicability of the fails charge (which currently applies to Treasury securities transactions) to Agency debt with the objective of reducing the incidence of delivery failures and supporting liquidity in this market.

The TMPG had previously recommended a charge for fails on Treasury securities, which the Government Securities Division (the ''GSD'') implemented pursuant to rule filing 2009–03.[4] At that time, the TMPG recommendation did not extend to Agency securities and, therefore, the GSD's 2009 rule filing did not cover Agency debt. However, the TMPG recently has expanded its recommendation to cover certain Agency securities and, therefore, the GSD is proposing to apply the existing fails charge regime to Agency debt transactions as recommended by the TMPG. Specifically, transactions in debentures issued by Fannie Mae, Freddie Mac, and the Federal Home Loan Banks now will be subject to this charge. The proposed fails charge for Agencies will be the same as that currently in place for Treasuries and is equal to the greater of: (a) 0 percent and (b) 3 percent per annum minus the federal funds target rate. The charge will accrue each calendar day a fail is outstanding.

The following examples illustrate the manner in which the proposed fails charge will apply:

*Example 1:* A settlement obligation fails and the next calendar date is a valid FICC business date. The GSD calculates the TMPG fail charge from the date the fail occurs to the next valid FICC business date. As the next valid business date is the next calendar date, the member's credit/debit resulting from the TMPG fail charge is assessed for one day.

*Example 2:* A settlement obligation fails and the next calendar date is a holiday occurring on a Tuesday, Wednesday or Thursday. The GSD calculates the TMPG fail charge from the date the fail occurs to the next valid FICC business date. The TMPG fail charge is assessed for two days; the day the fail occurs and the date of the holiday.

*Example 3:* A settlement obligation fails on Friday and the following Monday is not a holiday. The GSD calculates the TMPG fail charge from the date the fail occurs to the next valid FICC business date. The TMPG fail charge is assessed for three days; Friday, Saturday and Sunday.

FICC's Board of Directors (or appropriate Committee thereof) will retain the right to revoke application of the proposed charges if industry events or practices warrant such revocation.

The expansion of the fails charge trading practice to the Agency debt market would require that Rule 11 (Netting System), Section 14 (Fails Charge) of the GSD rulebook be amended to make such rule applicable to debentures issued by any of Fannie Mae, Freddie Mac or the Federal Home Loan Banks. The current GSD rule states that the fails charge shall be the product of the (i) Funds associated with a failed position and (ii) 3 percent per annum minus the target fed funds rate that is effective at 5 p.m. EST on the business day prior to the originally scheduled settlement date, capped at 3 percent per annum. FICC is proposing to restate the formula to make it clearer by amending section (ii) of the formula to read ''the greater of (a) 0 percent or (b) 3 percent per annum minus the target fed funds rate * * *.'' This change is not meant to affect the result of the formula in any way but rather is a more precise way of stating the formula.

The proposed rule change makes clear that FICC will not guaranty fails charge proceeds in the event of a default (*i.e.,* if a defaulting member does not pay its fail charge, members due to receive fails charge proceeds will have those proceeds reduced pro-rata by the defaulting member's unpaid amount).

Timing of Implementation

The fails charges will apply to transactions in Agency debentures entered into on or after February 1, 2012, as well as to transactions that were entered into, but remain unsettled as of, February 1, 2012. For transactions entered into prior to, and unsettled as of, February 1, 2012, the fails charge will begin accruing on the later of February 1, 2012, or the contractual settlement date.

FICC believes the proposed rule change is consistent with the requirements of Section 17A of the Act[5] and the rules and regulations thereunder applicable to FICC because it would facilitate the prompt and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission has modified the text of the summaries prepared by FICC.

[4] *See* Securities Exchange Act Release No. 34–59802 (April 20, 2009), 74 FR 19248 (April 28, 2009).

[5] 15 U.S.C. 78q–1.

accurate clearance and settlement of securities transactions by discouraging persistent fails in the marketplace. The proposed rule change is not inconsistent with the existing rules of FICC, including any other rules proposed to be amended.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

FICC does not believe that the proposed rule change would impose any burden on competition.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments relating to the proposed rule change have not been solicited or received. FICC will notify the Commission of any written comments received by FICC.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) As the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will: (A) By order approve or disapprove the proposed rule change or (B) institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FICC–2011–08 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–FICC–2011–08. 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 Section, 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 filings will also be available for inspection and copying at the principal office of FICC and on FICC's Web site at *http://www.dtcc.com/downloads/legal/rule_filings/2011/ficc/2011–08.pdf.*

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FICC–2011–08 and should be submitted on or before November 22, 2011.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[6]

**Kevin O'Neill,**

*Deputy Secretary.*

[FR Doc. 2011–28206 Filed 10–31–11; 8:45 am]

**BILLING CODE 8011–01–P**

[6] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–65627; File No. SR–NYSEAMEX–2011–81]**

## Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing of Proposed Rule Change Expanding the Scope of Potential "Users" of Its Co-Location Services To Include Any Market Participant That Requests To Receive Co-Location Services Directly From the Exchange and Amending Its Price List To Establish a Fee for Users That Host Their Customers at the Exchange's Data Center

October 26, 2011.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on October 14, 2011, NYSE Amex LLC (the "Exchange" or "NYSE Amex") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change**

The Exchange proposes to expand the scope of potential "Users" of its co-location services to include any market participant that requests to receive co-location services directly from the Exchange. In addition, the Exchange proposes to amend its Price List to establish a fee for Users that host their customers at the Exchange's data center. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below,

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange operates a data center in Mahwah, New Jersey from which it provides co-location services to Users.[4] For purposes of its co-location services, the term ''User'' currently includes member organizations, as that term is defined in Rule 2(b)—NYSE Amex Equities, and Sponsored Participants, as that term is defined in Rule 123B.30(a)(ii)(B)—NYSE Amex Equities.[5] The Exchange proposes to expand the scope of potential Users of its co-location services to include any market participant that requests to receive co-location services directly from the Exchange.[6] Under the proposed rule change, Users could therefore include member organizations, Sponsored Participants, non-member broker-dealers and vendors. The Exchange anticipates that the potential additional Users would provide, for example, hosting, service bureau, technical support, risk management, order routing and market data delivery services to their customers while the User is co-located in the Exchange's data center.[7] As is the case with all Exchange co-location arrangements, neither a User, nor any of its customers, would be permitted to submit orders directly to the Exchange unless such User or customer is a member organization or a Sponsored Participant. All existing co-location terms, conditions, facilities, services, and applicable fees would apply to these potential new Users.

The Exchange also proposes to amend its Price List to establish a fee applicable to Users that provide hosting services to their customers (''Hosted Users'') at the Exchange's data center. ''Hosting'' would be a service offered by a User to a Hosted User and could include, for example, a User supporting its Hosted User's technology, whether hardware or software, through the User's co-location space. Specifically, the Exchange proposes to charge each User a fee of $500.00 per month for each Hosted User that the User hosts in the Exchange's data center. Users would independently set fees for their Hosted Users and the Exchange would not receive a share of any such fees.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[8] in general, and furthers the objectives of Section 6(b)(4)[9] and 6(b)(5) of the Act,[10] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange's proposal to expand the scope of potential Users of its co-location services to include any market participant that requests to receive co-location services directly from the Exchange would increase access to the Exchange's co-location facilities by allowing additional types of Users to use those facilities. In this regard, co-location services would be offered by the Exchange to these additional types of Users, as is the case today for existing Users, in a manner that would not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms and conditions established from time to time by the Exchange.

Additionally, the proposed hosting fee would be applied uniformly for comparable services provided by the Exchange and would not unfairly discriminate between similarly situated Users of co-location services. In this regard, the proposed hosting capability and related fee would be applicable to all interested Users that provide hosting services. In addition, the Exchange believes that the proposed hosting fee is reasonable in that it is designed to defray applicable expenses incurred or resources expended by the Exchange related to such services, including, but not limited to, configuration of Users' connections to their Hosted User customers and subsequent monitoring thereof by Exchange staff.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve or disapprove such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEAMEX–2011–81 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–NYSEAMEX–2011–81. 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

[4] *See* Securities Exchange Act Release No. 62961 (September 21, 2010), 75 FR 59299 (September 27, 2010) (SR–NYSEAmex–2010–80).

[5] *Id.* at note 7.

[6] As is the case today, prospective Users must agree to, and be capable of satisfying, any applicable co-location fees, requirements, terms and conditions established from time to time by the Exchange.

[7] The Exchange anticipates that a User's customer(s) could include, under certain circumstances, other Users of the Exchange's co-location services.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78f(b)(5).

Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAMEX–2011–81, and should be submitted on or before November 22, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2011–28204 Filed 10–31–11; 8:45 am]

**BILLING CODE 8011–01–P**

[11] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–65625; File No. SR–NYSEARCA–2011–74]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Expanding the Scope of Potential ''Users'' of Its Co-Location Services To Include Any Market Participant That Requests To Receive Co-Location Services Directly From the Exchange and Amending Its Fee Schedule To Establish a Fee for Users That Host Their Customers at the Exchange's Data Center

October 26, 2011.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on October 14, 2011, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

### I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to expand the scope of potential ''Users'' of its co-location services to include any market participant that requests to receive co-location services directly from the Exchange. In addition, the Exchange proposes to amend its Fee Schedule to establish a fee for Users that host their customers at the Exchange's data center. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange operates a data center in Mahwah, New Jersey from which it provides co-location services to Users.[4] For purposes of its co-location services, the term ''User'' currently includes any ETP Holder or Sponsored Participant who is authorized to obtain access to the NYSE Arca Marketplace pursuant to NYSE Arca Equities Rule 7.29 (*see* NYSE Arca Equities Rule 1.1(yy)).[5] The Exchange proposes to expand the scope of potential Users of its co-location services to include any market participant that requests to receive co-location services directly from the Exchange.[6] Under the proposed rule change, Users could therefore include ETP Holders, Sponsored Participants, non-ETP Holder broker-dealers and vendors. The Exchange anticipates that the potential additional Users would provide, for example, hosting, service bureau, technical support, risk management, order routing and market data delivery services to their customers while the User is co-located in the Exchange's data center.[7] As is the case with all Exchange co-location arrangements, neither a User, nor any of its customers, would be permitted to submit orders directly to the Exchange unless such User or customer is an ETP Holder or a Sponsored Participant. All existing co-location terms, conditions, facilities, services, and applicable fees would apply to these potential new Users.

The Exchange also proposes to amend its Fee Schedule to establish a fee applicable to Users that provide hosting services to their customers (''Hosted Users'') at the Exchange's data center. ''Hosting'' would be a service offered by a User to a Hosted User and could include, for example, a User supporting its Hosted User's technology, whether hardware or software, through the User's co-location space. Specifically, the Exchange proposes to charge each User a fee of $500.00 per month for each Hosted User that the User hosts in the Exchange's data center. Users would independently set fees for their Hosted Users and the Exchange would not receive a share of any such fees.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[8] in general, and furthers the objectives of Section 6(b)(4)[9] and 6(b)(5) of the Act,[10] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market

[4] *See* Securities Exchange Act Release No. 63275 (November 8, 2010), 75 FR 70048 (November 16, 2010) (SR–NYSEArca–2010–100).

[5] *Id.* at note 7.

[6] As is the case today, prospective Users must agree to, and be capable of satisfying, any applicable co-location fees, requirements, terms and conditions established from time to time by the Exchange.

[7] The Exchange anticipates that a User's customer(s) could include, under certain circumstances, other Users of the Exchange's co-location services.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78f(b)(5).

and a national market system, and, in general, to protect investors and the public interest.

The Exchange's proposal to expand the scope of potential Users of its co-location services to include any market participant that requests to receive co-location services directly from the Exchange would increase access to the Exchange's co-location facilities by allowing additional types of Users to use those facilities. In this regard, co-location services would be offered by the Exchange to these additional types of Users, as is the case today for existing Users, in a manner that would not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms and conditions established from time to time by the Exchange.

Additionally, the proposed hosting fee would be applied uniformly for comparable services provided by the Exchange and would not unfairly discriminate between similarly situated Users of co-location services. In this regard, the proposed hosting capability and related fee would be applicable to all interested Users that provide hosting services. In addition, the Exchange believes that the proposed hosting fee is reasonable in that it is designed to defray applicable expenses incurred or resources expended by the Exchange related to such services, including, but not limited to, configuration of Users' connections to their Hosted User customers and subsequent monitoring thereof by Exchange staff.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve or disapprove such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEARCA–2011–74 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–NYSEARCA–2011–74. 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 office of NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEARCA–2011–74, and should be submitted on or before November 22, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2011–28202 Filed 10–31–11; 8:45 am]

BILLING CODE 8011–01–P

[11] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–65622 File No. SR–OCC–2011–15]**

## Self-Regulatory Organizations; Options Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to Management of Liquidity Risk

October 26, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder[2] notice is hereby given that on October 12, 2011, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The proposed rule change would clarify OCC's ability to obtain temporary liquidity for purposes of meeting liquidity needs arising from default obligations.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The purpose of the proposed rule change is to amend OCC's by-laws and rules to clarify OCC's authority to use, and the manner in which OCC may use, a defaulting clearing member's margin deposits and contributions to the clearing fund and all other clearing members' clearing fund contributions [3] to obtain temporary liquidity for purposes of meeting liquidity needs arising from Default Obligations.[4]

An essential element of OCC's risk management regime is sound management of liquidity risk. OCC regularly examines its liquidity risk exposure to determine the optimal amount and form of available liquidity. OCC's largest potential liquidity needs are projected to occur in the case of a clearing member's default where OCC would be obligated to settle the defaulting clearing member's payment obligations with respect to option premiums, settlement of cash-settled option exercises, and mark-to-market payments. These are obligations that OCC must fund on time and potentially with only a few hours of advance notice—from notice of default until the payments are due.

One of the resources that OCC may use to meet its liquidity needs is its existing committed credit facility. The amount of funds available to OCC under the committed credit facility is limited not only by the overall size of the facility, but also by the amount of assets that OCC can pledge as collateral to lenders supporting the facility. OCC believes that, in addition to the authority it already has to pledge clearing fund assets to secure a loan to cover Default Obligations, it should also have the express power to pledge a suspended clearing member's margin deposits to secure loans for the purpose of meeting obligations arising out of the default and suspension of that clearing member or any action taken by OCC in connection therewith. OCC clearly has authority to pledge a suspended clearing member's clearing fund deposits for that purpose under Article VIII, Section 5(e) of the by-laws. However, it is not as clear that OCC has authority to pledge a suspended clearing member's margin deposits. Rule 1104(a) provides, among other things, that upon the suspension of a clearing member, OCC shall promptly ''convert to cash,'' in the most orderly manner practicable, all of the clearing member's margin deposits. Although this mandate might be construed to include the authority to pledge margin assets as collateral for borrowings under the committed credit facility, the phrase ''convert to cash'' has generally been used in the by-laws as synonymous with ''liquidate'' to refer to a final disposition of an asset. And even if OCC does have implied authority to pledge margin assets, that may not be transparent to all clearing members because it is not expressly stated in the rule. In order to eliminate any ambiguity, OCC proposes to (i) Amend Rule 1104 and Rule 1106 to replace the phrases ''convert to cash,'' ''conversion to cash'' and ''converted to cash'' with the words ''liquidate,'' ''liquidation'' and ''liquidated,'' respectively; and (ii) amend Rule 1104(b) to expressly give OCC the power to pledge a suspended clearing member's margin deposits as security for loans if designated executive officers of OCC determine that immediate liquidation of such assets for cash under then-existing circumstances would not be in the best interests of OCC, other clearing members, or the general public.

While OCC's $2 billion committed credit facility should normally be more than sufficient to meet OCC's liquidity needs, it is nevertheless possible that OCC could encounter a liquidity demand that exceeds the size of that facility. Moreover, it could be difficult to maintain the size of the facility under unfavorable market conditions (*i.e.,* if the credit markets tighten significantly). In addition, future regulatory requirements for clearinghouses could impose liquidity requirements that would be difficult to meet with a committed credit facility alone. In order to be better prepared to deal with such situations, OCC believes that it is necessary to actively explore a variety of means for raising and maintaining liquidity resources, including participation in securities lending or tri-party repo markets. Therefore, OCC proposes to amend both Article VIII, Section 5(e) of the by-laws and Rule 1104(b) to clarify that OCC's authority to use a suspended clearing member's margin and clearing fund deposits and other clearing members' clearing fund deposits to obtain temporary liquidity for purposes of meeting Default Obligations is not limited to pledging such assets under the committed credit facility. Rather, OCC would have express authority to use such assets to obtain liquidity through any reasonable means as determined by designated executive officers of OCC in their discretion. The addition of the language ''or otherwise obtain'' in Article VIII, Section 5(e) of the by-laws reflects that certain transactions by which OCC may obtain liquidity could be characterized as something other than a transaction in which funds are ''borrowed.'' For example, in a Master Repurchase Agreement, the Agreement states that the parties' intent is for the transactions to be ''sales'' and ''purchases,'' but also contains provisions if such transactions are deemed to be loans. Accordingly, the use of ''or otherwise obtain'' in the phrase ''borrow or otherwise obtain'' addresses the possibility that the transaction by which OCC obtains funds may not be deemed to be a ''borrowing'' and forestalls technical arguments that it would be necessary for the transaction to be a ''loan'' in order for OCC to borrow funds.

OCC believes that the proposed changes to its by-laws and rules are consistent with the purposes and requirements of Section 17A of the Securities Exchange Act of 1934, as amended (the ''Exchange Act''), because they are designed to permit OCC to perform clearing services in a manner consistent with OCC's obligations to promote the prompt and accurate clearance and settlement of securities transactions and to protect investors and the public interest. They accomplish this purpose by clarifying and enhancing OCC's ability to raise liquidity to satisfy Default Obligations. The proposed rule change is not inconsistent with any rules of OCC, including any rules proposed to be amended.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

OCC does not believe that the proposed rule change would impose any burden on competition.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments were not and are not intended to be solicited with respect to the proposed rule change and none have been received.

[3] Margin deposits secure only the depositing clearing member's own obligations to OCC whereas clearing fund deposits of all clearing members may be applied by OCC not only to losses arising from the depositing clearing member's default, but also to losses resulting from defaults by other clearing members and specified other third parties such as settlement banks and other clearing organizations. See generally Article VIII, Sections 1 and 5 of OCC's by-laws and Rule 604 of OCC's rules.

[4] The specific language of the proposed changes can be found at *http://www.optionsclearing.com/components/docs/legal/rules_and_bylaws/sr_occ_11_15.pdf.*

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) As the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

• Use the Commissions Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or Send an email to *rule-comments@sec.gov.* Please include File Number SR–OCC–2011–15 on the subject line.

*Paper Comments*

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–OCC–2011–15. 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 Section, 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 filings will also be available for inspection and copying at the principal office of OCC and on OCC's Web site at *http://www.optionsclearing.com/components/docs/legal/rules_and_bylaws/sr_occ_11_15.pdf.*

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–OCC–2011–15 and should be submitted on or before November 22, 2011.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[5]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2011–28199 Filed 10–31–11; 8:45 am]

**BILLING CODE 8011–01–P**

[5] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–65623; File No. SR–NSCC–2011–09]**

## Self-Regulatory Organizations; The National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Revise NSCC's Fee Schedule as It Applies to Certain Hedge Fund Products Within NSCC's Alternative Investment Products Service

October 26, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on October 12, 2011, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I and II below, which Items have been prepared primarily by NSCC. NSCC filed the proposal pursuant to Section 19(b)(3)(A)(ii) of the Act,[2] and Rule 19b–4(f)(2)[3] thereunder so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the rule change from interested parties.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The proposed rule change will revise NSCC's fee schedule as it applies to certain hedge fund products within NSCCs Alternative Investment Products Service (''AIP'').

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78s(b)(3)(A)(ii).

[3] 17 CFR 240.19b–4(f)(2).

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, NSCC 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. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[4]

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The purpose of the proposed rule change is to revise NSCC's fee schedule (Addendum A of the NSCC Rules and Procedures) as it applies to certain hedge fund products within AIP to align the application of those fees with the cost of delivering the services. The proposed revisions to NSCC's fee schedule can be viewed at *http://www.dtcc.com/downloads/legal/rule_filings/2011/nscc/2011-09.pdf.*

The current AIP fee schedule is based upon previously projected transaction volumes for the various AIP eligible product types, where fees for higher volume products were intended to be lower than were fees for lower volume products.[5] In general, products such as non-traded Real Estate Investment Trusts and Managed Futures funds are higher volume products based on their distribution strategy, number of client accounts, and investment minimums. NSCC had previously projected that all hedge fund products would be lower volume as they are generally less broadly distributed, the number of investors is generally limited, and the investment minimums are quite high.

NSCC has since recognized that certain hedge funds are distributed through third party channels and are structured to be more attractive to the market. In general, these hedge funds are registered under the Investment Company Act of 1940, as amended (''1940 Act'') and as such, generally have lower investment minimums and no statutory limit on the number of

[4] The Commission has modified the text of the summaries prepared by NSCC.

[5] Securities Exchange Act Release No. 34–59285 (January 23, 2009), 74 FR 5875 (February 2, 2009) and Securities Exchange Act Release No. 34–63634 (January 3, 2011), 76 FR 1475 (January 10, 2011).

investors, factors which tend to increase their transaction volume over traditional hedge funds. The AIP fee schedule, as it was originally intended and filed with the Commission, contemplated a fee differentiation based on volume. Accordingly, NSCC seeks to apply the lower fee structure to hedge funds that are registered under the 1940 Act.

NSCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act [6] and the rules and regulations thereunder applicable to NSCC because it updates the NSCC fee schedule and provides for the equitable allocation of fees among NSCC's members. In addition, this proposed rule change is consistent with CPSS/IOSCO recommendations because it provides NSCC members with sufficient information for them to identify and evaluate accurately the costs associated with using NSCC's services.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

NSCC does not believe that the proposed rule change will have any impact or impose any burden on competition.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments relating to the proposed rule change have not been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing proposed rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act [7] and Rule 19b–4(f)(2) [8] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**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–NSCC–2011–09 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–NSCC–2011–09. 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, 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 filings also will be available for inspection and copying at the principal office of NSCC and on NSCC's Web site at *http://www.dtcc.com/downloads/legal/rule_filings/2011/nscc/2011-09.pdf.*

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NSCC–2011–09 and should be submitted on or before November 22, 2011.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[9]

**Kevin O'Neill,**

*Deputy Secretary.*

[FR Doc. 2011–28200 Filed 10–31–11; 8:45 am]

**BILLING CODE 8011–01–P**

[6] 15 U.S.C. 78q–1.

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 240.19b–4(f)(2).

[9] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–65624; File No. SR–NYSEARCA–2011–75]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Expanding the Scope of Potential ''Users'' of Its Co-Location Services To Include Any Market Participant That Requests To Receive Co-Location Services Directly From the Exchange and Amending Its Fee Schedule To Establish a Fee for Users That Host Their Customers at the Exchange's Data Center

October 26, 2011.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on October 14, 2011, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change**

The Exchange proposes to expand the scope of potential ''Users'' of its co-location services to include any market participant that requests to receive co-location services directly from the Exchange. In addition, the Exchange proposes to amend its Fee Schedule to establish a fee for Users that host their customers at the Exchange's data center. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange operates a data center in Mahwah, New Jersey from which it provides co-location services to Users.[4] For purposes of its co-location services, the term ''User'' currently includes any OTP Holder, OTP Firm or Sponsored Participant that is authorized to obtain access to the NYSE Arca System pursuant to NYSE Arca Options Rule 6.2A (*see* NYSE Arca Options Rule 6.1A(a)(19)).[5] The Exchange proposes to expand the scope of potential Users of its co-location services to include any market participant that requests to receive co-location services directly from the Exchange.[6] Under the proposed rule change, Users could therefore include OTP Holders, OTP Firms, Sponsored Participants, non-OTP Holder and non-OTP Firm broker dealers and vendors. The Exchange anticipates that the potential additional Users would provide, for example, hosting, service bureau, technical support, risk management, order routing and market data delivery services to their customers while the User is co-located in the Exchange's data center.[7] As is the case with all Exchange co-location arrangements, neither a User, nor any of its customers, would be permitted to submit orders directly to the Exchange unless such User or customer is an OTP Holder, OTP Firm or a Sponsored Participant. All existing co-location terms, conditions, facilities, services, and applicable fees would apply to these potential new Users.

The Exchange also proposes to amend its Fee Schedule to establish a fee applicable to Users that provide hosting services to their customers (''Hosted Users'') at the Exchange's data center. ''Hosting'' would be a service offered by a User to a Hosted User and could include, for example, a User supporting its Hosted User's technology, whether hardware or software, through the User's co-location space. Specifically, the Exchange proposes to charge each User a fee of $500.00 per month for each Hosted User that the User hosts in the Exchange's data center. Users would independently set fees for their Hosted Users and the Exchange would not receive a share of any such fees

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[8] in general, and furthers the objectives of Section 6(b)(4)[9] and 6(b)(5) of the Act,[10] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange's proposal to expand the scope of potential Users of its co-location services to include any market participant that requests to receive co-location services directly from the Exchange would increase access to the Exchange's co-location facilities by allowing additional types of Users to use those facilities. In this regard, co-location services would be offered by the Exchange to these additional types of Users, as is the case today for existing Users, in a manner that would not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms and conditions established from time to time by the Exchange.

Additionally, the proposed hosting fee would be applied uniformly for comparable services provided by the Exchange and would not unfairly discriminate between similarly situated Users of co-location services. In this regard, the proposed hosting capability and related fee would be applicable to all interested Users that provide hosting services. In addition, the Exchange believes that the proposed hosting fee is reasonable in that it is designed to defray applicable expenses incurred or resources expended by the Exchange related to such services, including, but not limited to, configuration of Users' connections to their Hosted User customers and subsequent monitoring thereof by Exchange staff.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve or disapprove such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEARCA–2011–75 on the subject line.

[4] *See* Securities Exchange Act Release No. 63275 (November 8, 2010), 75 FR 70048 (November 16, 2010) (SR–NYSEArca–2010–100).

[5] *Id.* at note 7.

[6] As is the case today, prospective Users must agree to, and be capable of satisfying, any applicable co-location fees, requirements, terms and conditions established from time to time by the Exchange.

[7] The Exchange anticipates that a User's customer(s) could include, under certain circumstances, other Users of the Exchange's co-location services.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78f(b)(5).

*Paper Comments*

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEARCA–2011–75. 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 office of NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEARCA–2011–75, and should be submitted on or before November 22, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2011–28201 Filed 10–31–11; 8:45 am]

**BILLING CODE 8011–01–P**

[11] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[File No. 500–1]**

### Curatech Industries, Inc., Order of Suspension of Trading

October 28, 2011.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of CuraTech Industries, Inc. (''CuraTech'') because of questions that have arisen regarding the accuracy of publicly disseminated information, concerning, among other things: (1) The company's assets; (2) the company's business operations, (3) the company's current financial condition; and/or (4) issuances of shares in company stock. CuraTech's common stock is presently quoted on OTC Link (formerly, ''Pink Sheets'') operated by OTC Markets Group, Inc. under the symbol ''CUTC.''

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 company listed above.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the company listed above is suspended for the period from 9:30 a.m. E.D.T., October 28, 2011, through 11:59 p.m. E.S.T., on November 10, 2011.

By the Commission.

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. 2011–28356 Filed 10–28–11; 11:15 am]

**BILLING CODE 8011–01–P**

## DEPARTMENT OF STATE

**[Public Notice 7669]**

### 60-Day Notice of Proposed Information Collection: DS–5520, Supplemental Questionnaire To Determine Identity for a U.S. Passport, 1405–XXXX

**ACTION:** Notice of request for public comments.

**SUMMARY:** The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

• *Title of Information Collection:* Supplemental Questionnaire to Determine Identity for a U.S. Passport

• *OMB Control Number:* None

• *Type of Request:* Existing Collection in Use Without an OMB Control Number

• *Originating Office:* Bureau of Consular Affairs, Passport Services, Office of Project Management and Operational Support, Program Coordination (CA/PPT/PMO/PC)

• *Form Number:* DS–5520

• *Respondents:* Individuals applying for a U.S. passport

• *Estimated Number of Respondents:* 69,011

• *Estimated Number of Responses:* 69,011

• *Average Hours per Response:* 45 Minutes

• *Total Estimated Burden:* 51,758 hours

• *Frequency:* On occasion

• *Obligation To Respond:* Required to Obtain a Benefit

**DATES:** The Department will accept comments from the public up to 60 days from November 1, 2011.

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

• *Email: PPTFormsOfficer@state.gov*

• *Mail (paper, disk, or CD-ROM submissions):* Passport Services, Passport Forms Management and Officer, U.S. Department of State, Office of Program Management and Operational Support, 2201 C Street NW., Washington, DC 20520

• *Fax:* (202) 736–9202

• *Hand Delivery or Courier:* Passport Services, Passport Forms Management and Officer, U.S. Department of State, Office of Program Management and Operational Support, 2201 C Street NW., Washington, DC 20520.

You must include the DS form number (if applicable), information collection title, and OMB control number in any correspondence.

**FOR FURTHER INFORMATION CONTACT:** Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, Passport Services, Passport Forms Management and Officer, U.S. Department of State, Office of Program Management and Operational Support, 2201 C Street NW., Washington, DC 20520, who may be reached on (202) 663–2457 or at *PPTFormsOfficer@state.gov.*

**SUPPLEMENTARY INFORMATION:**

We are soliciting public comments to permit the Department to:

• Evaluate whether the proposed information collection is necessary for the proper performance of our functions.

• Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

*Abstract of proposed collection:*

The primary purpose for soliciting this information is to validate an

identity claim for a U.S. Passport Book or Passport Card in the narrow category of cases in which the evidence presented by an applicant is insufficient to establish identity. The information may also be used in adjudicating applications for other travel documents and services, and in connection with law enforcement, fraud prevention, border security, counterterrorism, litigation activities, and administrative purposes.

*Methodology:*

The Supplemental Questionnaire to Determine Identity for a U.S. Passport is intended to verify the respondent's identity for purposes of determining eligibility for a U.S. passport. This form is used to supplement an existing passport application and solicits information relating to the respondent's employment and residences that is needed to corroborate an applicant's identity claim prior to passport issuance.

Dated: October 6, 2011.

**Brenda S. Sprague,**

*Deputy Assistant Secretary for Passport Services, Bureau of Consular Affairs, Department of State.*

[FR Doc. 2011–28272 Filed 10–31–11; 8:45 am]

**BILLING CODE 4710–06–P**

## DEPARTMENT OF STATE

**[Public Notice 7668]**

## 60-Day Notice of Proposed Information Collection: DS–5513, Supplemental Questionnaire To Determine Entitlement for a U.S. Passport, 1405–XXXX

**ACTION:** Notice of request for public comments.

**SUMMARY:** The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Supplemental Questionnaire to Determine Entitlement for a U.S. Passport.
- *OMB Control Number:* None.
- *Type of Request:* Existing Collection in Use Without an OMB Control Number.
- *Originating Office:* Bureau of Consular Affairs, Passport Services, Office of Project Management and Operational Support, Program Coordination (CA/PPT/PMO/PC).
- *Form Number:* DS–5513.
- *Respondents:* Individuals applying for a U.S. passport.
- *Estimated Number of Respondents:* 5,010.
- *Estimated Number of Responses:* 5,010.
- *Average Hours per Response:* 85 Minutes.
- *Total Estimated Burden:* 7,098 hours.
- *Frequency:* On occasion.
- *Obligation to Respond:* Required to Obtain a Benefit.

**DATES:** The Department will accept comments from the public up to January 3, 2012.

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

- *Email: PPTFormsOfficer@state.gov.*
- *Mail (paper, disk, or CD–ROM submissions):* PPT Forms Officer, U.S. Department of State, 2100 Pennsylvania Ave. NW., Room 3031, Washington, DC 20037.
- *Fax:* (202) 736–9202.
- *Hand Delivery or Courier:* PPT Forms Officer, U.S. Department of State, 2100 Pennsylvania Ave. NW., Room 3031, Washington, DC 20037.

You must include the DS form number (if applicable), information collection title, and OMB control number in any correspondence.

**FOR FURTHER INFORMATION CONTACT:** Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, PPT Forms Officer, U.S. Department of State, 2100 Pennsylvania Ave. NW., Room 3031, Washington, DC 20037, who may be reached on (202) 663–2457 or at *PPTFormsOfficer@state.gov.*

**SUPPLEMENTARY INFORMATION:** We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper performance of our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

*Abstract of proposed collection:*

The primary purpose for soliciting this information is to establish entitlement for a U.S. Passport Book or Passport Card. The information may also be used in connection with issuing other travel documents or evidence of citizenship, and in furtherance of the Secretary's responsibility for the protection of U.S. nationals abroad.

