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## DEPARTMENT OF ENERGY

### 10 CFR Part 430

**[Docket Number EE–2008–BT–STD–0012]**

**RIN 1904–AB79**

### Energy Conservation Program: Energy Conservation Standards for Residential Refrigerators, Refrigerator-Freezers, and Freezers

*Correction*

In rule document 2011–22329 appearing on pages 57516 through 57612 in the issue of Thursday, September 15, 2011 make the following correction:

**§ 430.32 [Corrected]**

On page 57610, in § 430.32(a), in the first column, in the sentence preceding the second table, ''September 14, 2014'' should read ''September 15, 2014''.

[FR Doc. C1–2011–22329 Filed 11–15–11; 8:45 am]

**BILLING CODE 1505–01–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Docket No. FAA–2011–0837; Airspace Docket No. 11–ANM–17]**

### Modification of Class E Airspace; Driggs, ID

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

**ACTION:** Final rule.

**SUMMARY:** This action modifies Class E airspace at Driggs, ID to accommodate aircraft using Area Navigation (RNAV) Global Positioning System (GPS) standard instrument approach procedures at Driggs-Reed Memorial Airport. This action also updates the airport name and adjusts the geographic coordinates of the airport. This improves the safety and management of Instrument Flight Rules (IFR) operations at the airport.

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

**FOR FURTHER INFORMATION CONTACT:** Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4537.

**SUPPLEMENTARY INFORMATION:**

#### History

On September 13, 2011, the FAA published in the **Federal Register** a notice of proposed rulemaking to modify controlled airspace at Driggs, ID (76 FR 56356). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005, of FAA Order 7400.9V dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in that Order.

#### The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by modifying Class E airspace extending upward from 700 feet above the surface, at Driggs-Reed Memorial Airport, to accommodate IFR aircraft executing RNAV (GPS) standard instrument approach procedures at the airport. This also changes the airport formerly known as Teton Peaks/Driggs Municipal Airport to Driggs-Reed Memorial Airport, and adjusts the geographic coordinates of the airport to coincide with the FAA's aeronautical database. This action is necessary for the safety and management of IFR operations.

The FAA has determined this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, section 106 discusses the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes additional controlled airspace at Driggs-Reed Memorial Airport, Driggs, ID.

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

Airspace, Incorporation by reference, Navigation (air).

#### Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

### PART 71—DESIGNATION OF CLASS A, B, C, D AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E. O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011, and effective September 15, 2011 is amended as follows:

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

* * * * *

**ANM ID E5 Driggs, ID [Modified]**

Driggs-Reed Memorial Airport, ID
(Lat. 43°44′34″ N., long. 111°05′48″ W.)

That airspace extending upward from 700 feet above the surface within a 10.4-mile radius of Driggs-Reed Memorial Airport, and within 4.5 miles either side of the 344° bearing of the airport extending from the 10.4-mile radius to 14.8 miles northwest of Driggs-Reed Memorial Airport, and within 2 miles west and 5.4 miles east of the 208° bearing of the airport extending from the 10.4-mile radius to 13 miles south of Driggs-Reed Memorial Airport.

Issued in Seattle, Washington, on November 4, 2011.

**Robert Henry,**

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## DEPARTMENT OF THE TREASURY

## Alcohol and Tobacco Tax and Trade Bureau

## 27 CFR Part 9

**[Docket No. TTB–2008–0009; T.D. TTB–97; Re: Notice Nos. 90 and 91]**

**RIN 1513–AB57**

## Expansions of the Russian River Valley and Northern Sonoma Viticultural Areas

**AGENCY:** Alcohol and Tobacco Tax and Trade Bureau, Treasury.

**ACTION:** Final rule; Treasury decision.

**SUMMARY:** This Treasury decision expands the Russian River Valley viticultural area in Sonoma County, California, by 14,044 acres, and the Northern Sonoma viticultural area in Sonoma County, California, by 44,244 acres. TTB designates viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase.

**DATES:** *Effective Date:* December 16, 2011.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Berry, Alcohol and Tobacco Tax and Trade Bureau, Regulations and Rulings Division, P.O. Box 18152, Roanoke, VA 24014; *telephone* 202–4453–1039, ext. 275.

**SUPPLEMENTARY INFORMATION:**

### Background on Viticultural Areas

*TTB Authority*

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act requires that these regulations should, among other things, prohibit consumer deception and the use of misleading statements on labels, and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the regulations promulgated under the FAA Act.

Part 4 of the TTB regulations (27 CFR part 4) allows the establishment of definitive viticultural areas and the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) sets forth standards for the preparation and submission of petitions for the establishment or modification of American viticultural areas and lists the approved American viticultural areas.

*Definition*

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region having distinguishing features as described in part 9 of the regulations and a name and delineated boundary as established in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to its geographic origin. The establishment of viticultural areas allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of a viticultural area is neither an approval nor an endorsement by TTB of the wine produced in that area.

*Requirements*

Section 4.25(e)(2) of the TTB regulations outlines the procedure for proposing an American viticultural area and provides that any interested party may petition TTB to establish a grape-growing region as a viticultural area. Petitioners may use the same procedure to request changes involving existing viticultural areas. Section 9.12 of the TTB regulations prescribes standards for petitions for the establishment or modification of American viticultural areas. Such petitions must include the following:

- Evidence that the area within the viticultural area boundary is nationally or locally known by the viticultural area name specified in the petition;
- An explanation of the basis for defining the boundary of the viticultural area;
- A narrative description of the features of the viticultural area that affect viticulture, such as climate, geology, soils, physical features, and elevation, that make it distinctive and distinguish it from adjacent areas outside the viticultural area boundary;
- A copy of the appropriate United States Geological Survey (USGS) map(s) showing the location of the viticultural area, with the boundary of the viticultural area clearly drawn thereon; and
- A detailed narrative description of the viticultural area boundary based on USGS map markings.

### Publication of Notice No. 90

On August 20, 2008, TTB published Notice No. 90, a notice of proposed rulemaking, in the **Federal Register** (73 FR 49123) regarding the proposed expansion of the Russian River Valley viticultural area (27 CFR 9.66) in Sonoma County, California. TTB undertook that action in response to a petition filed by Gallo Family Vineyards, which owns a vineyard near the southern end of the proposed expansion area. As discussed below, TTB also proposed in Notice No. 90 to expand the existing Northern Sonoma viticultural area (27 CFR 9.70) to encompass all of the Russian River Valley viticultural area, including its proposed expansion area.

Specifically, the petition proposed a 14,044-acre expansion of the Russian River Valley viticultural area, which would increase the existing viticultural area's acreage by approximately 9 percent, to 169,028 acres. The petitioner explained that approximately 550 acres of the proposed expansion area were planted to grapes at the time of the petition. The petitioner's Two Rock Ranch Vineyard, with 350 acres planted to grapes, lies near the southern end of the proposed expansion area.

The Russian River Valley viticultural area is located approximately 50 miles north of San Francisco in central Sonoma County, California. The viticultural area was originally established by Treasury Decision (T.D.) ATF–159, published in the **Federal Register** (48 FR 48812) on October 21, 1983. It was expanded by 767 acres in T.D. TTB–7, published in the **Federal Register** (68 FR 67367) on December 2,

2003, and again by 30,200 acres in T.D. TTB–32, published in the **Federal Register** (70 FR 53297) on September 8, 2005. Although T.D. TTB–32 states that the viticultural area covered 126,600 acres after the 2005 expansion, the current petition provides information updating the present size of the viticultural area to a total of 154,984 acres.

The current Russian River Valley viticultural area, with the exception of its southern tip, lies within the Northern Sonoma viticultural area. The Northern Sonoma viticultural area, in turn, lies largely within the Sonoma Coast viticultural area (27 CFR 9.116). The Northern Sonoma and Sonoma Coast viticultural areas are both entirely within the North Coast viticultural area (27 CFR 9.30).

The current Russian River Valley viticultural area also entirely encompasses two smaller viticultural areas—in its northeastern corner, the Chalk Hill viticultural area (27 CFR 9.52), and in the southwest, the Green Valley of Russian River Valley viticultural area (27 CFR 9.57).

According to the petition, the proposed expansion would extend the current viticultural area boundary south and east, encompassing land just west of the cities of Rohnert Park and Cotati. The proposed expansion area lies within the Sonoma Coast and North Coast viticultural areas, but not within the Northern Sonoma viticultural area. According to the petition, the proposed expansion area lies almost entirely within the Russian River Valley watershed, is historically part of the Russian River Valley, and shares all of the significant distinguishing features of the Russian River Valley viticultural area. The evidence submitted in support of the proposed expansion is summarized below.

*Name Evidence*

The petition states that the proposed expansion area is widely recognized as part of the Russian River watershed, a key criterion cited in past rulemaking documents regarding the existing Russian River Valley viticultural area. T.D. ATF–159 states that the Russian River Valley viticultural area ''includes those areas through which flow the Russian River or some of its tributaries * * *.'' Moreover, the petition contends that before the establishment of the current viticultural area boundary, the proposed expansion area was commonly considered part of the Russian River Valley.

The petitioner included several pieces of evidence showing the expansion area's inclusion in the Russian River watershed. A submitted map shows that almost all of the proposed expansion area lies within the Russian River watershed (see ''The California Interagency Watershed Map of 1999,'' published by the California Resources Agency, updated 2004). The petition notes that the water drainage is through the Laguna de Santa Rosa waterway beginning near the east side of the proposed expansion area and flowing west and north through the current viticultural area. Thus, the waterway provides a common connection between the two areas.

The petitioner also included an informational brochure published by the Russian River Watershed Association (RRWA), an association of local governments and districts that coordinates regional programs to protect or improve the quality of the Russian River watershed. A map in the brochure shows that the watershed includes both the current viticultural area and the area covered by the proposed expansion.

The petitioner submitted a letter from the RRWA that asks the California Department of Transportation to place a sign marking the southern boundary of the Russian River watershed at a point on northbound Highway 101 near the City of Cotati in Sonoma County, California. This point is on the southeastern portion of the boundary of the proposed expansion area. The petition notes that the State installed both the requested sign as well as an additional sign at another point on the southern portion of the boundary of the proposed expansion area.

Also submitted with the petition were 2002 water assessment data published by the U.S. Environmental Protection Agency. This information includes the expansion area in its assessment of the Russian River watershed. Finally, the petitioner included a Russian River Valley area tourism map that encompasses the proposed expansion area (see ''Russian River Map,'' (*http://russianrivertravel.com/*).

Several documents relating to the agricultural and economic history of Sonoma County were also submitted by the petitioner. The petition states that these documents illustrate a shared history of grape growing in the proposed expansion area and the current viticultural area. For example, an 1893 survey compares the yields of individual grape growers in the current viticultural area with those of growers in the proposed expansion area (see ''History of the Sonoma Viticultural District,'' by Ernest P. Peninou, Nomis Press, 1998). The petition asserts that this document clearly shows that growers in the two areas grew similar grape varieties under similar growing conditions with similar yields.

A letter from Robert Theiller submitted with the petition describes the family-owned Xavier Theiller Winery. The winery, now defunct, operated in the proposed expansion area from 1904 to 1938. According to Mr. Theiller, the defunct winery crushed grapes from both the area encompassed by the current Russian River Valley viticultural area and the area covered by the proposed expansion. The letter specifically states that ''* * * people involved in grape growing and other agriculture in the area of the winery knew that [the proposed expansion area] was part of the Russian River Valley.''

The petition also includes a letter from wine historian William F. Heintz. Mr. Heintz is the author of ''Wine and Viticulture History of the Region Known as the Russian River Appellation'' (Russian River Valley Winegrowers, 1999). In his letter, Mr. Heintz writes:

> I agree with the observation in your petition that the proposed expansion area and the main part of the Russian River Valley viticultural area, which lies to the north, have historically been part of one region in terms of common climate and geographic features, settlement, and the development of agriculture and transportation. For these reasons, I have always considered the proposed expansion area and the area to the north that is in the current Russian River Valley viticultural area to belong together. In my opinion, the proposed expansion area is part of the same historical district as the existing Russian River Valley viticultural area.

*Boundary Evidence*

According to the petition, the 2005 expansion created an artificial line for what became the southeast portion of the boundary. Proceeding south down the US 101 corridor, it abruptly turns due west at Todd Road. Consequently, on a map, the Russian River Valley viticultural area appears to have had a ''bite'' taken out of its southeastern corner, despite the fact that it and the proposed expansion area share common features of climate, soil, and watershed.

The proposed expansion would change the southeastern portion of the boundary of the current Russian River Valley viticultural area. At a point where the current southern portion of the boundary now ends and the boundary line abruptly turns north, the proposed new boundary line would generally continue to follow the defining ridge on the southern flank of the Russian River watershed. It would turn north at US 101, eventually meeting the southeast corner of the existing boundary, adding an area

almost entirely within the Russian River watershed.

*Distinguishing Features*

Climate

Past rulemakings regarding the Russian River Valley viticultural area have stated that coastal fog greatly affects the area's climate. T.D. TTB–32 at 70 FR 53298 states, for example, that ''Fog is the single most unifying and significant feature of the previously established Russian River Valley viticultural area.'' The petition states that the proposed expansion area lies directly in the path of the fog that moves from the ocean into southern and central Sonoma County; thus, the same fog influences both the proposed expansion area and the current viticultural area. Consequently, there is no ''fog line'' dividing the current viticultural area and the proposed expansion area, according to the petition.

The petitioner provided a report showing the effect of the fog on the climate of the current viticultural area and the proposed expansion area (see ''Sonoma County Climatic Zones,'' Paul Vossen, University of California Cooperative Extension Service, Sonoma County, 1986 (*http://cesonoma.ucdavis.edu/*)). The report describes the fog as passing through the Petaluma Gap and into the expansion area, as follows:

> The major climatic influence in Sonoma County is determined by the marine (ocean) air flow and the effect of the geography diverting that air flow. During an average summer there are many days when fog maintains a band of cold air all around the coastline and cool breezes blow a fog bank in through the Petaluma Gap northward toward Santa Rosa and northwestward toward Sebastopol. This fog bank is accompanied by a rapid decrease in temperature which can be as much as 50 ° F.

Additionally, the petitioner provided an online article delineating the presence of fog in the proposed expansion area (''Fog Noir,'' by Rod Smith, September/October 2005 at *http://www.privateclubs.com/Archives/2005-sept-oct/wine_fog-noir.htm*). The article describes satellite images of fog moving through the Russian River Valley, as follows:

> Until recently everyone assumed that the Russian River itself drew the fog inland and distributed it over the terrain west of Santa Rosa. Supplemental fog, it was thought, also came in from the southwest over the marshy lowlands along the coast between Point Reyes and Bodega Bay—the so-called Petaluma Wind Gap.
>
> In fact, it now appears to be the other way around. A new generation of satellite photography, sensitive enough to pick up translucent layers of moist air near the ground, shows for the first time the movement of the fog throughout the Russian River Valley region.
>
> * * * * *
>
> In Bobbitt's snapshot, the fog pours, literally pours, through the Petaluma Gap. The ocean dumps it ashore and the inland heat sink reels it in * * *.

According to the petition, the proposed expansion area also has the same ''coastal cool'' climate as the current Russian River Valley viticultural area. T.D. ATF–159, T.D. TTB–7, and T.D. TTB–32 refer to the Winkler degree-day system, which classifies climatic regions for grape growing. In the Winkler system, heat accumulation is measured during the typical grape-growing season from April to October. One degree day accumulates for each degree Fahrenheit that a day's mean temperature is above 50 degrees, the minimum temperature required for grapevine growth (see ''General Viticulture,'' Albert J. Winkler, University of California Press, 1974). As noted in T.D. ATF–159, the Russian River Valley viticultural area is termed ''coastal cool'' and has an annual range from 2,000 to 2,800 degree days.

The petition concedes that the ''Sonoma County Climate Zones'' report cited above would place most of the proposed expansion area and part of the 2005 expansion area within the ''marine'' zone, instead of the warmer coastal cool zone. However, the petition argues that, at the time of the 2005 expansion, TTB recognized that more current information had superseded the information in the 1986 report. Further, it is asserted in the petition that the climate information included in the exhibits shows that the proposed expansion area actually has a coastal cool climate.

Using the Winkler system, the petitioner provided a table that includes a complete degree day data set for the April through October growing season at seven vineyards, including the petitioner's Two Rock Ranch Vineyard, which is located in the southern part of the proposed expansion area, and the petitioner's Laguna Ranch and MacMurray Ranch Vineyards, both of which are located in the Russian River Valley viticultural area as established in 1983. For the petitioner's vineyards, the data are an average of the degree days for the three year period of 1996–1998; for vineyards that were added to the Russian River Valley viticultural area as part of the 2005 expansion, the data are the same 2001 data used by TTB in establishing the 2005 expansion in T.D. TTB–32. The table is reproduced below.

| Vineyard | Annual degree days | Location |
|---|---|---|
| Osley West | 2,084 | 2005 expansion. |
| Two Rock Ranch | 2,227 | Proposed expansion. |
| Bloomfield | 2,332 | 2005 expansion. |
| Laguna Ranch | 2,403 | 1983 establishment. |
| Osley East | 2,567 | 2005 expansion. |
| MacMurray Ranch | 2,601 | 1983 establishment. |
| Le Carrefour | 2,636 | 2005 expansion. |

The petition states that the table shows that all seven vineyards, including the Two Rock Ranch in the proposed expansion area, fall within the coastal cool climate range of 2,000 to 2,800 annual degree days, and notes the consistency of the degree day data for the vineyards located within the 1983 establishment of the viticultural area, the 2005 expansion, and the current proposed expansion area. The petition concludes that this degree day data show that the proposed expansion area has the same climate as the current Russian River Valley viticultural area. Further, the petitioner provided a raster map showing that annual average degree days in the proposed expansion area are within the same range as that of much of the existing viticultural area (see ''Growing Degree Days'' for Sonoma County (1951–80 average), published by the Spatial Climate Analysis Service, Oregon State University at *http://www.ocs.oregonstate.edu/index.html*).