*Methodology:*

The Supplemental Questionnaire to Determine Entitlement for a U.S. Passport is used to supplement an existing passport application and solicits information relating to the respondent's family and birth circumstances that is needed prior to passport issuance.

Dated: October 6, 2011.

**Brenda S. Sprague,**

*Deputy Assistant Secretary for Passport Services, Bureau of Consular Affairs, Department of State.*

[FR Doc. 2011–28277 Filed 10–31–11; 8:45 am]

**BILLING CODE 4710–06–P**

## DEPARTMENT OF STATE

**[Public Notice 7652]**

## U.S. National Commission for UNESCO Notice of Open Meeting

The U.S. National Commission for UNESCO will hold a meeting in open session on Monday, November 28, 2011 from 10 a.m. to approximately 2 p.m. E.S.T. The meeting will convene in room 310 of the George Washington University Marvin Center at 800 21st Street NW. in Washington, DC.

This meeting will feature a series of speakers offering information about UNESCO and the current state of U.S. engagement with UNESCO. In addition, participants will be invited to form break-out groups to discuss possible programmatic ideas for the Commission. The meeting will also feature a public comment session where the Commission will accept brief oral comments or questions from the public or media. The public comment session will be limited to approximately 10 minutes in total, with 2 minutes allowed per speaker.

For more information or to arrange to participate in this meeting (including requests for reasonable accommodation), individuals should contact Eric Woodard, Executive Director of the U.S. National Commission for UNESCO, Washington, DC 20037. Telephone (202) 663–0026; Fax (202) 663–0035; Email *DCUNESCO@state.gov*.

Dated: October 21, 2011.

**Eric Woodard,**

*Executive Director, U.S. National Commission for UNESCO, Department of State.*

[FR Doc. 2011–28279 Filed 10–31–11; 8:45 am]

**BILLING CODE 4710–19–P**

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

### Generalized System of Preferences (GSP): Notice of Actions Arising Out of the 2010 Annual GSP Review

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice of a petition accepted for review; and request for comments.

**SUMMARY:** In September 2010, the Office of the United States Trade Representative (USTR) accepted petitions in connection with the 2010 GSP Annual Review to modify the GSP status of certain GSP beneficiary developing countries because of country practices. In November 2010, USTR accepted petitions requesting waivers of GSP competitive need limitations (CNLs). On January 1, 2011, authorization of the GSP program lapsed. Following the recent reauthorization of the GSP program, the GSP Subcommittee of the Trade Policy Staff Committee (TPSC) announces that it has accepted for review a country practices petition submitted for the 2010 GSP Annual Review regarding the Republic of Georgia. This notice sets forth the schedule for submitting comments and conducting the public hearing on the newly accepted petition, requesting to participate in the hearing, and submitting pre-hearing and post-hearing briefs. The deadline for submitting pre-hearing comments and requesting participation in the hearing is 5 p.m., January 10, 2012. The petition can be found in docket USTR–2010–0017 at *http://www.regulations.gov.*

This notice also announces that in view of the lapse in authorization of the GSP program through much of 2011, there will be no actions taken in 2011 with respect to CNLs, including no CNL-related removals of products from GSP eligibility and no redesignations of products currently subject to CNLs. Petitions previously accepted that requested waivers of CNL-related exclusions based on 2010 trade data are hereby dismissed.

**FOR FURTHER INFORMATION CONTACT:** Tameka Cooper, GSP Program, Office of the United States Trade Representative, 600 17th Street NW., Room 422, Washington, DC 20508. The telephone number is (202) 395–6971, the fax number is (202) 395–2961, and the Email address is *Tameka_Cooper@ustr.eop.gov.*

**DATES:** The GSP regulations (15 CFR part 2007) provide the schedule of dates for conducting an annual review unless otherwise specified in a **Federal Register** notice. The schedule for review of country practices petitions accepted pursuant to the 2010 Annual Review is provided below. Notification of any changes to this schedule will be given in the **Federal Register**.

January 10, 2012: Due date for submission of pre-hearing briefs and requests to appear at the GSP Subcommittee Public Hearing.

January 24, 2012: GSP Subcommittee Public Hearing on the country practice petition accepted for the 2010 GSP Annual Review, to be held at 1724 F Street NW., Washington, DC 20508, beginning at 9:30 a.m.

February 14, 2012: Due date for submission of post-hearing briefs.

**SUPPLEMENTARY INFORMATION:** The GSP provides for the duty-free importation of designated articles when imported from designated beneficiary developing countries. The GSP is authorized by title V of the Trade Act of 1974 (19 U.S.C. 2461, et seq.), as amended (the ''1974 Act''), and is implemented in accordance with Executive Order 11888 of November 24, 1975, as modified by subsequent Executive Orders and Presidential Proclamations.

#### Petitions for Review Regarding Country Practices

Pursuant to 15 CFR 2007.0(b), the GSP Subcommittee of the TPSC has recommended, and the TPSC has accepted, the review of one country practice petition submitted for the 2010 GSP Annual Review. The petition accepted is a Worker Rights petition regarding the Republic of Georgia filed by the AFL–CIO. This is the only country practice petition accepted as part of the 2010 GSP Annual Review.

#### Opportunities for Public Comment and Inspection of Comments

The GSP Subcommittee of the TPSC invites comments in support of or in opposition to the petition described above. Submissions should comply with 15 CFR part 2007, except as modified below. All submissions should reference case number 001–CP–10.

#### Requirements for Submissions

All submissions for the 2010 GSP Country Practices Eligibility Review must conform to the GSP regulations set forth at 15 CFR part 2007, except as modified below. These regulations are available on the USTR Web site at *http://www.ustr.gov/trade-topics/trade-development/preference-programs/generalized-system-preference-gsp/gsp-program-inf.*

To ensure their timely and expeditious receipt and consideration, 2010 GSP Annual Review submissions in response to this notice must be submitted online at *http://www.regulations.gov*, under docket number USTR–2010–0017. Hand-delivered submissions will not be accepted. Submissions must be submitted in English by the applicable deadlines set forth in this notice.

To make a submission using *http://www.regulations.gov*, enter docket number USTR–2010–0017 on the home page and click ''search.'' The site will list all documents associated with this docket. Find a reference to this notice by selecting ''Notices'' under ''Document Type'' on the left side of the search results page, and click on the link entitled ''Submit a Comment.'' The *http://www.regulations.gov* Web site offers the option of providing comments by filling in the ''Type Comment and Upload File'' field or by attaching a document. Given the detailed nature of the information sought by the GSP Subcommittee, it is preferred that comments and submissions be provided in an attached document. When attaching a document, type: (1) 2010 GSP Annual Review (2) The Country and subject area of the petition (3) ''See attached'' in the ''Type Comment and Upload File'' field on the online submission form, and indicate on the attachment whether the document is, as appropriate, ''Written Comments,'' ''Notice of Intent to Testify,'' ''Pre-hearing brief'' or a ''Post hearing brief.'' Submissions must be in English, with the total submission not to exceed 30 single-spaced standard letter-size pages in 12-point type, including attachments. Any data attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Each submitter will receive a submission tracking number upon completion of the submissions procedure at *http://www.regulations.gov*. The tracking number will be the submitter's confirmation that the submission was received, and it should be kept for the submitter's records. USTR is not able to provide technical assistance for the Web site. Documents not submitted in accordance with these instructions may not be considered in this review. If unable to provide submissions as requested, please contact the GSP Program to arrange for an alternative method of transmission.

#### Business Confidential Comments

A person requesting that information contained in a submission submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily

be released to the public by the submitter. Confidential business information must be clearly designated as such, the submission must be marked ''BUSINESS CONFIDENTIAL'' at the top and bottom of the cover page and each succeeding page, and the submission should indicate, via brackets, the specific information that is confidential. Additionally, ''Business Confidential'' must be included in the ''Type Comment & Upload File'' field. Anyone submitting a comment containing business confidential information must also submit as a separate submission a non-confidential version of the confidential submission, indicating where confidential information has been redacted. The non-confidential version will be placed in the docket and open to public inspection.

**Notice of Public Hearing**

A hearing will be held by the GSP Subcommittee of the TPSC on Tuesday, January 24, 2012 for the country practice petition described above beginning at 9:30 a.m. at 1724 F Street NW., Washington, DC 20508. The hearing will be open to the public, and a transcript of the hearing will be made available for public inspection or can be purchased from the reporting company. No electronic media coverage (recording devices) will be allowed.

All interested parties wishing to make an oral presentation at the hearing must submit, following the above ''Requirements for Submissions,'' the name, address, telephone number, and facsimile number and email address, if available, of the witness(es) representing their organization to William D. Jackson, Deputy Assistant U.S. Trade Representative for GSP, by 5 p.m., January 10, 2012. Requests to present oral testimony must be accompanied by a written brief or statement, in English. Oral testimony before the GSP Subcommittee will be limited to five-minute presentations that summarize or supplement information contained in briefs or statements submitted for the record. Post-hearing briefs or statements will be accepted if they conform with the regulations cited above and are submitted, in English, by 5 p.m., February 14, 2012. Parties not wishing to appear at the public hearing may submit pre-hearing briefs or statements, in English, by 5 p.m., January 10, 2012, and post-hearing written briefs or statements, in English, by 5 p.m., February 14, 2012.

**Cancellation of the 2010 Review of CNL Waiver Petitions**

The statute governing the GSP program, 19 U.S.C. 2463(c)(2), provides that the President shall, not later than July 1 of the next calendar year, terminate the duty-free treatment for articles from GSP beneficiary countries that exceed the statutory competitive need limitations for the preceding year. In view of the lapse in the authorization of the GSP program from January 1, 2011 to November 5, 2011, a review of products subject to CNLs based on calendar year 2010 trade data and petitions seeking waivers of CNLs based on calendar year 2010 trade data could not be completed prior to the statutory deadline. Therefore, no CNL-related actions will be taken in 2011, including no CNL-related removals of GSP-eligible products based on 2010 trade and no redesignations of GSP-eligible products currently subject to CNL exclusions for specific GSP beneficiary countries. Petitions for CNL waivers that were accepted in December 2010 are dismissed.

The schedule for petitions seeking waivers of CNLs based on calendar year 2011 trade data is set forth in a separate **Federal Register** notice announcing the 2011 GSP Annual Review.

**William D. Jackson,**

*Deputy Assistant U.S. Trade Representative for the Generalized System of Preferences, Office of the U.S. Trade Representative.*

[FR Doc. 2011–28248 Filed 10–31–11; 8:45 am]

BILLING CODE 3190–W2–P

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

## Generalized System of Preferences (GSP): Notice of Initiation of the 2011 Annual GSP Product and Country Practices Review; Deadlines for Filing Petitions

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice of procedures for submission of petitions from the public.

**SUMMARY:** This notice announces that the Office of the United States Trade Representative (USTR) is prepared to receive petitions to modify the list of products that are eligible for duty-free treatment under the GSP program and to modify the GSP status of certain GSP beneficiary developing countries because of country practices. The deadline for submission of country practice petitions for the 2011 Annual Review is 5 p.m., December 5, 2011. The deadline for submission of product petitions, other than those requesting competitive need limitation (CNL) waivers, is 5 p.m., December 5, 2011. The deadline for submission of petitions requesting CNL waivers is 5 p.m., Friday, December 16, 2011. Decisions on which of the petitions that are submitted are accepted for review will be announced in the **Federal Register** at later dates.

**FOR FURTHER INFORMATION CONTACT:** Tameka Cooper, GSP Program, Office of the United States Trade Representative, 600 17th Street NW., Washington, DC 20508. The telephone number is (202) 395–6971; the fax number is (202) 395–9674, and the email address is *Tameka_Cooper@ustr.eop.gov.*

Public versions of all documents relating to the 2011 Annual Review will be made available for public viewing in docket USTR–2011–0015 at *http://www.regulations.gov* upon completion of processing and no later than approximately two weeks after the relevant due date.

**I. 2011 Annual GSP Review**

The GSP regulations (15 CFR part 2007) provide the timetable for conducting an annual review, unless otherwise specified by **Federal Register** notice. Notice is hereby given that, in order to be considered in the 2011 Annual Review, all petitions to modify the list of articles eligible for duty-free treatment under GSP or to review the GSP status of any beneficiary developing country must be received by the GSP Subcommittee of the Trade Policy Staff Committee no later than December 5, 2011. Petitions requesting CNL waivers must be received by the GSP Subcommittee of the Trade Policy Staff Committee no later than 5 p.m. on Friday, December 16, 2011. Petitions submitted after the respective deadlines will not be considered for review. Decisions on which petitions are accepted for review, along with a schedule for any related public hearings, will be announced at a later date.

*GSP Product Review Petitions*

Interested parties, including foreign governments, may submit petitions to: (1) Designate additional articles as eligible for GSP benefits, including to designate articles as eligible for GSP benefits only for countries designated as least-developed beneficiary developing countries, or only for countries designated as beneficiary sub-Saharan African countries under the African Growth and Opportunity Act (AGOA); (2) withdraw, suspend or limit the application of duty-free treatment accorded under the GSP with respect to any article, either for all beneficiary developing countries, least-developed beneficiary developing countries or beneficiary sub-Saharan African countries, or for any of these countries

individually; (3) waive the ''competitive need limitations'' for individual beneficiary developing countries with respect to specific GSP-eligible articles (these limits do not apply to least-developed beneficiary developing countries or AGOA beneficiary sub-Saharan African countries); and (4) otherwise modify GSP coverage.

As specified in 15 CFR 2007.1, all product petitions must include, *inter alia,* a detailed description of the product and the eight-digit subheading of the Harmonized Tariff Schedule of the United States (HTSUS) under which the product is classified.

As noted above, product petitions requesting CNL waivers for GSP-eligible articles from beneficiary developing countries that exceed the CNLs in 2011 must be received on or before the Friday, December 16, 2011, deadline described above. Before submitting petitions for CNL waivers, prospective petitioners may wish to review the year-to-date import trade data for products of interest. This data is available via the U.S. International Trade Commission's ''Dataweb'' database at *http://dataweb.usitc.gov/.*

*Country Practices Review Petitions*

Any interested party may submit a petition to review the GSP eligibility of any beneficiary developing country with respect to any of the designation criteria listed in sections 502(b) or 502(c) of the Trade Act (19 U.S.C. 2462(b) and (c)). As noted above, such petitions are due no later than 5 p.m. on December 5, 2011.

**II. Requirements for Submissions**

All submissions for the GSP Annual Review must conform to the GSP regulations set forth at 15 CFR part 2007, except as modified below. These regulations are reprinted in the ''U.S. Generalized System of Preferences Guidebook'' (''GSP Guidebook''), available at: *http://www.ustr.gov/webfm_send/2880.* The GSP Guidebook also contains general instructions on how to submit a GSP petition. Any person or party making a submission is strongly advised to review the GSP regulations and the GSP Guidebook.

Submissions in response to this notice must be submitted electronically using *http://www.regulations.gov,* docket number USTR–2011–0015. Hand-delivered submissions will not be accepted. Submissions must be submitted in English to the Chairman of the GSP Subcommittee of the Trade Policy Staff Committee by the applicable deadlines set forth in this notice. Submissions that do not provide the information required by sections 2007.0 and 2007.1 of the GSP regulations will not be accepted for review, except upon a detailed showing in the submission that the petitioner made a good faith effort to obtain the information required.

To ensure their most timely and expeditious receipt and consideration, petitions provided in response to this notice, including those containing business confidential information, must be submitted online at *http://www.regulations.gov.* To make a submission using *http://www.regulations.gov,* enter docket number USTR–2011–0015 in the ''Enter Keyword or ID'' filed on the home page and click ''go.'' The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice by selecting ''Notice'' under ''Document Type'' in the top-middle section of the search-results page, and click on the link entitled ''Submit a Comment.'' The *http://www.regulations.gov* Web site offers the option of providing comments by filling in a ''Type Comment'' field or by attaching a document using the ''Upload file(s)'' field. Submissions must be in English, with the total submission not to exceed 30 single-spaced standard letter-size pages in 12-point type, including attachments. Any data attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Given the detailed nature of the information sought by the GSP Subcommittee, it is expected that most submissions will be in the form of an attached document. When attaching a document, please type in the ''Type Comment'' field the relevant eight-digit HTSUS subheading number(s) (for product petitions) or the country name (for country practice petitions), and indicate on the attachment whether the document is a ''Country Practice Review Petition for [Country]'' or ''Product Review Petition for [HTSUS Subheading Number], [Product Name], and (if pertinent) [Country].''

Submissions must include at the beginning of the submission, or on the first page (if an attachment), the following text (in bold and underlined): (1) ''2011 GSP Annual Review''; and (2) the eight-digit HTSUS subheading number in which the product is classified (for product petitions) or the name of the country (for country practice petitions), Furthermore, interested parties submitting petitions that request action with respect to specific products should also list at the beginning of the submission, or on the first page (if an attachment) the following information: (1) The requested action; and (2) if applicable, the beneficiary developing country.

Each submitter will receive a submission tracking number upon completion of the submissions procedure at *http://www.regulations.gov.* The tracking number will be the submitter's confirmation that the submission was received into *http://www.regulations.gov.* The confirmation should be kept for the submitter's records. USTR is not responsible for any delays in a submission due to technical difficulties, nor is it able to provide any technical assistance for the Web site. Documents not submitted in accordance with these instructions may not be considered in this review. If unable to provide submissions as requested, please contact the GSP Program at USTR to arrange for an alternative method of transmission.

*Business Confidential Petitions*

A petitioner requesting that information contained in a petition be treated as business confidential information must certify that such information is business confidential and provide an explanation as to why the information should be protected in accordance with 15 CFR 2007.7. Confidential business information must be clearly designated as such. The submission must be marked ''BUSINESS CONFIDENTIAL'' at the top and bottom of the cover page and each succeeding page, and the submission should indicate, via brackets, the specific information that is confidential. Additionally, ''Business Confidential'' must be included in the ''Type Comment'' field. Anyone submitting a petition containing business confidential information must also submit as a separate submission a non-confidential version of the confidential submission, indicating where confidential information has been redacted. The non-confidential version will be placed in the docket and open to public inspection.

Business confidential submissions that are submitted without the required markings, or are not accompanied by a properly marked non-confidential version, as set forth above, might not be accepted or may be considered public documents.

**III. Public Viewing of Review Submissions**

Submissions in response to this notice, except for information granted ''business confidential'' status under 15 CFR 2003.6, will be available for public viewing pursuant to 15 CFR 2007.6 at

*http://www.regulations.gov* upon completion of processing and no later than approximately two weeks after the relevant due date. Such submissions may be viewed by entering the docket number USTR–2011–0015 in the search field at: *http://www.regulations.gov.*

**William D. Jackson,**

*Deputy Assistant U.S. Trade Representative for the Generalized System of Preferences and Chair of the GSP Subcommittee of the Trade Policy Staff Committee, Office of the U.S. Trade Representative.*

[FR Doc. 2011–28252 Filed 10–31–11; 8:45 am]

**BILLING CODE 3190–W2–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### Environmental Impact Statement: Cities of South Lake Tahoe, CA and Stateline, NV

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of Intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway realignment project on US Highway 50 (US 50) in the Cities of South Lake Tahoe, California and Stateline, Nevada.

**FOR FURTHER INFORMATION CONTACT:** Cesar Perez, Senior Transportation Engineer, Federal Highway Administration, 650 Capitol Mall, Suite 4–100, Sacramento, California 95814, telephone (916) 498–5065.

Suzanne Melim, Senior Environmental Coordinator, California Department of Transportation, 703 B Street, P.O. Box 911, Marysville, CA 95901, telephone (530) 741–4484.

Steve Cooke, Chief, Nevada Department of Transportation, 1263 S. Stewart Street, Carson City, NV 89712, telephone; (775) 888–7686.

**SUPPLEMENTARY INFORMATION:** The California and Nevada Divisions of FHWA, in cooperation with the California Department of Transportation (Caltrans), the Nevada Department of Transportation (NDOT), the Tahoe Transportation District, and the Tahoe Regional Planning Agency (TRPA), will prepare an Environmental Impact Statement (EIS) on a proposal to realign US Highway 50 (US 50) around the Stateline casino corridor area and convert the existing US 50 roadway, between Pioneer Trail in California and Lake Parkway in Nevada into a two-lane roadway. The California Division FHWA, in cooperation with Nevada FHWA, will serve as the lead Federal agency for compliance with the National Environmental Policy Act. The joint document will also serve as environmental compliance with the California Environmental Quality Act (Environmental Impact Report) and TRPA's own EIS requirements. The work includes converting the existing US 50 into a two-lane roadway (one travel lane in each direction). Additional work may include a center median, landscaping and turn pockets at major driveways and intersections. Expanded sidewalks and bicycle lanes are proposed to be constructed in this section within the casino corridor to improve pedestrian safety and encourage use of alternative transportation modes, and traffic signals would be installed and synchronized to improve the flow of traffic. The affected segment of existing US 50 is approximately 1.1 miles long.

The proposed action involves realigning US 50 from its intersection at Lake Parkway in Nevada along Lake Parkway on the mountain (southeast) side of the Stateline casino corridor area behind Montbleu and Harrah's casinos. West of the casinos, the realigned US 50 would continue behind (south of) Heavenly Village Center (Raley's Shopping Center) and then along a new alignment between Fern and Echo Roads, rejoining the existing US 50 at its intersection with Pioneer Trail in California. The proposed new US 50 alignment would be four lanes (two travel lanes in each direction) with left-turn pockets at intersections. One Build Alternative includes a new, two-lane roundabout at the intersection of US 50 and Lake Parkway in Stateline, Nevada. The other Build Alternative under consideration would have a signalized intersection rather than a roundabout. A number of other Build Alternatives have been investigated, but have not been carried through for additional consideration. These alternatives and evaluations will be fully disclosed in the EIS.

The realignment of US 50 is considered necessary to: (1) Improve pedestrian safety, mobility, and multi-modal transportation options to accommodate increased pedestrian traffic created by existing and proposed resort development in the project area; (2) help achieve TRPA's adopted environmental threshold carrying capacities and TRPA, Nevada Department of Environmental Protection (NDEP) and Lahontan Regional Water Quality Control Board (LRWQCB) regulations and requirements, while enhancing the community and tourism experience; and (3) mitigate severe summer and winter peak period traffic congestion along US 50 in the project area by achieving and maintaining acceptable Levels of Service for existing and future traffic demand. The EIS will also address the intent of the Loop Road System concept described in Article V(2) of the Tahoe Regional Planning Compact (Pub. L. 96–551), 1980 and incorporate the various regional and local plans for the area including the Lake Tahoe Regional Transportation Plan, the Lake Tahoe Environmental Improvement Program, and Stateline/Ski Run Community Plan

Alternatives under consideration include (1) Taking no action; (2) a Build Alternative with a roundabout at Lake Parkway in Stateline and (3) a Build Alternative that it would install a signalized intersection at the intersection of US 50 and Lake Parkway instead of a roundabout; and (4) potentially one or more additional Build Alternatives identified in the scoping or environmental evaluation process that will address identified impacts and achieve project goals. Grade and alignment design variations will be incorporated into and studied with the build alternatives' footprints.

Notices describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. Two public scoping meetings will be held in November and December 2011. At least two public hearings on the draft EIS will also be held. The draft EIS will be available for public and agency review and comment prior to the hearings. Public notices giving the time and place of the meetings and hearings will be widely circulated, including notification in locally prominent media.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments and questions concerning this proposed action and the EIS should be directed to the FHWA, NDOT, and/or Caltrans at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

**Authority:** 42 U.S.C. 4321 *et seq.,* 49 CFR 1.48(d)(17), and 40 CFR 1501.7.

Issued on: October 26, 2011.

**Steve Pyburn,**

*Senior Transportation Engineer, Federal Highway Administration, Sacramento, California.*

[FR Doc. 2011–28232 Filed 10–31–11; 8:45 am]

**BILLING CODE 4910–22–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

### Federal Fiscal Year 2012 Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements

**AGENCY:** Federal Transit Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** The Federal Transit Administration (FTA) has consolidated and updated the various pre-award Certifications and Assurances required for its Federal transit assistance (funding) programs in Federal fiscal year (FY) 2012. We (FTA) are now publishing them at Appendix A of this Notice.

**DATES:** *Effective Date:* These FY 2012 Certifications and Assurances are effective October 1, 2011, the first day of FY 2012.

**FOR FURTHER INFORMATION CONTACT:** The appropriate Regional or Metropolitan Office listed in this Notice. For copies of related documents and information, see our Web site at *http://www.fta.dot.gov* or contact our Office of Administration at (202) 366–4022.

**Region 1: Boston**

*States served:* Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont; Telephone # (617) 494–2055.

**Region 2: New York**

*States served:* New York, and New Jersey; Telephone # (212) 668–2170.

**Region 3: Philadelphia**

*States served:* Delaware, Maryland, Pennsylvania, Virginia, and West Virginia; Telephone # (215) 656–7100.

**Region 4: Atlanta**

*States served:* Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, *Territories served:* Puerto Rico and the U.S. Virgin Islands; Telephone # (404) 865–5600.

**Region 5: Chicago**

*States served:* Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin; Telephone # (312) 353–2789.

**Region 6: Dallas/Ft. Worth**

*States served:* Arkansas, Louisiana, New Mexico, Oklahoma, and Texas; Telephone # (817) 978–0550.

**Region 7: Kansas City**

*States served:* Iowa, Kansas, Missouri, and Nebraska; Telephone # (816) 329–3920.

**Region 8: Denver**

*States served:* Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming; Telephone # (720) 963–3300.

**Region 9: San Francisco**

*States served:* Arizona, California, Hawaii, Nevada, *Territories served:* Guam, American Samoa, and the Northern Mariana Islands; Telephone # (415) 744–3133.

**Region 10: Seattle**

*States served:* Alaska, Idaho, Oregon, and Washington; Telephone # (206) 220–7954.

**Chicago Metropolitan Office**

*Area served:* Chicago Metropolitan Area; Telephone # (312) 886–1616.

**Los Angeles Metropolitan Office**

*Area served:* Los Angeles Metropolitan Area; Telephone # (213) 202–3950.

**Lower Manhattan Recovery Office**

*Area served:* Lower Manhattan; Telephone # (212) 668–1770.

**New York Metropolitan Office**

*Area served:* New York Metropolitan Area; Telephone # (212) 668–2201.

**Philadelphia Metropolitan Office**

*Area served:* Philadelphia Metropolitan Area; Telephone # (215) 656–7070.

**Washington DC Metropolitan Office**

*Area served:* Washington DC Metropolitan Area; Telephone # (202) 219–3562/(202) 219–3565.

**SUPPLEMENTARY INFORMATION:** This notice includes instructions on how to submit the Certifications and Assurances and highlights the changes for FY 2012.

**1. What are our responsibilities?**

Several programs we administer require new certifications and assurances each fiscal year an Applicant seeks funding. We have been consolidating our list of Certifications and Assurances into a single document for annual publication in the **Federal Register** since 1995, as required by 49 U.S.C. 5323(n). Ideally this list would be published with our apportionment notice showing our latest allocations of our annual Department of Transportation (U.S. DOT) appropriations, FTA, however, is publishing its FY 2012 Certifications and Assurances now, although U.S. DOT's full-year appropriations for our FY 2012 have not been signed into law. These FY 2012 Certifications and Assurances supersede any Certifications and Assurances published in an earlier fiscal year or any that may have appeared as illustrations in any discontinued FTA circular. After publication in the **Federal Register**, we must be sure that each Applicant has submitted adequate FY 2012 Certifications and Assurances before we may award funding to support that request.

**2. What is their legal effect?**

a. *Binding Commitment.* An Applicant typically acts through its certified or authorized representative (You). Nevertheless, your Applicant will be required to comply with any certifications or assurances you make on its behalf whether or not you remain the Applicant's authorized representative. Certifications and Assurances are pre-award representations required by Federal law or regulation before we can provide funding for your Applicant's project. By providing Certifications and Assurances to FTA, you and your Applicant are agreeing to comply with their terms.

b. *Length of Commitment.* Your Applicant's FY 2012 Certifications and Assurances remain in effect until its project is closed or the project property's useful life has expired, whichever is later. If your Applicant provides different Certifications and Assurances in a later fiscal year, the later Certifications and Assurances will apply to its project, except as we permit otherwise in writing.

c. *Duration.* Your Applicant may use its FY 2012 Certifications and Assurances for its funding applications to us from the time of publication in the **Federal Register** until we issue our FY 2013 Certifications and Assurances.

d. *Our FY 2012 Certifications and Assurances are an Incomplete List of Federal Requirements.* We caution that our FY 2012 Certifications and Assurances focus only on those Federal requirements the Applicant must fulfill before we may fund its project. Consequently, they omit many other Federal requirements that will apply to your Applicant and its project.

e. *Other Federal Requirements.* We strongly encourage you to review all Federal legislation, regulations, and directives that apply to your Applicant and its proposed project. Our FY 2012 Master Agreement, *http://www.fta.dot.gov/documents/18-Master.pdf,* identifies many of those requirements.

f. *Penalties for False or Fraudulent Statements.* If you or your Applicant provide any false or fraudulent statement to the Federal government, you or your Applicant may be subject to both Federal civil and criminal penalties. *See:*

(1) Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. 3801 *et seq.,*

(2) U.S. DOT regulations, ''Program Fraud Civil Remedies,'' 49 CFR part 31, and

(3) 49 U.S.C. 5323(l), which makes Federal criminal penalties available for violations of our requirements.

**3. What are your responsibilities?**

a. *Make Sure Everyone Involved with Your Applicant's Project Understands the Federal Requirements that Will Apply to Your Applicant and its Project.* Your Applicant will be responsible for compliance with all Federal requirements that apply to itself and its project. Nevertheless, people and organizations participating in its project can seriously affect your Applicant's ability to comply with those Federal requirements. All involved need to know those Federal requirements that affect their project related activities.

b. *Subrecipient Participation.* The Applicant is ultimately responsible for compliance with all Certifications and Assurances that you select on its behalf even though its project may mainly be carried out by subrecipients, except in limited circumstances when we have determined otherwise. Therefore, we strongly recommend that you take appropriate measures to assure the validity of your Applicant's certifications and assurances.

c. *Submit Your Applicant's Certifications and Assurances.* You must submit all groups of the FY 2012 Certifications and Assurances that apply to your Applicant and its projects for which it seeks funding in FY 2012, irrespective of the statutory source of the funding. For your convenience, we recommend that you submit all 24 groups. Those that do not apply to your Applicant or its project will not be enforced.

d. *Obtain the Affirmation of Your Applicant's Attorney.* You must obtain a current (FY 2012) affirmation from your Applicant's Attorney that your Applicant has sufficient authority under its State and local law to certify its compliance with the FY 2012 Certifications and Assurances you have selected on its behalf. Your Applicant's Attorney must sign this affirmation during FY 2012. An Affirmation of your Applicant's Attorney from a previous fiscal year is unacceptable, unless we expressly determine otherwise in writing.

e. *When to Submit.* We expect to receive your Applicant's FY 2012 Certifications and Assurances within 90 days from the date of this publication or shortly after you submit your Applicant's request for FY 2012 funding (whichever is earlier) if your Applicant is applying for formula or capital program funding, or is a current FTA grantee with an active formula or capital project. If your Applicant also seeks funding for other projects, we should receive its FY 2012 Certifications and Assurances as soon as possible.

**4. Where are your applicant's FY 2012 certifications and assurances?**

a. Appendix A of this Notice;

b. Our Web site *http://www.fta.dot.gov/documents/2012-Certs-Appendix.A.pdf;* and

c. TEAM-Web, our electronic award and management system, *http://ftateamweb.fta.dot.gov,* at the ''Cert's & Assurances'' tab of the ''View/Modify Recipients'' page in the ''Recipients'' option.

**5. What changes have been made since FY 2011?**

a. *Preface.* We have amended the third paragraph of the Preface to identify the Web site for our FY 2012 Master Agreement *http://www.fta.dot.gov/documents/18-Master.pdf.*

b. *Certification (02).* We have amended the applicability of Certification (02) to clarify that the lobbying certification does not apply to an Indian tribe, tribal organization, or other Indian organization for consistency with the applicability provision of the ''Byrd'' lobbying amendment at 31 U.S.C. 1352(g)(1)(B).

c. *Authority Section of this Preamble.* We have added references to the Hiring Incentives to Restore Employment Act, Public Law 111–147, March 18, 2010, the Surface Transportation Extension Act of 2011, Public Law 112–5, March 4, 2011, and the Surface and Air Transportation Programs Extension Act of 2011, Public Law 112–30, September 16, 2011. Together, these Acts extended the effective date of FTA's authorizing legislation through March 31, 2012.

**6. How do I submit them?**

*a. Electronic Submission*

We expect you to submit your Applicant's FY 2012 Certifications and Assurances in TEAM–Web. If you are registered in TEAM–Web to act on your Applicant's behalf, you must submit its Certifications and Assurances, as well as its applications in TEAM-Web.

The TEAM-Web ''Recipients'' option at the ''Cert's & Assurances'' tab of the ''View/Modify Recipients'' page contains fields for selecting among the 24 groups of certifications and assurances and a designated field for selecting all 24 groups.

In the ''Cert's & Assurances'' tab is a field for you to enter your personal identification number (PIN), which is your electronic signature. There is also a field for the Attorney's PIN, affirming your Applicant's legal authority to make and comply with the Certifications and Assurances you have selected on your Applicant's behalf. You may enter your PIN in place of the Attorney's PIN, provided that your Applicant has on file a similar affirmation written, dated, and signed by its Attorney in FY 2012.

*b. Paper Submission*

You may only submit your Applicant's FY 2012 Certifications and Assurances on paper if you cannot submit them electronically in TEAM-Web. You must submit the Signature Page(s) in Appendix A of this Notice indicating the groups of Certifications and Assurances your Applicant is providing if you cannot submit them electronically. You may place a single mark in the designated space to signify your Applicant's agreement to comply with all groups of certifications and assurances or select the groups of certifications and assurances that apply to the Applicant and its projects.

You must enter your signature on the Signature Page(s) and provide an Affirmation of your Applicant's Attorney concerning your Applicant's legal capacity to make and comply with the FY 2012 Certifications and Assurances selected. You may enter your signature in place of the Attorney's signature in the Affirmation of Applicant's Attorney section, provided that your Applicant has on file a similar affirmation, written, dated, and signed by its Attorney in FY 2012.

For more information, you may contact the appropriate FTA Regional or Metropolitan Office.

**Authority.** 49 U.S.C. chapter 53; the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), Public Law 109–59, August 10, 2005, as amended by the

SAFETEA–LU Technical Corrections Act, 2008, Public Law 110–244, June 6, 2008; the Hiring Incentives to Restore Employment Act. Public Law 111–147, March 18, 2010; the Surface Transportation Extension Act of 2011, Public Law 112–5, March 4, 2011; the Surface and Air Transportation Programs Extension Act of 2011, Public Law 112–30, September 16, 2011; Title 23, United States Code (Highways); other Federal laws administered by FTA; U.S. DOT and FTA regulations at Title 49, Code of Federal Regulations; and FTA Circulars.

Issued in Washington, DC, this 26th day of October, 2011.

**Peter M. Rogoff,**

*Administrator.*

## FEDERAL FISCAL YEAR 2012 CERTIFICATIONS AND ASSURANCES FOR FEDERAL TRANSIT ADMINISTRATION ASSISTANCE PROGRAMS

### *PREFACE*

*Before the Federal Transit Administration (FTA or We) may award Federal transit assistance (funding or funds) to support a project, an authorized representative (you) of the project sponsor (Applicant) must provide certain certifications and assurances required by Federal law or regulation. You must provide all certifications and assurances required of your Applicant to support its applications for FTA funding during Federal fiscal year (FY) 2012.*

*We request that you read each certification and assurance carefully and select all certifications and assurances that might apply to all projects for which your Applicant might seek FTA funding. We can award FTA funding for your Applicant's project only if your Applicant provides adequate certifications and assurances on your Applicant's behalf as required by Federal law or regulation.*

*We have consolidated our certifications and assurances into 24 groups. At a minimum, you must provide the assurances in Group 01. If your Applicant requests more than $100,000, you must also provide the Lobbying certification in Group 02, unless your Applicant is an Indian tribe or organization or a tribal organization. Depending on the nature of your Applicant and its project, your Applicant may need to provide some of the certifications and assurances in Groups 03 through 24. However, instead of selecting individual groups of certifications and assurances, you may make a single selection that will encompass all groups of certifications and assurances applicable to all our programs. FTA and your Applicant understand and agree that not every provision of these certifications and assurances will apply to every Applicant or every project we fund. The type of project and Applicant will determine which certifications and assurances apply.*

*Your Applicant also understands and agrees that these certifications and assurances are special pre-award requirements and do not include all Federal requirements that may apply to your Applicant or its project. Our Master Agreement MA(18) for Federal Fiscal Year 2012, http://www.fta.dot.gov/documents/18-Master.pdf, contains a list of most of those requirements.*

*Except in limited circumstances, your Applicant is ultimately responsible for compliance with the certifications and assurances that apply to itself or its project irrespective of subrecipient participation in the project. Because many FY 2012 certifications and assurances will require subrecipient compliance, we strongly recommend that you take appropriate measures to assure the validity of your Applicant's certifications and assurances. Your Applicant understands and agrees that when you apply for funding on behalf of a consortium, joint venture, partnership, or team, each member of that consortium, joint venture, partnership, or team is responsible for compliance with the certifications and assurances you select on your Applicant's behalf.*

*We expect you to submit your Applicant's FY 2012 certifications and assurances in TEAM-Web, and its applications for funding as well. Thus you will need to be registered in TEAM-Web to act on your Applicant's behalf. The TEAM-Web ''Recipients'' option at the ''Cert's & Assurances'' tab of the ''View/Modify Recipients'' page contains fields for selecting among the 24 groups of certifications and assurances and a designated field for selecting all 24 groups. If you cannot submit your Applicant's FY 2012 certifications and assurances electronically, you must submit the Signature Page(s) in Appendix A of this Notice marked to show the groups of certifications and assurances your Applicant is providing.*

## GROUP 01. ASSURANCES REQUIRED FOR EACH APPLICANT

*You must select the following assurances in Group 01 on behalf of your Applicant unless we expressly determine otherwise in writing.*

A. *Assurance of Authority of the Applicant and Its Representative.*

Both you and the Applicant's attorney who sign these certifications, assurances, and agreements, affirm that both the Applicant and you as its authorized representative may, under their State, local, or Indian tribal law and regulations, and the Applicant's by-laws or internal rules, undertake the following activities on behalf of the Applicant:

1. Execute and file its application for Federal funds,

2. Execute and file its certifications, assurances, and agreements binding its compliance, and

3. Execute Grant Agreements or Cooperative Agreements, or both, with FTA.

B. *Standard Assurances.*

The Applicant assures that:

1. It has sufficient authority under its State, local, or Indian tribal law, regulations by-laws and internal rules to carry out each FTA funded project as required by Federal laws and regulations,

2. It will comply with all applicable Federal statutes and regulations to carry out any FTA funded project,

3. It is under a continuing obligation to comply with the terms and conditions of the FTA Grant Agreement or Cooperative Agreement for the project, including the FTA Master Agreement incorporated by reference and made part of the latest amendment to Grant Agreement or Cooperative Agreement,

4. It recognizes that Federal laws and regulations may be modified from time to time and those modifications may affect project implementation,

5. It understands that Presidential executive orders and Federal directives, including Federal policies and program guidance, may be issued concerning matters affecting the Applicant or its project, and

6. It agrees that the most recent Federal laws, regulations, and directives will apply to the project, unless FTA determines otherwise in writing.

C. *Intergovernmental Review Assurance.*

*This assurance does not apply to Indian tribe or organization or a tribal organization that applies for funding under FTA's Tribal Transit Program, 49 U.S.C. 5311(c)(1).*

The Applicant assures that it has or will submit each Federal funding application to the appropriate State and local agencies for intergovernmental review to facilitate compliance with U.S. Department of Transportation (U.S. DOT) regulations, ''Intergovernmental Review of Department of Transportation Programs and Activities,'' 49 CFR part 17.

D. *Nondiscrimination Assurance.*

1. The Applicant assures that it will comply with the following laws and

regulations so that no person in the United States will be denied the benefits of, or otherwise be subjected to discrimination in any U.S. DOT or FTA funded program or activity (particularly in the level and quality of transportation services and transportation-related benefits on the basis of race, color, national origin, creed, sex, or age:

a. Federal transit law, specifically 49 U.S.C. 5332 (prohibiting discrimination on the basis of race, color, creed, national origin, sex, or age, and in employment or business opportunity),

b. Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d, and

c. U.S. DOT regulations, ''Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act,'' 49 CFR part 21.

2. As required by 49 CFR 21.7, the Applicant assures that:

a. It will comply with 49 U.S.C. 5332, 42 U.S.C. 2000d, and 49 CFR part 21 in the manner:

(1) It conducts each project,

(2) It undertakes property acquisitions, and

(3) It operates the project facilities, including:

(a) Its entire facilities, and

(b) Its facilities operated in connection with its project,

b. This assurance applies to its entire project and entire facilities, including facilities operated in connection with its project,

c. It will promptly take the necessary actions to carry out this assurance, including:

(1) Notifying the public that discrimination complaints about transportation-related services or benefits may be filed with U.S. DOT or FTA, and

(2) Submitting information about its compliance with these provisions to U.S. DOT or FTA upon their request,

d. If it transfers FTA funded real property, structures, or improvements to another party, any deeds and instruments recording that transfer will contain a covenant running with the land assuring nondiscrimination:

(1) While the property is used for the purpose that the Federal funding is extended,

(2) While the property is used for another purpose involving the provision of similar services or benefits,

e. The United States has a right to seek judicial enforcement of any matter arising under:

(1) Title VI of the Civil Rights Act, 42 U.S.C. 2000d,

(2) U.S. DOT regulations, 49 CFR part 21, and

(3) This assurance,

f. It will make any changes in its Title VI implementing procedures as U.S. DOT or FTA may request to comply with:

(1) Title VI of the Civil Rights Act, 42 U.S.C. 2000d,

(2) U.S. DOT regulations, 49 CFR part 21, and

(3) Federal transit law, 49 U.S.C. 5332,

g. It will extend the requirements of 49 U.S.C. 5332, 42 U.S.C. 2000d, and 49 CFR part 21 to each third party participant, including:

(1) Any subrecipient,

(2) Any transferee,

(3) Any third party contractor or subcontractor at any tier,

(4) Any successor in interest,

(5) Any lessee, or

(6) Any other participant in the project,

h. It will include adequate provisions to extend the requirements of 49 U.S.C. 5332, 42 U.S.C. 2000d, and 49 CFR part 21 to each third party agreement, including:

(1) Each subagreement,

(2) Each property transfer agreement,

(3) Each third party contract or subcontract at any tier,

(4) Each lease, or

(5) Each participation agreement,

i. The assurances it has made will remain in effect for the longest of the following:

(1) As long as Federal funding is extended to the project,

(2) As long as the Project property is used for a purpose for which the Federal funding is extended,

(3) As long as the Project property is used for a purpose involving the provision of similar services or benefits, or

(4) As long as the Applicant retains ownership or possession of the project property.

E. *Assurance of Nondiscrimination on the Basis of Disability.*

1. The Applicant assures that it and its project implementation and operations will comply with all applicable requirements of:

a. The Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, et seq.,

b. The Americans with Disabilities Act of 1990, as amended, 42 U.S.C. 12101 et seq.,

c. U.S. DOT regulations, specifically 49 CFR parts 27, 37, and 38, and

d. Any other applicable Federal laws that may be enacted or Federal regulations that may be promulgated,

2. As required by U.S. DOT regulations, ''Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance,'' 49 CFR part 27, specifically 49 CFR 27.9, the Applicant assures that:

a. The following prohibition against discrimination on the basis of disability is a condition to the approval or extension of any FTA funding awarded to:

(1) Construct any facility,

(2) Obtain any rolling stock or other equipment,

(3) Undertake studies,

(4) Conduct research, or

(5) Participate in or obtain any benefit from any FTA administered program,

b. In any program or activity receiving or benefiting from Federal funding FTA or any entity within U.S. DOT administers, no otherwise qualified people with a disability will, because of their disability, be:

(1) Excluded from participation,

(2) Denied benefits, or

(3) Otherwise subjected to discrimination.

F. *Suspension and Debarment.*

1. U.S. DOT regulations, ''Nonprocurement Suspension and Debarment,'' 2 CFR part 1200, which adopts and supplements the provisions of U.S. Office of Management and Budget (U.S. OMB) ''Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),'' 2 CFR part 180, permit certifications to assure the Applicant acknowledges that:

2. The Applicant certifies to the best of its knowledge and belief that, it, its principals, and first tier subrecipients:

a. Are eligible to participate in covered transactions of any Federal department or agency and are not presently:

(1) Debarred,

(2) Suspended,

(3) Proposed for debarment,

(4) Declared ineligible, or

(5) Voluntarily excluded, or

(6) Disqualified,

b. Have not within a three-year period preceding its latest application or proposal been convicted of or had a civil judgment rendered against any of them for:

(1) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction, or contract under a public transaction,

(2) Violation of any Federal or State antitrust statute, or

(3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making any false statement, or receiving stolen property,

c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State,

or local) with commission of any of the offenses listed in the preceding Section 2.b of this certification,

d. Have not had one or more public transactions (Federal, State, or local) terminated for cause or default within a three-year period preceding this certification,

e. Will promptly provide any information to the FTA if at a later time any information contradicts the statements of subparagraphs (1) through (4) above, and

f. Will treat each lower tier contract or lower tier subcontract under the Project as a covered lower tier contract for purposes of 2 CFR part 1200 and 2 CFR part 180 if it:

(1) Equals or exceeds $25,000,

(2) Is for audit services, or

(3) Requires the consent of a Federal official,

g. Will require that each covered lower tier contractor and subcontractor:

(1) Comply with the Federal requirements of 2 CFR part 1200 and 2 CFR part 180, and

(2) Assure that each lower tier participant in the Project is not presently declared by any Federal department or agency to be:

(a) Debarred from participation in the federally funded project,

(b) Suspended from participation in the federally funded project,

(c) Proposed for debarment from participation in the federally funded project,

(d) Declared ineligible to participate in the federally funded project,

(e) Voluntarily excluded from participation in the federally funded project, or

(f) Disqualified from participation in the federally funded Project.

3. The Applicant will provide a written explanation indicated on its Signature Page or a page attached in FTA's TEAM if it or any of its principals, including any of its first tier subrecipients or lower tier participants, is unable to certify to the preceding statements in this certification.

*G. U.S. OMB Assurances in SF–424B and SF–424D.*

*(These assurances are consistent with U.S. OMB assurances required in SF–424B and SF–424D.)*

1. *Administrative Activities.* The Applicant assures that:

a. For every project described in any application it submits, it has adequate resources to properly plan, manage, and complete the project, including:

(1) The legal authority to apply for Federal funding, and

(2) The institutional capability,

(3) The managerial capability, and

(4) The financial capability (including funds sufficient to pay the non-Federal share of project cost).

b. It will give access and the right to examine project-related materials, including but not limited to:

(1) FTA,

(2) The Comptroller General of the United States, and,

(3) If appropriate, the State, through any authorized representative,

c. It will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

d. It will establish safeguards to prohibit employees from using their positions for a purpose that:

(1) Results in a personal or organizational conflict of interest, or personal gain, or

(2) Presents the appearance of a personal or organizational conflict of interest or personal gain.

2. *Project Specifics.* The Applicant assures that:

a. Following receipt of FTA award, it will begin and complete Project work within the applicable time periods,

b. For FTA funded construction projects:

(1) It will comply with FTA provisions concerning the drafting, review, and approval of construction plans and specifications

(2) It will to the extent practicable provide and maintain competent and adequate engineering supervision at the construction site to assure that the completed work conforms with the approved plans and specifications,

(3) It will include a covenant in the title of federally funded real property acquired to assure nondiscrimination during the useful life of the project,

(4) To the extent FTA requires, it will record the Federal interest in the title to FTA assisted real property or interests in real property, and

(5) To the extent practicable, without permission and instructions from FTA, it will not alter the site of the FTA funded construction project or facilities by:

(a) Disposing of the underlying real property or other interest in the site and facilities,

(b) Modifying the use of the underlying real property or other interest in the site and facilities, or

(c) Changing the terms of the underlying real property title or other interest in the site and facilities.

c. It will furnish progress reports and other information as FTA or the State may require.

3. *Statutory and Regulatory requirements.* The Applicant assures that:

a. It will comply with all applicable Federal statutes relating to nondiscrimination including, but not limited to the:

(1) Prohibitions against discrimination on the basis of race, color, or national origin of Title VI of the Civil Rights Act, 42 U.S.C. 2000d,

(2) Prohibitions against discrimination on the basis of sex of:

(a) Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 1681–1683, and 1685–1687, and

(b) U.S. DOT regulations, ''Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance,'' 49 CFR part 25,

(3) Prohibitions against discrimination on the basis of age in federally assisted programs of the Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101–6107,

(4) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, which prohibits discrimination on the basis of disability,

(5) Prohibitions against discrimination on the basis of disability of Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794,

(6) Nondiscrimination requirements relating to the sale, rental, or financing of housing of Title VIII of the Civil Rights Act, 42 U.S.C. 3601 *et seq.,*

(7) Prohibitions against discrimination on the basis of drug abuse of the Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. 1101 et seq.,

(8) Prohibitions against discrimination on the basis of alcohol abuse of the Comprehensive Alcohol Abuse and Alcoholism Prevention Act of 1970, as amended, 42 U.S.C. 4541 *et seq.,*

(9) Confidentiality requirements for the records of alcohol and drug abuse patients of the Public Health Service Act, as amended, 42 U.S.C. 290dd–290dd–2, and

(10) Nondiscrimination provisions of any other statute(s) that may apply to the project,

b. Regardless of whether Federal funding has been provided for any of the real property acquired for Project purposes, it will provide for fair and equitable treatment of displaced persons or persons whose property is acquired as a result of federally assisted programs, and:

(1) It has the necessary legal authority under State and local law to comply with:

(a) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (Uniform Relocation Act) 42

U.S.C. 4601 et seq., as specified by sections 210 and 305 of that Act, 42 U.S.C. 4630 and 4655, respectively, and

(b) U.S. DOT regulations, ''Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs,'' 49 CFR part 24, specifically 49 CFR 24.4.

(2) It has complied with or will comply with the Uniform Relocation Act and implementing U.S. DOT regulations including but not limited to doing the following:

(a) It will adequately inform each affected person of the benefits, policies, and procedures provided for in 49 CFR part 24,

(b) As required by 42 U.S.C. 4622, 4623, and 4624, and 49 CFR part 24, it will provide fair and reasonable relocation payments and assistance for displacement, resulting from any FTA funded project, of:

*1* Families and individuals,

*2* Partnerships, corporations, or associations,

(c) As provided by 42 U.S.C. 4625 and 49 CFR part 24, it will provide relocation assistance programs offering the services described in to the U.S. DOT regulations to such displaced:

*1* Families and individuals,

*2* Partnerships, corporations, or associations,

(d) As required by 42 U.S.C. 4625(c)(3), within a reasonable time before displacement it will make available comparable replacement dwellings to families and individuals,

(e) It will:

*1* Carry out the relocation process to provide displaced persons with uniform and consistent services, and

*2* Make available replacement housing in the same range of choices with respect to such housing to all displaced persons regardless of race, color, religion, or national origin,

(f) It will be guided to the greatest extent practicable under State law, by the real property acquisition policies of 42 U.S.C. 4651 and 4652,

(g) It will pay or reimburse property owners for their necessary expenses as specified in 42 U.S.C. 4653 and 4654, understanding that FTA will provide Federal funding for its eligible costs of providing payments for those expenses, as required by 42 U.S.C. 4631,

(h) It will execute the necessary implementing amendments to third party contracts and subagreements financed with FTA funding, and

(i) It will execute, furnish, and be bound by such additional documents as FTA may determine necessary to effectuate or implement these assurances, and

(j) It will incorporate these assurances by reference into and make them a part of any third party contract or subagreement, or any amendments thereto, relating to any FTA funded project involving relocation or land acquisition, and

(k) It will provide in any affected document that these relocation and land acquisition provisions must supersede any conflicting provisions,

c. To the extent practicable, it will comply with the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4831(b), which prohibits the use of lead-based paint in the construction or rehabilitation of residence structures,

d. It will, to the extent practicable, comply with the protections for human subjects involved in research, development, and related activities supported by Federal funding of:

(1) The National Research Act, Pub. L. 93–348, July 12, 1974, as amended, 42 U.S.C. 289 et seq., and

(2) U.S. DOT regulations, ''Protection of Human Subjects,'' 49 CFR part 11,

e. It will, to the extent practicable, comply with the labor standards and protections for federally funded projects of:

(1) The Davis-Bacon Act, as amended, 40 U.S.C. 3141 et seq.,

(2) Sections 1 and 2 of the Copeland ''Anti-Kickback'' Act, as amended, 18 U.S.C. 874, and 40 U.S.C. 3145, respectively,

(3) The Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. 3701 *et seq.,*

f. It will, to the extent practicable, comply with any applicable environmental standards that may be prescribed to implement the following Federal laws and executive orders, including but not limited to the following:

(l) It will comply with the institution of environmental quality control measures under the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321–4335 and Executive Order No. 11514, as amended, 42 U.S.C. 4321 note,

(2) It will comply with notification of violating facilities pursuant to Executive Order No. 11738, 42 U.S.C. 7606 note,

(3) It will comply with protection of wetlands pursuant to Executive Order No. 11990, 42 U.S.C. 4321 note,

(4) It will comply with evaluation of flood hazards in floodplains in accordance with Executive Order No. 11988, 42 U.S.C. 4321 note,

(5) It will comply with an assurance of project consistency with the approved State management program developed pursuant to the requirements of the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1451–1465,

(6) It will comply with Conformity of Federal actions to State (Clean Air) Implementation Plans under section 176(c) of the Clean Air Act of 1955, as amended, 42 U.S.C. 7401–7671q,

(7) It will comply with protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. 300f–300j–6,

(8) It will comply with protection of endangered species under the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531–1544, and

(9) It will comply with environmental protections for Federal transportation programs, including, but not limited to, protections for parks, recreation areas, or wildlife or waterfowl refuges of national, State, or local significance or any land from a historic site of national, State, or local significance to be used in a transportation project as required by 49 U.S.C. 303(b) and 303(c),

(10) It will comply with protection of the components of the national wild and scenic rivers systems, as required under the Wild and Scenic Rivers Act of 1968, as amended, 16 U.S.C. 1271–1287, and

(11) It will comply with and facilitate compliance with

(a) Section 106 of the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470f,

(b) The Archaeological and Historic Preservation Act of 1974, as amended, 16 U.S.C. 469–469c, and

(c) Executive Order No. 11593 (identification and protection of historic properties), 16 U.S.C. 470 note,

g. To the extent practicable, it will comply with Federal requirements for the care, handling, and treatment of warm blooded animals held or used for research, teaching, or other activities supported by Federal funding of:

(1) The Animal Welfare Act, as amended, 7 U.S.C. 2131 *et seq.,* and

(2) U.S. Department of Agriculture regulations, ''Animal Welfare,'' 9 CFR subchapter A, parts 1, 2, 3, and 4,

h. To the extent practicable, before accepting delivery of any FTA funded building it will obtain a certificate of compliance with the seismic design and construction requirements of U.S. DOT regulations, ''Seismic Safety,'' 49 CFR part 41, specifically 49 CFR 41.117(d),

i. To the extent practicable, it and its subrecipients located in special flood hazard areas will comply with section 102(a) of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012a(a), by:

(1) Participating in the Federal flood insurance program,

(2) Purchasing flood insurance if the total cost of insurable construction and acquisition is $10,000 or more,

j. To the extent practicable, it will comply with:

(1) The Hatch Act, 5 U.S.C. 1501–1508, 7324–7326, which limits the political activities of State and local agencies and their officers and employees whose primary employment activities are financed in whole or part with Federal funds including a Federal loan, grant agreement, or cooperative agreement, and

(2) 49 U.S.C. 5307(k)(2) and 23 U.S.C. 142(g), which provide an exception from Hatch Act restrictions for a nonsupervisory employee of a public transportation system (or of any other agency or entity performing related functions) receiving FTA funding to whom the Hatch Act does not otherwise apply,

k. It will have performed the financial and compliance audits as required by:

(1) The Single Audit Act Amendments of 1996, 31 U.S.C. 7501 *et seq.,*

(2) U.S. OMB Circular A–133, ''Audits of States, Local Governments, and Non-Profit Organizations,'' Revised, and

(3) The most recent applicable U.S. OMB A–133 Compliance Supplement provisions for the U.S. DOT, and

l. It will, to the extent practicable, comply with all applicable provisions of all other Federal laws or regulations, and follow Federal directives governing the project, except to the extent that FTA has expressly approved otherwise in writing.

**GROUP 02. LOBBYING CERTIFICATION**

*You must select the following certifications in Group 02 if you apply on behalf of your Applicant for a Federal grant or cooperative agreement exceeding $100,000, or a loan (including a line of credit), loan guarantee, or loan insurance exceeding $150,000, except if you are applying on behalf of an Indian tribe, tribal organization, or other Indian organization or if we determine otherwise in writing.*

As required by 31 U.S.C. 1352 and U.S. DOT regulations, ''New Restrictions on Lobbying,'' specifically 49 CFR 20.110, you and your Applicant understand that:

a. The lobbying restrictions of your certification apply to your Applicant's requests for:

(1) $100,000 or more in Federal funding for a grant or cooperative agreement, and

(2) $150,000 or more in Federal funding for a loan, line of credit, or loan guarantee,

b. Its certification covers the lobbying activities of:

(1) It,

(2) Its principals, and

(3) Its first tier subrecipients:

Therefore, on behalf of your Applicant, you certify to the best of your knowledge and belief, that:

1. No Federal appropriated funds have been or will be paid by or on its behalf to any person:

a. To influence or attempt to influence:

(1) An officer or employee of any Federal agency,

(2) A Member of Congress, an employee of a member of Congress, or an officer or employee of Congress,

b. Regarding the award of a:

(1) Federal grant or cooperative agreement, or

(2) Federal loan, line of credit, loan guarantee, or loan insurance

2. It will submit a complete OMB Standard Form-LLL, ''Disclosure of Lobbying Activities (Rev. 7–97),'' in accordance with its instructions, if any funds other than Federal appropriated funds have been or will be paid to any person:

a. To influence or attempt to influence:

(1) An officer or employee of any Federal agency,

(2) A Member of Congress, an employee of a Member of Congress, or an officer or employee of Congress, or

b. Regarding any application for a:

(1) Federal grant or cooperative agreement,

(2) Federal loan, line of credit, loan guarantee, or loan insurance, and

3. It will include the language of this certification in the award documents for all subawards at all tiers including, but not limited to:

a. Subcontracts,

b. Subgrants,

c. Subagreements, and

d. Third party contracts under a:

(1) Federal grant or cooperative agreement, or

(2) Federal loan, line of credit, loan guarantee, or loan insurance, and

4. It understands that:

a. This certification is a material representation of fact that the Federal Government relies on, and

b. It must submit this certification before the Federal Government may award funding for a transaction covered by 31 U.S.C. 1352, including a:

(1) Federal grant or cooperative agreement, or

(2) Federal loan, line of credit, loan guarantee, or loan insurance, and

5. It also understands that any person who does not file a required certification will be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

**GROUP 03. PROCUREMENT COMPLIANCE**

*We request that you provide the following procurement certification, on behalf of your Applicant by selecting Group 03, especially if your Applicant is a State, local, or Indian tribal government with a certified procurement system, as provided in 49 CFR 18.36(g)(3)(ii).*

The Applicant certifies that its procurements and procurement system will comply with all applicable Federal laws and regulations in accordance with applicable Federal directives, except to the extent FTA has approved otherwise in writing.

**GROUP 04. PROTECTIONS FOR PRIVATE TRANSPORTATION PROVIDERS**

*You must select the following certifications in Group 04 on behalf of your Applicant if it is a State, local, or Indian tribal government and you are applying for or will apply for 49 U.S.C. chapter 53 funding to:*

- *Acquire property of a private transit operator, or*
- *Operate public transit in competition with or in addition to a private transit provider.*

As required by 49 U.S.C. 5323(a)(1), the Applicant certifies that:

1. Before it:

a. Acquires the property or an interest in the property of a private provider of public transportation, or

b. Operates public transportation equipment or facilities:

(1) In competition with transportation service provided by an existing public transportation company, or

(2) In addition to transportation service provided by an existing public transportation company,

2. It has or will have:

a. Determined that the funding is essential to carrying out a program of projects as required by 49 U.S.C. 5303, 5304, and 5306,

b. Provided for the participation of private companies engaged in public transportation to the maximum extent feasible, and

c. Paid just compensation under State or local law to the company for any franchise or property acquired.

**GROUP 05. PUBLIC HEARING**

*You must select the following certifications in Group 05 on behalf of your Applicant if you apply for 49 U.S.C. chapter 53 funding for a capital project that will substantially affect a community or its transit service.*

As required by 49 U.S.C. 5323(b), the Applicant certifies that:

1. Before submitting an application for a capital project that:

a. Will substantially affect:

(1) A community, or

(2) The public transportation service of a community, and

b. Also will affect:

(1) Significant economic interests,

(2) Significant social interests, or

(3) Significant environmental interests,

It will:

(1) Provide an adequate opportunity for public review and comment on the project, after giving notice that:

(a) Includes a concise description of the proposed project; and

(b) Has been published in a newspaper of general circulation in the geographic area the project.

(2) Hold a public hearing on the project if the project affects:

(a) Significant economic interests,

(b) Significant social interests, or

(c) Significant environmental interests,

2. It will have considered the economic, social, and environmental effects of the project, and

3. It will have determined that the project is consistent with official plans for developing the community.

**GROUP 06. ACQUISITION OF ROLLING STOCK FOR USE IN REVENUE SERVICE**

*You must select the following certification on behalf of your Applicant in Group 06 if you apply for 49 U.S.C. chapter 53 funding to acquire any rolling stock for use in revenue service.*

The Applicant certifies that in procuring revenue service rolling stock, it will comply with:

1. Federal transit law, specifically 49 U.S.C. 5323(m),

2. FTA regulations, ''Pre-Award and Post-Delivery Audits of Rolling Stock Purchases,'' 49 CFR part 663, specifically 49 CFR 663.7, as modified by amendments authorized by section 3023(k) of SAFETEA–LU, including the requirements to:

a. Conduct or cause to be conducted the required preaward and post delivery reviews, and

b. Maintain on file the certifications required by 49 CFR part 663, subparts B, C, and D.

**GROUP 07. ACQUISITION OF CAPITAL ASSETS BY LEASE**

*You must select the following certifications in Group 07 if you apply on behalf of your Applicant for 49 U.S.C. chapter 53 funding to acquire capital assets by lease.*

As required by FTA regulations, ''Capital Leases,'' 49 CFR part 639, specifically 639.15(b)(1) and 639.21, if the Applicant acquires any capital asset by lease financed with Federal funding authorized under 49 U.S.C. chapter 53, the Applicant certifies as follows:

1. It will not use Federal funding authorized under 49 U.S.C. chapter 53 to finance the cost of leasing any capital asset until:

a. It performs calculations demonstrating that leasing the capital asset would be more cost-effective than purchasing or constructing a similar asset, and

b. It completes these calculations before the later of:

(1) Entering into the lease, or

(2) Receiving a capital grant for the asset, and

2. It will not enter into a capital lease for which FTA can provide only incremental Federal funding unless it has adequate financial resources to meet its future lease obligations if Federal funding is not available.

**GROUP 08. BUS TESTING**

*You must select the following certification in Group 08 if you apply on behalf of your Applicant for 49 U.S.C. chapter 53 funding to acquire any new or newly configured bus or a bus with new major components.*

The Applicant certifies that:

1. It will comply with Federal transit law, specifically 49 U.S.C. 5318,

2. FTA regulations, ''Bus Testing,'' 49 CFR part 665, specifically 49 CFR 665.7, requires that

a. Before:

(1) Spending any Federal funds to acquire:

(a) The first bus of any new bus model,

(b) The first bus with a new major change in configuration or components, or

(2) Authorizing final acceptance of a new bus model or a bus model with a major change in components or configuration:

b. It will:

(1) Ensure that the bus model has been tested at FTA's bus testing facility, and

(2) Have received a copy of the test report prepared on the bus model.