The petition also notes that 940 was the annual average number of hours between 70 and 90 degrees Fahrenheit at the Two Rock Ranch Vineyard during the April through October growing season from 1996–1998. Based on the

''Sonoma County Climatic Zones'' map, this average lies within the 800- to 1100-hour range that characterizes the coastal cool zone. The marine zone has fewer than 800 hours between 70 and 90 degrees Fahrenheit during the growing season.

The petition includes a report, written at the request of the petitioner, which includes a detailed analysis of the climate of the proposed expansion area. The petitioner requested expert commentary on the proposed expansion area, and the petition states that the report's author, Patrick L. Shabram, geographic consultant, has extensive experience in Sonoma County viticulture.

In the report, Mr. Shabram disputes the idea that the proposed expansion area is in a marine climate zone and cites three main factors in support of his position. First, successful viticulture would not be possible in a true marine zone because of insufficient solar radiation. Second, the proposed expansion area is well inland as compared to the rest of the marine zone; climatic conditions in the proposed expansion area would not be characteristic of a marine zone. Finally, Mr. Shabram states that the petitioner's climate data (summarized above) ''* * * clearly demonstrates that the area should be classified as 'Coastal Cool,' rather than the Marine climate type.''

Mr. Shabram provided the petitioner with a map that depicts all the proposed expansion area as belonging to the coastal cool zone (see ''Revised Sonoma County Climatic Zones of the Russian River Valley Area,'' by Patrick L. Shabram, 2007, based on ''Sonoma County Climatic Zones'' and ''Revised Coastal Cool/Marine Climate Zones Boundary,'' by Patrick L. Shabram).

Topography and Elevation

According to the petition, the southernmost portion of the proposed expansion area is on the ''Merced Hills'' of the Wilson Grove formation. These are gently rolling hills predominantly on 5 to 30 percent slopes. The current Russian River Valley viticultural area does not encompass these hills; the proposed expansion area includes a portion of them.

The northern portion of the proposed expansion area comprises the essentially flat Santa Rosa Plain. The plain is consistent with the portion of the current Russian River Valley viticultural area that wraps around both the west and north sides of the proposed expansion area. Elevations in the proposed expansion area range from 715 feet to 75 feet above sea level, which are similar to elevations in adjoining areas of the current Russian River Valley viticultural area.

Soils and Geology

The petition discusses the similarities between the soils of the proposed expansion area and those of the current viticultural area based on a soil association map (see ''Soil Survey of Sonoma County, California,'' online, issued by the U.S. Department of Agriculture, Natural Resources Conservation Service, (*http://websoilsurvey.nrcs.usda.gov/app/*). The soils on the Merced Hills included in the proposed expansion area formed mainly in sandstone rocks of the underlying Wilson Grove formation. This formation, which formed 3 to 5 million years ago under a shallow sea, is characterized by low lying, rolling hills beginning just south of the Russian River near Forestville, arching southeast through Sebastopol, and ending at Penngrove. According to the petition, the soils underlain by this formation are well suited to growing grapes in vineyards.

The petition includes the following quotation discussing the suitability of the soils to growing grapes in the proposed expansion area:

> The sandy loam soils of the apple-growing region of Gold Ridge-Sebastopol form as a direct result of breakdown of Wilson Grove rock. The low ridge running from Forestville to Sebastopol and south to Cotati is the classic terroir of this association, now being recognized as prime land and climate for Pinot Noir and Chardonnay. (''Diverse Geology/Soils Impact Wine Quality,'' by Terry Wright, Professor of Geology, Sonoma State University, ''Practical Winery & Vineyard,'' September/October 2001, Vol. XXIII, No. 2.)

The petition notes that the Wilson Grove formation underlies the current Russian River Valley viticultural area, but the current southeastern portion of its border cuts north to south through the formation, midway between Sebastopol and Cotati. However, the soil associations on either side of this southeastern portion of the current Russian River Valley viticultural area are identical. The Goldridge-Cotati-Sebastopol soil association is nearly continuous throughout the formation. The petition states that areas of Sebastopol sandy loam are in the Laguna Ranch Vineyard just north of the town of Sebastopol (in the current viticultural area) and also in the Two Rock Ranch Vineyard in the proposed expansion area, just west of the town of Cotati.

The petition states that the Clear Lake-Reyes association is in the portion of the proposed expansion area north of the Merced Hills. The soils in this association are poorly drained, nearly level to gently sloping clays, and clay loams in basins. This soils association is in the southeast portion of the Santa Rosa plain and also in pockets further north, almost directly west of the city of Santa Rosa. The Huichica-Wright-Zamora association is further north in the proposed expansion area. The soils of this association are somewhat poorly drained to well drained, nearly level to strongly sloping loams to silty loams on low bench terraces and alluvial fans. These soils are common in the middle and northern portions of the Santa Rosa plain, and are predominant in the eastern portion of the current Russian River Valley viticultural area, including the city of Santa Rosa, and in the proposed expansion area.

The petition notes that the ''Soil Survey of Sonoma County, California'' soil association map cited above shows that the current viticultural area boundary arbitrarily cuts directly through four major soil associations: Goldridge-Cotati-Sebastopol, Clear Lake-Reyes, Steinbeck-Los Osos, and Huichica-Wright-Zamora. The soils and the geology in the proposed expansion area are nearly identical to those in the adjacent areas of the current Russian River Valley viticultural area.

TTB noted in Notice No. 90 that T.D. ATF–159, which established the Russian River Valley viticultural area, does not identify any predominant soils or indicate any unique soils of the viticultural area.

Grape Brix Comparison

The petition compares Brix for grapes grown in both the current viticultural area and the proposed expansion area. Brix is the quantity of dissolved solids in grape juice, expressed as grams of sucrose in 100 grams of solution at 60 degrees Fahrenheit (see 27 CFR 24.10). Citing a brochure published by the Russian River Winegrowers Association, the petition notes that Pinot Noir and Chardonnay are the two most prominent grape varieties grown in the current Russian River Valley viticultural area. The successful cultivation of the Pinot Noir grape, in particular, has been considered a hallmark of the Russian River Valley viticultural area, and the Pinot Gris grape variety recently has been growing in popularity.

Data submitted with the petition show the 4-year average Brix comparisons for the period 2003–6 for the Pinot Noir, Chardonnay, and Pinot Gris varieties among three vineyards in the current Russian River Valley viticultural area and in the Two Rock Ranch Vineyard

within the proposed expansion area (see the table below). The petition asserts that the Brix levels for each variety at all four of the vineyards are very similar, reflecting similar growing conditions for the grapes.

2003–6 AVERAGE BRIX FOR SOME WINEGRAPES GROWN ON RANCHES IN THE CURRENT VITICULTURAL AREA AND THE PROPOSED VITICULTURAL AREA

| Ranch | Average Brix | | |
|---|---|---|---|
| | Pinot Noir | Chardonnay | Pinot Gris |
| Laguna North | 25.04 | 23.79 | ..... |
| Del Rio | 26.69 | 23.24 | 24.68 |
| MacMurray | 25.77 | ..... | 24.71 |
| Two Rock* | 25.80 | 23.55 | 24.14 |

* Located in the proposed expansion area.

In addition to the petition evidence summarized above, the petition included six letters of support from area grape growers and winery owners. The supporters generally assert that the proposed expansion area has the same grape growing conditions as the current Russian River Valley viticultural area. The petition also included a ''Petition of Support: Russian River Valley AVA Expansion'' with 208 signatures.

**Opposition to the Proposed Expansion**

Prior to and during review of the petition for the expansion, TTB received by mail, facsimile transmission, and email more than 50 pieces of correspondence opposing the proposed expansion. The correspondence generally asserts that the proposed expansion area falls outside the coastal fog line and thus has a different climate than that of the current viticultural area. The opponents of the proposed expansion are mostly vineyard or winery owners from the existing Russian River Valley viticultural area. Several of the opponents state that even though grapes grown in the proposed expansion area ''may eventually be brought to similar Brix, pH and total acidity maturity, the bloom and harvest dates are much later than in the Russian River Valley.'' TTB, when discussing this opposing correspondence in Notice No. 90, also noted that the assertions in the correspondence were not accompanied by any specific data that contradicted the petitioner's submitted evidence. In the *Comments Invited* portion of Notice No. 90, TTB specifically indicated that comments in response to the Notice should be supported with specific data or other appropriate information.

**Expansion of the Northern Sonoma Viticultural Area**

In Notice No. 90, TTB noted that prior to the 2005 expansion, all of the Russian River Valley viticultural area had been within the Northern Sonoma viticultural area. TTB further noted, however, that portions of the current boundaries of the Russian River Valley viticultural area and of the Green Valley of Russian River Valley viticultural area (which lies entirely within the Russian River Valley area) currently extend beyond the south and southeast portions of the Northern Sonoma viticultural area boundary line. The proposed new 14,044-acre expansion of the Russian River Valley viticultural area similarly is outside the boundary line of the Northern Sonoma viticultural area.

So that all of the Russian River Valley viticultural area would again fall within the Northern Sonoma viticultural area, as was the case prior to the 2005 expansion, TTB also proposed in Notice No. 90 a southern and southeastern expansion of the Northern Sonoma viticultural area boundary line to encompass all of the Russian River Valley viticultural area, including the currently proposed expansion of the Russian River Valley viticultural area. As a result, the Northern Sonoma viticultural area would increase in size by 44,244 acres to 394,088 acres, or by 9 percent. The following information was provided in support of this proposed expansion.

*Name and Boundary Evidence*

The Northern Sonoma viticultural area was established on May 17, 1985, by T.D. ATF–204 (50 FR 20560), which stated at 50 FR 20561:

> * * * Six approved viticultural areas are located entirely within the Northern Sonoma viticultural area as follows: Chalk Hill, Alexander Valley, Sonoma County Green Valley [subsequently renamed Green Valley of Russian River Valley], Dry Creek Valley, Russian River Valley, and Knights Valley.
>
> The Sonoma County Green Valley and Chalk Hill areas are each entirely within the Russian River Valley area. The boundaries of the Alexander Valley, Dry Creek Valley, Russian River Valley, and Knights Valley areas all fit perfectly together dividing northern Sonoma County into four large areas. The Northern Sonoma area uses all of the outer boundaries of these four areas with the exception of an area southwest of the Dry Creek Valley area and west of the Russian River Valley area * * *

The originally established Northern Sonoma viticultural area was expanded by T.D. ATF–233, published in the **Federal Register** (51 FR 30352) on August 26, 1986 and, again, by T.D. ATF–300, published in the **Federal Register** (55 FR 32400) on August 9, 1990.

The current southern portion of the boundary line of the Northern Sonoma viticultural area, west to east, follows California State Highway 12 from its intersection with Bohemian Highway, through the town of Sebastopol, to its intersection with Fulton Road. Although T.D. ATF–204 does not explain the basis for the choice of California State Highway 12 as the southern portion of the Northern Sonoma boundary line, TTB notes that at that time, California State Highway 12 also formed the southern portion of the boundary line of the Russian River Valley viticultural area.

T.D. ATF–204 included information regarding the geographical meaning of ''Northern Sonoma'' as distinct from the rest of Sonoma County. Although a Web search conducted by TTB failed to disclose conclusive information regarding current non-viticultural usage of ''Northern Sonoma'' as a geographical term, a Web search for ''Southern Sonoma County'' did disclose specific geographical data. The Southern Sonoma County Resource Conservation District (SCC–RCD) Web site has Sonoma County maps and describes the district as including the ''southern slopes of Mecham Hill'' (alternative spelling of ''Meacham,'' as on the USGS map), in the northern portion of the Petaluma River watershed in southern Sonoma County. Meacham Hill, according to the USGS Cotati map, lies 1.25 miles southeast of the area included in the expansion of the Northern Sonoma viticultural area proposed in Notice No. 90. Further, the SCC–RCD maps show that the southern

Sonoma County watershed excludes the Gold Ridge District, which comprises much of the Russian River watershed, including the Russian River Valley viticultural area and the area proposed in Notice No. 90 to be added to it.

Sonoma County Relocation, a real estate service, defines southern Sonoma County as extending south from the town of Penngrove. According to the USGS Cotati map, Penngrove lies 2.4 miles east-southeast of the proposed expansion of the Northern Sonoma viticultural area boundary line. The City of Petaluma, the southernmost large population center in Sonoma County, lies 6 miles southeast of the proposed expansion of the Northern Sonoma viticultural area.

Based on the above, TTB stated in Notice No. 90 that it is reasonable to conclude that the name ''Northern Sonoma,'' as distinct from southern Sonoma County, includes all of the Russian River Valley viticultural area, including the proposed expansion of that area that was the subject of Notice No. 90.

Comments on the proposed expansions were originally due on or before October 20, 2008. However, on October 29, 2008, in response to a request filed on behalf of the Russian River Valley Boundary Integrity Coalition, a group of area vineyards and wineries, TTB reopened the comment period for Notice No. 90, with comments due on or before December 19, 2008 (see Notice No. 91 published in the **Federal Register** at 73 FR 64286 on October 29, 2008).

**Comments Received in Response to Notice No. 90**

TTB received 171 comments in response to Notice No. 90. Of those, 26 comments support the proposal to expand the Russian River Valley and Northern Sonoma viticultural areas, while 133 are in opposition. The 12 remaining comments include one request to extend the comment period, one request for a public hearing, three comments from the petitioner's consultants defending their analyses and credentials, various copies of media reports about the proposed rulemaking, and other comments requesting actions beyond the scope of this rulemaking.

The origins of comments are as follows: 109 comments are from grape growers and/or wineries; 26 have no identified affiliation; 13 are from self-described consumers; 8 are from the petitioner or its two consultants; 7 are from grape grower associations (Russian River Valley Winegrowers, Russian River Valley Boundary Integrity Coalition, Allied Grape Growers, and Petaluma Gap Winegrowers Alliance); and 5 are from other wine professionals (writers, retailers, and educators).

*Supporting Comments*

The 26 comments supporting the regulatory action proposed in Notice No. 90 are from: 20 area grape growers; the petitioner and its two consultants; Constellation Brands, Inc.; and Allied Grape Growers, a California wine grape marketing cooperative. Most of these commenters state that they support the proposal and that they believe that the petitioner's evidence demonstrates that the proposed expansion area should be considered part of the Russian River Valley AVA. In response to comments from opponents, the petitioner and its consultants submitted additional arguments and evidence to support the proposal; these are discussed below where appropriate.

*Opposing Comments*

Comments opposing the regulatory action proposed in Notice No. 90 are from: 78 area grape growers and wineries; all 13 of the self-identified consumers; the membership of the Russian River Valley Winegrowers Association (the Association's board voted to take a neutral position on the expansion issue); the Russian River Valley Boundary Integrity Coalition (RRVBIC), which also requested a public hearing; and wine professionals. The most common reasons provided for opposing the proposed expansion of the Russian River Valley viticultural area are that the proposed expansion area is not known to be part of the Russian River Valley and that the proposed expansion area has a different climate from that of the existing Russian River Valley viticultural area. The vast majority of opposing comments address only the petitioned-for expansion of the Russian River Valley; only a few comments specifically address the proposed expansion of the Northern Sonoma viticultural area. Unless otherwise noted, the opposing comments discussed below address only the petitioned-for Russian River Valley expansion.

**Discussion of Comments**

*Name Evidence*

Many opposing commenters state that they do not believe that the proposed expansion area is considered part of the Russian River Valley, and two opposing commenters also state that the proposed expansion area is not part of northern Sonoma. Most of these commenters refer to the proposed expansion area as the Cotati or Rohnert Park areas, for two cities adjacent to the area, or as the Petaluma Gap, as discussed in more detail below.

Seven commenters state that the proposed expansion area is considered part of southern Sonoma County; the Russian River Valley viticultural area, in contrast, is considered part of northern Sonoma County and is mostly encompassed by the Northern Sonoma viticultural area. Hector Bedolla of the RRVBIC, in his comment (numbered by TTB as comment 7), states that it is ''ridiculous'' to add an area ten miles from the Marin County line (Marin County is south of Sonoma County) to the Northern Sonoma viticultural area. Another commenter, Barry C. Lawrence (comment 118), submitted four quotes from Web sites and area businesses describing Cotati, Rohnert Park, and Petaluma as part of southern Sonoma County. Mr. Lawrence also reports polling four Cotati and Rohnert Park city and school officials to ask whether their area is in the Russian River Valley or in southern Sonoma County; according to Mr. Lawrence, the officials all responded ''no'' and ''yes,'' respectively. A few commenters note that the petitioner's vineyard in the proposed expansion area, Two Rock Ranch, is named for the town of Two Rock, which is located southwest of the proposed area; the commenters argue that this name shows that the area is oriented to the Petaluma Gap region to the southwest, rather than to the Russian River Valley to the north.

A few commenters submitted historical references as evidence that the proposed expansion area has not historically been associated with the Russian River Valley. One of these, Maurice Nugent of Nugent Vineyards Inc. (comment 12), cited ''History of Sonoma County, California, 1850'' as stating, ''The lower end of this vast [Sonoma County] plain is Petaluma, the central portion is Santa Rosa, and the northern section, the Russian River Valleys.'' Mr. Nugent notes that the proposed expansion area is south of the current city of Santa Rosa.

Dr. William K. Crowley, a Professor Emeritus of Geography at Sonoma State University in Rohnert Park, submitted a forty-one page analysis of the petition on behalf of the RRVBIC. This analysis (comment 120) included several maps and documents as name evidence. Many of these documents show that, in the nineteenth century, the proposed expansion area was part of Petaluma Township, an area considered part of southern Sonoma County. The Russian River Township, Dr. Crowley notes, was much further to the north. Dr. Crowley also provided more recent evidence in

the form of two USGS maps published in 1958 and 1970 that label the proposed expansion area as the Cotati Valley, as well as a map of Sonoma County winegrowing areas from a 1977 article that he wrote for ''The California Geographer,'' which shows a Russian River Valley that does not include the proposed expansion area.

Several commenters state that they found the petitioner's name evidence to be insufficient. Other than evidence regarding the Russian River watershed (discussed in more detail below), the petitioner's name evidence consisted only of a tourism map of the Russian River Valley, two letters from individuals (one a local wine historian) stating their views that the proposed expansion area has historically been associated with the Russian River Valley, and several documents regarding the agricultural and economic history of Sonoma County that the petitioner contends show the expansion area and the AVA share a similar agricultural and economic history.

A few opposing commenters note that the petitioner's tourism map, taken from the Web site Russian River Travel.com (*http://www.russianrivertravel.com/*), shows nearly all of Sonoma County and portions of neighboring counties, so the map is therefore too general to be used as evidence of what is part of the Russian River Valley. One of these commenters, Dr. Crowley, also argues that other pages within the travel Web site support the view that the proposed expansion area is not considered part of the Russian River Valley. For example, the Web site's home page lists cities within the Russian River Valley that tourists might visit. He states that, although the list is extensive, ''it does not include either Cotati or Rohnert Park, the towns partially within the petitioned area, and both part of the Russian River watershed, because obviously the petitioned area is not seen as part of the Russian River Valley.''

Several opposing commenters state that the proposed expansion area does not share a similar agricultural history with the Russian River Valley. According to these commenters, the proposed expansion area has been known in recent decades for its poultry and dairy farms, while the Russian River Valley has historically been a fruit growing area. Before grapes were the dominant crop, these commenters note, the Russian River Valley was known for apple orchards. Commenters state that these differences are due to climatic differences between the two areas. Maurice Nugent, citing data from the 1893 phylloxera survey, states that the petitioned-for expansion area had far fewer vineyards at that time than the current viticultural area to the north.

The Petaluma Gap

Fifty-two commenters argue that the petitioned-for expansion area is part of a region known as the Petaluma Gap rather than the Russian River Valley. The Petaluma Gap Winegrowers Alliance (comment 44), an association of growers and wineries formed in 2006, submitted a comment describing the Petaluma Gap as a distinct winegrowing area within the Sonoma Coast viticultural area. The Alliance submitted a map entitled ''Sonoma Coast (Southern Section) American Viticultural Area with the Petaluma Gap,'' on which an area of southern Sonoma County and Northern Marin County is prominently labeled the ''Petaluma Gap.'' TTB observes that a portion of the petitioned-for expansion area and a portion of the current Russian River Valley viticultural area are located within the boundary line for the Petaluma Gap on the map. Two other commenters, Dr. Crowley and Dow Vineyards (comment 97), also submitted copies of this map to demonstrate that the proposed expansion area is part of the Petaluma Gap rather than Russian River Valley.

Four commenters in favor of the proposal dispute the contention that the petitioned-for expansion area is known as the Petaluma Gap. One of these, Patrick Shabram (comment 17), states that the Petaluma Gap is ''an area of relatively lower hills in the Sonoma and Marin coastal highlands.'' He further states that ''the term 'Petaluma Gap' is sometimes popularly used to refer to the area southwest of the proposed expansion and northwest of the city of Petaluma.'' In addition, two of these commenters (the petitioner, comment 67, and Cameron Sustainable Ag, LLC, comment 62) state that the Petaluma Gap map was recently developed by an opponent of the proposed expansion in an effort to discredit the expansion. These commenters also state that a portion of the current viticultural area is included within the map's boundaries for the Petaluma Gap, so the commenters contend that the map should not be considered valid evidence.

Russian River Watershed

Eleven comments opposing the petitioned-for expansion note that a portion of the proposed expansion area (that is, part of Two Rock Ranch) is not within the Russian River watershed. TTB notes that the petition acknowledges this fact, but the petition also states that this portion is very small (2 percent of the proposed expansion area) and that a similar portion (1.43 percent) of the current Russian River Valley viticultural area is also not within the Russian River watershed.

Thirteen commenters acknowledge that the proposed expansion area is (mostly) within the watershed, but these commenters note that the watershed is much larger than the current Russian River viticultural area and extends several miles north into Mendocino County. One commenter (Siebert Vineyard, comment 36) states that 99.7 percent of the Russian River watershed is not in the Russian River Valley viticultural area. These commenters also point out that the watershed encompasses all or part of several other viticultural areas (for example, Alexander Valley, Dry Creek Valley, Mendocino, and Redwood Valley), which are acknowledged to have different growing conditions than the Russian River Valley viticultural area. Thus, they argue, merely being in the Russian River watershed is not reason enough to be included in the Russian River Valley viticultural area.

*Geographical Features*

Climate

A large number of opposing commenters assert that the petitioned-for expansion area has a different climate than the existing Russian River Valley viticultural area. Most of these commenters state that the proposed expansion area is cooler and windier, and lacks the Russian River Valley viticultural area's characteristic ''coastal fog.'' Comments regarding fog and wind are discussed in greater detail later in this comment discussion.

Five opposing commenters make specific criticisms of the petitioner's data regarding degree days. To recap the petition data, using the Winkler system, the petitioner submitted a complete degree day data set for the years 1996–1998 for three of its vineyards: Laguna Ranch and MacMurray Ranch, both located within the Russian River Valley viticultural area as established in 1983, and Two Rock Ranch, located within the proposed expansion area. The annual degree day averages for the three-year period were then compared to the 2001 degree day data for four other Russian River Valley vineyards, which were published in the 2005 rulemaking document that expanded the viticultural area.

The opposing commenters note that the degree day data covers only a three-year period from a decade ago, and assert that the data provide an insufficient basis for stating that the

expansion area has the same climate as the Russian River Valley viticultural area. The commenters also note that data were submitted for only one location in the proposed expansion area. Frank R. Bailey, III, of Bailey Vineyards (comment 88), states: ''One data point in the expansion area is not sufficient to prove anything about climate in the 14,000 acre area, much less overturn climate reports that were prepared with 30 years of data * * *. Furthermore, the petition shows that this one data point only uses a selective 3 year period of time. This one location did not even include scientifically randomized or long term information * * *. This selective use of data is not credible.'' Paul Ahvenainen of F. Korbel & Bros., Inc. (comment 68) similarly states: ''The petitioner wishes to add approximately 14,000 acres of land to the RRV using only one data point in the expansion area. That data point is in the extreme southeast corner of the expansion area. * * * Three years is not enough data to accurately portray a climate accurately. I would have expected the petitioner to supply data from the following ten years.'' Dr. William K. Crowley further states: ''It is also reasonable to ask why the selected years were used for presentation. The petition was filed in 2008, but the latest data cited are from 1998. What do the data for the years since 1998 look like? Three years of data from one site are not sufficient evidence for moving a viticultural area boundary.''

Mr. Ahvenainen and Dr. Crowley also note that the petitioner's data show that Two Rock Ranch accumulated only 1,925 degree days in 1998. According to the Winkler system, 1,925 degree days would place the site in the cooler ''marine'' zone instead of the ''coastal cool'' zone which characterizes the Russian River Valley viticultural area. [TTB notes that the degree day data for each of the three years contained in the 1996–1998 degree day averages for the petitioner's vineyards are contained in Exhibit 21 to the petition; Exhibit 21 also shows that the degree days for Two Rock Ranch in 1996 and 1997 were 2,219 and 2,537, respectively; these data were not included in Notice No. 90.]

As described above, the petition also included a detailed analysis of the proposed expansion area's climate that was prepared by Patrick Shabram, a geographic consultant who claims extensive experience in Sonoma County viticulture. In this analysis, Mr. Shabram states that the petitioner's climate data, which showed an average of 940 degree days of temperatures between 70 and 90 degrees Fahrenheit during the growing season from 1996–1998 for Two Rock Ranch vineyard (within the proposed expansion area), demonstrate that the area should be classified as ''coastal cool'' rather than as a ''marine'' climate type. Mr. Shabram also provided the petitioner with a climate zone map that he drafted in which all of the proposed expansion area is depicted as belonging to the coastal cool zone. This map is a revision of an earlier climate map entitled ''Sonoma County Climatic Zones'' (Paul Vossen, University of California Cooperative Extension Service, Sonoma County, 1986). The earlier map, which was included in the petition and also submitted by a few opposing commenters, clearly depicts the proposed expansion area as having a marine climate and the Russian River Valley viticultural area as having a coastal cool climate.

Eight commenters disagree with Mr. Shabram's conclusions regarding the proposed expansion area's climate. In particular, these commenters disagree with Mr. Shabram's revisions to the ''Sonoma County Climatic Zones'' map based on the petitioner's data. The earlier map, they state, was developed by Paul Vossen and R.L. Sisson after analyzing thirty years of Sonoma County climate data, so the earlier map is more credible than Mr. Shabram's analysis, which is based on only three years of data from one location. Two of these commenters (Mr. Ahvenainen and Dr. Crowley) further state that Mr. Shabram contradicts earlier statements that Mr. Shabram made in his 1998 master's thesis about climate. Dr. Crowley quotes Mr. Shabram as stating in this thesis that a researcher's climate work was ''somewhat suspect because [it] use[s] data that were taken over only a ten year period.'' The petitioner and Mr. Shabram submitted rebuttal comments (comments 17, 18, and 67) defending Mr. Shabram's analysis, arguing that newer data collected with more modern methods should supersede the older climate map. The petitioner and Mr. Shabram also point out that a vineyard currently in the Russian River Valley viticultural area is similarly located within the older map's marine climate zone.

Fog

T.D. ATF–159, which established the Russian River Valley viticultural area, states that the viticultural area includes those areas ''where there is significant climate effect from coastal fogs.'' The petition argues that the same fog that affects the existing viticultural area also affects the proposed expansion area.

On the other hand, however, some commenters argue that the proposed expansion area has more fog, or fog of a different quality, than the fog that affects the existing Russian River Valley viticultural area. Most of these commenters state that the proposed expansion area has marine fog, rather than the coastal fog that affects the existing viticultural area. According to these commenters, marine fog is much heavier and colder than coastal fog, thus creating a different climate. One commenter, Siebert Vineyards, argues that ''the defining characteristic of the Russian River Valley AVA is not the presence of the fog itself, but the balance between the [warmer] inland valley climate and the fog.'' Another commenter, Dr. Crowley, states that fog intrusions characterize all of western Sonoma County as well as counties to the north and south, so fog alone is not a sufficient reason to include an area in the Russian River Valley viticultural area.

Wind

Twenty-five commenters state that the petitioned-for expansion area is much windier than the existing Russian River Valley viticultural area. One comment, from Nunes Vineyard (comment 53), includes links to technical articles about how wind affects grapevines. This commenter argues that the wind in the proposed expansion area causes grapes from that area to develop different color, flavor, and aroma compounds than those from the existing viticultural area, resulting in wines with different characteristics. Some of these commenters note that wind breaks consisting of eucalyptus trees are planted throughout the proposed expansion area, but not in the existing Russian River Valley viticultural area. Four commenters note that there are high wind warning signs in the proposed area, located on Highway 101 about ¼ mile north of Two Rock Ranch. Mr. Ahvenainen, who submitted a photo of one of these signs, states that they are the only such signs in Sonoma County. Another commenter notes that a winery in the expansion area is named Windy Hill Vineyard & Winery.

The petitioner responds that opponents submitted no hard evidence regarding wind, and that wind breaks and vineyard names are inadequate evidence to demonstrate the existence and effect of wind in the proposed expansion area. The petitioner's response further notes that a Windy Hill Ranch is located in the current Russian River Valley viticultural area. The petitioner also included with its comment wind speed data collected from several sites within the current viticultural area and the proposed

expansion area. Some of the data is from California Irrigation Management Information System (CIMIS) weather stations, while the remaining data are ''from weather stations positioned on vineyards.'' The petitioner notes that the CIMIS data show that the Petaluma station (ostensibly in the Petaluma Gap, but not in the petitioned-for expansion area) recorded winds no stronger than winds in the existing viticultural area. The data also show that wind speeds from Two Rock Ranch (not a CIMIS station) are no stronger than those within the existing viticultural area. In response, five commenters argue that the petitioner's self-collected wind data are not reliable. These commenters state that the placement of the measuring device in a sheltered site, such as on the lee side of a windy hill or close to the ground, could produce readings that are not typical of the area.

Vegetation

Several commenters state that the petitioned-for expansion area is nearly treeless and has little vegetation compared to the existing Russian River Valley viticultural area, which they describe as rich in redwoods and oaks. Three of these commenters submitted photographs showing the contrasting vegetation of the two areas. In this regard, Bailey Vineyards states: ''One hallmark feature of the Russian River Valley area is the ubiquitous redwood forest in the background of every vineyard or vista of the Russian River Valley * * * they are long standing evidence of the qualities of fog drip, humidity, soil type and hydration of the soil. The proposed expansion area is not in the vicinity of redwood trees * * *.''

In response to these comments, the petitioner submitted a map entitled ''Russian River Watershed Vegetation'' issued by the California Department of Fish & Game, which the petitioner argues shows that both the existing viticultural area and the petitioned-for expansion area share similar natural vegetation. The petitioner also states that its Sonoma County personnel have observed no differences in vegetation between the two areas.

Harvest Dates

Several opposing commenters state that they have observed the petitioner picking its grapes at Two Rock Ranch later in the season than growers in the Russian River Valley viticultural area. This, they state, is an indication of the proposed expansion area's climate. In response, the petitioner argues in its comments that harvest dates are not significant because they can be manipulated by factors other than climate, such as irrigation practices, canopy management, and crop load. Notwithstanding these arguments, the petitioner provided harvest dates for Two Rock Ranch and for its vineyards located within the existing viticultural area, which show that grapes in both areas were picked in the same ''harvest window,'' according to the petitioner.

*Comments Regarding Issues Outside the Scope of Part 9*

Numerous commenters cite various reasons for opposition to the proposed expansion of the Russian River Valley viticultural area that do not relate to the regulatory criteria set forth in 27 CFR 9.12 for viticultural area petitions. The points made by these commenters included the following:

- Approval of the proposal will harm growers/wineries in the current Russian River Valley viticultural area. Many of these commenters believe that the proposed expansion will result in lower grape prices. Other commenters state that small growers will not be able to compete with the petitioner, one of the world's largest wine companies. A few of these commenters further state that approving the petitioned-for expansion goes against TTB's mission to ensure a ''fair and even marketplace.''

With respect to this point and the potential effect on small grape growers, TTB notes that the Allied Grape Growers (comment 24) state that they do not believe that the proposed expansion would lower grape prices. TTB also notes that the petitioner already has vineyards located within the 154,984-acre Russian River Valley viticultural area, so the approval of the petitioned-for expansion area would not introduce the petitioner to the marketplace for wines or grapes from that viticultural area. Further, according to the petition, the petitioner's Two Rock Ranch Vineyard, which is located in the 14,044-acre petitioned-for expansion to the Russian River Valley viticultural area, is only 350 acres. By comparison, there are over 15,000 acres of vineyards in the current viticultural area, according to the Russian River Valley Winegrowers Web site (see *http://www.rrvw.org/ava-boundary*). The petitioner's 350 vineyard acres represents less than 2.5 percent of the vineyard acres currently within the Russian River Valley viticultural area.

- Wines from the petitioned-for expansion area taste different from those from the existing Russian River Valley viticultural area. Although most of these comments merely cite differences in taste, a few state that wines from the proposed expansion area are ''inferior.'' These commenters argue that these differences will confuse consumers and ultimately hurt the reputation and/or sales of wineries and growers currently in the viticultural area.

TTB notes that the purpose of viticultural areas is to allow vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. TTB also reiterates that the establishment of a viticultural area is neither an approval nor an endorsement by TTB of the wine produced in that area, including a determination of wine quality.

- Approval will lead to more expansion petitions. Several commenters argue that approving this proposal will lead to still more petitions to expand the Russian River Valley viticultural area, and one commenter suggests that TTB's acceptance of the proposed expansion of the Northern Sonoma viticultural area will make it more difficult for TTB to reject future petitions to expand that viticultural area.

TTB will examine the merits of any such petitions when and if they are received. TTB's decision regarding whether to approve the proposed expansion areas will neither forestall any future petitions regarding the expansion or re-alignment of the boundary lines for the Russian River Valley or Northern Sonoma viticultural areas, nor affect the likelihood of TTB's acceptance of any such proposals in the future.

**TTB Analysis**

*The Proposed Expansion of the Russian River Valley Viticultural Area*

TTB notes that although the comments submitted in response to Notice No. 90 overwhelmingly oppose the proposed expansion of the Russian River Valley viticultural area, the petition included a ''Petition of Support: Russian River Valley AVA Expansion'' with 208 signatures. Thus, significant numbers of persons have expressed support of and opposition to the expansion of the Russian River Valley viticultural area. In view of the divided opinions on whether or not TTB should approve the petitioned-for expansion, in addition to the petition evidence and the comments received, TTB reviewed the regulatory record concerning the establishment of the Russian River Valley viticultural area to ensure that any action taken concerning this petitioned-for expansion would be consistent with prior regulatory actions. In particular, TTB reviewed T.D. ATF–159, which initially established the Russian River Valley viticultural area in

1983, and T.D TTB–32, which expanded the viticultural area southward in 2005. TTB also notes that the number of comments received in response to this proposed rulemaking greatly exceeds the number of comments received on the initial establishment of the Russian River Valley viticultural area (only one comment, in favor) and on the 2005 expansion (two comments, both in favor).