**GROUP 09. CHARTER SERVICE AGREEMENT**

*You must enter in the Charter Service Agreement in Group 09 on behalf of your Applicant if you apply for funding to acquire or operate transit facilities and equipment, unless your Applicant qualifies for an exception under Federal law and regulations.*

As required by 49 U.S.C. 5323(d) and (g) and FTA regulations, ''Charter Service,'' 49 CFR part 604, specifically 49 CFR 604.4, the Applicant understands and agrees that:

1. Except in certain circumstances described in its regulations, FTA's ''Charter Service'' regulations restrict transportation by charter service using facilities and equipment acquired by FTA for transportation projects with Federal funding derived from:

(1) Federal transit laws, 49 U.S.C. chapter 53, or

(2) 23 U.S.C. §§ 133 or 142,

2. FTA's charter service restrictions extend to:

a. The Applicant when it becomes a recipient of Federal funding under:

(1) Federal transit laws, 49 U.S.C. chapter 53, or

(2) 23 U.S.C. §§ 133 or 142,

b. Any third party participant that receives Federal funding derived from:

(1) Federal transit laws, 49 U.S.C. chapter 53, or

(2) 23 U.S.C. §§ 133 or 142,

c. A third party participant includes a:

(1) Subrecipient at any tier,

(2) Lessee,

(3) Third party contractor or subcontractor at any tier, and

(4) Other participant in the project,

3. Neither the Applicant nor any third party participant involved in its Project will engage in charter service operations, except as permitted under:

a. Federal transit laws, specifically 49 U.S.C. 5323(d) and (g),

b. FTA regulations, ''Charter Service,'' 49 C.F.R. Part 604,

c. Any other Federal Charter Service regulations, or

d. Federal directives, except as FTA determines otherwise in writing.

4. The Applicant agrees that the latest Charter Service Agreement it has selected in its latest annual Certifications and Assurances is incorporated by reference in and made part of the underlying Agreement accompanying an award of FTA funding.

5. The Applicant agrees that:

a. FTA may require corrective measures or impose remedies on it or any subrecipient that has engaged in a pattern of violations of FTA's Charter Service regulations by:

(1) Conducting charter operations prohibited by Federal transit laws and FTA's Charter Service regulations, or

(2) Otherwise violating the Applicant's Charter Service Agreement it has elected in its latest annual Certifications and Assurances.

b. These corrective measures and remedies may include:

(1) Barring it or any third party participant operating public

transportation under the Project that has provided prohibited charter service from receiving FTA funds, or

(2) Withholding an amount of Federal funds as provided by Appendix D to FTA's Charter Service regulations.

**GROUP 10. SCHOOL TRANSPORTATION AGREEMENT**

*You must enter in the School Transportation Agreement in Group 10 on behalf of your Applicant if you apply for funding to acquire or operate transit facilities and equipment, unless your Applicant qualifies for an exception under Federal law and regulations.*

As required by 49 U.S.C. 5323(f) and (g) and FTA regulations, ''School Bus Operations,'' 49 CFR part 605, to the extent consistent with 49 U.S.C. 5323(f) and (g), the Applicant understands and agrees that:

1. FTA's ''School Bus Operations'' regulations restrict school bus service as defined in the FTA regulations using facilities and equipment acquired with Federal funding derived from:

(1) Federal transit laws, 49 U.S.C. chapter 53, or

(2) 23 U.S.C. §§ 133 or 142,

2. FTA's school bus operations restrictions extend to:

a. The Applicant when it becomes a recipient of Federal funding under:

(1) Federal transit laws, 49 U.S.C. chapter 53, or

(2) 23 U.S.C. §§ 133 or 142,

b. Any third party participant that receives Federal funding derived from:

(1) Federal transit laws, 49 U.S.C. chapter 53, or

(2) 23 U.S.C. §§ 133 or 142,

c. A third party participant includes a:

(1) Subrecipient at any tier,

(2) Lessee,

(3) Third party contractor or subcontractor at any tier, and

(4) Other participant in the project,

3. Neither the Applicant nor any third party participant involved in its Project will engage in school transportation operations in competition with private operators of school transportation, except as permitted under:

a. Federal transit laws, specifically 49 U.S.C. § 5323(f) and (g),

b. FTA regulations, ''School Bus Operations,'' 49 C.F.R. Part 605, to the extent consistent with 49 U.S.C. § 5323(f) and (g),

c. Any other Federal School Transportation regulations, or

d. Federal directives, except as FTA determines otherwise in writing.

4. The Applicant agrees that the latest School Transportation Agreement it has selected in its latest annual Certifications and Assurances is incorporated by reference in and made part of the underlying Agreement accompanying an award of FTA funding.

5. The Applicant agrees that FTA will bar the Applicant or any third party participant that has violated this School Transportation Agreement from receiving Federal transit funding in an amount FTA considers appropriate.

**GROUP 11. DEMAND RESPONSIVE SERVICE**

*You must select the following certification in Group 11 on behalf of your Applicant if your Applicant operates demand responsive service and you apply for 49 U.S.C. chapter 53 funding to acquire non rail transit vehicles.*

As required by U.S. DOT regulations, ''Transportation Services for Individuals with Disabilities (ADA),'' 49 CFR part 37, specifically 49 CFR 37.77(d), the Applicant certifies that:

1. The following public transportation services it offers are equivalent in level and quality of service:

a. Its demand responsive service offered to individuals with disabilities, including individuals who use wheelchairs,

b. Its service offered to individuals without disabilities,

2. Viewed in its entirety, the Applicant's service for individuals with disabilities is:

a. Provided in the most integrated setting feasible, and

b. Equivalent to the service it offers individuals without disabilities with respect to:

(1) Response time,

(2) Fares,

(3) Geographic service area,

(4) Hours and days of service,

(5) Restrictions on trip purpose,

(6) Availability of information and reservation capability, and

(7) Constraints on capacity or service availability.

**GROUP 12. ALCOHOL MISUSE AND PROHIBITED DRUG USE**

*You must select the following certification in Group 12 on behalf of your Applicant if FTA regulations, ''Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations,'' 49 CFR part 655, require your Applicant to provide a certification concerning its activities to prevent alcohol misuse and prohibited drug use in its public transportation operations.*

As required by FTA regulations, ''Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations,'' specifically 49 CFR part 655, subpart I, the Applicant certifies that it:

1. Has established and implemented:

a. An alcohol misuse program and

b. An anti-drug program, and

2. Has complied with or will comply with all applicable requirements of this part.

**GROUP 13. INTEREST AND OTHER FINANCING COSTS**

*You must select the following certification in Group 13 if the your Applicant intends to reimburse interest or other financing costs with Urbanized Area Formula Program, Capital Investment Program, or Paul S. Sarbanes Transit in Parks Program funding.*

The Applicant certifies that:

1. It will not seek reimbursement for interest or other financing costs:

a. Unless it is eligible to receive Federal funding for those costs,

b. Its records demonstrate that it has used reasonable diligence in seeking the most favorable financing terms underlying those costs, to the extent FTA may require, and

2. It will comply with:

a. Urbanized Area Formula Program interest provisions of 49 U.S.C. 5307(g)(3),

b. Capital Investment Program provisions of 49 U.S.C. 5309(g)(2)(B)(iii),

c. Capital Investment Program provisions of 49 U.S.C. 5309(g)(3)(B)(iii),

d. Capital Investment Program provisions of 49 U.S.C. 5309(i)(2)(C), and

e. Paul S. Sarbanes Transit in Parks Program provisions of 49 U.S.C. 5320(h)(2)(C).

**GROUP 14. INTELLIGENT TRANSPORTATION SYSTEMS**

*Select the following assurance in Group 14 if you apply on behalf of your Applicant for an Intelligent Transportation Systems (ITS) project or a project in support of an ITS project. An Applicant for ITS project funding that fails to provide this assurance, without providing other documentation assuring its commitment to comply with applicable Federal ITS standards and protocols, may be ineligible for award of Federal funding for that ITS project.*

As used in this assurance, the term Intelligent Transportation Systems (ITS) project is defined to include any project that in whole or in part finances the acquisition of technologies or systems of technologies that provide or significantly contribute to the provision of one or more ITS user services as defined in the ''National ITS Architecture.'' The Applicant assures that:

1. As provided in subsection 5307(c) of SAFETEA–LU, 23 U.S.C. 512 note:

a. ''Intelligent transportation system projects carried out using funds made available from the Highway Trust Fund, including funds made available under this subtitle to deploy intelligent transportation system technologies, [will] conform to the national architecture, applicable standards or provisional standards, and protocols developed under subsection (a) [of section 5307 of SAFETEA–LU].''

b. ITS standards will not apply if it obtains an exception to subsection 5307(c) of SAFETEA–LU, 23 U.S.C. 512 note.

2. It will use its best efforts to assure that any ITS project it undertakes will not preclude interface with other intelligent transportation systems in the Region, if supported with Federal funding not derived from:

a. Title 49, United States Code, or

b. Title 23, United States Code.

3. To facilitate compliance with subsection 5307(c) of 23 U.S.C. 512 note, except as the Federal Government determines otherwise in writing, the Applicant assures that it will comply with:

a. FTA Notice, ''FTA National ITS Architecture Policy on Transit Projects,'' 66 FR 1455, January 8, 2001, specifically:

(1) Applicable provisions of Section V (Regional ITS Architecture, and

(2) Section VI (Project Implementation), and

b. Other FTA policies that may be issued in connection with any ITS project it undertakes financed with funds authorized under Title 49 or Title 23, United States Code,

**GROUP 15. URBANIZED AREA FORMULA PROGRAM**

*You must select the following certifications and assurances in Group 15 if you apply on behalf of your Applicant for Urbanized Area Formula Program funding, 49 U.S.C. 5307. Your Applicant is ultimately responsible for compliance with its certifications and assurances even though a subrecipient, lessee, third party contractor, or other participant may participate in that project, unless FTA determines otherwise in writing. Consequently, we strongly encourage your Applicant to take the appropriate measures including, but not limited to, obtaining sufficient documentation from each subrecipient, to assure the validity of all certifications and assurances it has made.*

*Each Applicant is required by 49 U.S.C. 5307(d)(1)(J) to spend at least one (1) percent of its Urbanized Area Formula Program funding for public transportation security projects, unless it has certified that such expenses are not necessary. Information about its intentions must be recorded in the ''Security'' tab page of the TEAM–Web ''Project Information'' window when it submits its Urbanized Area Formula Program application in TEAM–Web.*

We may not award Urbanized Area Formula Program funding to any Applicant that is required by 49 U.S.C. 5307(d)(1)(K) to spend one (1) percent of its Urbanized Area Formula Program funding for eligible transit enhancements unless its quarterly report for the fourth quarter of the preceding Federal fiscal year has been submitted to FTA and includes the required list or sufficient information to demonstrate that the Designated Recipients in its area together have spent one (1) percent of the amount of Urbanized Area Program funding made available to them for transit enhancement projects or have included the same information in a separate report attached in TEAM–Web.

The following certifications apply to each Applicant for funding under the Urbanized Area Formula Program authorized under 49 U.S.C. 5307. The Applicant certifies that:

1. As required by 49 U.S.C. 5307(d)(1)(A), it has or will have the:

a. Legal capacity to carry out its proposed projects,

b. Financial capacity to carry out its proposed projects,

c. Technical capacity to carry out its proposed projects,

d. Safety aspects of its proposed projects, and

e. Security aspects of its proposed projects,

2. As required by 49 U.S.C. 5307(d)(1)(B), it has or will have satisfactory continuing control over the use of project equipment and facilities,

3. As required by 49 U.S.C. 5307(d)(1)(C), it will maintain the project equipment and facilities adequately,

4. As required by 49 U.S.C. 5307(d)(1)(D), it will ensure that the following individuals will be charged not more than fifty (50) percent of the peak hour fare for transportation during non-peak hours using or involving project facilities or equipment supported under 49 U.S.C. 5307:

a. Elderly individuals,

b. Individuals with disabilities, or

c. Individuals presenting a Medicare card issued to himself or herself pursuant to title II or title XVIII of the Social Security Act (42 U.S.C. 401 *et seq.* or 42 U.S.C. 1395 et seq.),

5. As required by 49 U.S.C. 5307(d)(1)(E), when carrying out a procurement under 49 U.S.C. 5307, it will:

a. Use competitive procurement (as defined or approved by FTA),

b. Not use exclusionary or discriminatory specifications in its procurements,

c. Comply with applicable Buy America laws, and

d. Comply with the:

(1) General provisions for FTA programs of 49 U.S.C. 5323, and

(2) Third party procurement requirements of 49 U.S.C. 5325,

6. As required by 49 U.S.C. 5307(d)(1)(F), it has complied with or will comply with 49 U.S.C. 5307(c) because it:

a. Has informed or will inform the public of the amounts of its Urbanized Area Formula Program funds available under 49 U.S.C. 5307, and the projects it proposes to undertake,

b. Has developed or will develop, in consultation with interested parties including private transportation providers, the projects proposed to be funded,

c. Has published or will publish a list of its projects in a way that affected citizens, private transportation providers, and local elected officials will have an opportunity to examine and submit comments on the proposed projects and its performance,

d. Has provided or will provide an opportunity for a public hearing to obtain the views of citizens on the proposed projects,

e. Has assured or will assure that the proposed projects provide for coordination of transportation services assisted under 49 U.S.C. 5336 with federally assisted transportation services supported by a Federal Government source other than U.S. DOT,

f. Has considered or will consider the comments and views received, especially those of private transportation providers, in preparing its final list of projects, and

g. Has made or will make the final list of projects available to the public,

7. As required by 49 U.S.C. 5307(d)(1)(G), it:

a. Has or will have the amount of funds required for the local share,

b. Will provide the local share funds from approved non-Federal sources except as permitted by Federal law, and

c. Will provide the local share funds when needed,

8. As required by 49 U.S.C. 5307(d)(1)(H), it will comply with:

a. The requirements of 49 U.S.C. 5301(a) for public transportation systems that:

(1) Maximize the safe, secure, and efficient mobility of people,

(2) Minimize environmental impacts, and,

(3) Minimize transportation-related fuel consumption and reliance on foreign oil,

b. The requirements of 49 U.S.C. 5301(d) for special efforts to:

(1) Design public transportation for elderly individuals and individuals with disabilities, and

(2) Provide public transportation for elderly individuals and individuals with disabilities, and

c. The requirements of 49 U.S.C. 5303—5306 for:

(1) Metropolitan and State Planning, and

(2) Private enterprise participation,

9. As required by 49 U.S.C. 5307(d)(1)(I), it has a locally developed process to solicit and consider public comment before:

a. Raising a fare, or

b. Implementing a major reduction of public transportation,

10. As required by 49 U.S.C. 5307(d)(1)(J), if it serves an urbanized area with a population of at least 200,000:

a. Each fiscal year, it will spend at least one (1) percent of its 49 U.S.C. 5307 funding for public transportation security projects (limited to capital projects in the case of an Applicant serving an urbanized area with a population of 200,000 or more), or

b. That fiscal year, it will certify that such expenses for transportation security projects are not necessary,

c. Public transportation security projects include:

(1) Increased lighting in or adjacent to a public transportation system (including bus stops, subway stations, parking lots, and garages),

(2) Increased camera surveillance of an area in or adjacent to that system,

(3) Emergency telephone line or lines to contact law enforcement or security personnel in an area in or adjacent to that system, and

(4) Any other project intended to increase the security and safety of an existing or planned public transportation, and

11. As required by 49 U.S.C. 5307(d)(1)(K), if it serves an urbanized area with a population of at least 200,000:

a. Each fiscal year, it or all the Recipients of 49 U.S.C. 5307 funding in its urbanized area will spend at least one (1) percent of that funding for transit enhancements, as defined in 49 U.S.C. 5302(a),

b. It will include in its quarterly report for the fourth quarter of the preceding Federal fiscal year a list of the projects during that Federal fiscal year using those 49 U.S.C. 5307 funds, and

c. The report of its transit enhancement projects is or will be incorporated by reference and made part of its certifications and assurances.

**GROUP 16. CLEAN FUELS GRANT PROGRAM**

*You must select the following certifications and assurances in Group 16 if you apply on behalf of your Applicant for Clean Fuels Grant Program funding, 49 U.S.C. 5308. Your Applicant itself is ultimately responsible for compliance with its certifications and assurances even though a subrecipient, lessee, third party contractor, or other participant may participate in that project, unless FTA determines otherwise in writing. Consequently, we strongly encourage your Applicant to take the appropriate measures including, but not limited to, obtaining sufficient documentation from each subrecipient, to assure the validity of all certifications and assurances it has made.*

The following certifications apply to each Applicant for funding under the Clean Fuels Grant Program authorized under 49 U.S.C. 5308:

1. As required by FTA regulations, ''Clean Fuels Grant Program, 49 CFR part 624, specifically 49 CFR 624.7, the Applicant certifies it will operate vehicles purchased with Federal funding provided under the Clean Fuels Grant Program, 49 U.S.C. 5308 only with clean fuels.

2. Under 49 U.S.C. 5308(d)(1), the requirements of 49 U.S.C. 5307 apply to the Clean Fuels Grant Program. To comply with those requirements, as specified under 49 U.S.C. 5307(d)(1), the Applicant certifies that:

a. As required by 49 U.S.C. 5307(d)(1)(A), it has or will have the:

(1) Legal capacity to carry out its proposed projects,

(2) Financial capacity to carry out its proposed projects,

(3) Technical capacity to carry out its proposed projects,

(4) Safety aspects of its proposed projects, and

(5) Security aspects of its proposed projects,

b. As required by 49 U.S.C. 5307(d)(1)(B), it has or will have satisfactory continuing control over the use of project equipment and facilities,

c. As required by 49 U.S.C. 5307(d)(1)(C), it will maintain the project equipment and facilities adequately,

d. As required by 49 U.S.C. 5307(d)(1)(D), it will ensure that the following individuals will be charged not more than fifty (50) percent of the peak hour fare for transportation during non-peak hours using or involving project facilities or equipment supported under 49 U.S.C. 5308:

(1) Elderly individuals,

(2) Individuals with disabilities, or

(3) Individuals presenting a Medicare card issued to himself or herself pursuant to title II or title XVIII of the Social Security Act (42 U.S.C. 401 et seq. or 42 U.S.C. 1395 et seq.),

e. As required by 49 U.S.C. 5307(d)(1)(E), when carrying out a procurement under 49 U.S.C. 5308, it will:

(1) Use competitive procurement (as defined or approved by FTA),

(2) Not use exclusionary or discriminatory specifications in its procurements,

(3) Comply with applicable Buy America laws, and

(4) Comply with the general provisions for FTA programs of 49 U.S.C. 5323, and

(5) Comply with the third party procurement requirements of 49 U.S.C. 5325,

f. As required by 49 U.S.C. 5307(d)(1)(F), it has complied with or will comply with 49 U.S.C. 5307(c) because it:

(1) Has informed or will inform the public of the amounts of its Clean Fuels Grant Program funds available under 49 U.S.C. 5308, and the projects it proposes to undertake,

(2) Has developed or will develop, in consultation with interested parties including private transportation providers, the projects proposed to be funded,

(3) Has published or will publish a list of its projects in a way that affected citizens, private transportation providers, and local elected officials will have an opportunity to examine and submit comments on the proposed projects and its performance,

(4) Has provided or will provide an opportunity for a public hearing to obtain the views of citizens on the proposed projects,

(5) Has assured or will assure that the proposed projects provide for coordination of transportation services assisted under 49 U.S.C. 5336 with federally assisted transportation services supported by a Federal government source other than U.S. DOT,

(6) Has considered or will consider the comments and views received, especially those of private transportation providers, in preparing its final list of projects, and

(7) Has made or will make the final list of projects available to the public,

g. As required by 49 U.S.C. 5307(d)(1)(G), it:

(1) Has or will have the amount of funds required for the local share,

(2) Will provide the local share funds from approved non-Federal sources except as permitted by Federal law, and

(3) Will provide the local share funds when needed,

h. As required by 49 U.S.C. 5307(d)(1)(H), it will comply with:

(1) The requirements of 49 U.S.C. 5301(a) for public transportation systems that:

(a) Maximize the safe, secure, and efficient mobility of people,

(b) Minimize environmental impacts, and

(c) Minimize transportation-related fuel consumption and reliance on foreign oil,

(2) The requirements of 49 U.S.C. 5301(d) for special efforts to:

(a) Design public transportation for elderly individuals and individuals with disabilities, and

(b) Provide public transportation for elderly individuals and individuals with disabilities, and

(3) The requirements of 49 U.S.C. 5303—5306 for:

(a) Metropolitan and State Planning, and

(b) Private enterprise participation, and

i. As required by 49 U.S.C. 5307(d)(1)(I), it has a locally developed process to solicit and consider public comment before:

(1) Raising a fare, or

(2) Implementing a major reduction of public transportation.

## GROUP 17. ELDERLY INDIVIDUALS AND INDIVIDUALS WITH DISABILITIES FORMULA GRANT PROGRAM AND PILOT PROGRAM

*You must select the following certifications and assurances in Group 17 if you apply on behalf of your State or State organization as the direct Applicant for Elderly Individuals and Individuals with Disabilities Formula Grant Program funding 49 U.S.C. 5310, and, if qualified, for Elderly Individuals and Individuals with Disabilities Pilot Program funding, subsection 3012(b) of SAFETEA–LU. Only a State or a State organization acting as the Recipient on behalf of a State may be a direct recipient of this funding. Your State or State organization Applicant is ultimately responsible for compliance with its certifications and assurances even though a subrecipient, lessee, third party contractor, or other participant may participate in that project, unless FTA determines otherwise in writing. Consequently, we strongly encourage your State or State organization Applicant to take the appropriate measures including, but not limited to, obtaining sufficient documentation from each subrecipient, to assure the validity of all certifications and assurances it has made.*

The following certifications and assurances apply to each State or State organization serving as Applicant for funding and each subrecipient of funding under the Elderly Individuals and Individuals with Disabilities Formula Grant Program authorized under 49 U.S.C. 5310, and the Elderly Individuals and Individuals with Disabilities Pilot Program authorized under subsection 3012(b) of SAFETEA–LU.

1. The State or State organization Applicant assures that:

a. Each subrecipient is:

(1) Recognized under State law as a private nonprofit organization with the legal capability to contract with the State to carry out the proposed project, or

(2) A public body that has met the statutory requirements to receive Federal funding authorized for 49 U.S.C. 5310,

b. The State or State organization Applicant can conclude from information in a private nonprofit subrecipient's application for 49 U.S.C. 5310 funding that:

(1) The transit service provided or offered to be provided by existing public or private transit operators cannot meet the special needs of elderly individuals and individuals with disabilities, because it is:

(a) Unavailable,

(b) Insufficient, or

(c) Inappropriate,

c. As required by 49 U.S.C. 5310(d)(2)(A) and subsection 3012(b)(2) of SAFETEA–LU, the State certifies that, before it transfers funds to a project funded under 49 U.S.C. 5336, the project has been or will have been coordinated with private nonprofit providers of services under 49 U.S.C. 5310,

d. As required by 49 U.S.C. 5310(d)(2)(C), the Applicant certifies that allocations to subrecipients 49 U.S.C. 5310 funding or subsection 3012(b) funding will be distributed on a fair and equitable basis, and

e. As required by 49 U.S.C. 5310(d)(2)(B) and subsection 3012(b)(2) of SAFETEA–LU, the Applicant certifies that:

(1) The projects it has selected or will select for funding under that program were derived from a public transit-human services transportation plan that has been:

(a) Locally developed, and

(b) Coordinated, and

(2) That locally developed, coordinated plan was produced through a process that included:

(a) Representatives of public, private, and nonprofit transportation providers,

(b) Representatives of public, private, and nonprofit human services providers, and

(c) Participation by the public.

2. As permitted by 49 U.S.C. 5310(d), the Federal Transit Administrator has selected certain requirements of 49 U.S.C. 5307 to be appropriate for the Elderly Individuals and Individuals with Disabilities Formula Grant Program authorized by 49 U.S.C. 5310, and the Elderly Individuals and Individuals with Disabilities Pilot Program authorized by subsection 3012(b) of SAFETEA–LU, 49 U.S.C. 5310 note, of which some require certifications. Therefore, as specified under 49 U.S.C. 5307(d)(1), the State or State organization Applicant certifies that:

a. As required by 49 U.S.C. 5307(d)(1)(A), it and each subrecipient has or will have the:

(1) Legal capacity to carry out its proposed projects,

(2) Financial capacity to carry out its proposed projects,

(3) Technical capacity to carry out its proposed projects,

(4) Safety aspects of its proposed projects, and

(5) Security aspects of its proposed projects,

b. As required by 49 U.S.C. 5307(d)(1)(B), it and each subrecipient has or will have satisfactory continuing control over the use of project equipment and facilities,

c. As required by 49 U.S.C. 5307(d)(1)(C), it and each subrecipient will maintain the project equipment and facilities adequately,

d. As required by 49 U.S.C. 5307(d)(1)(E), when carrying out a procurement under the Elderly Individuals and Individuals with Disabilities Formula Grant Program authorized by 49 U.S.C. 5310, or the Elderly Individuals and Individuals with Disabilities Pilot Program authorized by subsection 3012(b) of SAFETEA–LU, 49 U.S.C. 5310 note, it and each subrecipient will:

(1) Use competitive procurement (as defined or approved by FTA),

(2) Not use exclusionary or discriminatory specifications in its procurements,

(3) Comply with applicable Buy America laws, and

(4) Comply with the general provisions for FTA programs of 49 U.S.C. 5323, and

(5) Comply with the third party procurement requirements of 49 U.S.C. 5325,

e. As required by 49 U.S.C. 5307(d)(1)(G), it and each subrecipient:

(1) Has or will have the amount of funds required for the local share,

(a) As required by 49 U.S.C. 5310(c), and

(b) Subsections 3012(b)(3) and (4) of SAFETEA–LU, if applicable,

(2) Will provide the local share funds from approved non-Federal sources except as permitted by Federal law, and

(3) Will provide the local share funds when needed, and

f. As required by 49 U.S.C. 5307(d)(1)(H), it and each subrecipient will comply with:

(1) The requirements of 49 U.S.C. 5301(a) for public transportation systems that:

(a) Maximize the safe, secure, and efficient mobility of people,

(b) Minimize environmental impacts, and

(c) Minimize transportation-related fuel consumption and reliance on foreign oil,

(2) The requirements of 49 U.S.C. 5301(d) for special efforts to:

(a) Design public transportation for elderly individuals and individuals with disabilities, and

(b) Provide public transportation for elderly individuals and individuals with disabilities, and

(3) The requirements of 49 U.S.C. 5303—5306 for:

(a) Metropolitan and State Planning, and

(b) Private enterprise participation.

## GROUP 18. NONURBANIZED AREA FORMULA PROGRAM FOR STATES

*You must select the following certifications and assurances in Group 18 if you apply on behalf of your Applicant for Nonurbanized Area Formula Program funding, 49 U.S.C. 5311(b). Your Applicant itself is ultimately responsible for compliance with its certifications and assurances even though a subrecipient, lessee, third party contractor, or other participant may participate in that project, unless FTA determines otherwise in writing. Consequently, we strongly encourage your Applicant to take the appropriate measures including, but not limited to, obtaining sufficient documentation from each subrecipient, to assure the validity of all certifications and assurances it has made.*

Only a State or a State organization acting as the Recipient on behalf of a State (State) may be a direct recipient of this Nonurbanized Area Formula Program funding. Separate certifications and assurances have been established in Group 22 for an Indian tribe that is an Applicant for Tribal Transit Program funding, 49 U.S.C. 5311(c)(1).

The following certifications and assurances apply to each State or State organization serving as the Applicant for funding under the Nonurbanized Area Formula Program authorized under 49 U.S.C. 5311. The Applicant assures that:

1. It has or will have the necessary legal, financial, and managerial capability to:

a Apply, receive and disburse 49 U.S.C. 5311(c)(1) funding, and

b. Carry out each project, including the:

(1) Safety aspects of its proposed projects, and

(2) Security aspects of its proposed projects,

2. It has or will have satisfactory continuing control over the use of project equipment and facilities,

3. The project equipment and facilities will be adequately maintained,

4. As required by 49 U.S.C. 5311(b)(2)(C)(i), its program has provided for a fair distribution of Federal funding authorized for 49 U.S.C. 5311 within the State, including Indian reservations within the State,

5. As required by 49 U.S.C. 5311(b)(2)(C)(ii), its program provides or will provide the maximum feasible coordination of public transportation service to receive funding under 49 U.S.C. 5311 with transportation service assisted by other Federal sources,

6. The projects in its Nonurbanized Area Formula Program are included in:

a. The Statewide Transportation Improvement Program, and

b. To the extent applicable, a metropolitan Transportation Improvement Program,

7. It has or will have the amount of funds required for the local share, as required by 49 U.S.C. 5311(g), and

(2) Will provide the local share funds from approved non-Federal sources except as permitted by Federal law, and

(3) Will provide the local share funds when needed, and

8. As required by 49 U.S.C. 5311(f), each fiscal year:

a. It will spend at least fifteen (15) percent of its 49 U.S.C. 5311 funding available that fiscal year to develop and support intercity bus transportation within the State, with eligible activities including:

(1) Planning and marketing for intercity bus transportation,

(2) Capital grants for intercity bus shelters,

(3) Joint-use stops and depots,

(4) Operating grants through purchase-of-service agreements, user-side subsidies, and demonstration projects, and

(5) Coordinating rural connections between small public transportation operations and intercity bus carriers, or

b. It will provide to the Federal Transit Administrator a certification of the State's chief executive officer that:

(1) After consulting with the affected intercity bus service providers about the intercity bus needs of the State,

(2) The State's intercity bus service needs are being met adequately.

## GROUP 19. JOB ACCESS AND REVERSE COMMUTE (JARC) FORMULA GRANT PROGRAM

*You must select the following certifications and assurances in Group 19 if you apply on behalf of your Applicant for Job Access and Reverse Commute (JARC) Formula Grant funding, 49 U.S.C. 5316. Your Applicant is ultimately responsible for compliance with its certifications and assurances even though a subrecipient, lessee, third party contractor, or other participant may participate in that project, unless FTA determines otherwise in writing. Consequently, we strongly encourage your Applicant to take the appropriate measures including, but not limited to, obtaining sufficient documentation from each subrecipient, to assure the validity of all certifications and assurances it has made.*

The following certifications and assurances apply to each Applicant for and subrecipient of funding under the Job Access and Reverse Commute (JARC) Formula Grant funding authorized under 49 U.S.C. 5316.

1. The Applicant certifies that:

a. As required by 49 U.S.C. 5316(d)(4), it will make awards of JARC funding on a competitive basis following:

(1) An areawide solicitation in cooperation with the appropriate metropolitan planning organization for applications for funding under 5316(c)(1)(A) (see 49 U.S.C. 5316(d)(1)), and

(2) A statewide solicitation for applications for JARC funding under 49 U.S.C. 5316(c)(1)(B) or 49 U.S.C. 5316(c)(1)(C), (see 49 U.S.C. 5316(d)(2)) and

b. As required by 49 U.S.C. 5316(f)(2), any allocations to subrecipients of funding authorized under 49 U.S.C. 5316 will be distributed on a fair and equitable basis,

c. As required by 49 U.S.C. 5316(g)(3):

(1) The projects it has selected or will select for funding under that program were derived from a public transit-human services transportation plan that has been:

(a) Locally developed, and

(b) Coordinated,

(2) That locally developed, coordinated plan was produced through a process that included:

(a) Representatives of public, private, and nonprofit transportation providers,

(b) Representatives of public, private, and nonprofit human services providers, and

(c) Participation by the public, and

d. As required by 49 U.S.C. 5316(g)(2), before it transfers funds to a project funded under 49 U.S.C. 5336, that project has been or will have been coordinated with private nonprofit providers of services, and

e. As required by 49 U.S.C. 5316(c)(3), before using funds apportioned for projects serving an area other than that for which funding was apportioned under 49 U.S.C. 5316(c)(1)(B) or (C):

(1) The State's chief executive officer, or his or her designee, will have certified that all the JARC program objectives of 49 U.S.C. 5316 are being met in the area from which the funding would be derived,

(2) If the State has a statewide program for meeting the JARC program objectives of 49 U.S.C. 5316, the funds can be used for projects anywhere in the State.