*Name Evidence*

With regard to the issue of name evidence for the petitioned-for expansion, TTB reviewed the regulatory history of the Russian River Valley viticultural area, and those prior rulemakings do not reflect name evidence that clearly defines what area is recognized as constituting the Russian River Valley. Maps of the Russian River watershed and of the current viticultural area submitted with the petition indicate that the Russian River Valley viticultural area occupies only a small portion of the watershed. Moreover, the Russian River itself flows in a southerly direction far north of the of the current viticultural area boundary, then into the current viticultural area through the northern portion of the boundary, and then westward through the northern portion of the viticultural area before passing through the western portion of the viticultural area boundary on its way to the Pacific Ocean.

The name evidence submitted in support of the petitioned-for expansion is based on the proposed area being within the Russian River watershed, on several letters from vineyard owners who express their beliefs that the expansion area is known to be part of the Russian River Valley, and on a letter from William F. Heintz, a local wine and viticulture historian. The petitioner also included a printed copy of map entitled ''Russian River Map'' on which the proposed expansion area appears.

With regard to those commenters who indicate that the petitioned-for expansion area is known by other names such as Rohnert Park and Cotati, or is part of the Petaluma Gap, TTB notes that the Russian River Valley is a large area that also incorporates other communities such as Sebastopol and Healdsburg. Recognition of the names of communities such as Rohnert Park and Cotati does not preclude the area from being recognized as part of the larger Russian River Valley. Regarding the assertion that the expansion area is known under the name of Petaluma Gap rather than as part of the Russian River Valley, TTB believes that the evidence submitted is not conclusive or persuasive.

Some opposing commenters assert that the Russian River Valley is in northern Sonoma while the proposed expansion area is in southern Sonoma, with one commenter citing historical documentation that puts Petaluma Valley to the south, Santa Rosa Valley to the center, and the Russian River Valley to the north. Several commenters (for example, Dr. Crowley) submitted maps and other historical evidence indicating that the Russian River Valley does not extend south of Santa Rosa. In response to these comments, TTB notes that the regulatory history does not lead to the conclusion that what is known as the Russian River Valley is a term exclusive to ''northern'' Sonoma. Although T.D. ATF–159 indicates that the Russian River Valley viticultural area as initially established was north of Santa Rosa, the existing viticultural area, as expanded southward by T.D. TTB–32 in 2005, extends significantly south of Santa Rosa. With regard to the 2005 expansion, TTB notes that Dr. Crowley's comment appears to be supportive of that regulatory action, which also involved an expansion to the south of Santa Rosa.

With regard to the tourism map, TTB agrees with the opposing commenters that the map does not identify the proposed expansion area as being known as part of the Russian River Valley.

However, even without considering the tourism map as supporting evidence, TTB believes that the petitioner has submitted sufficient evidence that the expansion area is associated with what is known as the Russian River Valley. Specifically, the petitioner's assertion is supported by evidence that the expansion area is almost entirely within the Russian River watershed, by the letter from Mr. Heinz, and by other letters in support of the expansion area. Moreover, the prior regulatory record, specifically T.D. TTB–32, is consistent with the petitioner's assertion that the Russian River Valley name extends to the south, where the petitioned-for expansion area lies.

*Boundary Evidence*

As described in Notice No. 90, the boundary line for the proposed expansion area is based upon well-supported evidence that the proposed boundary line primarily follows the ridge that defines the southern flank of the Russian River watershed, and it then turns north to meet the current boundary line of the viticultural area. Although some comments contend that the proposed expansion area is part of the ''Petaluma Gap'' rather than the Russian River Valley, TTB notes that comment 44, which was submitted by the Petaluma Gap Winegrowers Alliance, does not oppose the proposed expansion of the Russian River Valley viticultural area or otherwise address the evidence submitted in support of the proposed expansion; rather, the comment merely describes the Petaluma Gap region and states that the Petaluma Gap Winegrowers Alliance strongly supports the Sonoma Coast viticultural area and its current boundary line. TTB has not recognized the Petaluma Gap as a viticultural area, and no evidence has been submitted that sufficiently identifies and supports any specific distinguishing features of the Petaluma Gap region. Further, as previously noted, the map of the Petaluma Gap submitted for the rulemaking record indicates that a portion of the petitioned-for expansion area, as well as a portion of the current Russian River Valley viticultural area, is located within the boundary line for the Petaluma Gap area. In summary, none of the comments submitted provide sufficient evidence to refute the evidence submitted by the petitioner that the proposed boundary line is appropriate for the Russian River Valley viticultural area.

*Geographical Features*

Climate

The issues raised in the comments concerning temperature data primarily concern the adequacy of the data to demonstrate that the petitioned-for expansion is in a coastal cool climate zone. The petitioner supplied three years of degree day data from the Two Rock Ranch, which is in the southernmost portion of the proposed expansion area. In Notice No. 90, TTB determined that these data were sufficient for purposes of soliciting comments on the proposed expansion. With regard to the adequacy of the data, TTB notes two points. First, the Two Rock Ranch is located in the southern portion of the proposed expansion, and TTB believes that this is highly relevant to the issue of whether the expansion area has a climate that is similar to that of the existing Russian River Valley viticultural area to the north. Second, the petitioner submitted three years of data from the Two Rock Ranch, and TTB believes that these data are sufficient, noting that the climate data supporting the 2005 expansion of the Russian River Valley viticultural area was derived from only a single year and did not engender any negative public comments regarding the adequacy of these data. TTB also notes that, although

some commenters have questioned the adequacy of the data in the present case, none of those opposing comments included actual data that contradict the data supplied by the petitioner.

With regard to comments referring to the ''Sonoma County Climate Zones'' map, TTB notes that several commenters submitted copies of this map with additional lines indicating the current boundary of the Russian River Valley viticultural area as well as the petitioned-for expansion area. First, given that the northern portion of the proposed expansion area is identified on the maps as being within the coastal cool climate, this information augments the specific temperature data concerning the more southern portion of the proposed expansion area submitted by the petitioner, and the information further supports the conclusion that the specific data submitted by the petitioner are adequate. Second, TTB notes that, in the case of the 2005 expansion, inclusion of that expansion area in the Russian River Valley viticultural area was not dependent on all of the expansion area being within the coastal cool climate zone as delineated on the ''Sonoma County Climate Zones'' map, as shown by the fact that a southeastern portion of the 2005 expansion area is identified on the map as having a marine climate.

Finally, from a historical perspective, T.D. ATF–159 describes the fog intrusions in the Russian River Valley viticultural area as yielding growing temperatures that are normally (Winkler) Region I or cooler, thus distinguishing the Russian River Valley from the warmer neighboring valleys such as Dry Creek Valley, Alexander Valley, and Sonoma Valley. Accordingly, in the establishment of the Russian River Valley viticultural area, the focus was on identifying a climate that was cooler than surrounding areas, so temperatures lower than those associated with Region I are not inconsistent with the intent of that rulemaking.

Fog

Although there does not seem to be any dispute that the petitioned-for expansion area is affected by fog, some opposing commenters suggest that the fog in the expansion area is marine fog that is much heavier and colder than the coastal fog in the existing Russian River Valley viticultural area. Despite the commenters' assertion that the different fog creates a different climate, no data were submitted to show that there is a distinction in this regard between the existing Russian River Valley viticultural area and the proposed expansion area. Moreover, neither T.D. ATF–159 nor T.D. TTB–32 noted any distinction between the Russian River Valley viticultural area and areas outside the boundary of the viticultural area based on type of fog.

Wind

TTB notes that wind was not a geographical feature relied upon to establish the existing Russian River Valley viticultural area. Nevertheless, TTB reviewed the information submitted by opposing commenters concerning high winds within the petitioned-for expansion area. No adequate data were submitted that would enable TTB to determine the extent of the wind variation between the existing viticultural area and the petitioned-for expansion area, if any, or to determine whether there is a significant and unique effect on viticulture caused by wind within the petitioned-for expansion area.

Vegetation and Harvest Dates

TTB recognizes that variations in vegetation and harvest dates from one area to another can result from several factors, including differences in temperature and/or fog. However, it would be inappropriate for TTB to give weight to statements regarding the effect of temperature and/or fog in this regard in the absence of actual data that support those statements.

*The Proposed Expansion of the Northern Sonoma Viticultural Area*

As noted above, most commenters addressed only the petitioned-for expansion of the Russian River Valley viticultural area, and only a few commenters specifically addressed the proposed expansion of the Northern Sonoma viticultural area. The several commenters who specifically opposed the proposed expansion of the Northern Sonoma viticultural area contend that the Northern Sonoma viticultural area should be limited to ''northern'' Sonoma, and that northern Sonoma does not include the proposed expansion area, which is located only ten miles from Marin County. Accordingly, those commenters argue that the proposed expansion is too far south to be part of the Northern Sonoma viticultural area.

In contrast, in his comment supporting the proposed expansion of the Northern Sonoma viticultural area, Patrick Shabram (comment 16) states that the Russian River watershed is a defining feature for northern Sonoma, so the proposed expansion area should be considered part of northern Sonoma because it is part of the Russian River watershed. In addition, some commenters supported the proposed expansion of the Northern Sonoma viticultural area on the ground that the entire Russian River Valley viticultural area had been part of the Northern Sonoma viticultural area prior to the 2005 expansion, so the Northern Sonoma viticultural area should be expanded to once again include the entire Russian River Valley viticultural area, including the 2005 expansion area as well as the current proposed expansion area.

TTB agrees with the supporting commenters that the Northern Sonoma viticultural area should be expanded as proposed to ensure that the entire Russian River Valley viticultural area is once again fully contained within the Northern Sonoma viticultural area, as had been the case prior to the 2005 expansion of the Russian River Valley viticultural area.

*Request for a Public Hearing*

TTB is not granting RRVBIC's request for a public hearing. The Bureau has determined that a hearing is not necessary because the public record as described above provides sufficient basis for a decision.

*TTB Determination*

TTB concludes that the evidence submitted by the petitioner, and the rulemaking record as discussed above, support the approval of the proposed expansion of the Russian River Valley viticultural area. TTB also concludes that, for the reasons stated above and in Notice No. 90, the Northern Sonoma viticultural area should be expanded to include the entire Russian River Valley viticultural area.

*Boundary Description*

See the narrative boundary description of the expanded Russian River Valley and Northern Sonoma viticultural areas in the regulatory text at the end of this document. In this final rule, TTB altered some of the language in the written boundary descriptions published as part of Notice No. 90. TTB made these alterations in the written boundary description language for clarity and consistency with the existing written boundary descriptions for the Russian River Valley and Northern Sonoma viticultural areas. These alterations do not change the location of the expanded Russian River Valley or Northern Sonoma viticultural area boundaries as proposed in Notice No. 90.

*Maps*

The maps for determining the boundaries of the viticultural areas are listed below in the regulatory text.

**Impact on Current Wine Labels**

The expansions of the Russian River Valley and Northern Sonoma viticultural areas do not affect currently approved wine labels. The approval of these expansions will allow additional vintners to use both ''Russian River Valley'' and ''Northern Sonoma'' as appellations of origin on their wine labels. Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. For a wine to be eligible to use as an appellation of origin a viticultural area name or other viticulturally significant term specified in part 9 of the TTB regulations, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name or other term, and the wine must meet the other conditions listed in 27 CFR 4.25(e)(3). Different rules apply if a wine has a brand name containing a viticultural area name or other viticulturally significant term that was used as a brand name on a label approved before July 7, 1986. See 27 CFR 4.39(i)(2) for details.

**Regulatory Flexibility Act**

TTB certifies that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of a viticultural area name is the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

**Executive Order 12866**

This rule is not a significant regulatory action as defined by Executive Order 12866, 58 FR 51735. Therefore, it requires no regulatory assessment.

**Drafting Information**

This rule was drafted by the Regulations and Rulings Division.

**List of Subjects in 27 CFR Part 9**

Wine.

**The Regulatory Amendment**

For the reasons discussed in the preamble, TTB amends title 27, chapter 1, part 9, Code of Federal Regulations, as follows:

## PART 9—AMERICAN VITICULTURAL AREAS

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

**Authority:** 27 U.S.C. 205.

## Subpart C—Approved American Viticultural Areas

■ 2. Section 9.66 is amended:

■ a. In paragraph (b), by removing the word ''and'' at the end of paragraph (b)(9), by removing the word '', and'' at the end of paragraph (b)(10) and adding, in its place, a semicolon, by removing the period at the end of paragraph (b)(11) and adding, in its place, a semicolon followed by the word ''and'', and by adding a new paragraph (b)(12); and

■ b. In paragraph (c), by revising paragraphs (c)(15) through (c)(19), by redesignating paragraphs (c)(20) through (c)(34) as paragraphs (c)(26) through (c)(40), and by adding new paragraphs (c)(20) through (c)(25).

The additions and revision read as follows:

### § 9.66 Russian River Valley.

* * * * *

(b) * * *

(12) Cotati Quadrangle, California—Sonoma Co., scale 1:24 000, 1954, photorevised 1980.

(c) * * *

(15) Proceed southeast 0.5 mile, crossing over the end of an unnamed, unimproved dirt road to an unnamed 524-foot elevation peak, T6N, R8W, on the Two Rock map.

(16) Proceed southeast 0.75 mile in a straight line to the intersection of an unnamed unimproved dirt road (leading to four barn-like structures) and an unnamed medium-duty road (known locally as Roblar Road), T6N, R8W, on the Two Rock map.

(17) Proceed south 0.5 mile to an unnamed 678-foot elevation peak just slightly north of the intersection of T5N and T6N, R8W, on the Two Rock map.

(18) Proceed east-southeast 0.8 mile to an unnamed peak with a 599-foot elevation, T5N, R8W, on the Two Rock map.

(19) Proceed east-southeast 0.7 mile to an unnamed peak with a 604-foot elevation, T5N, R8W, on the Two Rock map.

(20) Proceed east-southeast 0.9 mile to the intersection of a short, unnamed light-duty road leading past a group of barn-like structures and a medium duty road known locally as Meacham Road, and cross on to the Cotati map T5N, R8W.

(21) Proceed north-northeast 0.75 mile to the intersection of Meacham and Stony Point Roads, T5N, R8W, on the Cotati map.

(22) Proceed southeast 1.1 miles along Stony Point Road to the point where the 200-foot elevation contour line intersects Stony Point Road, T5N, R8W, on the Cotati map.

(23) Proceed north-northeast 0.5 mile to the point where an unnamed intermittent stream intersects U.S. 101, T5N, R8W, on the Cotati map.

(24) Proceed north 4.25 miles along U.S. 101 to the point where Santa Rosa Avenue exits U.S. 101 (approximately 0.5 mile north of the Wilfred Avenue overpass) T6N, R8W, on the Cotati map.

(25) Proceed north 1.1 miles along Santa Rosa Avenue to its intersection with Todd Road, crossing on to the Santa Rosa map, T6N, R8W, on the Santa Rosa map.

* * * * *

■ 3. Section 9.70 is amended:

■ a. By revising paragraph (b); and

■ b. In paragraph (c), by revising the introductory text and paragraphs (c)(1) through (c)(5), by redesignating paragraphs (c)(6) through (c)(26) as paragraphs (c)(23) through (c)(43), and by adding new paragraphs (c)(6) through (c)(22).

The revisions and addition read as follows:

### § 9.70 Northern Sonoma.

* * * * *

(b) *Approved Maps.* The nine United States Geological Survey maps used to determine the boundary of the Northern Sonoma viticultural area are titled:

(1) Sonoma County, California, scale 1:100 000, 1970;

(2) Asti Quadrangle, California, scale 1:24 000, 1959, photorevised 1978;

(3) Jimtown Quadrangle, California—Sonoma County; scale 1:24 000, 1955, photorevised 1975;

(4) Camp Meeker Quadrangle, California—Sonoma Co., scale 1:24 000, 1954, photorevised 1971;

(5) Valley Ford Quadrangle, California, scale 1:24 000, 1954, photorevised 1971;

(6) Two Rock Quadrangle, California, scale 1:24 000, 1954, photorevised 1971;

(7) Cotati Quadrangle, California—Sonoma Co., scale 1:24 000, 1954, photorevised 1980;

(8) Santa Rosa Quadrangle, California—Sonoma Co., scale 1:24 000, 1954, photorevised 1980; and

(9) Mark West Springs Quadrangle, California, scale 1:24 000, 1993.

(c) *Boundary.* The Northern Sonoma viticultural area is located in Sonoma County, California. The boundary description includes (in parentheses) the local names of roads that are not identified by name on the map.

(1) The beginning point is on the Sonoma County, map in the town of Monte Rio at the intersection of the Russian River and a secondary highway (Bohemian Highway);

(2) The boundary follows this secondary highway (Bohemian Highway), southeasterly parallel to Dutch Bill Creek, through the towns of Camp Meeker, Occidental, and Freestone, and then northeasterly to its intersection with an unnamed secondary highway designated as State Highway 12 (Bodega Road) at BM 214, as shown on the Valley Ford map.

(3) The boundary follows Bodega Road northeasterly 0.9 miles on the Valley Ford map; then onto the Camp Meeker map to its intersection, at BM 486, with Jonive Road to the north and an unnamed light duty road to the south (Barnett Valley Road), Township 6 North, Range 9 West, on the Camp Meeker map.

(4) The boundary follows Barnett Valley Road south 2.2 miles, then east crossing over the Valley Ford map and onto the Two Rock map, to Barnett Valley Road's intersection with Burnside Road, section 17, Township 6 North, Range 9 West.

(5) The boundary follows Burnside Road southeast 3.3 miles to Burnside Road's intersection with an unnamed medium duty road at BM 375, Township 6 North, Range 9 West.

(6) The boundary follows a straight line southeast 0.6 mile to an unnamed 610-foot elevation peak, 1.5 miles southwest of Canfield School, Township 6 North, Range 9 West.

(7) The boundary follows a straight line east-southeast 0.75 mile to an unnamed 641-foot elevation peak 1.4 miles south-southwest of Canfield School, Township 6 North, Range 9 West.

(8) The boundary follows a straight line northeast 0.85 mile to its intersection with an unnamed intermittent stream and Canfield Road; then continues on the straight line northeast 0.3 mile to the line's intersection with the common Ranges 8 and 9 line, just west of an unnamed unimproved dirt road, Township 6 North.

(9) The boundary follows a straight line southeast 0.5 mile, crossing over the end of an unnamed, unimproved dirt road to an unnamed 524-foot elevation peak, Township 6 North, Range 8 West.

(10) The boundary follows a straight line southeast 0.75 mile to the intersection of an unnamed unimproved dirt road (leading to four barn-like structures) and an unnamed medium-duty road (Roblar Road), Township 6 North, Range 8 West.

(11) The boundary follows a straight line south 0.5 mile to an unnamed 678-foot elevation peak, Township 6 North, Range 8 West.

(12) The boundary follows a straight line east-southeast 0.8 mile to an unnamed peak with a 599-foot elevation, Township 5 North, Range 8 West.

(13) The boundary follows a straight line east-southeast 0.7 mile to an unnamed peak with a 604-foot elevation, Township 5 North, Range 8 West.

(14) The boundary follows a straight line east-southeast 0.9 mile, onto the Cotati map, to the intersection of a short, unnamed light-duty road leading past a group of barn-like structures and Meacham Road, Township 5 North, Range 8 West.

(15) The boundary follows Meacham Road north-northeast 0.75 mile to Meacham Road's intersection with Stony Point Road, Township 5 North, Range 8 West.

(16) The boundary follows Stony Point Road southeast 1.1 miles to the point where the 200-foot elevation contour line intersects Stony Point Road, Township 5 North, Range 8 West.

(17) The boundary follows a straight line north-northeast 0.5 mile to the point where an unnamed intermittent stream intersects U.S. 101, Township 5 North, Range 8 West.

(18) The boundary follows U.S. Route 101 north 4.25 miles to the point where Santa Rosa Avenue exits U.S. Route 101 to the east (approximately 0.5 mile north of the Wilfred Avenue overpass) Township 6 North, Range 8 West.

(19) The boundary follows Santa Rosa Avenue north 1.1 miles to its intersection with Todd Road, crossing on to the Santa Rosa map, Township 6 North, Range 8 West.

(20) The boundary follows Santa Rosa Avenue generally north 5.8 miles, eventually becoming Mendocino Avenue, to Santa Rosa Avenue's intersection with an unnamed secondary road (Bicentennial Way), 0.3 mile north-northwest of BM 161 on Mendocino Avenue, section 11, Township 7 North, Range 8 West.

(21) The boundary follows a straight line north 2.5 miles crossing over the 906-foot elevation peak in section 35, T8N, R8W, crossing onto the Mark West Springs map, to the line's intersection with Mark West Springs Road and the meandering 280-foot elevation line in section 26, Township 6 North, Range 8 West.

(22) The boundary follows the unnamed secondary highway, Mark West Springs Road, on the Sonoma County map, generally north and east, eventually turning into Porter Road and then to Petrified Forest Road, passing BM 545, the town of Mark West Springs, BM 495, and the Petrified Forest area, to Petrified Forest Road's intersection with the Sonoma County-Napa County line.

* * * * *

Signed: April 14, 2011.

**John J. Manfreda,**

*Administrator.*

Approved: July 21, 2011.

**Timothy E. Skud,**

*Deputy Assistant Secretary (Tax, Trade, and Tariff Policy).*

[FR Doc. 2011–29519 Filed 11–15–11; 8:45 am]

**BILLING CODE 4810–31–P**

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

### 32 CFR Part 174

**[Docket ID: DOD–2010–OS–0135]**

**RIN 0790–AI67**

## Revitalizing Base Closure Communities and Addressing Impacts of Realignment

**AGENCY:** Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics, DoD.

**ACTION:** Final rule.

**SUMMARY:** Section 2715 of the National Defense Authorization Act for Fiscal Year 2010, Public Law 111–84, amended the Defense Base Closure and Realignment Act of 1990 to change the authority of the Department of Defense to convey property to a local redevelopment authority (LRA) for purposes of job generation on a military installation closed or realigned under a base closure law. Such a conveyance is known as an Economic Development Conveyance (EDC). Economic Development Conveyances were created by amendments to the Base Closure and Realignment law in 1993, creating a new tool for communities experiencing negative economic effects caused by the elimination of a significant number of jobs in the community. Congress recognized that the existing authority under the Federal Property and Administrative Services Act of 1949 (as amended and otherwise known as the Real Property Act) was not structured to deal with the unique challenges of assisting base closure communities with economic recovery and job creation, many with decaying or obsolete infrastructure and other redevelopment

challenges. Under this revised authority, the Department is no longer required to seek fair market value for an EDC. An EDC may be for consideration at or below the estimated fair market value, including without consideration. The amendment expands the flexibility of the Department regarding the form of consideration it may accept, including the authority to accept consideration in the form of revenue sharing or so-called ''back-end'' funding. Back-end funding is consideration consisting of a share of the revenues that the LRA receives from third-party buyers or lessees from sales and leases of the conveyed property, consideration in kind (including goods and services), real property and improvements, or such other consideration as the Secretary considers appropriate.

The amendment also provides that the Department's determination of the consideration may account for the economic conditions of the local affected community and the estimated costs to redevelop the property.

This final rule amends the existing regulation on reutilization of installations closed under the base closure process to conform to the amendment to the Defense Base Closure and Realignment Act of 1990 and makes other improvements that encourage expedited property transfers for job creation that allow for the Department to recover a share of the revenues obtained.

**DATES:** *Effective Date:* This final rule is effective December 16, 2011.

**FOR FURTHER INFORMATION CONTACT:** Robert Hertzfeld, (703) 604–6020.

**SUPPLEMENTARY INFORMATION:**

## I. Background

This final rule implements statutory changes and enables the military departments to expedite the EDC process. Closed military bases represent a potential engine of economic activity and job creation for the local affected communities. When disposing of property using an EDC, the military departments should use the full breadth of their authority to structure conveyances that respond to the job creation and redevelopment challenges of the individual community.

The amended law no longer requires the Department to seek fair market value when conveying property to eligible recipients. Accordingly, a transfer may be made below estimated fair market value or without consideration if the LRA agrees to reinvest sale or lease proceeds for not less than seven years and to take title to the property within a reasonable timeframe. This rule also amends the regulation to delete the requirement for the Department to obtain an appraisal of the property as part of an EDC conveyance, and instead allows the military departments to conduct the type of analysis it deems appropriate to protect the interest of the Government and to make an informed decision. The analysis should be based on the uses identified in the community reuse plan, rather than an independent analysis of highest and best use. This regulation emphasizes the use of EDCs to best promote the economic redevelopment of the former installation. With this change, the Department has the option to pursue property value by obtaining a share of the revenues obtained from the redevelopment of the property. Experience has shown that estimates of fair market value for property at closing installations, especially those requiring substantial future investment in redevelopment, can vary widely due to the uncertainties inherent in significant long-term redevelopment projects and different projections of costs and revenues over a potential 20–30 year development cycle that may occur on a large closing installation. Elimination of the requirement to estimate the fair market value, along with related appraisal requirements, should expedite the conveyance process and remove what has been a common source of conflict and delay between the community and the Department. Accordingly, the final rule establishes as DoD policy a requirement that, for every EDC, the LRA must reinvest sale or lease proceeds for at least seven years after transfer and take title to the property within a reasonable timeframe. This makes the determination of fair market value of the property unnecessary for purposes of establishing EDC terms and conditions. It also eliminates the need to establish a process by which the fair market value of property to be conveyed by EDC must be determined. The final rule does allow the Secretary concerned to obtain and use any information deemed appropriate, which may include economic and market analysis, construction estimates, a r pro forma cash flow analysis, and appraisals, to ensure that decisions regarding property disposal are properly informed. If the proposed conveyance does not meet the requirements for an EDC, or if the LRA does not agree to reinvest sale or lease proceeds for at least seven years and to take title to the property within a reasonable timeframe, the Secretary concerned may pursue a negotiated sale to a public entity at fair market value, including a negotiated sale for economic development purposes, under regulations at 41 CFR 102–75.880, *et seq,* or competitive public sale.

This rule streamlines the disposal process by separating the eligibility criteria for an EDC from the criteria guiding the negotiation of the terms and conditions. It also makes the application more concise and incorporates adjustments to reflect current market conditions and to recognize local community investment and risk. This final rule implements the revised EDC authority in a manner intended to clarify and streamline the Economic Development Conveyance process and assist affected communities in job generation. As explained below in the response to public comments, additional changes have been made to address those comments and to better clarify the Department's intent.

*Public Comments*

The Department of Defense published a proposed rule on December 17, 2010 (75 FR 78946) and received comments from four individuals/organizations. All comments were generally supportive of the revised regulation, particularly the increased flexibility and promotion of community reuse and redevelopment efforts. Following is a summary of the individual comments and the Department's responses.

*Comment:* One comment addressed the reporting requirements contained in paragraph 174.9(d)(8); specifically the requirement to maintain separate reinvestment reporting requirements for each transfer when property is transferred in phases. The person making the comment thought that this proposed requirement would result in a ''difficult, expensive and time consuming process for both local jurisdiction and the Department''. The commenter suggested that the reporting requirement should be at least seven years from the date of the initial transfer.

*Response:* The Department agrees that, as proposed, the requirement for keeping track of separate reporting timelines for individual parcels conveyed would create a confusing and burdensome requirement. The Department thinks a simple solution to meet the congressional intent of the reinvestment requirement is to have the reinvestment requirement extend for at least seven years after the *last* transfer. This requirement should simplify the process and ensure that funds are dedicated to the redevelopment of the former installation to promote its successful redevelopment. The Department recognizes that some parcels may have beneficial use

transferred before physical title through the use of a lease in furtherance of conveyance, and the final rule treats such property as a transfer for determining the start of the reinvestment period. The rule has been changed accordingly.

*Comment:* One comment addressed the requirement contained in paragraph 174.9(d)(9) that requires the Local Redevelopment Authority to accept control of the property within a reasonable time after the date of the property disposal record of decision. The commenter was concerned that this requirement does not fully address the circumstances of the transfer and asks the Department to add ''under the circumstances'' after ''in a reasonable time''.

*Response:* The Department does not believe a change is necessary. It is assumed that all parties act reasonably with regard to the individual facts and circumstances of each property. The property will only be ready for transfer after a property disposal record of decision is issued. No change was made to the rule to address this comment.

*Comment:* One comment was very supportive of the removal of the requirement to conduct an appraisal in all circumstances and was generally supportive of the language contained in paragraph 174.9(k) which provides that the consideration should be based on a business plan and development pro forma that assumes the uses in the redevelopment plan. The commenter suggests that the basis of consideration should be required to be a business plan and development pro forma. This would be accomplished by changing the word ''should'' to ''shall''.

*Response:* The Department believes that the military departments should have the flexibility to treat each EDC application on an individual basis and create a transaction that is both fair to the Government and to the local community. For most large redevelopment projects, the basis of consideration needs to be a business plan and development pro forma due to the uncertainties inherent in large, long term redevelopment projects. Not all properties subject to this regulation are large, long term redevelopment projects and the Department needs to maintain flexibility for differing circumstances. The use of the word ''should'' maintains needed flexibility, but denotes a policy preference for use in most circumstances. No change in the final rule was made to address this comment.

*Comment:* One comment expressed concern over the inclusion of environmental clean-up savings when evaluating an EDC application, as provided for in paragraph 174.9(f)(8). The commenter thought that consideration of this factor would transfer the burden of clean-up costs to the local community.

*Response:* Paragraph 174.9(f)(8) does not transfer clean-up costs to local communities. The Department retains the responsibility for environmental restoration to meet all applicable standards. This paragraph allows the Department to take into account the benefit of phasing clean-up schedules with planned reuse when negotiating the consideration paid by the Local Redevelopment Authority. No change was made in the final rule to address this comment.

*Comment:* One comment raised a concern about complying with the provisions of the McKinney Act with regard to the needs of the homeless as part of a community economic development strategy.

*Response:* The Base Closure Community Redevelopment and Homeless Assistance Act exempted Base Closure communities from the McKinney Act and substituted an alternative process for evaluating the needs of the homeless in the base property disposal process. This rule only effects Local Redevelopment Authorities that have already complied with the requirements of the Base Closure Community Redevelopment and Homeless Assistance Act, since a requirement of making an EDC application is an approved redevelopment plan. No change was made to the final rule to address this comment.

## II. Regulatory Procedures

*Executive Order 12866, ''Regulatory Planning and Review'' and Executive Order 13563, ''Improving Regulation and Regulatory Review''*

It has been certified that 32 CFR part 174 does not:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a section of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribunal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in these Executive Orders.

*Sec. 202, Public Law 104–4, ''Unfunded Mandates Reform Act''*

It has been certified that 32 CFR part 174 does not contain a Federal mandate that may result in the expenditure by State, local and tribunal governments, in aggregate, or by the private sector, of $100 million or more in any one year.

*Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. 601)*

It has been certified that 32 CFR part 174 is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities.

*Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)*

It has been certified that 32 CFR part 174 does not impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

*Executive Order 13132, ''Federalism''*

It has been certified that 32 CFR part 174 does not have federalism implications, as set forth in Executive Order 13132. This rule does not have substantial direct effects on:

(1) The States;

(2) The relationship between the National Government and the States; or

(3) The distribution of power and responsibilities among the various levels of Government.

**List of Subjects in 32 CFR Part 174**

Community development; Government employees; Military personnel; Surplus Government property.

Accordingly, 32 CFR part 174 is amended as follows:

## PART 174—[AMENDED]

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

**Authority:** 10 U.S.C. 113 and 10 U.S.C. 2687 *note.*

■ 2. Section 174.9 is revised to read as follows:

### § 174.9 Economic development conveyances.

(a) The Secretary concerned may transfer real property and personal property to the LRA for purposes of job generation on the former installation. Such a transfer is an Economic Development Conveyance (EDC).

(b) An LRA is the only entity eligible to receive property under an EDC.

(c) The Secretary concerned shall use the completed application, along with other relevant information, to decide

whether to enter into an EDC with an LRA. An LRA may submit an EDC application only after it adopts a redevelopment plan. The Secretary concerned shall establish a reasonable time period for submission of an EDC application after consultation with the LRA.

(d) The application shall include:

(1) A copy of the adopted redevelopment plan.

(2) A project narrative including the following:

(i) A general description of the property requested.

(ii) A description of the intended uses.

(iii) A description of the economic impact of closure or realignment on the local community.

(iv) A description of the economic condition of the community and the prospects for redevelopment of the property.

(v) A statement of how the EDC is consistent with the overall redevelopment plan.

(3) A description of how the EDC will contribute to short- and long-term job generation on the installation, including the projected number and type of new jobs it will assist in generating.

(4) A business/operational plan for development of the EDC parcel, including at least the following elements:

(i) A development timetable, phasing schedule, and cash flow analysis.

(ii) A market and financial feasibility analysis describing the economic viability of the project, including an estimate of net proceeds over the planned life of the redevelopment project, but in no event for less than fifteen years after the initial transfer of property, and the proposed consideration or payment to the Department of Defense. The proposed consideration should describe the methodology for payment and include draft documents or instruments proposed to secure such payment.

(iii) A cost estimate and justification for infrastructure and other investments needed for redevelopment of the EDC parcel.

(iv) A proposed local investment and financing plan for the development.

(5) A statement describing why an EDC will more effectively enable achievement of the job generation objectives of the redevelopment plan regarding the parcel requested for conveyance than other federal real property disposal authorities.

(6) Evidence of the LRA's legal authority to acquire and dispose of the property.

(7) Evidence that:

(i) The LRA has authority to perform the actions required of it, pursuant to the terms of the EDC, and

(ii) That the officers submitting the application and making the representations contained therein on behalf of the LRA have the authority to do so.

(8) A commitment from the LRA that the proceeds from any sale or lease of the EDC parcel (or any portion thereof) received by the LRA during at least the first seven years after the date of the initial transfer of property, except proceeds that are used to pay consideration to the Secretary concerned under paragraph (h) of this section, shall be used to support economic redevelopment of, or related to, the installation. In the case of phased transfers, the Secretary concerned shall require that this commitment apply during at least the first seven years after the date of the last transfer of property to the LRA. For the purposes of calculating this reinvestment period, a lease in furtherance of conveyance shall constitute a transfer. The use of proceeds to pay for, or offset the costs of, public investment on or related to the installation for any of the following purposes shall be considered a use to support the economic redevelopment of, or related to, the installation—

(i) Road construction;

(ii) Transportation management facilities;

(iii) Storm and sanitary sewer construction;

(iv) Police and fire protection facilities and other public facilities;

(v) Utility construction;

(vi) Building rehabilitation;

(vii) Historic property preservation;

(viii) Pollution prevention equipment or facilities;

(vix) Demolition;

(x) Disposal of hazardous materials and hazardous waste generated by demolition;

(xi) Landscaping, grading, and other site or public improvements; and

(xii) Planning for or the marketing of the development and reuse of the installation.