2. Under 49 U.S.C. 5316(f)(1), the requirements of 49 U.S.C. 5307 apply to the JARC Program, authorized under 49 U.S.C. 5316. Therefore, as specified under 49 U.S.C. 5307(d)(1), the Applicant certifies that

a. As required by 49 U.S.C. 5307(d)(1)(A), it and each subrecipient has or will have the:

(1) Legal capacity to carry out its proposed projects,

(2) Financial capacity to carry out its proposed projects,

(3) Technical capacity to carry out its proposed projects,

(4) Safety aspects of its proposed projects, and

(5) Security aspects of its proposed projects,

b. As required by 49 U.S.C. 5307(d)(1)(B), it and each subrecipient has or will have satisfactory continuing control over the use of project equipment and facilities,

c. As required by 49 U.S.C. 5307(d)(1)(C), it and each subrecipient will maintain the project equipment and facilities adequately,

d. As required by 49 U.S.C. 5307(d)(1)(D), it and each subrecipient will ensure that the following individuals will be charged not more than fifty (50) percent of the peak hour fare for transportation during non-peak hours using or involving project facilities or equipment supported under 49 U.S.C. 5316:

(1) Elderly individuals,

(2) Individuals with disabilities, or

(3) Individuals presenting a Medicare card issued to himself or herself pursuant to title II or title XVIII of the Social Security Act (42 U.S.C. 401 et seq. or 42 U.S.C. 1395 et seq.),

e. As required by 49 U.S.C. 5307(d)(1)(E), when carrying out a procurement under the JARC Program, 49 U.S.C. 5316, it will:

(1) Use competitive procurement (as defined or approved by FTA),

(2) Not use exclusionary or discriminatory specifications in its procurements,

(3) Comply with applicable Buy America laws,

(4) Comply with the general provisions for FTA programs of 49 U.S.C. 5323, and

(5) Comply with the third party procurement requirements of 49 U.S.C. 5325,

f. As required by 49 U.S.C. 5307(d)(1)(F), it and each subrecipient has complied with or will comply with 49 U.S.C. 5307(c) because it:

(1) Has informed or will inform the public of the amount of its JARC Program funds available under 49 U.S.C. 5316, and the projects it proposes to undertake,

(2) Has developed or will develop, in consultation with interested parties including private transportation providers, the projects proposed to be funded,

(3) Has published or will publish a list of its projects in a way that affected citizens, private transportation providers, and local elected officials will have an opportunity to examine and submit comments on the proposed projects and its performance,

(4) Has provided or will provide an opportunity for a public hearing to obtain the views of citizens on the proposed projects,

(5) Has assured or will assure that the proposed projects provide for coordination of transportation services assisted under 49 U.S.C. 5336 with federally assisted transportation services supported by a Federal government source other than U.S. DOT,

(6) Has considered or will consider the comments and views received, especially those of private transportation providers, in preparing its final list of projects, and

(7) Has made or will make the final list of projects available to the public,

g. As required by 49 U.S.C. 5307(d)(1)(G), it and each subrecipient:

(1) Has or will have the amount of funds required for the local share,

(2) Will provide the local share funds from approved non-Federal sources except as permitted by Federal law, and

(3) Will provide the local share funds when needed,

h. As required by 49 U.S.C. 5307(d)(1)(H), it and each subrecipient will comply with:

(1) The requirements of 49 U.S.C. 5301(a) for public transportation systems that:

(a) Maximize the safe, secure, and efficient mobility of people,

(b) Minimize environmental impacts, and

(c) Minimize transportation-related fuel consumption and reliance on foreign oil,

(2) The requirements of 49 U.S.C. 5301(d) for special efforts to:

(a) Design public transportation for elderly individuals and individuals with disabilities, and

(b) Provide public transportation for elderly individuals and individuals with disabilities, and

(3) The requirements of 49 U.S.C. 5303—5306 for:

(a) Metropolitan and State Planning, and

(b) Private enterprise participation, and

i. As required by 49 U.S.C. 5307(d)(1)(I), it and each subrecipient has a locally developed process to solicit and consider public comment before:

(1) Raising a fare, or

(2) Implementing a major reduction of public transportation.

**GROUP 20. NEW FREEDOM PROGRAM**

*You must select the following certifications and assurances in Group 20 if you apply on behalf of your Applicant for New Freedom Program funding, 49 U.S.C. 5317. Your Applicant is ultimately responsible for compliance with its certifications and assurances even though a subrecipient, lessee, third party contractor, or other participant may participate in that project, unless FTA determines otherwise in writing. Consequently, we strongly encourage your Applicant to take the appropriate measures including, but not limited to, obtaining sufficient documentation from each subrecipient, to assure the validity of all certifications and assurances it has made.*

1. The Applicant certifies that:

a. As required by 49 U.S.C. 5317(d)(4), it will make awards of New Freedom funding on a competitive basis following:

(1) An areawide solicitation in cooperation with the appropriate metropolitan planning organization for applications for funding under 5317(c)(1)(A) (see 49 U.S.C. 5317(d)(1)), and

(2) A statewide solicitation for applications for JARC funding under 49 U.S.C. 5317(c)(1)(B) or 49 U.S.C. 5317(c)(1)(C), (see 49 U.S.C. 5317(d)(2)),

b. As required by 49 U.S.C. 5317(e)(2), any allocations to subrecipients of funding authorized under 49 U.S.C. 5317 will be distributed on a fair and equitable basis,

c. As required by 49 U.S.C. 5317(f)(3):

(1) The projects it has selected or will select for funding under that program were derived from a public transit-human services transportation plan that has been:

(a) Locally developed, and

(b) Coordinated,

(2) That locally developed, coordinated plan was produced through a process that included:

(a) Representatives of public, private, and nonprofit transportation providers,

(b) Representatives of human services public, private, and nonprofit providers, and

(c) Participation by the public, and

d. As required by 49 U.S.C. 5316(f)(2), before it transfers funds to a project funded under 49 U.S.C. 5336, that project has been or will have been coordinated with private nonprofit providers of services.

2. As permitted by 49 U.S.C. 5317(e)(1), the Federal Transit Administrator has selected certain requirements of 49 U.S.C. 5310 and 49 U.S.C. 5307 to be appropriate for the New Freedom Program, of which some require certifications. Therefore, as specified under 49 U.S.C. 5307(d)(1), the Applicant certifies that:

a. As required by 49 U.S.C. 5307(d)(1)(A), it and each subrecipient has or will have the:

(1) Legal capacity to carry out its proposed projects,

(2) Financial capacity to carry out its proposed projects,

(3) Technical capacity to carry out its proposed projects,

(4) Safety aspects of its proposed projects, and

(5) Security aspects of its proposed projects,

b. As required by 49 U.S.C. 5307(d)(1)(B), it and each subrecipient has or will have satisfactory continuing control over the use of project equipment and facilities,

c. As required by 49 U.S.C. 5307(d)(1)(C), it and each subrecipient will maintain the project equipment and facilities adequately,

d. As required by 49 U.S.C. 5307(d)(1)(E), when carrying out a procurement under the New Freedom Program authorized by 49 U.S.C. 5317, it and each subrecipient will:

(1) Use competitive procurement (as defined or approved by FTA),

(2) Not use exclusionary or discriminatory specifications in its procurements,

(3) Comply with applicable Buy America laws, and

(4) Comply with the general provisions for FTA programs of 49 U.S.C. 5323, and

(5) Comply with the third party procurement requirements of 49 U.S.C. 5325,

e. As required by 49 U.S.C. 5307(d)(1)(G), it and each subrecipient:

(1) Has or will have the amount of funds required for the local share,

(2) Will provide the local share funds from approved non-Federal sources except as permitted by Federal law, and

(3) Will provide the local share funds when needed, and

f. As required by 49 U.S.C. 5307(d)(1)(H), it will comply with:

(1) The requirements of 49 U.S.C. 5301(a) for public transportation systems that:

(a) Maximize the safe, secure, and efficient mobility of people,

(b) Minimize environmental impacts, and

(c) Minimize transportation-related fuel consumption and reliance on foreign oil,

(2) The requirements of 49 U.S.C. 5301(d) for special efforts to:

(a) Design public transportation for elderly individuals and individuals with disabilities, and

(b) Provide public transportation for elderly individuals and individuals with disabilities, and

(3) The requirements of 49 U.S.C. 5303—5306 for:

(a) Metropolitan and State Planning, and

(b) Private enterprise participation.

## GROUP 21. PAUL S. SARBANES TRANSIT IN PARKS PROGRAM

*You must select the following certifications and assurances in Group 21 if you apply on behalf of your Applicant for Paul S. Sarbanes Transit in Parks Program (Parks Program) funding, 49 U.S.C. 5320.*

The following certifications apply to each Applicant for funding under the Paul S. Sarbanes Transit in Parks Program (Parks Program) authorized under 49 U.S.C. 5320:

1. As required by 49 U.S.C. 5320(e)(D), the Applicant assures that it will consult with the appropriate Federal land management agency during the planning process.

2. As permitted by 49 U.S.C. 5320(i), the Federal Transit Administrator has selected certain requirements of 49 U.S.C. 5307 to be appropriate for the Parks Program, of which some require certifications. Therefore as specified under 49 U.S.C. 5307(d)(1), the Applicant certifies that:

a. As required by 49 U.S.C. 5307(d)(1)(A), it has or will have the:

(1) Legal capacity to carry out its proposed projects,

(2) Financial capacity to carry out its proposed projects,

(3) Technical capacity to carry out its proposed projects,

(4) Safety aspects of its proposed projects, and

(5) Security aspects of its proposed projects,

b. As required by 49 U.S.C. 5307(d)(1)(B), it has or will have satisfactory continuing control over the use of project equipment and facilities,

c. As required by 49 U.S.C. 5307(d)(1)(C), it will maintain the project equipment and facilities adequately,

d. As required by 49 U.S.C. 5307(d)(1)(E), when carrying out a procurement under the Parks Program, 49 U.S.C. 5320, it will:

(1) Use competitive procurement (as defined or approved by FTA),

(2) Not use exclusionary or discriminatory specifications in its procurements,

(3) Comply with applicable Buy America laws, and

(4) Comply with the general provisions for FTA programs of 49 U.S.C. 5323, and

(5) Comply with the third party procurement requirements of 49 U.S.C. 5325,

e. As required by 49 U.S.C. 5307(d)(1)(F) and 49 U.S.C. 5320(e)(2)(C), it has complied with or will comply with the requirements of 49 U.S.C. 5307(c). Specifically, it:

(1) Has made available, or will make available, to the public information on the amounts available for the Parks Program, 49 U.S.C. 5320, and the projects it proposes to undertake,

(2) Has developed or will develop, in consultation with interested parties including private transportation providers, projects to be financed,

(3) Has published or will publish a list of proposed projects in a way that affected citizens, private transportation providers, and local elected officials have the opportunity to examine the proposed projects and submit comments on the proposed projects and the performance of the Applicant,

(4) Has provided or will provide an opportunity for a public hearing to obtain the views of citizens on the proposed projects,

(5) Has considered or will consider the comments and views received, especially those of private

transportation providers, in preparing its final list of projects, and

(6) Has made or will make the final list of projects available to the public,

f. As required by 49 U.S.C. 5307(d)(1)(G), it:

(1) Has or will have the amount of funds required for the local share,

(2) Will provide the local share funds from approved non-Federal sources except as permitted by Federal law, and

(3) Will provide the local share funds when needed,

g. As required by 49 U.S.C. 5307(d)(1)(H), it will comply with:

(1) The requirements of 49 U.S.C. 5301(a) for public transportation systems that:

(a) Maximize the safe, secure, and efficient mobility of people,

(b) Minimize environmental impacts, and

(c) Minimize transportation-related fuel consumption and reliance on foreign oil,

(2) The requirements of 49 U.S.C. 5301(d) for special efforts to:

(a) Design public transportation for elderly individuals and individuals with disabilities, and

(b) Provide public transportation for elderly individuals with disabilities, and

(3) The requirements of 49 U.S.C. 5303—5306 for:

(a) Metropolitan and State Planning, and

(b) Private enterprise participation, and

h. As required by 49 U.S.C. 5307(d)(1)(I), it has a locally developed process to solicit and consider public comment before:

(1) Raising a fare, or

(2) Implementing a major reduction of public transportation.

## GROUP 22. TRIBAL TRANSIT PROGRAM

*You must select the following certifications and assurances in Group 22 if you apply on behalf of your Applicant for Tribal Transit Program funds, 49 U.S.C. 5311(c)(1).*

As permitted by 49 U.S.C. 5311(c)(1) the Federal Transit Administrator has established terms and conditions for direct grants funded under FTA's Tribal Transit Program authorized under 49 U.S.C. 5311(c)(1) for Indian tribal governments. To ensure compliance with those requirements, the Indian tribal government serving as the Applicant certifies and assures that:

1. It has or will have the necessary legal, financial, and managerial capability to:

a. Apply, receive and disburse 49 U.S.C. 5311(c)(1) funding, and

b. Carry out each project, including the:

(1) Safety aspects of its proposed projects, and

(2) Security aspects of its proposed projects,

2. It has or will have satisfactory continuing control over the use of project equipment and facilities,

3. The project equipment and facilities will be adequately maintained,

4. Its project will achieve maximum feasible coordination with transportation service assisted by other Federal sources,

5. It will:

a. Have a procurement system that complies with U.S. DOT regulations, ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments,'' 49 C.F.R. part 18, specifically 49 CFR 18.36, or

b. Inform FTA promptly that its procurement system does not comply with those U.S. DOT regulations, and

6. It will comply with the certifications, assurances, and agreements in:

a. Group 08 (Bus Testing),

b. Group 09 (Charter Bus Agreement),

c. Group 10 (School Transportation Agreement),

d. Group 11 (Demand Responsive Service),

e. Group 12 (Alcohol Misuse and Prohibited Drug Use), and

f. Group 14 (National Intelligent Transportation Systems Architecture and Standards).

## GROUP 23. TIFIA PROJECTS

You must select the following certifications and assurances in Group 23 if you apply on behalf of your Applicant for Transportation Infrastructure Finance and Innovation Act (TIFIA) credit assistance authorized under 23 U.S.C. chapter 6.

The following certifications apply to each Applicant for funding under the Transportation Infrastructure Finance and Innovation Act (TIFIA) Program authorized under 23 U.S.C. chapter 6:

1. Federal transit law, specifically 49 U.S.C. 5323(o) requires an Applicant for TIFIA credit assistance funded under 23 U.S.C. chapter 6 and its project to comply with 49 U.S.C. 5307. As required by 49 U.S.C. 5307(d)(1), the Applicant certifies that:

a. As required by 49 U.S.C. 5307(d)(1)(A), it has or will have the:

(1) Legal capacity to carry out its proposed projects,

(2) Financial capacity to carry out its proposed projects,

(3) Technical capacity to carry out its projects,

(4) Safety aspects of its proposed projects, and

(5) Security aspects of its proposed projects,

b. As required by 49 U.S.C. 5307(d)(1)(B), it has or will have satisfactory continuing control over the use of project equipment and facilities,

c. As required by 49 U.S.C. 5307(d)(1)(C), it will maintain the project equipment and facilities adequately,

d. As required by 49 U.S.C. 5307(d)(1)(D), it will ensure that the following individuals will be charged not more than fifty (50) percent of the peak hour fare for transportation during non-peak hours using or involving project facilities or equipment supported under 23 U.S.C. chapter 6:

(1) Elderly individuals,

(2) Individuals with disabilities, or

(3) Individuals presenting a Medicare card issued to himself or herself pursuant to title II or title XVIII of the Social Security Act (42 U.S.C. 401 et seq. or 42 U.S.C. 1395 et seq.),

e. As required by 49 U.S.C. 5307(d)(1)(E), when carrying out a procurement supported with TIFIA funding under 23 U.S.C. chapter 6, it will:

(1) Use competitive procurement (as defined or approved by FTA),

(2) Not use exclusionary or discriminatory specifications in its procurements,

(3) Comply with applicable Buy America laws, and

(4) Comply with the general provisions for FTA programs of 49 U.S.C. 5323, and

(5) Comply with the third party procurement requirements of 49 U.S.C. 5325,

f. As required by 49 U.S.C. 5307(d)(1)(F), it has complied or will comply with 49 U.S.C. 5307(c) because it:

(1) Has informed or will inform the public of the amounts of its TIFIA credit assistance available under 23 U.S.C. chapter 6, and the projects it proposes to undertake,

(2) Has developed or will develop, in consultation with interested parties including private transportation providers, the projects it proposes to fund,

(3) Has published or will publish a list of its projects in a way that affected citizens, private transportation providers, and local elected officials will have an opportunity to examine and submit comments on the proposed projects and its performance,

(4) Has provided or will provide an opportunity for a public hearing to obtain the views of citizens on the proposed projects,

(5) Has assured or will assure that the proposed projects provide for coordination of transportation services assisted under 49 U.S.C. 5336 with federally assisted transportation services supported by a Federal government source other than U.S. DOT,

(6) Has considered or will consider the comments and views received, especially those of private transportation providers, in preparing its final list of projects, and

(7) Has made or will make the final list of projects available to the public,

g. As required by 49 U.S.C. 5307(d)(1)(G), it:

(1) Has or will have the amount of funds required for the local share,

(2) Will provide the local share funds from approved non-Federal sources except as permitted by Federal law, and

(3) Will provide the local share funds when needed,

h. As required by 49 U.S.C. 5307(d)(1)(H), the Applicant will comply with:

(1) The requirements of 49 U.S.C. 5301(a) for public transportation systems that:

(a) Maximize the safe, secure, and efficient mobility of people,

(b) Minimize environmental impacts, and

(c) Minimize transportation-related fuel consumption and reliance on foreign oil,

(2) The requirements of 49 U.S.C. 5301(d) for special efforts to:

(a) Design public transportation for elderly individuals and individuals with disabilities, and

(b) Provide public transportation for elderly individuals and individuals with disabilities, and

(3) The requirements of 49 U.S.C. 5303–5306

(a) Metropolitan and State Planning, and

(b) Private enterprise participation,

i. As required by 49 U.S.C. 5307(d)(1)(I), it has a locally developed process to solicit and consider public comment before:

(1) Raising a fare, or

(2) Implementing a major reduction of public transportation,

j. As required by 49 U.S.C. 5307(d)(1)(J), if it serves an urbanized area with a population of at least 200,000:

(1) Each fiscal year it will spend at least one (1) percent of its funding attributed to 49 U.S.C. 5307 for public transportation security projects, or

(2) That fiscal year, it will certify that such expenses for transportation security projects are not necessary,

(3) Public transportation security projects include:

(a) Increased lighting in or adjacent to a public transportation system (including bus stops, subway stations, parking lots, and garages),

(b) Increased camera surveillance of an area in or adjacent to that system,

(c) Emergency telephone line or lines to contact law enforcement or security personnel in an area in or adjacent to that system, and

(d) Any other project intended to increase the security and safety of an existing or planned public transportation, and

k. As required by 49 U.S.C. 5307(d)(1)(K), if it serves an urbanized area with a population of at least 200,000:

(1) Each fiscal year, it or all the Recipients of 49 U.S.C. 5307 funding in its urbanized area will spend at least one (1) percent of that funding for transit enhancements, as defined at 49 U.S.C. 5302(a),

(2) It will include in its quarterly report for the fourth quarter of the preceding Federal fiscal year a list of the projects during that Federal fiscal year using those 49 U.S.C. 5307 funds, and

(3) The report of its transit enhancement projects is or will be incorporated by reference and made part of its certifications and assurances.

2. Federal transit law at 49 U.S.C. 5323(o) requires an Applicant for TIFIA credit assistance funded under 23 U.S.C. chapter 6 and its project to comply with 49 U.S.C. 5309. As required by 49 U.S.C. 5309(g)(2)(B)(iii), 5309(g)(3)(B)(iii), and 5309(i)(2)(C), the Applicant certifies that it will not seek reimbursement for interest and other financing costs incurred in connection with the Project unless:

a. It is eligible to receive Federal funding for those expenses, and

b. Its records demonstrate that it has used reasonable diligence in seeking the most favorable financing terms underlying those costs, to the extent FTA may require.

## GROUP 24. DEPOSITS OF FEDERAL FINANCIAL FUNDING TO STATE INFRASTRUCTURE BANKS

We request that you select the following certifications and assurances in Group 24 if you apply for 49 U.S.C. chapter 53 funding on behalf of a State Applicant that intends to deposit the funding in a State Infrastructure Bank (SIB). Unless we determine otherwise in writing, the State Applicant itself is ultimately responsible for compliance with its certifications and assurances even though the SIB and a subrecipient may participate in a project financed with our funds deposited in the SIB. Consequently, we encourage the Applicant to take appropriate measures to obtaining sufficient documents from the SIB and each subrecipient, to assure the validity of all certifications and assurances the State Applicant has made.

The following certifications apply to each Applicant for funding under the State Infrastructure Bank Program authorized under 23 U.S.C. 610. The State organization, serving as the Applicant for funding for its State Infrastructure Bank (SIB) Program, assures the agreement of both its SIB and each recipient of SIB funding (subrecipient) that each public transportation project financed with SIB funds will be administered in accordance with:

1. The applicable Federal laws establishing the various SIB programs since 1995:

a. Section 1602 of SAFETEA–LU, now codified in 23 U.S.C. 610, or

b Section 1511 of TEA–21, 23 U.S.C. 181 note, or

c. Section 350 of the National Highway System Designation Act of 1995, as amended, 23 U.S.C. 181,

2. The Cooperative Agreement establishing the State's SIB program between:

a. The State Applicant and Federal parties (FHWA, FRA, and FTA), or

b. The State Applicant and Federal parties (FHWA and FTA),

3. The Grant Agreement with the State Applicant that provides FTA funding for the SIB, except that any provision of the FTA Master Agreement incorporated by reference into that Grant Agreement will not apply if it conflicts with any provision of:

a. Section 1602 of SAFETEA–LU, now codified in 23 U.S.C. 610,

b. Section 1511 of TEA–21, 23 U.S.C. 181 note, or section 350 of the National Highway System Designation Act of 1995, as amended, 23 U.S.C. 181 note, or

c. Federal guidance pertaining to the SIB Program,

d. The Cooperative Agreement establishing the State's SIB Program, or

e. The FTA Grant Agreement,

4. As required by 49 U.S.C. 5323(o), Federal transit laws, specifically 49 U.S.C. 5307 and 49 U.S.C. 5309, apply to any project under 49 U.S.C. chapter 53 that receives SIB support or financing under 23 U.S.C. 610 (or any support from 23 U.S.C. 601–608.). Therefore:

a. To comply with 49 U.S.C. 5307, specifically 49 U.S.C. 5307(d)(1), the Applicant certifies that:

(1) As required by 49 U.S.C. 5307(d)(1)(A), it has or will have the:

(a) Legal capacity to carry out its proposed projects,

(b) Financial capacity to carry out its proposed projects,

(c) Technical capacity to carry out its proposed projects,

(d) Safety aspects of its proposed projects, and

(e) Security aspects of its proposed projects,

(2) As required by 49 U.S.C. 5307(d)(1)(B), it has or will have satisfactory continuing control over the use of project equipment and facilities,

(3) As required by 49 U.S.C. 5307(d)(1)(C), it will maintain the project equipment and facilities adequately,

(4) As required by 49 U.S.C. 5307(d)(1)(D), it will ensure that the following individuals will be charged not more than fifty (50) percent of the peak hour fare for transportation during non-peak hours using or involving project facilities or equipment supported under 23 U.S.C. chapter 6:

(a) Elderly individuals,

(b) Individuals with disabilities, or

(c) Individuals presenting a Medicare card issued to himself or herself pursuant to title II or title XVIII of the Social Security Act (42 U.S.C. 401 et seq. or 42 U.S.C. 1395 et seq.),

(5) As required by 49 U.S.C. 5307(d)(1)(E), when carrying out a procurement supported by the SIB program, 23 U.S.C. 610, it will:

(a) Use competitive procurement (as defined or approved by FTA),

(b) Not use exclusionary or discriminatory specifications in its procurements,

(c) Comply with applicable Buy America laws, and

(d) Comply with the general provisions for FTA programs of 49 U.S.C. 5323, and

(e) Comply with the third party procurement requirements of 49 U.S.C. 5325,

(6) As required by 49 U.S.C. 5307(d)(1)(F), it has complied with or will comply 49 U.S.C. 5307(c) because it:

(a) Has informed or will inform the public of the amounts of its SIB funding under 23 U.S.C. 610, and the projects it proposes to undertake,

(b) Has developed or will develop, in consultation with interested parties including private transportation providers, the projects proposed to be funded,

(c) Has published or will publish a list of its projects in a way that affected citizens, private transportation providers, and local elected officials will have an opportunity to examine and submit comments on the proposed projects and its performance,

(d) Has provided or will provide an opportunity for a public hearing to obtain the views of citizens on the proposed projects,

(e) Has assured or will assure that the proposed projects provide for coordination of transportation services assisted under 49 U.S.C. 5336 with federally assisted transportation services supported by a Federal government source other than U.S. DOT,

(f) Has considered or will consider the comments and views received, especially those of private transportation providers, in preparing its final list of projects, and

(g) Has made or will make the final list of projects available to the public,

(7) As required by 49 U.S.C. 5307(d)(1)(G), it:

(a) Has or will have the amount of funds required for the local share,

(b) Will provide the local share funds from approved non-Federal sources except as permitted by Federal law, and

(c) Will provide the local share funds when needed,

(8) As required by 49 U.S.C. 5307(d)(1)(H), the Applicant will comply with:

(a) The requirements of 49 U.S.C. 5301(a) for public transportation systems that:

*1* Maximize the safe, secure, and efficient mobility of people,

*2* Minimize environmental impacts, and

*3* Minimize transportation-related fuel consumption and reliance on foreign oil,

(b) The requirements of 49 U.S.C. 5301(d) for special efforts to:

*1* Design public transportation for elderly individuals and individuals with disabilities, and

*2* Provide public transportation for elderly individuals and individuals with disabilities, and

(c) The requirements of 49 U.S.C. 5303–5306 for:

*1* Metropolitan and State Planning, and

*2* Private enterprise participation,

(9) As required by 49 U.S.C. 5307(d)(1)(I), it has a locally developed process to solicit and consider public comment before:

(a) Raising a fare, or

(b) Implementing a major reduction of public transportation,

(10) As required by 49 U.S.C. 5307(d)(1)(J), if it will be using 49 U.S.C. 5307 funds and it serves an urbanized area with a population of at least 200,000:

(a) Each fiscal year, it will spend at least one (1) percent of its 49 U.S.C. 5307 funding for public transportation security projects, or

(b) That fiscal year, it will certify that such expenses for transportation security projects are not necessary,

(c) Public transportation security projects include:

*1* Increased lighting in or adjacent to a public transportation system (including bus stops, subway stations, parking lots, and garages),

*2* Increased camera surveillance of an area in or adjacent to that system,

*3* Emergency telephone line or lines to contact law enforcement or security personnel in an area in or adjacent to that system, and

*4* Any other project intended to increase the security and safety of an existing or planned public transportation project, and

(11) As required by 49 U.S.C. 5307(d)(1)(K), if it will be using 49 U.S.C. 5307 funds and it serves an urbanized area with a population of at least 200,000:

(a) Each fiscal year, it or all the Recipients of 49 U.S.C. 5307 funding in its urbanized area will spend at least one (1) percent of that funding for transit enhancements, as defined in 49 U.S.C. 5302(a),

(b) It will include in its quarterly report for the fourth quarter of the preceding Federal fiscal year a list of the projects during that Federal fiscal year using those 49 U.S.C. 5307 funds, and

(c) The report of its transit enhancement projects is or will be incorporated by reference and made part of its certifications and assurances.

b. To comply with 49 U.S.C. 5309, specifically 49 U.S.C. 5309(g)(2)(B)(iii), 5309(g)(3)(B)(iii), and 5309(i)(2)(C), the Applicant certifies that it will not seek reimbursement for interest and other financing costs incurred in connection with the Project unless:

(1) It is eligible to receive Federal funding for those expenses, and

(2) Its records demonstrate that it has used reasonable diligence in seeking the most favorable financing terms underlying those costs, to the extent FTA may require.

3. Federal guidance that may be issued and amendments thereto, unless FTA has provided written approval of an alternative procedure or course of action.

*Selection and Signature Page(s) follow.*

BILLING CODE 4910–57–P

**FEDERAL FISCAL YEAR 2012 CERTIFICATIONS AND ASSURANCES FOR FEDERAL TRANSIT ADMINISTRATION ASSISTANCE PROGRAMS**

*(Signature page alternative to providing Certifications and Assurances in TEAM-Web)*

**Name of Applicant**: _____

**The Applicant agrees to comply with applicable provisions of Groups 01 – 24.** _____

**OR**

**The Applicant agrees to comply with applicable provisions of the Groups it has selected:**

| Group | Description | |
|---|---|---|
| 01. | Assurances Required For Each Applicant. | _____ |
| 02. | Lobbying. | _____ |
| 03. | Procurement Compliance. | _____ |
| 04. | Protections for Private Providers of Public Transportation. | _____ |
| 05. | Public Hearing. | _____ |
| 06. | Acquisition of Rolling Stock for Use in Revenue Service. | _____ |
| 07. | Acquisition of Capital Assets by Lease. | _____ |
| 08. | Bus Testing. | _____ |
| 09. | Charter Service Agreement. | _____ |
| 10. | School Transportation Agreement. | _____ |
| 11. | Demand Responsive Service. | _____ |
| 12. | Alcohol Misuse and Prohibited Drug Use. | _____ |
| 13. | Interest and Other Financing Costs. | _____ |
| 14. | Intelligent Transportation Systems. | _____ |
| 15. | Urbanized Area Formula Program. | _____ |
| 16. | Clean Fuels Grant Program. | _____ |
| 17. | Elderly Individuals and Individuals with Disabilities Formula Program and Pilot Program. | _____ |
| 18. | Nonurbanized Area Formula Program for States. | _____ |
| 19. | Job Access and Reverse Commute (JARC) Program. | _____ |
| 20. | New Freedom Program. | _____ |
| 21. | Paul S. Sarbanes Transit in Parks Program. | _____ |
| 22. | Tribal Transit Program. | _____ |
| 23. | TIFIA Projects | _____ |
| 24. | Deposits of Federal Financial Funding to a State Infrastructure Banks. | _____ |

**FEDERAL FISCAL YEAR 2012 FTA CERTIFICATIONS AND ASSURANCES SIGNATURE PAGE**

*(Required of all Applicants for FTA funding and all FTA Grantees with an active capital or formula project)*

AFFIRMATION OF APPLICANT

Name of Applicant: _____

Name and Relationship of Authorized Representative: _____

BY SIGNING BELOW, on behalf of the Applicant, I declare that the Applicant has duly authorized me to make these certifications and assurances and bind the Applicant's compliance. Thus, the Applicant agrees to comply with all Federal statutes and regulations, and follow applicable Federal directives, and comply with the certifications and assurances as indicated on the foregoing page applicable to each application it makes to the Federal Transit Administration (FTA) in Federal Fiscal Year 2012.

FTA intends that the certifications and assurances the Applicant selects on the other side of this document, as representative of the certifications and assurances, should apply, as provided, to each project for which the Applicant seeks now, or may later seek FTA funding during Federal Fiscal Year 2012.

The Applicant affirms the truthfulness and accuracy of the certifications and assurances it has made in the statements submitted with this document and any other submission made to FTA, and acknowledges that the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. 3801 *et seq*., and implementing U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR part 31 apply to any certification, assurance or submission made to FTA. The criminal provisions of 18 U.S.C. 1001 apply to any certification, assurance, or submission made in connection with a Federal public transportation program authorized in 49 U.S.C. chapter 53 or any other statute

In signing this document, I declare under penalties of perjury that the foregoing certifications and assurances, and any other statements made by me on behalf of the Applicant are true and accurate.

Signature_____ Date: _____

Name_____
Authorized Representative of Applicant

AFFIRMATION OF APPLICANT'S ATTORNEY

For (Name of Applicant): _____

As the undersigned Attorney for the above named Applicant, I hereby affirm to the Applicant that it has authority under State, local, or tribal government law, as applicable, to make and comply with the certifications and assurances as indicated on the foregoing pages. I further affirm that, in my opinion, the certifications and assurances have been legally made and constitute legal and binding obligations on the Applicant.

I further affirm to the Applicant that, to the best of my knowledge, there is no legislation or litigation pending or imminent that might adversely affect the validity of these certifications and assurances, or of the performance of the project.

Signature_____ Date: _____

Name_____

Attorney for Applicant

Each Applicant for FTA funding and each FTA Grantee with an active capital or formula project must provide an Affirmation of Applicant's Attorney pertaining to the Applicant's legal capacity. The Applicant may enter its signature in lieu of the Attorney's signature, provided the Applicant has on file this Affirmation, signed by the attorney and dated this Federal fiscal year.