(9) A commitment from the LRA to execute the agreement for transfer of the property and accept control of the property within a reasonable time, as determined by the Secretary concerned after consultation with the LRA, after the date of the property disposal record of decision. The determination of reasonable time should take account of the ability of the Secretary concerned to provide the deed covenants, or covenant deferral, provided for under section 120(h)(3) and (4) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9620(h)(3) and (4)).

(e) The Secretary concerned shall review the application and, to the extent practicable, provide a preliminary determination within 30 days of receipt as to whether the Military Department can accept the application for negotiation of terms and conditions, subject to the following findings:

(1) The LRA submitting the application has been duly recognized by the DoD Office of Economic Adjustment;

(2) The application is complete. With respect to the elements of the application specified in paragraph (d)(6) and (d)(7)(i) of this section, the Secretary concerned may accept the application for negotiation of terms and conditions without this element, provided the Secretary concerned is satisfied that the LRA has a reasonable plan in place to provide the element prior to transfer of the property; and

(3) The proposed EDC will more effectively enable achievement of the job generation objectives of the redevelopment plan regarding the parcel requested than the application of other federal real property disposal authorities.

(f) Upon acceptance of an EDC application, the Secretary concerned shall determine if the proposed terms and conditions are fair and reasonable. The Secretary concerned may propose and negotiate any alternative terms or conditions that the Secretary considers necessary. The following factors shall be considered, as appropriate, in evaluating the terms and conditions of the proposed transfer, including price, time of payment, and other relevant methods of compensation to the Federal government:

(1) Local economic conditions and adverse impact of closure or realignment on the region and potential for economic recovery through an EDC.

(2) Extent of short- and long-term job generation.

(3) Consistency with the entire redevelopment plan.

(4) Financial feasibility of the development and proposed consideration, including financial and market analysis and the need and extent of proposed infrastructure and other investments.

(5) Extent of state and local investment, level of risk incurred, and the LRA's ability to implement the redevelopment plan. Higher risk assumed and investment made by the LRA should be recognized with more favorable terms and conditions, to encourage local investment to support job generation.

(6) Current local and regional real estate market conditions, including market demand for the property.

(7) Incorporation of other Federal agency interests and concerns, including the applicability of other Federal surplus property disposal authorities.

(8) Economic benefit to the Federal Government, including protection and maintenance cost savings, environmental clean-up savings, and anticipated consideration from the transfer.

(9) Compliance with applicable Federal, state, interstate, and local laws and regulations.

(g) The Secretary concerned shall negotiate the terms and conditions of each transaction with the LRA. The Secretary concerned shall have the discretion and flexibility to enter into agreements that specify the form of payment and the schedule.

(h)(1) The Secretary concerned may accept, as consideration, any combination of the following:

(i) Cash, including a share of the revenues that the local redevelopment authority receives from third-party buyers or lessees from sales and leases of the conveyed property (*i.e.,* a share of the revenues generated from the redevelopment project);

(ii) Goods and services;

(iii) Real property and improvements; and

(iv) Such other consideration as the Secretary considers appropriate.

(2) The consideration may be accepted over time.

(3) All cash consideration for property at a military installation where the date of approval of closure or realignment is before January 1, 2005, shall be deposited in the account established under Section 2906(a) of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Pub. L. 101–510; 10 U.S.C. 2687 note). All cash consideration for property at a military installation where the date of approval of closure or realignment is after January 1, 2005, shall be deposited in the account established under Section 2906A(a) of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Pub. L. 101–510; 10 U.S.C. 2687 note).

(4) The Secretary concerned may use in-kind consideration received from an LRA at any location under control of the Secretary concerned.

(i) The LRA and the Secretary concerned may agree on a schedule for sale of parcels and payment participation.

(j) Additional provisions shall be incorporated in the conveyance documents to protect the Department's interest in obtaining the agreed upon consideration, which may include such items as predetermined release prices, accounting standards, or other appropriate clauses designed to ensure payment and protect against fraudulent transactions. Every agreement for an EDC shall contain provisions allowing the Secretary concerned to recoup from the LRA such portion of the proceeds from a sale or lease by the LRA as the Secretary concerned determines appropriate if the LRA does not use the proceeds to support economic redevelopment of or related to the installation during the period specified in paragraph (d)(8) of this section. The Secretary concerned and an LRA may enter into a mutually agreed participation agreement which may include input by the Secretary concerned on the LRA's disposal of EDC parcels.

(k) The Secretary concerned should take account of property value but is not required to formally determine the estimated fair market value of the property for any EDC. The consideration negotiated should be based on a business plan and development pro-forma that assumes the uses in the redevelopment plan. The Secretary concerned may determine the nature and extent of any additional information needed for purposes of an informed negotiation. This may include, but is not limited to, an economic and market analysis, construction estimates, a real estate pro forrma analysis, or an appraisal. To the extent not prohibited by law, information used should be shared with the LRA.

(l) After evaluating the application based upon the criteria specified in paragraph (f) of this section, and negotiating terms and conditions, the Secretary concerned shall present the proposed EDC to the Deputy Under Secretary of Defense (Installations and Environment) for formal coordination before announcing approval of the application.

**§ 174.10 [Removed and Reserved]**

■ 3. Section 174.10 is removed and reserved.

Dated: November 10, 2011.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2011–29533 Filed 11–15–11; 8:45 am]

BILLING CODE 5001–06–P

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[Docket No. USCG–2011–0842]**

## Safety Zones; Annual Firework Displays Within the Captain of the Port, Puget Sound Area of Responsibility

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule; correction.

**SUMMARY:** This document corrects a final rule published in the **Federal Register** on October 4, 2011, for the Safety Zones; Annual Firework Displays Within the Captain of the Port, Puget Sound Area of Responsibility. That document contained an inaccurate Docket Number, USCG–2010–0842. The correct Docket Number is USCG–2011–0842.

**DATES:** Effective November 16, 2011.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Ensign Anthony P. LaBoy, USCG Sector Puget Sound Waterways Management Division, Coast Guard; telephone (206) 217–6323, email *SectorPugetSoundWWM@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

**SUPPLEMENTARY INFORMATION:**

*Correction*

The heading of the final rule published in the **Federal Register** of October 4, 2011, in FR Doc. 2011–25344, on page 61263, contained an incorrect Docket Number, USCG–2010–0842. The correct Docket Number is USCG–2011–0842. To advise the public of this error, we are publishing this notice of correction.

**Correction of Publication**

Accordingly, the final rule Safety Zones; Annual Firework Displays Within the Captain of the Port, Puget Sound Area of Responsibility published in the **Federal Register** of October 4, 2011, in FR Doc. 2011–25344, is corrected as follows: On page 61263, in the heading, ''Docket No. USCG–2010–0842'' is corrected to read ''Docket No. USCG–2011–0842.''

Dated: November 9, 2011.

**Kathryn A. Sinniger,**

*Chief, Office of Regulations and Administrative Law United States Coast Guard.*

[FR Doc. 2011–29561 Filed 11–15–11; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 3

**RIN 2900–AN64**

### Clothing Allowance

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** The Department of Veterans Affairs (VA) amends its regulations regarding clothing allowances. The amendment provides for an annual clothing allowance for each qualifying prosthetic or orthopedic appliance worn or used by a veteran for a service-connected disability or disabilities that wears out or tears a single article of the veteran's clothing and for each physician-prescribed medication used by a veteran for a skin condition that is due to a service-connected disability that affects a single outergarment. The amendment also provides two annual clothing allowances if a veteran wears or uses more than one qualifying prosthetic or orthopedic appliance, physician-prescribed medication for more than one skin condition, or an appliance and a medication for a service-connected disability or disabilities and the appliance(s) or medication(s) together cause a single article of clothing to wear out faster than if affected by a single appliance or medication. This amendment also makes certain technical changes to the rule.

**DATES:** *Effective Date:* This final rule is effective December 16, 2011.

*Applicability Date:* This final rule applies to claims received by or pending before VA on or after December 16, 2011.

**FOR FURTHER INFORMATION CONTACT:** Tom Kniffen, Chief, Regulations Staff (211D), Compensation Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 461–9725. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** In a document published in the **Federal Register** on February 2, 2011 (76 FR 5733–5734), VA proposed to amend its regulations regarding clothing allowances in order to implement the holding of the U.S. Court of Appeals for the Federal Circuit (Federal Circuit) in *Sursely* v. *Peake,* 551 F.3d 1351, 1356 (Fed. Cir. 2009). In this final rule, VA will implement *Sursely* by amending 38 CFR 3.810(a)(2) to provide that a veteran is entitled to a clothing allowance for each qualifying prosthetic or orthopedic appliance worn or used by a veteran because of a service-connected disability which tends to wear or tear clothing or medication prescribed by a physician and used by a veteran for a skin condition caused by a service-connected disability which irreparably damages an outergarment if each appliance or medication affects a single article of clothing or outergarment.

VA also provides in § 3.810(a)(3) that a veteran is entitled to two annual clothing allowances if: (1) A veteran uses more than one qualifying prosthetic or orthopedic appliance, medication for more than one skin condition, or an appliance and a medication; and (2) the appliance(s) or medication(s) each satisfy the requirements of § 3.810(a)(1) and together tend to tear or wear a single article of clothing or irreparably damage an outergarment, requiring replacement at an increased rate than if the article of clothing, or outergarment, was affected by a single qualifying appliance or medication.

**Comments in Response to Proposed Rule**

A 60-day comment period ended April 4, 2011, and VA received comments from seven members of the general public and one organization. Three individual commenters expressed general support for the rule. A fourth commenter stated that VA should expand the service-connected disabilities for which a clothing allowance is provided to include ''very limited knee movement when walking'' which causes shoes to wear out faster. VA makes no change based on this comment because 38 U.S.C. 1162 authorizes payment of a clothing allowance only if a veteran ''wears or uses a prosthetic or orthopedic appliance'' that tends to wear out or tear the veteran's clothing or uses physician-prescribed medication for a skin condition due to a service-connected disability and the medication causes irreparable damage to the veteran's outergarments. No clothing allowance is payable if a veteran does not use a prosthetic or orthopedic appliance or medication for a skin condition.

Another commenter stated that use of an Ankle-Foot Orthotic (AFO) wears out shoes as well as slacks/trousers. VA makes no change based on this comment because 38 U.S.C. 1162 does not authorize the payment of more than one clothing allowance based on a single qualifying appliance. Section 1162 authorizes VA to pay ''a clothing allowance of $716 per year'' to each veteran who, because of service-connected disability ''wears or uses a prosthetic appliance (including a wheelchair) which the Secretary determines tends to wear out or tear the clothing of the veteran.'' In *Sursely,* the Federal Circuit stated that ''by linking receipt of the [clothing allowance] to a single qualifying appliance, Congress recognized that multiple appliances might allow the award of multiple benefits.'' That decision provides no basis for interpreting section 1162 to allow more than one clothing allowance for a single appliance.

A sixth commenter expressed that VA should establish ''no limitation for the number of clothing allowances per year'' because some veterans use a combination of prosthetic and/or orthopedic appliances for service-connected disabilities. VA appreciates this comment; however, VA makes no change in response to this comment because the rule as proposed already provides for multiple prosthetic and/or orthopedic appliances. As explained above, § 3.810(a)(2) provides that a veteran is entitled to an annual clothing allowance for each prosthetic or orthopedic appliance used by the veteran if each appliance affects a distinct article of clothing and § 3.810(a)(3) provides for two clothing allowances based on the cumulative effects of multiple appliances on a single article of clothing.

The seventh commenter stated that currently, only metal-hinged prosthetic devices qualify for the clothing allowance and that VA should cover wear and tear caused by plastic-hinged prosthetics as well. The commenter further stated that prescription skin cream for the ''face, neck, hands, arms, or any area not covered by clothing may come into contact with clothing, causing discoloration or rapid deterioration.'' VA appreciates these comments; however, VA makes no change to the rule based on these comments for the following reasons. The term ''prosthetic * * * appliance'' in § 3.810(a)(1)(i), (a)(1)(ii)(A), (a)(2) and (3) includes plastic-hinged prosthetics and is not limited to metal-hinged prosthetic devices. With regard to the comment about medication that comes in contact with clothing, § 3.810(a) does not limit entitlement to a clothing allowance to medications that are covered by clothing. Rather a veteran is entitled to a clothing allowance if any physician-

prescribed medication used for a skin condition caused by a service-connected disability irreparably damages the veteran's outergarment. As such, VA makes no change based on this comment.

VA received an eighth and final comment from the National Organization of Veterans' Advocates, Inc. (NOVA). NOVA suggested that VA revise § 3.810(a)(1)(i) to clarify that a veteran is entitled to one clothing allowance if a VA examination or hospital or examination report from a facility specified in 38 CFR 3.326(b) establishes that physician-prescribed medication for a skin condition due to a service-connected disability causes irreparable damage to the veteran's outergarments. VA makes no change based on this comment because it is beyond the scope of this rulemaking. Section 3.810(a)(1)(i) restates, without change, VA's long-standing policy of providing that claims for clothing allowance that are based on certain types of disabilities (*i.e.,* the loss or loss of use of a hand or foot compensable at the rate prescribed in 38 CFR 3.350(a), (b), (c), (d), or (f)) may be decided without the requirement for a certification from the VA Under Secretary for Health, or his or her designee, of medical facts establishing eligibility for the clothing allowance. Section 3.810(a)(1)(ii) correspondingly provides that, in all other clothing allowance claims, including claims based on use of prescribed medication and claims based on use of a prosthetic or orthopedic device for conditions other than those specified in § 3.810(a)(1)(i), certification from the Under Secretary for Health or his or her designee is necessary. VA's proposed rule did not propose to change this long-standing policy concerning the circumstances in which certification of medical facts is required. The purpose of this rule is to amend 38 CFR 3.810(a)(2) and (3) ''to implement *Sursely,''* which addressed a veteran's entitlement to two clothing allowances for independently qualifying orthopedic appliances affecting different articles of clothing. 76 FR 5733; *Sursely,* 551 F.3d at 1356.

VA will make the following non-substantive technical changes to the final rule to enhance clarity. The parenthetical ''(including a wheelchair)'' was included in proposed § 3.810(a)(1)(i) and (a)(1)(ii)(A), but was not included in proposed § 3.810(a)(2) and (3). VA will revise the parenthetical in § 3.810(a)(1)(i) and (a)(1)(ii)(A) to read ''(including, but not limited to, a wheelchair)'' and also add this parenthetical after the term ''orthopedic appliance'' in paragraphs (a)(2) and (3) to clearly state that all qualifying prosthetic or orthopedic appliances, in addition to a wheelchair, are included.

VA will replace the term ''distinct'' in the title of § 3.810(a)(2) with the term ''multiple types of'' in order to clarify that more than one clothing allowance is payable when more than one type of garment is affected. Similarly, in § 3.810(a)(2)(ii), VA will replace the term ''distinct'' with ''more than one type of'' to clarify that more than one clothing allowance is payable when more than one type of article of clothing or outergarment is affected. We will also insert ''type of'' after ''single'' in the title of § 3.810(a)(3) and in § 3.810(a)(3)(ii) and will replace ''an outergarment'' with ''a type of outergarment'' in § 3.810(a)(3)(ii). This will clarify that the references to garments or clothing in this regulation are to types of garments, such as shirts, rather than to individual garments, such as a specific shirt.

In § 3.810(a)(3)(ii), VA will replace the phrase ''at a faster rate than if affected by one qualifying appliance or medication'' with ''at an increased rate of damage to the clothing or outergarment due to a second appliance or medication.'' This language will clarify that a second clothing allowance may be paid when a second appliance and/or medication increases the rate of damage to the clothing or outergarment.

**Paperwork Reduction Act**

The collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521) referenced in the proposed rule has an existing OMB approval as a form. The form is VA Form 10–8678, Application for Annual Clothing Allowance (Under 38 U.S.C. 1162), OMB approval number 2900–0198. No changes are made in this final rule to the collection of information.

**Regulatory Flexibility Act**

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This final rule would not affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

**Executive Orders 12866 and 13563**

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a ''significant regulatory action,'' which requires review by the Office of Management and Budget (OMB), as ''any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.''

The economic, interagency, budgetary, legal, and policy implications of this regulatory action have been examined and it has been determined not to be a significant regulatory action under Executive Order 12866.

**Unfunded Mandates**

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any year. This final rule would have no such effect on State, local, and tribal governments, or on the private sector.

**Catalog of Federal Domestic Assistance Numbers and Titles**

The Catalog of Federal Domestic Assistance program numbers and titles for this proposed rule are 64.013, Veterans Prosthetic Appliances; and 64.109, Veterans Compensation for Service-Connected Disability.

**Signing Authority**

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. John R. Gingrich, Chief of Staff, Department of Veterans Affairs, approved this document on November 2, 2011, for publication.

**List of Subjects in 38 CFR Part 3**

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Radioactive materials, Veterans, Vietnam.

Dated: November 10, 2011.