[FR Doc. 2011–28293 Filed 10–31–11; 8:45 am]
BILLING CODE 4910–57–C

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

**[Docket No. MARAD 2011 0134]**

### Requested Administrative Waiver of the Coastwise Trade Laws: Vessel SALLY; 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 December 1, 2011.

**ADDRESSES:** Comments should refer to docket number MARAD–2011–0134. 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 SALLY is:

*Intended Commercial Use of Vessel:* ''Coastwise trade, 6 passengers or less.''

*Geographic Region:* ''California.''

The complete application is given in DOT docket MARAD–2011–0134 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. 2011–28023 Filed 10–31–11; 8:45 am]
BILLING CODE 4910–81–P

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

### Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

**AGENCY:** National Highway Traffic Safety Administration, DOT

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period was published on June 24, 2011 [76 FR 37189].

**DATES:** Comments must be submitted on or before December 1, 2011.

**FOR FURTHER INFORMATION CONTACT:** Larry Long, National Highway Traffic Safety Administration, Office of Defects Investigation, (202) 366–6281. 1200 New Jersey Ave., SE., Room 48–220, Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:**

**National Highway Traffic Safety Administration**

*Title:* Consumer Complaint.

*OMB Number:* 2127—0008.

*Type of Request:* Extension of a currently approved collection.

*Affected Public:* Individuals and households.

*Abstract:* Chapter 301 of title 49 of the United States Code, the Secretary of Transportation is authorized to require manufacturers of motor vehicles and items of motor vehicle equipment to conduct owner notification and remedy, *i.e.,* a recall campaign, when it has been determined that a safety defect exists in the performance, construction, components, or materials in motor vehicles and motor vehicle equipment. To make this determination, the National Highway Traffic Safety Administration (NHTSA) solicits information from vehicle owners which is used to identify and evaluate possible safety-related defects and provide the necessary evidence of the existence of such a defect. Under the Authority of chapter 301 of Title 49 of the United States Code, the Secretary of Transportation is authorized to require manufacturers of motor vehicle and motor vehicle equipment which do not comply with the applicable motor vehicle safety standards or contains a defect that relates to motor vehicle safety to notify each owner that their vehicle contains a safety defect or noncompliance. Also, the manufacturer of each such motor vehicle item of replacement equipment presented for remedy pursuant to such notification shall cause such defect or noncompliance to be remedied without charge. In the case of a motor vehicle presented for remedy pursuant to such notification, the manufacturer shall cause the vehicle remedied by whichever of the following means he elects: (1) By repairing such vehicle; (2) by replacing such motor vehicle without charge; or (3) by refunding the purchase price less depreciation. To ensure these objectives are being met, NHTSA audits recalls conducted by manufacturer. These audits are performed on a randomly selected number of vehicle owners for verification and validation purposes.

*Estimated Burden Hours:* 11,803.

*Number of Respondents:* 47,211.

**ADDRESSES:** Send comments, within 30 days, to the Office of Information and

Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention NHTSA Desk Officer.

*Comments are invited on:* Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department'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 most effective if OMB receives it within 30 days of publication.

Issued in Washington, DC, on October 25, 2011.

**Frank Borris,**

*Director, Office of Defects Investigation.*

[FR Doc. 2011–27978 Filed 10–31–11; 8:45 am]

**BILLING CODE 4910–59–P**

## 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 Information Reporting Program Advisory Committee (IRPAC), has been renewed for a two-year period beginning October 20, 2011.

**FOR FURTHER INFORMATION CONTACT:** Ms.Caryl Grant, 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 Information Reporting Program Advisory Committee (IRPAC). The purpose of the IRPAC is to provide an organized public forum for discussion of relevant information reporting issues of mutual concern as between Internal Revenue Service (''IRS'') officials and representatives of the public. Advisory committee members convey the public's perception of IRS activities, advise with respect to specific information reporting administration issues, provide constructive observations regarding current or proposed IRS policies, programs, and procedures, and propose improvements to information reporting operations and the Information Reporting Program. Membership is balanced to include stakeholder segmentation, geographic location, industry representation and influence in channel communication and preferences, technology adaptation, life cycle data reporting, economics and specific product/service usage.

Dated: October 24, 2011.

**Candice Cromling,**

*Director, National Public Liaison.*

[FR Doc. 2011–28171 Filed 10–31–11; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0156]**

### Proposed Information Collection (Notice of Change in Student Status) Activity: Comment Request

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to report changes in students' enrollment status.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before January 3, 2012.

**ADDRESSES:** Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0156'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

**FOR FURTHER INFORMATION CONTACT:** Nancy J. Kessinger at (202) 461–9769 or fax (202) 275–5947.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

*Titles:* Notice of Change in Student Status, VA Form 22–1999b.

*OMB Control Number:* 2900–0156.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* Educational institutions use VA Form 22–1999b to report a student's enrollment status. Benefits are not payable when a student interrupts or terminates a program. VA uses the information to determine a student's continued entitlement to educational benefits or if the benefits should be increased, decreased, or terminated.

*Affected Public:* Business or other for-profit, and Not-for-profit institutions.

*Estimated Annual Burden:*

a. VA Form 22–1999b (Paper Copy)—16,667 hours.

b. VA Form 22–1999b (Electronically Filed)—35,000 hours.

*Estimated Average Burden per Respondent:*

a. VA Form 22–1999b (Paper Copy)—10 minutes.

b. VA Form 22–1999b (Electronically Filed)—7 minutes.

*Frequency of Response:* On occasion.

*Estimated Total Number of Responses Annually:*

a. VA Form 22–1999b (Paper Copy)—100,000.

b. VA Form 22–1999b (Electronically Filed)—300,000.

Dated: October 26, 2011.

By direction of the Secretary.

**Denise McLamb,**

*Program Analyst, Enterprise Records Service.*

[FR Doc. 2011–28153 Filed 10–31–11; 8:45 am]

**BILLING CODE 8320–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0609]**

### Proposed Information Collection (Survey of Veteran Enrollees' Health and Reliance Upon VA) Activity: Comment Request

**AGENCY:** Veterans Health Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** The Veterans Health Administration (VHA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to this notice. This notice solicits comments for information needed to survey Veteran enrollees' health status and reliance on VA's health care services.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before January 3, 2012.

**ADDRESSES:** Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov;* or to Cynthia Harvey-Pryor, Veterans Health Administration (10P7B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420; or *email: cynthia.harvey-pryor@va.gov.* Please refer to ''OMB Control No. 2900–0609'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

**FOR FURTHER INFORMATION CONTACT:** Cynthia Harvey-Pryor at (202) 461–5870 or fax (202) 273–9381.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995 (Pub. L.104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

*Title:* Survey of Veteran Enrollees' Health and Reliance Upon VA, VA Form 10–21034g.

*OMB Control Number:* 2900–0609.

*Type of Review:* Revision of a currently approved collection.

*Abstract:* Public Law 104–262, the Veterans Health Care Eligibility Reform Act of 1996, requires VA to implement a priority-based enrollment system. VA must enroll Veterans by specified priorities as far down the priorities as the available resources permit. The number of priority levels to which VHA will be able to deliver care will be a function of annual funding levels and utilization of health care services by enrollees. Additionally, eligibility reform has brought about the ever-increasing need for VA to plan and budget for evolving clinical care needs of enrollee population at risk of need or use of VA care. There is no valid, recent information available in administrative databases on all enrollees' health status, income, and their reliance upon the VA system. The magnitude of changes each year in enrollees, their characteristics, and system policies make annual surveys necessary to capture this critical information for input into VHA's Health Care Services Demand Model. The survey will provide VA with current information for sound decisions that affect the entire VA health care delivery system and the veterans it serves. VA Form 10–21034g will be used to provide the survey data on morbidity and reliance that is critical to obtaining accurate projections of VA's ability to service Veterans who are seeking VA health care services. The projections also serve as the basis for VA's emphasis on population-based budget formulation, policy scenario testing, and strategic planning.

*Affected Public:* Individuals or households.

*Estimated Annual Burden:* 14,400 hours.

*Estimated Average Burden per Respondent:* 20.5 minutes.

*Frequency of Response:* Annually.

*Estimated Number of Respondents:* 42,200.

Dated: October 26, 2011.

By direction of the Secretary.

**Denise McLamb,**

*Program Analyst, Enterprise Records Service.*

[FR Doc. 2011–28157 Filed 10–31–11; 8:45 am]

**BILLING CODE 8320–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0695]**

### Proposed Information Collection (Application for Reimbursement of Licensing or Certification Test Fees) Activity: Comment Request

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine an applicant's eligibility for reimbursement of licensing and certification test fees.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before January 3, 2012.

**ADDRESSES:** Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0695'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

**FOR FURTHER INFORMATION CONTACT:** Nancy J. Kessinger at (202) 461–9769 or fax (202) 275–5947.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501—3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

*Title:* Application for Reimbursement of Licensing or Certification Test Fees, (38 U.S.C. chapters 30, 32, and 35; 10 U.S.C. chapters 1606 & 1607), VA Form 22–0803.

*OMB Control Number:* 2900–0695.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* Claimants complete VA Form 22–0803 to request reimbursement of licensing or certification fees paid.

*Affected Public:* Individuals or households.

*Estimated Annual Burden:* 1,000 hours.

*Frequency of Response:* On occasion.

*Estimated Average Burden per Respondents:* 15 minutes.

*Estimated Annual Responses:* 4,000.

Dated: October 26, 2011.

By direction of the Secretary.

**Denise McLamb,**

*Program Analyst, Enterprise Records Service.*

[FR Doc. 2011–28156 Filed 10–31–11; 8:45 am]

**BILLING CODE 8302–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0209]**

### Proposed Information Collection (Application for Work-Study Allowance) Activity: Comment Request

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine a claimant's eligibility for work-study benefits.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before January 3, 2012.

**ADDRESSES:** Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0209'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

**FOR FURTHER INFORMATION CONTACT:** Nancy J. Kessinger at (202) 461–9769 or fax (202) 275–5947.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

*Titles:*

a. Application for Work-Study Allowance, VA Form 22–8691.

b. Student Work-Study Agreement (Advance Payment), VA Form 22–8692.

c. Extended Student Work-Study Agreement, VA Form 22–8692a.

d. Work-Study Agreement, VA Form 22–8692b.

*OMB Control Number:* 2900–0209.

*Type of Review:* Extension of a currently approved collection.

*Abstracts:*

a. VA Form 22–8691 is used by claimants to apply for work-study benefits.

b. VA Form 22–8692 is used to request an advance payment of work-study allowance.

c. VA Form 22–8692a is used by a claimant to extend his or her work-study contract.

d. VA Form 22–8692b is used by claimants who do not want a work-study advanced allowance payment.

The data collected is used to determine an applicant's eligibility for work-study allowance and the amount payable.

*Affected Public:* Individuals or households.

*Estimated Annual Burden:*

a. VA Form 22–8691—4,350 hours.

b. VA Form 22–8692—608 hours.

c. VA Form 22–8692a—25 hours.

d. VA Form 22–8692b—608 hours.

Estimated Average Burden Per Respondent:

a. VA Form 22–8691—15 minutes.

b. VA Form 22–8692—5 minutes.

c. VA Form 22–8692a—3 minutes.

d. VA Form 22–8692b—5 minutes.

*Frequency of Response:* Annually.

*Estimated Number of Respondents:*

a. VA Form 22–8691—17,400.

b. VA Form 22–8692—7,300.

c. VA Form 22–8692a—500.

d. VA Form 22–8692b—7,300.

Dated: October 26, 2011.

By direction of the Secretary.

**Denise McLamb,**

*Program Analyst, Enterprise Records Service.*

[FR Doc. 2011–28150 Filed 10–31–11; 8:45 am]

**BILLING CODE 8320–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0074]**

### Proposed Information Collection (Request for Change of Program or Place of Training) Activity: Comment Request

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an

opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to determine a claimant's eligibility for continued educational assistance when he or she requests a program change or place of training.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before January 3, 2012.

**ADDRESSES:** Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0074'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

**FOR FURTHER INFORMATION CONTACT:** Nancy J. Kessinger at (202) 461–9769 or fax (202) 275–5947.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

*Title:* Request for Change of Program or Place of Training, VA Form 22–1995.

*OMB Control Number:* 2900–0074.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* Claimants receiving educational benefits complete VA Form 22–1995 to request a change in program or training establishment. VA uses the data collected to determine the claimant's eligibility for continued educational benefits.

*Affected Public:* Individuals or households.

*Estimated Annual Burden:*

a. Electronically—8,709 hours.

b. Paper Copy—27,095 hours.

*Estimated Average Burden per Respondent:*

a. Electronically—15 minutes.

b. Paper Copy—20 minutes.

*Frequency of Response:* On occasion.

*Estimated Number of Respondents:*

a. Electronically—34,836.

b. Paper Copy—81,284.

Dated: October 26, 2011.

By direction of the Secretary.

**Denise McLamb,**

*Program Analyst, Enterprise Records Service.*

[FR Doc. 2011–28155 Filed 10–31–11; 8:45 am]

**BILLING CODE 8320–01–P**

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## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0178]**

## Proposed Information Collection (Monthly Certification of On-the-Job and Apprenticeship Training) Activity: Comment Request

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine a claimant's continued eligibility for educational benefits.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before January 3, 2012.

**ADDRESSES:** Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0178'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

**FOR FURTHER INFORMATION CONTACT:** Nancy J. Kessinger at (202) 461–9769 or fax (202) 275–5947.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

*Title:* Monthly Certification of On-the-Job and Apprenticeship Training, VA Forms 22–6553d and 22–6553d–1.

*OMB Control Number:* 2900–0178.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* Claimants receiving on the job and apprenticeship training complete VA Form 22–6553d to report the number of hours worked. Schools or training establishments also complete the form to report whether the claimant's educational benefits are to be continued, unchanged or terminated, and the effective date of such action. VA Form 22–6553d–1 is an identical printed copy of VA Form 22–6553d. Claimants use VA Form 22–6553d–1 when the computer-generated version of VA Form 22–6553d is not available. VA uses the data collected to process a claimant's educational benefit claim.

*Affected Public:* Individuals or households.

*Estimated Annual Burden:* 30,722 hours.

*Estimated Average Burden per Respondent:* 10 minutes.

*Frequency of Response:* Monthly.

*Estimated Number of Respondents:* 20,481.

*Number of Responses Annually:* 184,329.

Dated: October 26, 2011.

By direction of the Secretary.

**Denise McLamb,**

*Program Analyst, Enterprise Records Service.*

[FR Doc. 2011–28151 Filed 10–31–11; 8:45 am]

**BILLING CODE 8320–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0579]**

### Proposed Information Collection (Request for Vocational Training Benefits—Certain Children of Vietnam Veterans); Comment Request

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to determine children of Vietnam veterans born with birth defects eligibility for vocational training benefits.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before January 3, 2012.

**ADDRESSES:** Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email to nancy.kessinger@va.gov. Please refer to ''OMB Control No. 2900–0579'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

**FOR FURTHER INFORMATION CONTACT:** Nancy J. Kessinger at (202) 461–9769 or fax (202) 275–5947.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

*Title:* Request for Vocational Training Benefits—Certain Children of Vietnam Veterans, 38 CFR 21.8014.

*OMB Control Number:* 2900–0579.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* Vietnam veterans' children born with certain birth defects may submit a written claim to request participation in a vocational training program. In order for VA to relate the claim to other existing VA records, applicants must provide identifying information about themselves and the natural parent who served in Vietnam. The information collected will allow VA counselors to review existing records and to schedule an appointment with the applicant to evaluate the claim.

*Affected Public:* Individuals or households.

*Estimated Annual Burden:* 15 hours.

*Estimated Average Burden per Respondent:* 15 minutes.

*Frequency of Response:* One-time.

*Estimated Number of Respondents:* 60.

Dated: October 26, 2011.

By direction of the Secretary.

**Denise McLamb,**

*Program Analyst, Enterprise Records Service.*

[FR Doc. 2011–28149 Filed 10–31–11; 8:45 am]

**BILLING CODE 8302–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0353]**

### Proposed Information Collection (Certification of Lessons Completed) Activity: Comment Request

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed report the number of correspondence course lessons completed and for correspondence schools to report the number of lessons serviced.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before January 3, 2012.

**ADDRESSES:** Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0353'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

**FOR FURTHER INFORMATION CONTACT:** Nancy J. Kessinger at (202) 461–9769 or fax (202) 275–5947.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501—3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's

functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

*Title:* Certification of Lessons Completed, VA Forms 22–6553b and 22–6553b–1.

*OMB Control Number:* 2900–0353.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* Students enrolled in a correspondence school complete VA Forms 22–6553b and 22–6553b–1 to report the number of correspondence course lessons completed and forward the forms to the correspondence school for certification. School official certifies the number of lessons serviced and submits the forms to VA for processing. Benefits are payable based on the data provided on the form. Benefits are not payable when students interrupt, discontinue, or complete the training. VA uses the data collected to determine the amount of benefit is payable.

*Affected Public:* Individuals or households, and Business or other for-profit.

*Estimated Annual Burden:* 411 hours.

*Estimated Average Burden Per Respondent:* 10 minutes.

*Frequency of Response:* Quarterly.

*Estimated Number of Respondents:* 821.

*Number of Responses Annually:* 2,463.

Dated: October 26, 2011.

By direction of the Secretary.

**Denise McLamb,**

*Program Analyst, Enterprise Records Service.*

[FR Doc. 2011–28152 Filed 10–31–11; 8:45 am]

BILLING CODE 8320–01–P

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0073]**

### Proposed Information Collection (VA Enrollment Certification) Activity: Comment Request

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine the amount of educational benefits payable to claimants pursuing approved programs of education.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before January 3, 2012.

**ADDRESSES:** Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0073'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

**FOR FURTHER INFORMATION CONTACT:** Nancy J. Kessinger at (202) 461–9769 or fax (202) 275–5947.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

*Title:* VA Enrollment Certification, VA Form 22–1999.

*OMB Control Number:* 2900–0073.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* School officials and employers complete VA Form 22–1999 to report and certify a claimant's enrollment in an educational program. The data is used to determine the amount of benefits payable and whether the claimant requested an advanced or accelerated payment.

*Affected Public:* Not-for-profit institutions.

*Estimated Annual Burden:*

a. Electronically—104,262 hours.

b. Paper copy—55,855 hours.

*Estimated Average Burden per Respondent:*

c. Electronically—8 minutes.

d. Paper copy—10 minutes.

*Frequency of Response:* On occasion.

*Estimated Number of Respondents:*

a. Electronically—781,967.

b. Paper copy—335,129.

Dated: October 26, 2011.

By direction of the Secretary.

**Denise McLamb,**

*Program Analyst, Enterprise Records Service.*

[FR Doc. 2011–28154 Filed 10–31–11; 8:45 am]

BILLING CODE 8320–01–P

## DEPARTMENT OF VETERANS AFFAIRS

### Privacy Act of 1974; System of Records

**AGENCY:** Department of Veterans Affairs (VA).

**ACTION:** Notice of establishment of new system of records.

**SUMMARY:** The Privacy Act of 1974 (5 U.S.C. 552(e)(4)) requires that all agencies publish in the **Federal Register** a notice of the existence and character of their systems of records. Notice is hereby given that VA is establishing a new system of records entitled ''Community Residential Care and Medical Foster Home Programs—VA'' (142VA114).

**DATES:** Comments on this new system of records must be received no later than December 1, 2011. If no public comment is received, the new system will become effective December 1, 2011.

**ADDRESSES:** Written comments concerning the proposed amended system of records may be submitted through *http://www.regulations.gov;* by mail or hand-delivery to Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. All 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:** Rick Greene, MSW, National Program Manager for Community Residential Care and Medical Foster Home, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; telephone (202) 461–6786.

**SUPPLEMENTAL INFORMATION:**

## I. Description of Proposed Systems of Records

These records include information concerning veterans who reside in Community Residential Care (CRC) or Medical Foster Home (MFH) homes. In addition, the records include information on the operators and staff at these homes.

## II. Proposed Routine Use Disclosures of Data in the System

We are proposing to establish the following routine use disclosures of information maintained in the system:

1. The record of an individual who is covered by a system of records may be disclosed to a Member of Congress, or a staff person acting for the Member, when the Member or staff person requests the record on behalf of or at the written request of the individual.

2. Disclosure may be made to National Archives and Records Administration (NARA) and the General Services Administration (GSA) in records management inspections conducted under authority of title 44, chapter 29, of the United States Code (U.S.C.). NARA and GSA are responsible for management of old records no longer actively used, but which may be appropriate for preservation, and for the physical maintenance of the Federal government's records. VA must be able to provide the records to NARA and GSA in order to determine the proper disposition of such records.

3. VA may disclose on its own initiative any information in this system, except the names and home addresses of veterans and their dependents, that is relevant to a suspected or reasonably imminent violation of law, whether civil, criminal, or regulatory in nature and whether arising by general or program statute or by regulation, rule, or order issued pursuant thereto, to a Federal, state, local, tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule, or order. VA may also disclose on its own initiative the names and addresses of veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal, or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule, or order issued pursuant thereto.

4. VA may disclose information from this system of records to the Department of Justice (DoJ), either on VA's initiative or in response to DoJ's request for the information, after either VA or DoJ determines that such information is relevant to DoJ's representation of the United States or any of its components in legal proceedings before a court or adjudicative body, provided that, in each case, the agency also determines prior to disclosure that release of the records to the DoJ is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. VA, on its own initiative, may disclose records in this system of records in legal proceedings before a court or administrative body after determining that the disclosure of the records to the court or administrative body is a use of the information contained in the records that is compatible with the purpose for which VA collected the records.

5. Disclosures of relevant information may be made to individuals, organizations, private or public agencies, or other entities with whom VA has a contract or agreement or where there is a subcontract to perform the services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor or subcontractor to perform the services of the contract or agreement. This routine use includes disclosures by the individual or entity performing the service for VA to any secondary entity or individual to perform an activity that is necessary for individuals, organizations, private or public agencies, or other entities or individuals with whom VA has a contract or agreement to provide the service to VA.

6. Disclosure to other Federal agencies may be made to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs.

7. VA may, on its own initiative, disclose any information or records to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that the integrity or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise, there is a risk of embarrassment or harm to the reputations of the record subjects, harm to economic or property interests, identity theft or fraud, or harm to the security, confidentiality, or integrity of this system or other systems or programs whether maintained by the Department or another agency or disclosure is to agencies, entities, or persons whom VA determines are reasonably necessary to assist or carry out the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm. This routine use permits disclosures by the Department to respond to a suspected or confirmed data breach, including the conduct of any risk analysis or provision of credit protection services as provided in 38 U.S.C. 5724, as the terms are defined in 38 U.S.C. 5727.

8. VA may disclose identifying information, including Social Security number, concerning veterans, spouses of veterans, and the beneficiaries of veterans to other Federal agencies for the purpose of conducting computer matches to obtain information to determine or verify eligibility of veterans receiving VA medical care under title 38, U.S.C.

9. VA may disclose relevant health care information to: (1) A Federal agency or non-VA health care provider or institution when VA refers a patient for hospital or nursing home care or medical services, or authorizes a patient to obtain non-VA medical services and the information is needed by the Federal agency or non-VA institution or provider to perform the services; or (2) a Federal agency or to a non-VA hospital (Federal, state, and local public or private) or other medical installation having hospital facilities, organ banks, blood banks, or similar institutions, medical schools or clinics, or other groups or individuals that have contracted or agreed to provide medical services or share the use of medical resources under the provisions of 38 U.S.C. 513, 7409, 8111, or 8153, when treatment is rendered by VA under the terms of such contract or agreement or the issuance of an authorization, and the information is needed for purposes of medical treatment and/or follow-up, determining entitlement to a benefit, or for VA to effect recovery of the costs of the medical care.

10. VA may disclose information from this system of records to the Office of

Management and Budget (OMB) for the performance of its statutory responsibilities for evaluating Federal programs. VA must be able to provide information to OMB to assist it in fulfilling its duties as required by statute and regulation.

11. VA may disclose information to a fiduciary or guardian ad litem in relation to his or her representation of a claimant in any legal proceeding, but only to the extent necessary to fulfill the duties of the fiduciary or guardian ad litem. This disclosure permits VA to provide individual information to an appointed VA Federal fiduciary or to the individual's guardian ad litem that is needed to fulfill appointed duties.

12. VA may disclose relevant information from this system of records in the course of presenting evidence to a court, magistrate, or administrative tribunal; in matters of guardianship, inquests, and commitments; to private attorneys representing veterans rated incompetent in conjunction with issuance of Certificates of Incompetency; and to probation and parole officers in connection with court-required duties.

13. VA may disclose information from this system of records relevant to a claim of a veteran or beneficiary, such as the name, address, the basis and nature of a claim, amount of benefit payment information, medical information, and military service and active duty separation information, at the request of the claimant to accredited service organizations, VA-approved claim agents, and attorneys acting under a declaration of representation, so that these individuals can aid claimants in the preparation, presentation, and prosecution of claims under the laws administered by VA. The name and address of a claimant will not, however, be disclosed to these individuals under this routine use if the claimant has not requested the assistance of an accredited service organization, claims agent or an attorney.

14. VA may disclose relevant medical record information concerning a patient to a non-VA nursing home facility that is considering the patient for admission, when information concerning the individual's medical care is needed for the purpose of preadmission screening under 42 CFR 483.20(f) to identify patients who are mentally ill or mentally retarded so they can be evaluated for appropriate placement.

## III. Compatibility of the Proposed Routine Uses

The Privacy Act permits VA to disclose information about individuals without their consent for a routine use when the information will be used for a purpose that is compatible with the purpose for which we collected the information. In all of the routine use disclosures described above, the recipient of the information will use the information in connection with a matter relating to one of VA's programs, or will use the information to provide a benefit to VA, or disclosure is required by law.

The notice of intent to publish and an advance copy of the system notice have been sent to the appropriate Congressional committees and to the Director of the Office of Management and Budget as required by 5 U.S.C. 552a(r) (Privacy Act) and guidelines issued by OMB (65 FR 77677), December 12, 2000.

Approved: October 4, 2011.

**John R. Gingrich,**

*Chief of Staff, Department of Veterans Affairs.*

## SOR #142VA114

### SYSTEM NAME:

''Community Residential Care and Medical Foster Home Programs—VA''

### SYSTEM LOCATION:

Records are maintained at selected VA health care facilities that have Community Residential Care (CRC) and Medical Foster Home (MFH) Programs (in most cases, back-up computer tape information is stored at the VA Data Processing Center, 1615 East Woodward Street, Austin, Texas 78772). Address locations for VA facilities are listed in VA Appendix 1. In addition, information from these records or copies of records may be maintained at the Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC, VA Data Processing Centers, and Veterans Integrated Service Network Offices.

### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The records include information concerning veterans who reside in CRC or MFH homes. In addition, the records include information on the operators and staff of these homes.

### CATEGORIES OF RECORDS IN THE SYSTEM:

The records may include information related to:

1. Applications, background checks, agreements with veterans, educational programs, driver's licenses, health screenings, *etc.*

2. Home inspection reports, corrective plans of action, emergency plans, correspondence, and hearing documents.

3. Personal identifiers (including date of birth, Social Security number, VA Claim number, financial information, pictures, *etc.*), medical records, etc.

### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 38, United States Code, section 1730.

### PURPOSE(S):

The records and information may be used for determining a potential facility's initial eligibility and ongoing participation in the program, provision of medical and psycho-social services to veterans, operation of the programs, and information required by VA Medical Centers to complete quarterly statistical reports.

### ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the extent that records contained in the system include information protected by 45 CFR parts 160 and 164, i.e., individually identifiable health information, and 38 U.S.C. 7332, *i.e.,* medical treatment information related to drug abuse, alcoholism or alcohol abuse, sickle cell anemia, or infection with the human immunodeficiency virus, that information cannot be disclosed under a routine use unless there is also specific statutory authority in 38 U.S.C. 7332 and regulatory authority in 45 CFR parts 160 and 164 permitting disclosure.

1. The record of an individual who is covered by a system of records may be disclosed to a Member of Congress, or a staff person acting for the Member, when the Member or staff person requests the record on behalf of or at the written request of the individual.

2. Disclosure may be made to National Archives and Records Administration (NARA) and the General Services Administration (GSA) in records management inspections conducted under authority of title 44, chapter 29, of the United States Code (U.S.C.).

3. VA may disclose on its own initiative any information in this system, except the names and home addresses of veterans and their dependents, that is relevant to a suspected or reasonably imminent violation of law, whether civil, criminal, or regulatory in nature and whether arising by general or program statute or by regulation, rule, or order issued pursuant thereto, to a Federal, state, local, tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule, or order. VA may also disclose on its own initiative the names and addresses of veterans and their dependents to a Federal agency charged with the responsibility of

investigating or prosecuting civil, criminal, or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule, or order issued pursuant thereto.

4. VA may disclose information from this system of records to the Department of Justice (DoJ), either on VA's initiative or in response to DoJ's request for the information, after either VA or DoJ determines that such information is relevant to DoJ's representation of the United States or any of its components in legal proceedings before a court or adjudicative body, provided that, in each case, the agency also determines prior to disclosure that release of the records to the DoJ is a use of the information contained in the records that is compatible with the purpose for which VA collected the records.

5. Disclosures of relevant information may be made to individuals, organizations, private or public agencies, or other entities with whom VA has a contract or agreement or where there is a subcontract to perform the services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor or subcontractor to perform the services of the contract or agreement.

6. Disclosure to other Federal agencies may be made to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs.

7. VA may, on its own initiative, disclose any information or records to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that the integrity or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise, there is a risk of embarrassment or harm to the reputations of the record subjects, harm to economic or property interests, identity theft or fraud, or harm to the security, confidentiality, or integrity of this system or other systems or programs whether maintained by the Department or another agency or disclosure is to agencies, entities, or persons whom VA determines are reasonably necessary to assist or carry out the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm. This routine use permits disclosures by the Department to respond to a suspected or confirmed data breach, including the conduct of any risk analysis or provision of credit protection services as provided in 38 U.S.C. 5724, as the terms are defined in 38 U.S.C. 5727.

8. VA may disclose identifying information, including Social Security number, concerning veterans, spouses of veterans, and the beneficiaries of veterans to other Federal agencies for the purpose of conducting computer matches to obtain information to determine or verify eligibility of veterans receiving VA medical care under Title 38, U.S.C.

9. VA may disclose relevant health care information to: (1) A Federal agency or non-VA health care provider or institution when VA refers a patient for hospital or nursing home care or medical services, or authorizes a patient to obtain non-VA medical services and the information is needed by the Federal agency or non-VA institution or provider to perform the services; or (2) a Federal agency or to a non-VA hospital (Federal, state, and local public or private) or other medical installation having hospital facilities, organ banks, blood banks, or similar institutions, medical schools or clinics, or other groups or individuals that have contracted or agreed to provide medical services or share the use of medical resources under the provisions of 38 U.S.C. 513, 7409, 8111, or 8153, when treatment is rendered by VA under the terms of such contract or agreement or the issuance of an authorization, and the information is needed for purposes of medical treatment and/or follow-up, determining entitlement to a benefit, or for VA to effect recovery of the costs of the medical care.

10. VA may disclose information from this system of records to the Office of Management and Budget (OMB) for the performance of its statutory responsibilities for evaluating Federal programs.

11. VA may disclose information to a fiduciary or guardian ad litem in relation to his or her representation of a claimant in any legal proceeding, but only to the extent necessary to fulfill the duties of the fiduciary or guardian ad litem.

12. VA may disclose relevant information from this system of records in the course of presenting evidence to a court, magistrate, or administrative tribunal; in matters of guardianship, inquests, and commitments; to private attorneys representing veterans rated incompetent in conjunction with issuance of Certificates of Incompetency; and to probation and parole officers in connection with court-required duties.

13. VA may disclose information from this system of records relevant to a claim of a veteran or beneficiary, such as the name, address, the basis and nature of a claim, amount of benefit payment information, medical information, and military service and active duty separation information, at the request of the claimant to accredited service organizations, VA-approved claim agents, and attorneys acting under a declaration of representation, so that these individuals can aid claimants in the preparation, presentation, and prosecution of claims under the laws administered by VA. The name and address of a claimant will not, however, be disclosed to these individuals under this routine use if the claimant has not requested the assistance of an accredited service organization, claims agent, or an attorney.

14. VA may disclose relevant medical record information concerning a patient to a non-VA nursing home facility that is considering the patient for admission, when information concerning the individual's medical care is needed for the purpose of preadmission screening under 42 CFR 483.20(f) to identify patients who are mentally ill or mentally retarded so they can be evaluated for appropriate placement.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records are maintained on computers, paper, and removable or external hardware.

**RETRIEVABILITY:**

Records are retrieved by name, Social Security number, or other assigned identifiers of the individuals on whom they are maintained.

**SAFEGUARDS:**

1. Access to VA working and storage areas is restricted to VA employees on a ''need-to-know'' basis; strict control measures are enforced to ensure that disclosure to these individuals is also based on this same principle. Generally, VA file areas are locked after normal duty hours and the facilities are protected from outside access by the Federal Protective Service or other security personnel.

2. Access to computer rooms at health care facilities is generally limited by appropriate locking devices and restricted to authorized VA employees and vendor personnel. ADP peripheral devices are placed in secure areas (areas that are locked or have limited access) or are otherwise protected. Information in VistA may be accessed by authorized VA employees. Access to file information is controlled at two levels; the systems recognize authorized employees by series of individually unique passwords/codes as a part of

each data message, and the employees are limited to only that information in the file which is needed in the performance of their official duties. Information that is downloaded from VistA and maintained on personal computers is afforded similar storage and access protections as the data that is maintained in the original files. Access to information stored on automated storage media at other VA locations is controlled by individually unique passwords/codes.

3. Access to the Austin VA Data Processing Center is generally restricted to Center employees, custodial personnel, Federal Protective Service, and other security personnel. Access to computer rooms is restricted to authorized operational personnel through electronic locking devices. All other persons gaining access to computer rooms are escorted. Information stored in the computer may be accessed by authorized VA employees at remote locations including VA health care facilities, Information Systems Centers, VA Central Office, and Veterans Integrated Service Networks. Access is controlled by individually unique passwords/codes which must be changed periodically by the employee.

**RETENTION AND DISPOSAL:**

Paper records and information are maintained and disposed of in accordance with records disposition authority approved by the Archivist of the United States.

**SYSTEM MANAGER(S) AND ADDRESS:**

Official responsible for policies and procedures; Office of Geriatrics and Extended Care (114), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420.

**NOTIFICATION PROCEDURE:**

Individuals who wish to determine whether this system of records contains information about them should contact the VA facility location at which they are or were employed or made or have contact. Inquiries should include the person's full name, Social Security number, dates of employment, date(s) of contact, and return address.

**RECORD ACCESS PROCEDURE:**

Individuals seeking information regarding access to and contesting of records in this system may write, call, or visit the VA facility location where they are or were employed or made contact.

**CONTESTING RECORD PROCEDURES:**

(See Record Access Procedures above.)

**RECORD SOURCE CATEGORIES:**

Information in this system of records is provided by individuals requesting participation in the CRC and MFH programs.

## APPENDIX I—ADDRESS LOCATIONS FOR VA FACILITIES

**COMMUNITY RESIDENTIAL CARE PROGRAMS:**

Togus ME; Bedford MA; Leeds MA; Boston MA; Bath NY; Canandaigua NY; Syracuse NY; Montrose NY; East Orange NJ; Northport NY; Altoona PA; Lebanon PA; Wilkes Barre PA; Pittsburgh PA; Wilmington DE; Clarksburg WV; Martinsburg WV; Perry Point MD; Beckley WV; Washington DC; Richmond VA; Hampton VA; Salem VA; Asheville NC; Salisbury NC; Atlanta GA; Augusta GA; Dublin GA; Birmingham AL; Tuscaloosa AL; Tuskegee AL; San Juan PR; Gainesville FL; Jacksonville FL; West Palm Beach FL; Murfreesboro TN; Mountain Home TN: Lexington KY; Louisville KY; Cleveland OH; Dayton OH; Chillicothe OH; Columbus OH; Danville IL; Indianapolis IN; Marion IN; Tomah WI; North Chicago IL; Hines IL; St. Louis MO; Alexandria LA; New Orleans LA; Shreveport LA; Biloxi MS; Jackson MI; Fayetteville AR; Little Rock AR; Dallas TX; Houston TX; San Antonio TX; Waco TX; Muskogee OK; Oklahoma City OK; Denver CO; Salt Lake City UT; Boise ID; Roseburg OR; Tacoma WA; Loma Linda CA; Long Beach CA; Los Angeles CA; San Diego CA; Palo Alto CA; St. Cloud MN; Sioux Falls SD; Omaha NE; Des Moines IA.

**MEDICAL FOSTER HOME PROGRAMS (OPERATIONAL OR BEING DEVELOPED):**

Togus ME; Manchester NH; Boston MA; Lebanon PA; Huntington WV; Asheville NC; Hampton VA; Salem VA; Augusta GA; Dublin GA; Tuscaloosa AL; Tuskegee AL; Bay Pines FL; Gainesville FL; Miami FL; Tampa FL; West Palm Beach FL; San Juan PR; Lexington KY; Louisville KY; Memphis TN; Murfreesboro TN; Chillicothe OH; Cleveland OH; Battle Creek MI; St. Louis MO; Biloxi MS; Fayetteville AR; Little Rock AR; Dallas TX; San Antonio TX; Denver CO; Portland OR; Salt Lake City UT; Honolulu HI; Sioux Falls SD; Des Moines IA; Minneapolis MN.

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Part II

## Department of Health and Human Services

Centers for Medicare & Medicaid Services

Medicare Program; Inpatient Hospital Deductible and Hospital and Extended Care Services Coinsurance Amounts for CY 2012; Part A Premiums for CY 2012 for the Uninsured Aged and for Certain Disabled Individuals Who Have Exhausted Other Entitlement; Medicare Part B Monthly Actuarial Rates, Premium Rate, and Annual Deductible Beginning January 1, 2012; Notices

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Centers for Medicare & Medicaid Services**

**[CMS–8043–N]**

**RIN 0938–AQ14**

## Medicare Program; Inpatient Hospital Deductible and Hospital and Extended Care Services Coinsurance Amounts for CY 2012

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Notice.

**SUMMARY:** This notice announces the inpatient hospital deductible and the hospital and extended care services coinsurance amounts for services furnished in calendar year (CY) 2012 under Medicare's Hospital Insurance Program (Medicare Part A). The Medicare statute specifies the formulae used to determine these amounts. For CY 2012, the inpatient hospital deductible will be $1,156. The daily coinsurance amounts for CY 2012 will be—(1) $289 for the 61st through 90th day of hospitalization in a benefit period; (2) $578 for lifetime reserve days; and (3) $144.50 for the 21st through 100th day of extended care services in a skilled nursing facility in a benefit period.

**DATES:** *Effective Date:* This notice is effective on January 1, 2012.

**FOR FURTHER INFORMATION CONTACT:** Clare McFarland, (410) 786–6390 for general information. Gregory J. Savord, (410) 786–1521 for case-mix analysis.

**SUPPLEMENTARY INFORMATION:**

### I. Background

Section 1813 of the Social Security Act (the Act) provides for an inpatient hospital deductible to be subtracted from the amount payable by Medicare for inpatient hospital services furnished to a beneficiary. It also provides for certain coinsurance amounts to be subtracted from the amounts payable by Medicare for inpatient hospital and extended care services. Section 1813(b)(2) of the Act requires us to determine and publish each year the amount of the inpatient hospital deductible and the hospital and extended care services coinsurance amounts applicable for services furnished in the following calendar year (CY).

### II. Computing the Inpatient Hospital Deductible for CY 2012

Section 1813(b) of the Act prescribes the method for computing the amount of the inpatient hospital deductible. The inpatient hospital deductible is an amount equal to the inpatient hospital deductible for the preceding CY, adjusted by our best estimate of the payment-weighted average of the applicable percentage increases (as defined in section 1886(b)(3)(B) of the Act) used for updating the payment rates to hospitals for discharges in the fiscal year (FY) that begins on October 1 of the same preceding CY, and adjusted to reflect changes in real case-mix. The adjustment to reflect real case-mix is determined on the basis of the most recent case-mix data available. The amount determined under this formula is rounded to the nearest multiple of $4 (or, if midway between two multiples of $4, to the next higher multiple of $4).

Under section 1886(b)(3)(B)(i)(XX) of the Act, the percentage increase used to update the payment rates for FY 2012 for hospitals paid under the inpatient prospective payment system is the market basket percentage increase, otherwise known as the market basket update, reduced by 0.1 percentage points (see section 1886(b)(3)(B)(xii)(II) of the Act), and an adjustment based on changes in the economy-wide productivity (the multifactor productivity (MFP) adjustment (see section 1886(b)(3)(B)(xi)(II) of the Act). Under section 1886(b)(3)(B)(viii) of the Act, hospitals will receive this update only if they submit quality data as specified by the Secretary. The update for hospitals that do not submit this data is reduced by 2.0 percentage points. We are estimating that after accounting for those hospitals receiving the lower market basket update in the payment-weighted average update, the calculated deductible will remain the same, as the majority of hospitals submit quality data and receive the full market basket update.

Under section 1886(b)(3)(B)(ii)(VIII) of the Act, the percentage increase used to update the payment rates for FY 2012 for hospitals excluded from the inpatient prospective payment system is as follows:

- For FY 2012, the percentage increase for long term care hospitals is the market basket percentage increase reduced by 0.1 percentage points and the MFP adjustment (see section 1886(m)(3)(A) of the Act).
- For FY 2012, the percentage increase for inpatient rehabilitation facilities is the market basket percentage increase reduced by 0.1 percentage points and the MFP adjustment (see section 1886(j)(3)(C) of the Act).
- For FY 2012, the percentage increase used to update the payment rate for psychiatric hospitals is the market basket percentage increase reduced by 0.25 percentage points (see section 1886(s)(2)(A)(ii) of the Act).

The market basket percentage increase for 2012 is 3.0 percent and the MFP adjustment is 1.0 percent, as announced in the final rule with comment period published in the **Federal Register** on August 18, 2011 entitled, ''Changes to the Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and FY 2012 Rates and to the Long Term Care Hospital PPS and FY 2012 Rates.'' Therefore, the percentage increase for hospitals paid under the inpatient prospective payment system is 1.9 percent. The average payment percentage increase for hospitals excluded from the inpatient prospective payment system is 2.29 percent. Weighting these percentages in accordance with payment volume, our best estimate of the payment-weighted average of the increases in the payment rates for FY 2012 is 1.95 percent.

To develop the adjustment to reflect changes in real case-mix, we first calculated for each hospital an average case-mix that reflects the relative costliness of that hospital's mix of cases compared to those of other hospitals. We then computed the change in average case-mix for hospitals paid under the Medicare prospective payment system in FY 2011 compared to FY 2010. (We excluded from this calculation hospitals whose payments are not based on the inpatient prospective payment system because their payments are based on alternate prospective payment systems or reasonable costs.) We used Medicare bills from prospective payment hospitals that we received as of July 2011. These bills represent a total of about 8 million Medicare discharges for FY 2011 and provide the most recent case-mix data available at this time. Based on these bills, the change in average case-mix in FY 2011 is $-0.3$ percent. Based on these bills and past experience, we expect the overall case mix change to be zero percent as the year progresses and more FY 2011 data become available.

Section 1813 of the Act requires that the inpatient hospital deductible be adjusted only by that portion of the case-mix change that is determined to be real. Since we are not expecting any overall case mix to increase, the real case mix will remain unchanged for FY 2011.

Thus, the estimate of the payment-weighted average of the applicable percentage increases used for updating the payment rates is 1.95 percent, and the real case-mix adjustment factor for the deductible is zero percent.

Therefore, under the statutory formula, the inpatient hospital deductible for services furnished in CY 2012 is $1156. This deductible amount is determined by multiplying $1132 (the inpatient hospital deductible for CY 2011) by the payment-weighted average increase in the payment rates of 1.0195 multiplied by the increase in real case-mix of 1.000, which equals $1154.07 and is rounded to $1156.

## III. Computing the Inpatient Hospital and Extended Care Services Coinsurance Amounts for CY 2012

The coinsurance amounts provided for in section 1813 of the Act are defined as fixed percentages of the inpatient hospital deductible for services furnished in the same CY. The increase in the deductible generates increases in the coinsurance amounts. For inpatient hospital and extended care services furnished in CY 2012, in accordance with the fixed percentages defined in the law, the daily coinsurance for the 61st through 90th day of hospitalization in a benefit period will be $289 (one-fourth of the inpatient hospital deductible); the daily coinsurance for lifetime reserve days will be $578 (one-half of the inpatient hospital deductible); and the daily coinsurance for the 21st through 100th day of extended care services in a skilled nursing facility in a benefit period will be $144.50 (one-eighth of the inpatient hospital deductible).

## IV. Cost to Medicare Beneficiaries

Table 1 below summarizes the deductible and coinsurance amounts for CYs 2011 and 2012, as well as the number of each that is estimated to be paid.

TABLE 1—PART A DEDUCTIBLE AND COINSURANCE AMOUNTS FOR CALENDAR YEARS 2011 AND 2012

| Type of cost sharing | Value | | Number paid (in millions) | |
|---|---|---|---|---|
| | 2011 | 2012 | 2011 | 2012 |
| Inpatient hospital deductible | $1132 | $1156 | 8.50 | 8.76 |
| Daily coinsurance for 61st–90th Day | 283 | 289 | 2.26 | 2.34 |
| Daily coinsurance for lifetime reserve days | 566 | 578 | 1.13 | 1.17 |
| SNF coinsurance | 141.50 | 144.50 | 43.94 | 45.73 |

The estimated total increase in costs to beneficiaries is about $970 million (rounded to the nearest $10 million) due to—(1) The increase in the deductible and coinsurance amounts; and (2) the change in the number of deductibles and daily coinsurance amounts paid.

## V. Waiver of Proposed Notice and Comment Period

The Medicare statute, as discussed previously, requires publication of the Medicare Part A inpatient hospital deductible and the hospital and extended care services coinsurance amounts for services for each CY. The amounts are determined according to the statute. As has been our custom, we use general notices, rather than notice and comment rulemaking procedures, to make the announcements. In doing so, we acknowledge that, under the Administrative Procedure Act (APA), interpretive rules, general statements of policy, and rules of agency organization, procedure, or practice are excepted from the requirements of notice and comment rulemaking.

We considered publishing a proposed notice to provide a period for public comment. However, we may waive that procedure if we find good cause that prior notice and comment are impracticable, unnecessary, or contrary to the public interest. We find that the procedure for notice and comment is unnecessary because the formulae used to calculate the inpatient hospital deductible and hospital and extended care services coinsurance amounts are statutorily directed, and we can exercise no discretion in following the formulae. Moreover, the statute establishes the time period for which the deductible and coinsurance amounts will apply and delaying publication would be contrary to the public interest. Therefore, we find good cause to waive publication of a proposed notice and solicitation of public comments.

## VI. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 35).

## VII. Regulatory Impact Statement

We have examined the impact of this notice as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999) and the Congressional Review Act (5 U.S.C. 804(2)).

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). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). As stated in section IV of this notice, we estimate that the total increase in costs to beneficiaries associated with this notice is about $970 million due to —(1) The increase in the deductible and coinsurance amounts; and (2) the change in the number of deductibles and daily coinsurance amounts paid. Therefore, this notice is a major action as defined in Title 5, United States Code, section 804(2), and is an economically significant action under Executive Order 12866.

The RFA requires agencies to analyze options for regulatory relief of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $7.0 million to $34.5 million in any 1 year. Individuals and States are not included in the definition of a small entity. We have determined that this

notice will not have a significant economic impact on a substantial number of small entities. Therefore, we are not preparing an analysis under the RFA.

In addition, section 1102(b) of the Social Security Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area for Medicare payment regulations and has fewer than 100 beds. The Secretary has determined that this notice will not have a significant impact on the operations of a substantial number of small rural hospitals. Therefore, we are not preparing an analysis under section 1102(b) of the Act.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2011, that threshold is approximately $136 million. This notice will have no consequential effect on State, local, or tribal governments or on the private sector. However, States may be required to pay the deductibles and coinsurance for dually-eligible beneficiaries.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This notice will not have a substantial effect on State or local governments.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance)

Dated: September 22, 2011

**Donald M. Berwick,**

*Administrator, Centers for Medicare & Medicaid Services.*

Dated: October 25, 2011.

**Kathleen Sebelius,**

*Secretary.*

[FR Doc. 2011–28187 Filed 10–27–11; 11:15 am]

**BILLING CODE 4120–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

**[CMS–8044–N]**

**RIN 0938–AQ15**

## Medicare Program; Part A Premiums for CY 2012 for the Uninsured Aged and for Certain Disabled Individuals Who Have Exhausted Other Entitlement

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Notice.

**SUMMARY:** This annual notice announces Medicare's Hospital Insurance (Part A) premium for uninsured enrollees in calendar year (CY) 2012. This premium is paid by enrollees age 65 and over who are not otherwise eligible for benefits under Medicare Part A (hereafter known as the ''uninsured aged'') and by certain disabled individuals who have exhausted other entitlement. The monthly Part A premium for the 12 months beginning January 1, 2012, for these individuals will be $451. The reduced premium for certain other individuals as described in this notice will be $248.

**DATES:** *Effective Date:* This notice is effective on January 1, 2012.

**FOR FURTHER INFORMATION CONTACT:** Clare McFarland, (410) 786–6390.

**SUPPLEMENTARY INFORMATION:**

### I. Background

Section 1818 of the Social Security Act (the Act) provides for voluntary enrollment in the Medicare Hospital Insurance Program (Medicare Part A), subject to payment of a monthly premium, of certain persons aged 65 and older who are uninsured under the Old-Age, Survivors, and Disability Insurance (OASDI) program or the Railroad Retirement Act and do not otherwise meet the requirements for entitlement to Medicare Part A. These ''uninsured aged'' individuals are uninsured under the OASDI program or the Railroad Retirement Act, because they do not have 40 quarters of coverage under Title II of the Act (or are/were not married to someone who did). (Persons insured under the OASDI program or the Railroad Retirement Act and certain others do not have to pay premiums for Medicare Part A.)

Section 1818A of the Act provides for voluntary enrollment in Medicare Part A, subject to payment of a monthly premium for certain disabled individuals who have exhausted other entitlement. These are individuals who were entitled to coverage due to a disabling impairment under section 226(b) of the Act, but who are no longer entitled to disability benefits and free Medicare Part A coverage because they have gone back to work and their earnings exceed the statutorily defined ''substantial gainful activity'' amount (section 223(d)(4) of the Act).

Section 1818A(d)(2) of the Act specifies that the provisions relating to premiums under section 1818(d) through section 1818(f) of the Act for the aged will also apply to certain disabled individuals as described above.

Section 1818(d) of the Act requires us to estimate, on an average per capita basis, the amount to be paid from the Federal Hospital Insurance Trust Fund for services incurred in the following calendar year (CY) (including the associated administrative costs) on behalf of individuals aged 65 and over who will be entitled to benefits under Medicare Part A. We must then determine, during September of each year, the monthly actuarial rate for the following year (the per capita amount estimated above divided by 12) and publish the dollar amount for the monthly premium in the succeeding CY. If the premium is not a multiple of $1, the premium is rounded to the nearest multiple of $1 (or, if it is a multiple of 50 cents but not of $1, it is rounded to the next highest $1).

Section 13508 of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66) amended section 1818(d) of the Act to provide for a reduction in the premium amount for certain voluntary enrollees (section 1818 and section 1818A of the Act). The reduction applies to an individual who is eligible to buy into the Medicare Part A program and who, as of the last day of the previous month—

- Had at least 30 quarters of coverage under Title II of the Act;
- Was married, and had been married for the previous 1-year period, to a person who had at least 30 quarters of coverage;
- Had been married to a person for at least 1 year at the time of the person's death if, at the time of death, the person had at least 30 quarters of coverage; or
- Is divorced from a person and had been married to the person for at least 10 years at the time of the divorce if, at the time of the divorce, the person had at least 30 quarters of coverage.

Section 1818(d)(4)(A) of the Act specifies that the premium that these individuals will pay for CY 2012 will be equal to the premium for uninsured aged enrollees reduced by 45 percent.

## II. Monthly Premium Amount for CY 2012

The monthly premium for the uninsured aged and certain disabled individuals who have exhausted other entitlement for the 12 months beginning January 1, 2012, is $451.

The monthly premium for those individuals subject to the 45 percent reduction in the monthly premium is $248.

## III. Monthly Premium Rate Calculation

As discussed in section I of this notice, the monthly Medicare Part A premium is equal to the estimated monthly actuarial rate for CY 2012 rounded to the nearest multiple of $1 and equals one-twelfth of the average per capita amount, which is determined by projecting the number of Part A enrollees aged 65 years and over as well as the benefits and administrative costs that will be incurred on their behalf.

The steps involved in projecting these future costs to the Federal Hospital Insurance Trust Fund are:

- Establishing the present cost of services furnished to beneficiaries, by type of service, to serve as a projection base;
- Projecting increases in payment amounts for each of the service types; and
- Projecting increases in administrative costs.

We base our projections for CY 2012 on—(1) Current historical data; and (2) projection assumptions derived from current law and the Mid-Session Review of the President's Fiscal Year 2012 Budget.

We estimate that in CY 2012, 40,787,939 people aged 65 years and over will be entitled to benefits (without premium payment) and that they will incur about $220.656 billion in benefits and related administrative costs. Thus, the estimated monthly average per capita amount is $450.82 and the monthly premium is $451. The full monthly premium reduced by 45 percent is $248.

## IV. Costs to Beneficiaries

The CY 2012 premium of $451 is approximately 0.22 percent higher than the CY 2011 premium of $450.

We estimate that approximately 590,000 enrollees will voluntarily enroll in Medicare Part A by paying the full premium. We estimate an additional 45,000 enrollees will pay the reduced premium. We estimate that the aggregate cost to enrollees paying these premiums in CY 2012, compared to the amount that they paid in CY 2011, will be about $7 million.

## V. Waiver of Proposed Notice and Comment Period

We use general notices, rather than notice and comment rulemaking procedures, to make announcements such as this premium notice. In doing so, we acknowledge that, under the Administrative Procedure Act (APA), interpretive rules, general statements of policy, and rules of agency organization, procedure, or practice are excepted from the requirements of notice and comment rulemaking. The agency may also waive notice and comment if there is ''good cause,'' as defined by the statute. We considered publishing a proposed notice to provide a period for public comment. However, under the APA, we may waive that procedure if we find good cause that prior notice and comment are impracticable, unnecessary, or contrary to the public interest.

We are not using notice and comment rulemaking in this notification of Medicare Part A premiums for CY 2011 as that procedure is unnecessary because of the lack of discretion in the statutory formula that is used to calculate the premium and the solely ministerial function that this notice serves. The APA permits agencies to waive notice and comment rulemaking when notice and public comment thereon are unnecessary. On this basis, we waive publication of a proposed notice and a solicitation of public comments.

## VI. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 35).

## VII. Regulatory Impact Statement

We have examined the impact of this notice as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999) and the Congressional Review Act (5 U.S.C. 804(2)).

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). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). As stated in section IV of this notice, we estimate that the overall effect of these changes in the Part A premium will be a cost to voluntary enrollees (section 1818 and section 1818A of the Act) of about $7 million. Therefore, this notice is a not a major action as defined in Title 5, United States Code, section 804(2) and is not an economically significant action under Executive Order 12866.

The RFA requires agencies to analyze options for regulatory relief of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $7.0 million to $34.5 million in any 1 year. Individuals and States are not included in the definition of a small entity. We have determined that this notice will not have a significant economic impact on a substantial number of small entities. Therefore, we are not preparing an analysis under the RFA.

In addition, section 1102(b) of the Social Security Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area for Medicare payment regulations and has fewer than 100 beds. The Secretary has determined that this notice will not have a significant impact on the operations of a substantial number of small rural hospitals. Therefore, we are not preparing an analysis under section 1102(b) of the Act.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2011, that threshold is approximately $136 million. This notice will have no

consequential effect on State, local, or tribal governments or on the private sector. However, States are required to pay the premiums for dually-eligible beneficiaries.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This notice will not have a substantial effect on State or local governments.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance)

Dated: September 22, 2011.

**Donald M. Berwick,**

*Administrator, Centers for Medicare & Medicaid Services.*

Dated: October 25, 2011.

**Kathleen Sebelius,**

*Secretary.*

[FR Doc. 2011–28188 Filed 10–27–11; 11:15 am]

**BILLING CODE 4120–01–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

**[CMS–8045–N]**

**RIN 0938–AQ16**

### Medicare Program; Medicare Part B Monthly Actuarial Rates, Premium Rate, and Annual Deductible Beginning January 1, 2012

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Notice.

**SUMMARY:** This notice announces the monthly actuarial rates for aged (age 65 and over) and disabled (under age 65) beneficiaries enrolled in Part B of the Medicare Supplementary Medical Insurance (SMI) program beginning January 1, 2012. In addition, this notice announces the monthly premium for aged and disabled beneficiaries as well as the income-related monthly adjustment amounts to be paid by beneficiaries with modified adjusted gross income above certain threshold amounts. The monthly actuarial rates for 2012 are $199.80 for aged enrollees and $192.50 for disabled enrollees. The standard monthly Part B premium rate for 2012 is $99.90, which is equal to 50 percent of the monthly actuarial rate for aged enrollees or approximately 25 percent of the expected average total cost of Part B coverage for aged enrollees. (The 2011 standard premium rate was $115.40) The Part B deductible for 2012 is $140.00 for all Part B beneficiaries. If a beneficiary has to pay an income-related monthly adjustment, they may have to pay a total monthly premium of about 35, 50, 65, or 80 percent of the total cost of Part B coverage.

**DATES:** *Effective Date:* January 1, 2012.

**FOR FURTHER INFORMATION CONTACT:** M. Kent Clemens, (410) 786–6391.

**SUPPLEMENTARY INFORMATION:**

## I. Background

Part B is the voluntary portion of the Medicare program that pays all or part of the costs for physicians' services, outpatient hospital services, certain home health services, services furnished by rural health clinics, ambulatory surgical centers, comprehensive outpatient rehabilitation facilities, and certain other medical and health services not covered by Medicare Part A, Hospital Insurance. Medicare Part B is available to individuals who are entitled to Medicare Part A, as well as to U.S. residents who have attained age 65 and are citizens, and aliens who were lawfully admitted for permanent residence and have resided in the United States for 5 consecutive years. Part B requires enrollment and payment of monthly premiums, as described in 42 CFR part 407, subpart B, and part 408, respectively. The difference between the premiums paid by all enrollees and total incurred costs is met by transfers from the general fund of the Treasury.

The Secretary of the Department of Health and Human Services (the Secretary) is required by section 1839 of the Social Security Act (the Act) to announce the Part B monthly actuarial rates for aged and disabled beneficiaries as well as the monthly Part B premium. The Part B annual deductible is included because its determination is directly linked to the aged actuarial rate.

The monthly actuarial rates for aged and disabled enrollees are used to determine the correct amount of general revenue financing per beneficiary each month. These amounts, according to actuarial estimates, will equal, respectively, one-half of the expected average monthly cost of Part B for each aged enrollee (age 65 or over) and one-half of the expected average monthly cost of Part B for each disabled enrollee (under age 65).

The Part B deductible to be paid by enrollees is also announced. Prior to the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173), the Part B deductible was set in statute. After setting the 2005 deductible amount at $110.00, section 629 of the MMA (amending section 1833(b) of the Act) requires that the Part B deductible be indexed beginning in 2006. The inflation factor to be used each year is the annual percentage increase in the Part B actuarial rate for enrollees age 65 and over. Specifically, the 2012 Part B deductible is calculated by multiplying the 2011 deductible by the ratio of the 2012 aged actuarial rate over the 2011 aged actuarial rate. The amount determined under this formula is then rounded to the nearest $1.

The monthly Part B premium rate to be paid by aged and disabled enrollees is also announced. (Although the costs to the program per disabled enrollee are different than for the aged, the statute provides that they pay the same premium amount.) Beginning with the passage of section 203 of the Social Security Amendments of 1972 (Pub. L. 92–603), the premium rate, which was determined on a fiscal year basis, was limited to the lesser of the actuarial rate for aged enrollees, or the current monthly premium rate increased by the same percentage as the most recent general increase in monthly Title II social security benefits.

However, the passage of section 124 of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) (Pub. L. 97–248) suspended this premium determination process. Section 124 of TEFRA changed the premium basis to 50 percent of the monthly actuarial rate for aged enrollees (that is, 25 percent of program costs for aged enrollees). Section 606 of the Social Security Amendments of 1983 (Pub. L. 98–21), section 2302 of the Deficit Reduction Act of 1984 (DEFRA 84) (Pub. L. 98–369), section 9313 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA 85) (Pub. L. 99–272), section 4080 of the Omnibus Budget Reconciliation Act of 1987 (OBRA 87) (Pub. L. 100–203), and section 6301 of the Omnibus Budget Reconciliation Act of 1989 (OBRA 89) (Pub. L. 101–239) extended the provision that the premium be based on 50 percent of the monthly actuarial rate for aged enrollees (that is, 25 percent of program costs for aged enrollees). This extension expired at the end of 1990.

The premium rate for 1991 through 1995 was legislated by section 1839(e)(1)(B) of the Act, as added by section 4301 of the Omnibus Budget

Reconciliation Act of 1990 (OBRA 90) (Pub. L. 101–508). In January 1996, the premium determination basis would have reverted to the method established by the 1972 Social Security Act Amendments. However, section 13571 of the Omnibus Budget Reconciliation Act of 1993 (OBRA 93) (Pub. L. 103–66) changed the premium basis to 50 percent of the monthly actuarial rate for aged enrollees (that is, 25 percent of program costs for aged enrollees) for 1996 through 1998.

Section 4571 of the Balanced Budget Act of 1997 (BBA) (Pub. L. 105–33) permanently extended the provision that the premium be based on 50 percent of the monthly actuarial rate for aged enrollees (that is, 25 percent of program costs for aged enrollees).

The BBA included a further provision affecting the calculation of the Part B actuarial rates and premiums for 1998 through 2003. Section 4611 of the BBA modified the home health benefit payable under Part A for individuals enrolled in Part B. Under this section, beginning in 1998, expenditures for home health services not considered ''post-institutional'' are payable under Part B rather than Part A. However, section 4611(e)(1) of the BBA required that there be a transition from 1998 through 2002 for the aggregate amount of the expenditures transferred from Part A to Part B. Section 4611(e)(2) of the BBA also provided a specific yearly proportion for the transferred funds. The proportions were 1/6 for 1998, 1/3 for 1999, 1/2 for 2000, 2/3 for 2001, and 5/6 for 2002. For the purpose of determining the correct amount of financing from general revenues of the Federal Government, it was necessary to include only these transitional amounts in the monthly actuarial rates for both aged and disabled enrollees, rather than the total cost of the home health services being transferred.

Section 4611(e)(3) of the BBA also specified, for the purpose of determining the premium, that the monthly actuarial rate for enrollees age 65 and over be computed as though the transition would occur for 1998 through 2003 and that 1/7 of the cost be transferred in 1998, 2/7 in 1999, 3/7 in 2000, 4/7 in 2001, 5/7 in 2002, and 6/7 in 2003. Therefore, the transition period for incorporating this home health transfer into the premium was 7 years while the transition period for including these services in the actuarial rate was 6 years.

Section 811 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Pub. L. 108–173, also known as the Medicare Modernization Act, or MMA), which amended section 1839 of the Act, requires that, starting on January 1,2007, the Part B premium a beneficiary pays each month be based on their annual income. Specifically, if a beneficiary's ''modified adjusted gross income'' is greater than the legislated threshold amounts (for 2012, $85,000 for a beneficiary filing an individual income tax return, and $170,000 for a beneficiary filing a joint tax return) the beneficiary is responsible for a larger portion of the estimated total cost of Part B benefit coverage. In addition to the standard 25 percent premium, these beneficiaries will now have to pay an income-related monthly adjustment amount. The MMA made no change to the actuarial rate calculation, and the standard premium, which will continue to be paid by beneficiaries whose modified adjusted gross income is below the applicable thresholds, still represents 25 percent of the estimated total cost to the program of Part B coverage for an aged enrollee. However, depending on income and tax filing status, a beneficiary can now be responsible for 35, 50, 65, or 80 percent of the estimated total cost of Part B coverage, rather than 25 percent. The end result of the higher premium is that the Part B premium subsidy is reduced and less general revenue financing is required for beneficiaries with higher income because they are paying a larger share of the total cost with their premium. That is, the premium subsidy continues to be approximately 75 percent for beneficiaries with income below the applicable income thresholds, but will be reduced for beneficiaries with income above these thresholds. The MMA specified that there be a 5-year transition to full implementation of this provision. However, section 5111 of the Deficit Reduction Act of 2005 (Pub. L. 109–171) (DRA) modified the transition to a 3-year period.