**Robert C. McFetridge,**

*Director of Regulation Policy and Management, Office of the General Counsel, Department of Veterans Affairs.*

For the reasons set out in the preamble, VA amends 38 CFR part 3 as follows:

## PART 3—ADJUDICATION

### Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

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

**Authority:** 38 U.S.C. 501(a), unless otherwise noted.

■ 2. Revise § 3.810, paragraph (a) to read as follows:

**§ 3.810 Clothing allowance.**

(a) Except as provided in paragraph (d) of this section, a veteran who has a service-connected disability, or a disability compensable under 38 U.S.C. 1151 as if it were service connected, is entitled, upon application therefore, to an annual clothing allowance, which is payable in a lump sum, as specified in this paragraph.

(1) *One clothing allowance.* A veteran is entitled to one annual clothing allowance if—

(i) A VA examination or a hospital or examination report from a facility specified in § 3.326(b) establishes that the veteran, because of a service-connected disability or disabilities due to loss or loss of use of a hand or foot compensable at a rate specified in § 3.350(a), (b), (c), (d), or (f), wears or uses one qualifying prosthetic or orthopedic appliance (including, but not limited to, a wheelchair) which tends to wear or tear clothing; or

(ii) The Under Secretary for Health or a designee certifies that—

(A) A veteran, because of a service-connected disability or disabilities, wears or uses one qualifying prosthetic or orthopedic appliance (including, but not limited to, a wheelchair) which tends to wear or tear clothing; or

(B) A veteran uses medication prescribed by a physician for one skin condition, which is due to a service-connected disability, that causes irreparable damage to the veteran's outergarments.

(2) *More than one clothing allowance; multiple types of garments affected.* A veteran is entitled to an annual clothing allowance for each prosthetic or orthopedic appliance (including, but not limited to, a wheelchair) or medication used by the veteran if each appliance or medication—

(i) Satisfies the requirements of paragraph (a)(1) of this section; and

(ii) Affects more than one type of article of clothing or outergarment.

(3) *Two clothing allowances; single type of garment affected.* A veteran is entitled to two annual clothing allowances if a veteran uses more than one prosthetic or orthopedic appliance, (including, but not limited to, a wheelchair), medication for more than one skin condition, or an appliance and a medication, and the appliance(s) or medication(s)—

(i) Each satisfy the requirements of paragraph (a)(1) of this section; and

(ii) Together tend to wear or tear a single type of article of clothing or irreparably damage a type of outergarment at an increased rate of damage to the clothing or outergarment due to a second appliance or medication.

* * * * *

[FR Doc. 2011–29579 Filed 11–15–11; 8:45 am]

BILLING CODE 8320–01–P

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## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 59

**RIN 2900–AN57**

### Updating Fire Safety Standards

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule; affirmation.

**SUMMARY:** This document affirms as final, without changes, a provision included in a final rule with request for comments that amended the Department of Veterans Affairs (VA) regulations concerning community residential care facilities, contract facilities for certain outpatient and residential services, and State home facilities. That provision established a five-year period within which all covered buildings with nursing home facilities existing as of June 25, 2001, must conform to the automatic sprinkler requirement of the 2009 edition of the National Fire Protection Association (NFPA) 101. This rule helps ensure the safety of veterans in the affected facilities.

**DATES:** *Effective Date:* This final rule is effective November 16, 2011.

**FOR FURTHER INFORMATION CONTACT:** Brian McCarthy, Office of Patient Care Services, Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Ave. NW., Washington, DC 20420, (202) 461–6759. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** In a final rule with request for comments published in the **Federal Register** on February 24, 2011 (76 FR 10246), VA amended its regulations concerning the codes and standards applicable to community residential care facilities, contract facilities for outpatient and residential treatment services for veterans with alcohol or drug dependence or abuse disabilities, and State homes. We amended 38 CFR 17.63, 17.81(a)(1), 17.82(a)(1), and 59.130(d)(1) to require facilities to meet the requirements in the applicable provisions of current editions of publications produced by the NFPA. These publications are: NFPA 10, Standard for Portable Fire Extinguishers; NFPA 99, Standard for Health Care Facilities; NFPA 101, Life Safety Code; and NFPA 101A, Guide on Alternative Approaches to Life Safety.

We solicited comments regarding an interim final provision in the amendment to 38 CFR 59.130 that requires all buildings with nursing home facilities existing as of June 25, 2001, to have an automatic sprinkler system, as required in the 2009 edition of NFPA 101 by February 24, 2016. We provided a 60-day comment period on this interim final provision of the amendment to 38 CFR 59.130, and we received no comments.

Accordingly, we adopt this provision without change. This and all other provisions of the final rule with request for comments remain in effect as stated in the February 24, 2011, rule.

**Unfunded Mandates**

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any

year. This final rule will have no such effect on State, local, and tribal governments, or on the private sector.

**Paperwork Reduction Act of 1995**

This document contains no collections of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

**Executive Orders 12866 and 13563**

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a ''significant regulatory action,'' which requires review by the Office of Management and Budget, as ''any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.''

The economic, interagency, budgetary, legal, and policy implications of this regulatory action have been examined and it has been determined not to be a significant regulatory action under Executive Order 12866.

**Regulatory Flexibility Act**

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612.

The change to part 59 concerning sprinkler systems will affect certain State homes. The State homes that will be subject to this rulemaking are State government entities under the control of State governments. All State homes are owned, operated and managed by State governments except for a small number operated by entities under contract with State governments. These contractors are not small entities.

Accordingly, pursuant to 5 U.S.C. 605(b), this rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

**Catalog of Federal Domestic Assistance**

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are 64.005, Grants to States for Construction of State Home Facilities; 64.007, Blind Rehabilitation Centers; 64.008, Veterans Domiciliary Care; 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; 64.011, Veterans Dental Care; 64.012, Veterans Prescription Service; 64.013, Veterans Prosthetic Appliances; 64.014, Veterans State Domiciliary Care; 64.015, Veterans State Nursing Home Care; 64.016, Veterans State Hospital Care; 64.018, Sharing Specialized Medical Resources; 64.019, Veterans Rehabilitation Alcohol and Drug Dependence; 64.022, Veterans Home Based Primary Care.

**Signing Authority**

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. John R. Gingrich, Chief of Staff, Department of Veterans Affairs, approved this document on October 21, 2011, for publication.

Dated: November 9, 2011.

**Robert C. McFetridge,**

*Director of Regulation Policy and Management, Office of the General Counsel, Department of Veterans Affairs.*

[FR Doc. 2011–29471 Filed 11–15–11; 8:45 am]

BILLING CODE 8320–01–P

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R09–OAR–2011–0701; FRL–9490–1]**

## Revisions to the California State Implementation Plan, San Joaquin Valley Unified 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) portion of the California State Implementation Plan (SIP). These revisions were proposed in the **Federal Register** on September 12, 2011 and concern volatile organic compound (VOC) emissions from steam enhanced crude oil production and aerospace coating 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:* These rules are effective on December 16, 2011.

**ADDRESSES:** EPA has established docket number EPA–R09–OAR–2011–0701 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
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### I. Proposed Action

On September 12, 2011 (76 FR 56134), EPA proposed to approve the following rules into the California SIP.

| Local agency | Rule No. | Rule title | Adopted | Submitted |
|---|---|---|---|---|
| SJVUAPCD | 4401 | Steam-Enhanced Crude Oil Production Wells | 06/16/11 | 07/28/11 |
| SJVUAPCD | 4605 | Aerospace Assembly and Component Coating Operations | 06/16/11 | 07/28/11 |

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 rule 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. This action permanently terminates all Clean Air Act sanctions and FIP implications of our January 26, 2010 (75 FR 3996) limited disapproval of previous versions of these rules.

**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, these rules do 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 17, 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. 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, Volatile organic compounds.

Dated: October 27, 2011.

**Jared Blumenfeld,**

*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 paragraph (c)(402)

to read as follows:

**§ 52.220 Identification of plan.**

* * * * *

(c) * * *

(402) New and amended regulations were submitted on July 28, 2011 by the Governor's designee.

(i) Incorporation by reference.

(A) San Joaquin Valley Unified Air Pollution Control District.

(*1*) Rule 4401, ''Steam-Enhanced Crude Oil Production Wells,'' adopted on June 16, 2011.

(*2*) Rule 4605, ''Aerospace Assembly and Component Coating Operations,'' amended on June 16, 2011.

[FR Doc. 2011–29466 Filed 11–15–11; 8:45 am]

BILLING CODE 6560–50–P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA–R09–OAR–2011–0537; FRL–9489–2]**

## Revisions to the California State Implementation Plan, South Coast Air Quality Management District

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

**ACTION:** Final rule.

**SUMMARY:** EPA is finalizing approval of revisions to the South Coast Air Quality Management District (SCAQMD) portion of the California State Implementation Plan (SIP). These revisions were proposed in the **Federal Register** on July 15, 2011 and concern volatile organic compound (VOC) emissions from paint thinners and multi-purpose solvents and from metalworking fluids and direct-contact lubricants. 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 16, 2011.

**ADDRESSES:** EPA has established docket number EPA–R09–OAR–2011–0537 for this action. Generally, documents in the docket for this action are available electronically at *http://www.regulations.gov* 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.

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I. Proposed Action
II. Public Comments and EPA Responses
III. EPA Action
IV. Statutory and Executive Order Reviews

### I. Proposed Action

On July 15, 2011 (76 FR 41744), EPA proposed to approve the following rules into the California SIP.

| Local agency | Rule No. | Rule title | Amended | Submitted |
|---|---|---|---|---|
| SCAQMD | 1143 | Consumer Paint and Multi-purpose Solvents | 12/03/10 | 04/05/11 |
| SCAQMD | 1144 | Metalworking Fluids and Direct-Contact Lubricants | 07/09/10 | 04/05/11 |

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. On July 15, 2011 (76 FR 41717), EPA also published a direct final approval of these rules. Because we received timely public comments, we withdrew this direct final approval on September 1, 2011 (76 FR 54384).

### II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period, we received comments from the following parties.

1. Michael S. Colley, W.M. Barr & Company; letter dated August 15, 2011 and received August 15, 2011 (W.M. Barr).

2. Pete Founger, WD–40 Company; letter dated August 12, 2011 and received August 12, 2011 (WD–40).

The comments and our responses are summarized below.

*Comment #1:* W.M. Barr states that rule 1143 effectively requires reformulation to acetone-based products which are extremely flammable, creating unnecessary fire risks for consumers and potential liability for manufacturers.

*Response #1:* The District analyzed this issue during local development of this rule, and determined that, Rule 1143 includes rule requirements designed to alert the consumer that new formulations may be more flammable than their conventional solvent counterpart. Further, the rule 1143 labeling requirement is identical to the labeling language recommended in CARB's consumer products regulation, which was supported as an acceptable remedy to address the safety concerns initially expressed by fire authorities. Rule 1143 also includes additional language that goes beyond CARB's requirements and commits the SCAQMD to continue conducting ongoing public education and outreach activities in conjunction with the local fire departments to alert the public of the dangers of reformulated solvents with flammable or extremely flammable chemicals. SCAQMD staff met with local fire departments and related fire agencies and developed educational brochures and public service announcements to further alert the public of a potential change in formulations of paint thinners and multi-purpose solvents. This outreach effort was designed to further alert the public about the need to review labels for products that may contain flammable or extremely flammable solvents. Based upon these considerations, the existing rule was found to have less than significant fire hazard impacts in the June 2010 Final EA for PAR 1143.[1]

We also note that this issue has already been resolved in court. Specifically, the Superior Court of California, County of Los Angeles denied the petition for writ of mandate by the commenter, which contended that SCAQMD's Supplemental Environmental Assessment (SEA) did not comply with CEQA, was inconsistent with the court's prior decision, and was preempted by State and Federal Law. The court also subsequently found that there was substantial evidence in the record to support SCAQMD's conclusion of no significant fire hazard.[2] EPA has reviewed the SCAQMD's analysis and the court decision, and does not find basis in the comment to disapprove rule 1143 for this issue. See also response to comment 6.

*Comment #2:* W.M. Barr states that they will not distribute certain acetone-based products in SCAQMD to avoid the increased fire hazard caused by rule 1143 as discussed in comment 1. W.M. Barr claims this will result in the loss of several million dollars in annual sales to their company and possible inadequate supplies of consumer paint thinners and multi-purpose solvents in SCAQMD.

*Response #2:* As discussed in response to comment 1, we concur with SCAQMD and court determinations that the rule does not create a significant new fire hazard. The District further provided a detailed Final

[1] Initial Study for Proposed Amended Rule 1143, SCAQMD, August 2010, pages 2–19 to 2–20 (Initial Study).

[2] Superior Court of California, County of Los Angeles Ruling on Submitted Matter March 29, 2011 Writ of Mandamus, May 16, 2011, page 2 (Superior Court ruling, May 16, 2011).

Socioeconomic Assessment [3] for rule 1143 showing that cost-effective controls are available. W.M. Barr has provided no new information to undermine this analysis, but merely stated that they will choose not to provide certain products subject to the rule. Since controls are cost-effective, we assume other companies will provide them, and we cannot disapprove the rule merely to protect the commenter's market share. Lastly, we note that, ''(m)any of the solvent technologies certified under the District's Clean Air Solvent (CAS) program have utility as consumer paint thinners and multi-purpose solvents. The most common and effective cleaners that meet this criteria are water-based or aqueous cleaners that contain little or no VOCs.'' [4] Additionally, based on 2008 data, the District concluded that 92.7% of all architectural coatings sold were of waterborne chemistry, while coatings that required thinning with solvents accounted for only 0.28% of the total inventory.[5] District data shows that the trend continues to favor waterborne coatings as the 2010 data indicates that 93.2% of the coatings sold were of waterborne chemistry.[6] Therefore, the need for commercial high-VOC solvents and thinners is relatively small and continues to decrease.

*Comment #3:* W.M. Barr comments that EPA should conduct further independent evaluation of whether rule 1143 constitutes reasonably available control technology (RACT).

*Response #3:* CAA Section 182(b)(2) requires RACT for all major VOC sources. However, States are not limited, in the CAA, to implementing RACT and may, particularly for extreme Ozone nonattainment areas like South Coast, need more stringent requirements to fulfill attainment and other requirements of CAA Sections 110 and part D. Rule 1143 is intended to exceed RACT requirements because the rule largely applies to consumer product distributors and users who fall below the major source threshold and therefore do not require RACT. In addition, EPA approved South Coast's demonstration of RACT in 2007,[7] which did not rely on rule 1143 controls. See also response to comments 4 and 5.

*Comment #4:* W.M. Barr states that rule 1143 is not RACT because it: (a) Does not exempt low vapor pressure VOCs as does CARB; and (b) phases in the 25 grams/liter VOC standard more quickly and without the qualifications that are allowed by CARB.

*Response #4:* The District has concluded ''that ample technology and over 150 compliant products are available,'' [8] so a low vapor pressure exemption and slower phase-in of the 25 grams/liter limit are not needed. Nonetheless, even if we agreed with the comment that the lack of low vapor pressure exemption and the accelerated phase-in of the 25 g/l standard are not reasonably available, nothing in section 182(b)(2) or elsewhere in the CAA prohibits States from incorporating into the SIP provisions more stringent than RACT. See also response to comments 3 and 5.

*Comment #5:* W.M. Barr comments that technology is only ''reasonably available'' where it would expedite attainment, which is not necessarily the case for rule 1143.

*Response #5:* Here and elsewhere, the commenter confuses CAA RACT requirements as a control ceiling instead of a floor. For purposes of CAA Section 172(c)(1), for example, EPA may only require States to include Reasonably Available Control Measures (RACM) that will accelerate attainment. However, nothing in section 172(c)(1) or elsewhere in the Act prohibits States from incorporating more stringent requirements in SIPs. We also note that, based on the Draft Supplemental Environmental Assessment, [9] consumer products with VOC limits meeting rule 1143 are available. In addition, we note that the District believes the amended rule will result in a total reduction of 9.75 tons/day by January 1, 2012, which contributes towards the District's progress to attainment.[10] See also response to comments 3 and 4.

*Comment #6:* W.M. Barr does not believe that CARB's submittal to EPA of rule 1143 fulfilled the CAA requirement for State authority to adopt and implement the rule. W.M. Barr has filed legal action challenging rule 1143 and, until this action is resolved, it is unclear whether California has authority to adopt and implement this rule.

*Response #6:* A summary of W.M Barr's legal action against SCAQMD regarding rule 1143 is outlined in the July 2010 Final Staff Report for Proposed Amended rule 1143.[11] On April 1, 2009, W.M. Barr filed a challenge to rule 1143, alleging violations of California Environmental Quality Act (CEQA) and of the District's certified regulatory program codified in rule 110. On April 1, 2010, SCAQMD's motion to dismiss was granted in part, but the judgment and writ required SCAQMD to vacate the final VOC limits of 25 g/l and prepare a CEQA document to address the potential fire hazard issue.[12] On March 29, 2011, SCAQMD submitted documentation for the remedial actions and on May 16 2011, the court ruled in favor of the District noting:

> The SEA described the conventional solvents used in paint thinners and multi-purpose solvents and likely replacement solvents. The SEA also described the relative flammability of each product * * * The OSFM and Chief Bunting provided detailed comments * * * Experts agreed that the consumer warning programs established by CARB and SCAQMD will avoid any potentially significant fire hazards. There is now substantial evidence in record to support SCAQMD conclusion of no significant fire hazard.[13]

The comment has not described any additional legal challenge to justify EPA delaying SIP action on SIP submittal of this rule.

*Comment #7:* WD–40 states that rule 1144 is ambiguous and unenforceable because it is not clear whether the rule applies to direct-contact lubricants used on all substrates or only metal.