Section 4732(c) of the BBA added section 1933(c) of the Act, which required the Secretary to allocate money from the Part B trust fund to the State Medicaid programs for the purpose of providing Medicare Part B premium assistance from 1998 through 2002 for the low-income Medicaid beneficiaries who qualify under section 1933 of the Act. This allocation, while not a benefit expenditure, was an expenditure of the trust fund and was included in calculating the Part B actuarial rates through 2002. For 2003 through 2007, the expenditure was made from the trust fund because the allocation was temporarily extended. However, because the extension occurred after the financing was determined, the allocation was not included in the calculation of the financing rates.

A further provision affecting the calculation of the Part B premium is section 1839(f) of the Act, as amended by section 211 of the Medicare Catastrophic Coverage Act of 1988 (MCCA 88) (Pub.L. 100–360). (The Medicare Catastrophic Coverage Repeal Act of 1989 (Pub. L. 101–234) did not repeal the revisions to section 1839(f) made by MCCA 88.) Section 1839(f) of the Act, referred to as the ''hold-harmless'' provision, provides that if an individual is entitled to benefits under section 202 or 223 of the Act (the Old-Age and Survivors Insurance Benefit and the Disability Insurance Benefit, respectively) and has the Part B premiums deducted from these benefit payments, the premium increase will be reduced, if necessary, to avoid causing a decrease in the individual's net monthly payment. This decrease in payment occurs if the increase in the individual's social security benefit due to the cost-of-living adjustment under section 215(i) of the Act is less than the increase in the premium. Specifically, the reduction in the premium amount applies if the individual is entitled to benefits under section 202 or 223 of the Act for November and December of a particular year and the individual's Part B premiums for December and the following January are deducted from the respective month's section 202 or 223 benefits. The ''hold-harmless'' provision does not apply to beneficiaries who are required to pay an income-related monthly adjustment amount.

A check for benefits under section 202 or 223 of the Act is received in the month following the month for which the benefits are due. The Part B premium that is deducted from a particular check is the Part B payment for the month in which the check is received. Therefore, a benefit check for November is not received until December, but has December's Part B premium deducted from it.

Generally, if a beneficiary qualifies for hold-harmless protection, the reduced premium for the individual for that January and for each of the succeeding 11 months is the greater of the following—

- The monthly premium for January reduced as necessary to make the December monthly benefits, after the deduction of the Part B premium for January, at least equal to the preceding November's monthly benefits, after the deduction of the Part B premium for December; or
- The monthly premium for that individual for that December.

In determining the premium limitations under section 1839(f) of the Act, the monthly benefits to which an individual is entitled under section 202 or 223 of the Act do not include retroactive adjustments or payments and deductions on account of work. Also, once the monthly premium amount is established under section 1839(f) of the Act, it will not be changed during the year even if there are retroactive adjustments or payments and deductions on account of work that apply to the individual's monthly benefits.

Individuals who have enrolled in Part B late or who have re-enrolled after the termination of a coverage period are subject to an increased premium under section 1839(b) of the Act. The increase is a percentage of the premium and is based on the new premium rate before any reductions under section 1839(f) of the Act are made.

## II. Provisions of the Notice

### *A. Notice of Medicare Part B Monthly Actuarial Rates, Monthly Premium Rates, and Annual Deductible*

The Medicare Part B monthly actuarial rates applicable for 2012 are $199.80 for enrollees age 65 and over and $192.50 for disabled enrollees under age 65. In section II.B. of this notice, we present the actuarial assumptions and bases from which these rates are derived. The Part B standard monthly premium rate for 2012 is $99.90. The Part B annual deductible for 2012 is $140.00. Listed below are the 2012 Part B monthly premium rates to be paid by beneficiaries who file an individual tax return (including those who are single, head of household, qualifying widow(er) with dependent child, or married filing separately who lived apart from their spouse for the entire taxable year), or a joint tax return.

| Beneficiaries who file an individual tax return with income: | Beneficiaries who file a joint tax return with income: | Income-related monthly adjustment amount | Total monthly premium amount |
|---|---|---|---|
| Less than or equal to $85,000 | Less than or equal to $170,000 | $0.00 | $99.90 |
| Greater than $85,000 and less than or equal to $107,000. | Greater than $170,000 and less than or equal to $214,000. | 40.00 | 139.90 |
| Greater than $107,000 and less than or equal to $160,000. | Greater than $214,000 and less than or equal to $320,000. | 99.90 | 199.80 |
| Greater than $160,000 and less than or equal to $214,000. | Greater than $320,000 and less than or equal to $428,000. | 159.80 | 259.70 |
| Greater than $214,000 | Greater than $428,000 | 219.80 | 319.70 |

In addition, the monthly premium rates to be paid by beneficiaries who are married and lived with their spouse at any time during the taxable year, but file a separate tax return from their spouse, are listed below.

| Beneficiaries who are married and lived with their spouse at any time during the year, but file a separate tax return from their spouse: | Income-related monthly adjustment amount | Total monthly premium amount |
|---|---|---|
| Less than or equal to $85,000 | $0.00 | $99.90 |
| Greater than $85,000 and less than or equal to $129,000 | 159.80 | 259.70 |
| Greater than $129,000 | 219.80 | 319.70 |

The Part B annual deductible for 2012 is $140.00 for all beneficiaries.

### *B. Statement of Actuarial Assumptions and Bases Employed in Determining the Monthly Actuarial Rates and the Monthly Premium Rate for Part B Beginning January 2012*

1. Actuarial Status of the Part B Account in the Supplementary Medical Insurance Trust Fund

Under the statute, the starting point for determining the standard monthly premium is the amount that would be necessary to finance Part B on an incurred basis. This is the amount of income that would be sufficient to pay for services furnished during that year (including associated administrative costs) even though payment for some of these services will not be made until after the close of the year. The portion of income required to cover benefits not paid until after the close of the year is added to the trust fund and used when needed.

The premium rates are established prospectively and are, therefore, subject to projection error. Additionally, legislation enacted after the financing was established, but effective for the period in which the financing is set, may affect program costs. As a result, the income to the program may not equal incurred costs. Therefore, trust fund assets must be maintained at a level that is adequate to cover an appropriate degree of variation between actual and projected costs, and the amount of incurred, but unpaid, expenses. Numerous factors determine what level of assets is appropriate to cover variation between actual and projected costs. The three most important of these factors are: (1) The difference from prior years between the actual performance of the program and estimates made at the time financing was established; (2) the likelihood and potential magnitude of expenditure changes resulting from enactment of legislation affecting Part B costs in a year subsequent to the establishment of financing for that year, and (3) the expected relationship between incurred and cash expenditures. These factors are analyzed on an ongoing basis, as the trends can vary over time.

Table 1 summarizes the estimated actuarial status of the trust fund as of the end of the financing period for 2010 and 2011.

TABLE 1—ESTIMATED ACTUARIAL STATUS OF THE PART B ACCOUNT IN THE SUPPLEMENTARY MEDICAL INSURANCE TRUST FUND AS OF THE END OF THE FINANCING PERIOD

| Financing period ending | Assets (millions) | Liabilities (millions) | Assets less liabilities (millions) |
|---|---|---|---|
| December 31, 2010 | $71,435 | $14,558 | $56,877 |
| December 31, 2011 | 76,174 | 16,647 | 59,527 |

2. Monthly Actuarial Rate for Enrollees Age 65 and Older

The monthly actuarial rate for enrollees age 65 and older is one-half of the sum of monthly amounts for: (1) The projected cost of benefits; and (2) administrative expenses for each enrollee age 65 and older, after adjustments to this sum to allow for interest earnings on assets in the trust fund and an adequate contingency margin. The contingency margin is an amount appropriate to provide for possible variation between actual and projected costs and to amortize any surplus assets or unfunded liabilities.

The monthly actuarial rate for enrollees age 65 and older for 2012 is determined by first establishing per-enrollee cost by type of service from program data through 2010 and then projecting these costs for subsequent years. The projection factors used for financing periods from January 1, 2009 through December 31, 2012 are shown in Table 2.

As indicated in Table 3, the projected monthly rate required to pay for one-half of the total of benefits and administrative costs for enrollees age 65 and over for 2012 is $192.80. Based on current estimates, the assets are not sufficient to cover the amount of incurred, but unpaid, expenses and to provide for a significant degree of variation between actual and projected costs. Thus, a positive contingency margin is needed to increase assets to a more appropriate level. The monthly actuarial rate of $199.80 provides an adjustment of $9.64 for a contingency margin and −$2.64 for interest earnings.

The size of the contingency margin for 2012 is affected by several factors. The largest factor involves the current law formula for physician fees, which is projected to result in a reduction in physician fees of 28.9 percent in 2012. For each year from 2003 through 2011, Congress has acted to prevent physician fee reductions from occurring. In recognition of the strong possibility of substantial increases in Part B expenditures that would result from similar legislation to override the decreases in physician fees in 2012, it is appropriate to maintain a significantly larger Part B contingency reserve than would otherwise be necessary. The asset level projected for the end of 2010 is not adequate to accommodate this contingency.

As noted previously, for most Part B beneficiaries the hold-harmless provision prevents their benefits under section 202 or 223 of the Act from decreasing as a result of an increase in the Part B premium. The increase in the benefits under section 202 and 223 of the Act was 0 percent in 2010 and 0 percent again in 2011. As a result, the increases in the Part B premium for 2010 and 2011 were paid by only a small percentage of Part B enrollees. In order for Part B to be adequately funded in 2010 and 2011, the contingency margin was increased to account for this situation. For 2012, the increase in benefits under section 202 or 223 of the Act is expected to be large enough to meet the Part B premium increase for nearly all Part B enrollees, and therefore not require an increase in the 2012 contingency margin.

Two other, smaller factors affect the contingency margin for 2012. Starting in 2011, manufacturers and importers of brand-name prescription drugs will pay a fee that is allocated to the Part B account of the SMI trust. For 2012, the total of these brand-name drug fees will be $2.8 billion. The contingency margin has been reduced to account for this additional revenue.

Another small factor impacting the contingency margin comes from the requirement that certain payment incentives, to encourage the development and use of health information technology (HIT) by Medicare physicians, are to be excluded from the premium determination. HIT bonuses or penalties will be directly offset through transfers with the general fund of the Treasury. The monthly actuarial rate includes an adjustment of −$0.65 for HIT bonus payments in 2012.

The traditional goal for the Part B reserve has been that assets minus liabilities at the end of a year should represent between 15 and 20 percent of the following year's total incurred expenditures. Within this range, 17 percent has been the normal target. In view of the strong likelihood of actual expenditures exceeding estimated levels, due to the enactment of legislation after the financing has been set for a given year, a contingency reserve ratio in excess of 20 percent of the following year's expenditures would better ensure that the assets of the Part B account can adequately cover the cost of incurred-but-not-reported benefits together with variations between actual and estimated cost levels.

The actuarial rate of $199.80 per month for aged beneficiaries, as announced in this notice for 2012, reflects the combined net effect of the factors previously described and the projection assumptions listed in Table 2.

3. Monthly Actuarial Rate for Disabled Enrollees

Disabled enrollees are those persons under age 65 who are enrolled in Part B because of entitlement to Social Security disability benefits for more than 24 months or because of entitlement to Medicare under the end-stage renal disease (ESRD) program. Projected monthly costs for disabled enrollees (other than those with ESRD) are prepared in a fashion parallel to the projection for the aged using appropriate actuarial assumptions (see Table 2). Costs for the ESRD program are projected differently because of the different nature of services offered by the program.

As shown in Table 4, the projected monthly rate required to pay for one-half of the total of benefits and administrative costs for disabled enrollees for 2012 is $224.74. The monthly actuarial rate of $192.50 also provides an adjustment of −$5.34 for interest earnings and −$26.90 for a contingency margin, reflecting the same factors described above for the aged actuarial rate. Based on current estimates, the assets associated with the disabled Medicare beneficiaries are more than sufficient to cover the amount of incurred, but unpaid, expenses and to provide for a significant degree of variation between actual and projected costs. Thus, a large negative contingency margin is needed to decrease assets to an appropriate level.

The actuarial rate of $192.50 per month for disabled beneficiaries, as announced in this notice for 2012, reflects the combined net effect of the factors described above for aged beneficiaries and the projection assumptions listed in Table 2.

4. Sensitivity Testing

Several factors contribute to uncertainty about future trends in medical care costs. It is appropriate to test the adequacy of the rates using alternative assumptions. The results of those assumptions are shown in Table 5. One set represents increases that are lower and, therefore, more optimistic than the current estimate. The other set represents increases that are higher and, therefore, more pessimistic than the current estimate. The values for the alternative assumptions were determined from a statistical analysis of the historical variation in the respective increase factors.

As indicated in Table 5, the monthly actuarial rates would result in an excess of assets over liabilities of $67,156 million by the end of December 2012 under the assumptions used in preparing this report. This amounts to 28.4 percent of the estimated total incurred expenditures for the following year.

Assumptions that are somewhat more pessimistic (and that therefore test the adequacy of the assets to accommodate projection errors) produce a surplus of $44,895 million by the end of December 2012, which amounts to 17.0 percent of the estimated total incurred expenditures for the following year. Under fairly optimistic assumptions, the monthly actuarial rates would result in a surplus of $97,393 million by the end of December 2012, or 45.9 percent of the estimated total incurred expenditures for the following year.

The previous analysis indicates that the premium and general revenue financing established for 2012, together with existing Part B account assets would be adequate to cover estimated Part B costs for 2012 under current law, even if actual costs prove to be somewhat greater than expected.

5. Premium Rates and Deductible

As determined in accordance with section 1839 of the Act, listed are the 2012 Part B monthly premium rates to be paid by beneficiaries who file an individual tax return (including those who are single, head of household, qualifying widow(er) with dependent child, or married filing separately who lived apart from their spouse for the entire taxable year), or a joint tax return.

| Beneficiaries who file an individual tax return with income: | Beneficiaries who file a joint tax return with income: | Income-related monthly adjustment amount | Total monthly premium amount |
|---|---|---|---|
| Less than or equal to $85,000 | Less than or equal to $170,000 | $0.00 | $99.90 |
| Greater than $85,000 and less than or equal to $107,000. | Greater than $170,000 and less than or equal to $214,000. | 40.00 | 139.90 |
| Greater than $107,000 and less than or equal to $160,000. | Greater than $214,000 and less than or equal to $320,000. | 99.90 | 199.80 |
| Greater than $160,000 and less than or equal to $214,000. | Greater than $320,000 and less than or equal to $428,000. | 159.80 | 259.70 |
| Greater than $214,000 | Greater than $428,000 | 219.80 | 319.70 |

In addition, the monthly premium rates to be paid by beneficiaries who are married and lived with their spouse at any time during the taxable year, but file a separate tax return from their spouse, are listed below.

| Beneficiaries who are married and lived with their spouse at any time during the year, but file a separate tax return from their spouse: | Income-related monthly adjustment amount | Total monthly premium amount |
|---|---|---|
| Less than or equal to $85,000 | $0.00 | $99.90 |
| Greater than $85,000 and less than or equal to $129,000 | 159.80 | 259.70 |
| Greater than $129,000 | 219.80 | 319.70 |

TABLE 2—PROJECTION FACTORS [1] 12-MONTH PERIODS ENDING DECEMBER 31 OF 2009–2012

[In percent]

| Calendar year | Physicians' services | | Durable medical equipment | Carrier lab [4] | Other carrier services [5] | Outpatient hospital | Home health agency | Hospital lab [6] | Other intermediary services [7] | Managed care |
|---|---|---|---|---|---|---|---|---|---|---|
| | Fees [2] | Residual [3] | | | | | | | | |
| *Aged:* | | | | | | | | | | |
| 2009 | 1.6 | 1.5 | −7.4 | 8.6 | 8.1 | 8.5 | 13.5 | 9.0 | 10.3 | 0.3 |
| 2010 | 3.2 | 0.8 | 2.1 | 1.6 | 3.5 | 6.2 | 2.0 | 2.7 | 2.3 | −1.6 |
| 2011 | 0.3 | 4.7 | −3.9 | −4.4 | 4.8 | 6.5 | −1.9 | 0.7 | 2.5 | 1.7 |
| 2012 | −30.2 | 8.5 | 7.7 | 7.2 | 4.8 | 5.7 | −1.0 | 2.7 | −4.2 | 0.6 |
| *Disabled:* | | | | | | | | | | |
| 2009 | 1.6 | 5.0 | −1.8 | 21.3 | 9.8 | 9.7 | 13.8 | 10.8 | 12.5 | 0.8 |
| 2010 | 3.2 | 2.6 | 3.4 | −2.4 | 3.9 | 6.1 | 1.2 | 4.3 | 3.9 | −1.3 |
| 2011 | 0.3 | 4.1 | −3.8 | −3.6 | 2.4 | 6.2 | −1.4 | 2.3 | −2.2 | 2.0 |
| 2012 | −30.2 | 8.4 | 7.6 | 7.2 | 4.7 | 5.7 | −0.1 | 2.7 | −0.7 | 0.4 |

[1] All values for services other than managed care are per fee-for-service enrollee. Managed care values are per managed care enrollee.
[2] As recognized for payment under the program.
[3] Increase in the number of services received per enrollee and greater relative use of more expensive services.
[4] Includes services paid under the lab fee schedule furnished in the physician's office or an independent lab.
[5] Includes physician-administered drugs, ambulatory surgical center facility costs, ambulance services, parenteral and enteral drug costs, supplies, etc.
[6] Includes services paid under the lab fee schedule furnished in the outpatient department of a hospital.
[7] Includes services furnished in dialysis facilities, rural health clinics, Federally qualified health centers, rehabilitation and psychiatric hospitals, etc.

TABLE 3—DERIVATION OF MONTHLY ACTUARIAL RATE FOR ENROLLEES AGE 65 AND OVER FOR FINANCING PERIODS ENDING DECEMBER 31, 2009 THROUGH DECEMBER 31, 2012

| | Financing Periods | | | |
|---|---|---|---|---|
| | CY 2009 | CY 2010 | CY 2011 | CY 2012 |
| Covered services (at level recognized): | | | | |
| Physician fee schedule | 78.53 | 80.76 | 83.78 | 63.51 |
| Durable medical equipment | 8.90 | 8.98 | 8.53 | 9.20 |
| Carrier lab [1] | 4.30 | 4.32 | 4.08 | 4.38 |
| Other carrier services [2] | 20.80 | 21.27 | 22.03 | 23.12 |
| Outpatient hospital | 32.38 | 33.99 | 35.74 | 37.83 |
| Home health | 11.77 | 11.86 | 11.49 | 11.38 |
| Hospital lab [3] | 2.95 | 2.99 | 2.98 | 3.06 |
| Other intermediary services [4] | 14.25 | 14.41 | 14.58 | 13.99 |
| Managed care | 54.11 | 54.92 | 57.61 | 57.77 |
| Total services | 227.99 | 233.50 | 240.81 | 224.23 |
| Cost sharing: | | | | |
| Deductible | −5.50 | −6.32 | −6.61 | −5.72 |
| Coinsurance | −30.39 | −30.69 | −31.10 | −27.73 |
| HIT payment incentives | 0.00 | 0.00 | −0.51 | −0.65 |
| Total benefits | 192.10 | 196.49 | 203.10 | 190.13 |
| Administrative expenses | 2.97 | 2.94 | 3.38 | 2.66 |
| Incurred expenditures | 195.08 | 199.43 | 206.48 | 192.80 |
| Value of interest | −2.80 | −2.74 | −2.62 | −2.64 |
| Contingency margin for projection error and to amortize the surplus or deficit | 0.42 | 24.31 | 26.84 | 9.64 |
| Monthly actuarial rate | 192.70 | 221.00 | 230.70 | 199.80 |

[1] Includes services paid under the lab fee schedule furnished in the physician's office or an independent lab.
[2] Includes physician-administered drugs, ambulatory surgical center facility costs, ambulance services, parenteral and enteral drug costs, supplies, etc.
[3] Includes services paid under the lab fee schedule furnished in the outpatient department of a hospital.
[4] Includes services furnished in dialysis facilities, rural health clinics, Federally qualified health centers, rehabilitation and psychiatric hospitals, etc.

TABLE 4—DERIVATION OF MONTHLY ACTUARIAL RATE FOR DISABLED ENROLLEES FOR FINANCING PERIODS ENDING DECEMBER 31, 2009 THROUGH DECEMBER 31, 2012

| | Financing Periods | | | |
|---|---|---|---|---|
| | CY 2009 | CY 2010 | CY 2011 | CY 2012 |
| Covered services (at level recognized): | | | | |
| Physician fee schedule | 81.92 | 85.99 | 89.41 | 67.87 |
| Durable medical equipment | 16.62 | 17.03 | 16.28 | 17.57 |
| Carrier lab [1] | 6.08 | 5.93 | 4.88 | 5.25 |
| Other carrier services [2] | 25.97 | 26.15 | 26.60 | 27.94 |
| Outpatient hospital | 44.65 | 46.89 | 49.75 | 52.74 |
| Home health | 10.17 | 10.21 | 10.01 | 10.04 |
| Hospital lab [3] | 4.76 | 4.90 | 4.60 | 4.74 |
| Other intermediary services [4] | 42.27 | 42.01 | 41.18 | 41.66 |
| Managed care | 40.29 | 40.84 | 42.36 | 41.95 |
| Total services | 272.73 | 279.96 | 285.07 | 269.77 |
| Cost sharing: | | | | |
| Deductible | −5.15 | −5.92 | −6.20 | −5.37 |
| Coinsurance | −45.32 | −45.96 | −46.14 | −42.09 |
| HIT payment incentives | 0.00 | 0.00 | −0.54 | −0.68 |
| Total benefits | 222.25 | 228.07 | 232.19 | 221.63 |
| Administrative expenses | 3.44 | 3.40 | 3.88 | 3.10 |
| Incurred expenditures | 225.69 | 231.48 | 236.07 | 224.74 |
| Value of interest | −3.31 | −4.07 | −4.71 | −5.34 |
| Contingency margin for projection error and to amortize the surplus or deficit | 1.82 | 42.99 | 34.94 | −26.90 |
| Monthly actuarial rate | 224.20 | 270.40 | 266.30 | 192.50 |

[1] Includes services paid under the lab fee schedule furnished in the physician's office or an independent lab.
[2] Includes physician-administered drugs, ambulatory surgical center facility costs, ambulance services, parenteral and enteral drug costs, supplies, etc.
[3] Includes services paid under the lab fee schedule furnished in the outpatient department of a hospital.

[4] Includes services furnished in dialysis facilities, rural health clinics, federally qualified health centers, rehabilitation and psychiatric hospitals, etc.

TABLE 5—ACTUARIAL STATUS OF THE PART B ACCOUNT IN THE SMI TRUST FUND UNDER THREE SETS OF ASSUMPTIONS FOR FINANCING PERIODS THROUGH DECEMBER 31, 2012

| As of December 31, | 2010 | 2011 | 2012 |
|---|---|---|---|
| This projection: | | | |
| Actuarial status (in millions). | | | |
| Assets | 71,435 | 76,174 | 83,245 |
| Liabilities | 14,558 | 16,647 | 16,089 |
| Assets less liabilities | 56,877 | 59,527 | 67,156 |
| Ratio (in percent) [1] | 24.9 | 26.9 | 28.4 |
| Low cost projection: | | | |
| Actuarial status (in millions). | | | |
| Assets | 71,435 | 84,855 | 112,748 |
| Liabilities | 14,558 | 15,683 | 15,355 |
| Assets less liabilities | 56,877 | 69,173 | 97,393 |
| Ratio (in percent) [1] | 26.0 | 33.8 | 45.9 |
| High cost projection: | | | |
| Actuarial status (in millions). | | | |
| Assets | 71,435 | 66,857 | 61,820 |
| Liabilities | 14,558 | 17,683 | 16,925 |
| Assets less liabilities | 56,877 | 49,174 | 44,895 |
| Ratio (in percent) [1] | 23.8 | 20.5 | 17.0 |

[1] Ratio of assets less liabilities at the end of the year to the total incurred expenditures during the following year, expressed as a percent.

## III. Regulatory Impact Analysis

### *A. Statement of Need*

Section 1839 of the Act requires us to annually announce (that is by September 30th of each year) the Part B monthly actuarial rates for aged and disabled beneficiaries as well as the monthly Part B premium. We also announce the Part B annual deductible because its determination is directly linked to the aged actuarial rate.

### *B. Overall Impact*

We have examined the impacts of this notice as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999), and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any one year).

We have examined the impact of this notice as required by Executive Order 12866 (September 1993, Regulatory Planning and Review) and the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity).

The RFA requires agencies to analyze options for regulatory relief of small businesses, if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $7.0 million to $34.5 million in any 1 year. Individuals and States are not included in the definition of a small entity. This notice will not have a significant impact on a substantial number of small businesses or other small entities. Therefore, the Secretary has determined that this notice will not have a significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. We have determined that this notice will not have a significant effect on a substantial number of small entities or on the operations of a substantial number of small rural hospitals. Therefore, we are not preparing analyses for either the RFA or section 1102(b) of the Act.

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2011, that threshold is approximately $136 million. This notice has no consequential effect on State, local, or tribal governments. We believe the private sector costs of this notice fall below this threshold as well.

Executive Order 13132 establishes certain requirements that an agency must meet when it publishes a proposed rule (and subsequent final rule) that imposes substantial direct compliance costs on State and local governments,

preempts State law, or otherwise has Federalism implications. We have determined that this notice does not significantly affect the rights, roles, and responsibilities of States.

This notice announces that the monthly actuarial rates applicable for 2012 are $199.80 for enrollees age 65 and over and $192.50 for disabled enrollees under age 65. It also announces the 2011 monthly Part B premium rates to be paid by beneficiaries who file an individual tax return (including those who are single, head of household, qualifying widow(er) with a dependent child, or married filing separately who lived apart from their spouse for the entire taxable year), or a joint tax return.

| Beneficiaries who file an individual tax return with income: | Beneficiaries who file a joint tax return with income: | Income-related monthly adjustment amount | Total monthly premium amount |
|---|---|---|---|
| Less than or equal to $85,000 | Less than or equal to $170,000 | $0.00 | $99.90 |
| Greater than $85,000 and less than or equal to $107,000. | Greater than $170,000 and less than or equal to $214,000. | 40.00 | 139.90 |
| Greater than $107,000 and less than or equal to $160,000. | Greater than $214,000 and less than or equal to $320,000. | 99.90 | 199.80 |
| Greater than $160,000 and less than or equal to $214,000. | Greater than $320,000 and less than or equal to $428,000. | 159.80 | 259.70 |
| Greater than $214,000 | Greater than $428,000 | 219.80 | 319.70 |

In addition, the monthly premium rates to be paid by beneficiaries who are married and lived with their spouse at any time during the taxable year, but file a separate tax return from their spouse, are also announced and listed in the following chart.

| Beneficiaries who are married and lived with their spouse at any time during the year, but file a separate tax return from their spouse: | Income-related monthly adjustment amount | Total monthly premium amount |
|---|---|---|
| Less than or equal to $85,000 | $0.00 | $99.90 |
| Greater than $85,000 and less than or equal to $129,000 | 159.80 | 259.70 |
| Greater than $129,000 | 219.80 | 319.70 |

Approximately 2 million Part B enrollees paid the 2011 standard premium rate of $115.40 which is $15.50 higher than the 2012 standard premium rate of $99.90. These enrollees will have about $0.4 billion in reduced costs in 2012. For the approximately 30 million Part B enrollees who paid a 2011 premium of $96.40 under the hold-harmless provision, the standard Part B premium rate of $99.90 is $3.50 higher than the 2011 premium that they paid, so there will be about $1.3 billion of additional costs in 2012 to the these Part B enrollees. Therefore, this notice is a major action as defined in 5 U.S.C. 804(2) and is an economically significant action under Executive Order 12866.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

## IV. Waiver of Proposed Notice

The Medicare statute requires the publication of the monthly actuarial rates and the Part B premium amounts in September. We ordinarily use general notices, rather than notice and comment rulemaking procedures, to make such announcements. In doing so, we note that, under the Administrative Procedure Act, interpretive rules, general statements of policy, and rules of agency organization, procedure, or practice are excepted from the requirements of notice and comment rulemaking.

We considered publishing a proposed notice to provide a period for public comment. However, we may waive that procedure if we find, for good cause, that prior notice and comment are impracticable, unnecessary, or contrary to the public interest. The statute establishes the time period for which the premium rates will apply, and delaying publication of the Part B premium rate such that it would not be published before that time would be contrary to the public interest. Moreover, we find that notice and comment are unnecessary because the formulas used to calculate the Part B premiums are statutorily directed. Therefore, we find good cause to waive publication of a proposed notice and solicitation of public comments.

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: September 20, 2011.

**Donald M. Berwick,**

*Administrator, Centers for Medicare & Medicaid Services.*

Approved: October 25, 2011.

**Kathleen Sebelius,**

*Secretary, Department of Health and Human Services.*

[FR Doc. 2011–28186 Filed 10–27–11; 11:15 am]

BILLING CODE 4120–01–P

# Reader Aids

**Federal Register**

Vol. 76, No. 211

Tuesday, November 1, 2011

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## CFR PARTS AFFECTED DURING NOVEMBER

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

## LIST OF PUBLIC LAWS

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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**

United States-Korea Free Trade Agreement Implementation Act (Oct. 21, 2011; 125 Stat. 428)

**H.R. 3078/P.L. 112–42**

United States-Colombia Trade Promotion Agreement Implementation Act (Oct. 21, 2011; 125 Stat. 462)

**H.R. 3079/P.L. 112–43**

United States-Panama Trade Promotion Agreement Implementation Act (Oct. 21, 2011; 125 Stat. 497)

**H.R. 2944/P.L. 112–44**

United States Parole Commission Extension Act of 2011 (Oct. 21, 2011; 125 Stat. 532)

**Last List October 17, 2011**

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When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

| Date of FR publication | 15 days after publication | 21 days after publication | 30 days after publication | 35 days after publication | 45 days after publication | 60 days after publication | 90 days after publication |
|---|---|---|---|---|---|---|---|
| November 1 | Nov 16 | Nov 22 | Dec 1 | Dec 6 | Dec 16 | Jan 3 | Jan 30 |
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| November 7 | Nov 22 | Nov 28 | Dec 7 | Dec 12 | Dec 22 | Jan 6 | Feb 6 |
| November 8 | Nov 23 | Nov 29 | Dec 8 | Dec 13 | Dec 23 | Jan 9 | Feb 6 |
| November 9 | Nov 25 | Nov 30 | Dec 9 | Dec 14 | Dec 27 | Jan 9 | Feb 7 |
| November 10 | Nov 25 | Dec 1 | Dec 12 | Dec 15 | Dec 27 | Jan 9 | Feb 8 |
| November 14 | Nov 29 | Dec 5 | Dec 14 | Dec 19 | Dec 29 | Jan 13 | Feb 13 |
| November 15 | Nov 30 | Dec 6 | Dec 15 | Dec 20 | Dec 30 | Jan 17 | Feb 13 |
| November 16 | Dec 1 | Dec 7 | Dec 16 | Dec 21 | Jan 3 | Jan 17 | Feb 14 |
| November 17 | Dec 2 | Dec 8 | Dec 19 | Dec 22 | Jan 3 | Jan 17 | Feb 15 |
| November 18 | Dec 5 | Dec 9 | Dec 19 | Dec 23 | Jan 3 | Jan 17 | Feb 16 |
| November 21 | Dec 6 | Dec 12 | Dec 21 | Dec 27 | Jan 5 | Jan 20 | Feb 21 |
| November 22 | Dec 7 | Dec 13 | Dec 22 | Dec 27 | Jan 6 | Jan 23 | Feb 21 |
| November 23 | Dec 8 | Dec 14 | Dec 23 | Dec 28 | Jan 9 | Jan 23 | Feb 21 |
| November 25 | Dec 12 | Dec 16 | Dec 27 | Dec 30 | Jan 9 | Jan 24 | Feb 23 |
| November 28 | Dec 13 | Dec 19 | Dec 28 | Jan 3 | Jan 12 | Jan 27 | Feb 27 |
| November 29 | Dec 14 | Dec 20 | Dec 29 | Jan 3 | Jan 13 | Jan 30 | Feb 27 |
| November 30 | Dec 15 | Dec 21 | Dec 30 | Jan 4 | Jan 17 | Jan 30 | Feb 28 |