*Response #7:* We agree that the rule could be clearer in this regard. However, the plain reading of both the rule title and the applicability section suggest that the rule is focused only on metal substrates. SCAQMD staff support material and response to this comment similarly clarify SCAQMD's intent to regulate only metal substrates.[14] We expect that this clarification somewhat addresses any compliance concerns for the commenter. While we recommend that SCAQMD further clarify this rule in the future, this minor ambiguity does

[3] Final Socioeconomic Assessment for Proposed Rule 1143—Consumer Paint Thinners and Multi-purpose Solvents, SCAQMD, February 2009, pages 3 and 10 (Socioeconomic Assessment).

[4] SCAQMD Final Staff Report of Rule 1143—Consumer Paint Thinners and Multi-Purpose Solvents, March 6 2010 (Staff Report, March 6 2010), page 4.

[5] SCAQMD Final Staff Report for Proposed Rule 1143—Consumer Paint Thinners and Multi-Purpose Solvents, July 2010 (Staff Report, July 2010), page 27.

[6] 2008 Annual quantity and emissions reports submitted by the Architectural Coatings Manufacturers pursuant to SCAQMD rule 314, Fees for Architectural Coatings, amended May 16, 2011 (2008 Architectural Coating sales data).

[7] 40 CFR 52.220(c)(358).

[8] Staff Report, March 6 2010, page 29.

[9] June 2010 Final Supplemental Environmental Assessment for Proposed Amended Rule 1143—Consumer Paint Thinners and Multi-Purpose Solvents, page 9 (Final SEA June 2010).

[10] December 2010 Staff Report for PAR 1143, SCAQMD, page 1 (December 2010 Staff Report).

[11] December 2010 Staff Report, page 1.

[12] Superior Court of California for the County of Los Angeles Transcript of Proceedings of Case BS 119869, pages 4–7 (April 2010 Court ruling).

[13] April 2010 Court ruling, page 2.

[14] Email from Michael Morris (SCAQMD) to Adrianne Borgia (EPA) regarding, ''Comment Letter from WD–40,'' August 25, 2011.

not justify less than full SIP approval of the rule at this time.

*Comment #8:* WD–40 commented that the SIP emission credits associated with this rule are based on outdated data and are significantly low if the rule covers more than just metal working facilities.

*Response #8:* The rule specifically states that it covers all VOC containing fluids used for metalworking and for metal protection. The exact amount of emission credit associated with this rule is not relevant to the action on whether to approve the rule into the federally-enforceable SIP.

*Comment #9:* WD–40 further stated that rule 1144 does not meet RACT because it: (a) does not exempt small containers; and (b) does not allow low vapor pressure VOCs as do other EPA and CARB regulations.

*Response #9:* States are not limited to implementing RACT and may, particularly for extreme Ozone nonattainment areas like South Coast, need more stringent requirements to fulfill attainment and other requirements of CAA Sections 110 and part D. See also response to comments 3, 4 and 5.

### 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, Intergovernmental relations, Reporting and recordkeeping requirements, Volatile organic compounds].

Dated: October 21, 2011.

**Jared Blumenfeld,**

*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)(388)(i)(A) to read as follows:

**§ 52.220 Identification of plan.**

* * * * *

(c) * * *

(388) New and amended regulations for the following APCD were submitted on April 5, 2011 by the Governor's Designee.

(i) Incorporation by reference.

(A) South Coast Air Quality Management District—SCAQMD)

(*1*) Rule 1143, ''Consumer Paint Thinners & Multi-purpose Solvents,'' adopted on March 6, 2009 and amended December 3, 2010.

(*2*) Rule 1144, ''Metal Working Fluids and Direct-Contact Lubricants,'' adopted on March 6, 2009, and amended July 9, 2010.

* * * * *

[FR Doc. 2011–29459 Filed 11–15–11; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 180

**[EPA–HQ–OPP–2010–0866; FRL–9325–4]**

## Fenamidone; Pesticide Tolerances

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

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes tolerances for inadvertent residues of fenamidone in or on the cereal grains crop group 15, except rice and the forage, fodder, and straw of cereal grains crop group 16, except rice. Bayer Crop Science requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

**DATES:** This regulation is effective November 16, 2011. Objections and requests for hearings must be received on or before January 17, 2012, and must be filed in accordance with the instructions provided in 40 CFR part

178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2010–0866. All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

**FOR FURTHER INFORMATION CONTACT:** Rosemary Kearns, Registration Division, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; *telephone number:* (703) 305–5611; *email address: kearns.rosemary@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. General Information

*A. Does this action apply to me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to those engaged in the following activities:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How can I get electronic access to other related information?*

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

*C. How can I file an objection or hearing request?*

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2010–0866 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before January 17, 2012. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA–HQ–OPP–2010–0866, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

## II. Summary of Petitioned-For Tolerance

In the **Federal Register** of December 15, 2010 (75 FR 78240) (FRL–8853–1), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 0F7764) by Bayer CropScience, 2 T.W. Alexander Dr., Research Triangle Park, NC 27709. The petition requested that 40 CFR 180.547 be amended by establishing tolerances for residues of the fungicide fenamidone, (4H-Imidazol-4-one, 3,5-dihydro-5-methyl-2-(methylthio)-5-phenyl-3 (phenylamino)-, (S)-), in or on grain, cereal, group 15 (except rice) at 0.1 ppm; grain, forage, group 16 (except rice) at 0.3 ppm; and grain, stover, group 16 (except rice) at 0.5 ppm. That notice referenced a summary of the petition prepared by Bayer CropScience, the registrant, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

EPA has modified the commodity definitions for which tolerances are being established. The reason for these changes is explained in Unit IV.C.

## III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue * * *.''

Consistent with section 408(b)(2)(D) of FFDCA, and the factors specified in section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for fenamidone

including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with fenamidone follows.

*A. Toxicological Profile*

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Fenamidone has low acute toxicity via the oral, dermal and inhalation routes of exposure. It is a moderate eye irritant, but is not a dermal irritant or a dermal sensitizer. The liver is the target organ in chronic studies in the rat, mouse and dog. The thyroid is also a target organ in the rat. An acceptable guideline immunotoxicity study in rats has been reviewed. While the study showed a potential immunosuppression at the highest dose tested, the existing risk assessment points of departure are lower and are therefore protective of this potential effect. Fenamidone is not likely to be a human carcinogen based on the negative carcinogenic potential of fenamidone in rats and mice and studies indicate that there is no concern for mutagenicity for fenamidone.

Fenamidone did not demonstrate any qualitative or quantitative increased susceptibility of fetuses or offspring in the rat and rabbit developmental toxicity studies or the 2-generation rat reproduction study. In the rat reproduction study (Sprague Dawleyrat), decreased absolute brain weight and pup body weight occurred at the same dose levels as decreased absolute brain weight and parental body weight, food consumption and increased liver and spleen weight. Developmental toxicity (decreased fetal weights and incomplete ossification) was observed in the rat only at the limit dose. Fenamidone did not produce developmental toxicity in the rabbit or reproductive toxicity in the rat.

No treatment-related effects were observed on motor activity or in the functional observation battery (FOB) parameters measured in the subchronic neurotoxicity study in rats. In this subchronic neurotoxicity study, marginal decreases in brain weights were observed only in high dose males. In the acute neurotoxicity study in rats, the most commonly observed clinical sign was staining/soiling of the anogenital region. Other day-1 FOB findings included mucous in the feces, hunched posture and unsteady gait. In a developmental neurotoxicity study in Wistar rats, no neurobehavioral effects and no neuropathological changes were observed at any dose in the offspring, but decreased body weight was observed during pre- and post-weaning.

Specific information on the studies received and the nature of the adverse effects caused by fenamidone as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in docket ID EPA–HQ–OPP–2010–0866 on pages 25–28 of the document titled ''Fenamidone: Human Health Risk Assessment to Support the Label Amendment to Permit Rotation to All Cereal Grain, Except Rice and Establish Revised Tolerances for Inadvertent Residues.''

*B. Toxicological Points of Departure/Levels of Concern*

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm.*

A summary of the toxicological endpoints for fenamidone used for human risk assessment is shown in Table 1 of this unit.

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR FENAMIDONE FOR USE IN HUMAN HEALTH RISK ASSESSMENT

| Exposure/scenario | Point of departure and uncertainty/safety factors | RfD, PAD, LOC for risk assessment | Study and toxicological effects |
|---|---|---|---|
| Acute dietary (All populations). | NOAEL = 125 milligrams/kilograms/day (mg/kg/day).<br>$UF_A$ = 10x<br>$UF_H$ = 10x<br>FQPA SF = 1x | Acute RfD = 1.25 mg/kg/day.<br>aPAD = 1.25 mg/kg/day | Acute Neurotoxicity in Rats: LOAEL = 500 mg/kg/day based on urination, staining/soiling of the anogenital region, mucous in the feces, and unsteady gait in the females. |
| Chronic dietary (All populations). | NOAEL= 2.83 mg/kg/day ..<br>$UF_A$ = 10x<br>$UF_H$ = 10x<br>FQPA SF = 1x | Chronic RfD = 0.0283 mg/kg/day.<br>cPAD = 0.0283 mg/kg/day | 2 Year Chronic Toxicity/Carcinogenicity in Rats: LOAEL = 7.07/9.24 mg/kg/day (M/F) based on increase in severity of diffuse thyroid C-cell hyperplasia in both sexes. |
| Cancer (Oral, dermal, inhalation). | Based on the negative carcinogenic potential of fenamidone in rats and mice, EPA has classified fenamidone as ''not likely'' to be a human carcinogen by all relevant routes of exposure. | | |

$UF_A$ = extrapolation from animal to human (interspecies). $UF_H$ = potential variation in sensitivity among members of the human population (intraspecies). FQPA SF = Food Quality Protection Act Safety Factor. PAD = population adjusted dose (a = acute, c = chronic). RfD = reference dose.

*C. Exposure Assessment*

1. Dietary exposure from food and feed uses. In evaluating dietary exposure to fenamidone, EPA considered exposure under the petitioned-for tolerances as well as all existing fenamidone tolerances in 40 CFR 180.579. EPA assessed dietary exposures from fenamidone in food as follows:

i. Acute exposure. Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure.

Such effects were identified for fenamidone. In estimating acute dietary exposure, EPA used food consumption information from the United States Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, EPA conducted a conservative acute dietary risk assessment which used maximum field trial residue values and assumed 100 percent crop treated for all commodities.

ii. Chronic exposure. In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994–1996 and 1998 CSFII. As to residue levels in food, EPA conducted a conservative acute dietary risk assessment which used maximum field trial residue values and assumed 100 percent crop treated for all commodities.

iii. Cancer. Based on the data summarized in Unit III.A., EPA has concluded that fenamidone does not pose a cancer risk to humans. Therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

iv. Anticipated residue information. Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide residues that have been measured in food. If EPA relies on such information, EPA must require pursuant to FFDCA section 408(f)(1) that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. For the present action, EPA will issue such data call-ins as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Data will be required to be submitted no later than 5 years from the date of issuance of these tolerances.

2. Dietary exposure from drinking water. The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for fenamidone in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of fenamidone. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm.*

Based on the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) and Screening Concentration in Ground Water (SCI–GROW) models the estimated drinking water concentrations (EDWCs) of fenamidone for acute exposures are estimated to be 47.88 parts per billion (ppb) for surface water and 178 ppb for ground water. For chronic exposures for non-cancer assessments these levels are estimated to be 12.86 ppb for surface water and 178 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For both acute and chronic dietary risk assessments, the water concentration value of 178 ppb was used to assess the contribution to drinking water.

3. From non-dietary exposure. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Fenamidone is not registered for any specific use patterns that would result in residential exposure.

4. Cumulative effects from substances with a common mechanism of toxicity. Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA has not found fenamidone to share a common mechanism of toxicity with any other substances, and fenamidone does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that fenamidone does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative.*

*D. Safety Factor for Infants and Children*

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* The pre- and postnatal toxicity database for fenamidone includes rat and rabbit developmental toxicity studies, a rat developmental neurotoxicity study (DNT), and a 2-generation reproduction toxicity study in rats. No evidence of increased quantitative or qualitative susceptibility of rat or rabbit fetuses to in utero exposure was observed in the developmental toxicity studies. There was no developmental toxicity in rabbit fetuses up to 100 milligrams/kilogram/day (mg/kg/day), the highest dose tested (HDT); whereas an increase in absolute liver weight was observed in the dose at 30 and 100 mg/kg/day. Since the liver was identified as one of the principal target organs in rodents and dogs, the occurrence of this finding in rabbits at 30 and 100 mg/kg/day was considered strong evidence of maternal toxicity. In the rat developmental study, developmental toxicity manifested as decreased fetal body weight and incomplete fetal ossification in the presence of maternal toxicity in the form of decreased body weight and food consumption at the limit dose (1,000 mg/kg/day). The effects at the limit dose were comparable between fetuses and dams. No quantitative or qualitative evidence of increased susceptibility was observed in the 2-generation reproduction study in rats. In that study, both the parental and offspring LOAELs were based on decreased absolute brain weight in female F1 adults and female F2 offspring at 89.2 mg/kg/day. At 438.3 mg/kg/day, parental effects consisted of decreased body weight and food consumption, and increased liver and spleen weight. Decreased pup body weight was also observed at the same dose level of 438.3 mg/kg/day. There were no effects on reproductive

performance up to 438.3 mg/kg/day (highest dose tested; HDT).

The results of the DNT study indicated an increased susceptibility of offspring. There was no maternal toxicity at the HDT (429 mg/kg/day). Effects in the offspring included decreased body weight (9–11%) and body weight gain (8–20%) during preweaning and decreased body weight (4–6%) during post-weaning at 429 mg/kg/day (LOAEL). There were no neurobehavioral effects and no neuropathological changes at any dose in the offspring. The concern for the increased susceptibility observed in the DNT is low because:

i. There were no neurobehavioral or neuropathological changes in the offspring at any dose;

ii. A clear NOAEL for the adverse effects in the study was identified;

iii. The endpoints used for the various risk assessment scenarios are much more sensitive than that of the decreased bodyweight of the offspring occurring at almost half the limit-dose (429 mg/kg/day); and

iv. The NOAEL of 2.83 mg/kg/day used for the long-term risk assessment is 33x lower than the offspring NOAEL of 92.3 mg/kg/day in the DNT.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1x. That decision is based on the following findings:

i. The toxicology database for fenamidone is complete for purposes of the characterization of potential pre-natal and/or post-natal risks to infants and children.

ii. There was no evidence of neurotoxicity in the subchronic neurotoxicity study submitted for fenamidone. There was evidence of neurotoxicity (urination, staining/soiling of the anogenital region, mucous in the feces and unsteady gait in females) in the acute neurotoxicity study, and EPA used the NOAEL from this study to assess acute dietary exposure. There was also evidence of neurotoxicity (decreased absolute brain weights) in the 2-generation rat reproduction study; however, there was no indication of increased susceptibility of offspring with regard to these effects. Finally, there was no evidence of neurotoxicity at any dose in the submitted DNT study. Based on the results of these studies, EPA concluded that there is no need for additional UFs to account for neurotoxicity.

iii. No qualitative or quantitative increased susceptibility of rat or rabbit fetuses to *in utero* exposure in the developmental toxicity studies was observed. There was no qualitative or quantitative increased susceptibility in the two generation reproduction study (rat). There is low concern for residual uncertainties in the DNT study in the rat since there is a well established offspring NOAEL for the reasons noted in Unit III.D.2.

iv. Residue values used in the dietary risk assessments are unlikely to underestimate risk. Dietary exposure assessments were conducted using maximum field trial residue values and assumed 100% crop treated. Therefore, the acute and chronic dietary, food only, exposure is considered an upper bound conservative estimate. The contribution from drinking water is minimal. EPA concludes that the acute and chronic exposure estimates in this analysis are unlikely to underestimate actual exposure. The drinking water component of the dietary assessment utilizes water concentration values generated by modeling parameters which are designed to provide conservative, health protective, high-end estimates of water concentrations which will not likely be exceeded.

### *E. Aggregate Risks and Determination of Safety*

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to fenamidone will occupy 5% of the aPAD for children 1–2 years old, the population group receiving the greatest exposure.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to fenamidone from food and water will utilize 90% of the cPAD for children 1–2 years old the population group receiving the greatest exposure. There are no residential uses for fenamidone.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account short- and intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Short- and intermediate-term adverse effects were identified; however, fenamidone is not registered for any use patterns that would result in short- and/or intermediate-term residential exposure. Short- and/or intermediate-term risk is assessed based on short- and/or intermediate-term residential exposure plus chronic dietary exposure. Because there is no short- or intermediate-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess short-term risk), no further assessment of short- or intermediate-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating short- and intermediate-term risk for fenamidone.

4. *Aggregate cancer risk for U.S. population.* Based on the lack of evidence of carcinogenicity in two adequate rodent carcinogenicity studies, fenamidone is not expected to pose a cancer risk to humans.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to fenamidone residues.

## IV. Other Considerations

### *A. Analytical Enforcement Methodology*

Adequate enforcement methodology (liquid chromatographic method coupled with tandem mass spectrum detection (LC/MS/MS)) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; *telephone number:* (410) 305–2905; *email address: residuemethods@epa.gov.*

### *B. International Residue Limits*

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint U.N. Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States

is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

There are no Codex MRLs for fenamidone in cereal crops (crop group 15 and 16, except rice).

*C. Revisions to Petitioned-For Tolerances*

EPA has modified the commodity definitions that were proposed in the Notice of Filing to (1) be consistent with Agency policy and nomenclature and (2) to have all of crop group 16 under a single tolerance instead of separated into separate ones as proposed.

EPA is removing the tolerances for corn, field forage; corn, field, grain; corn, field, stover; corn, sweet, forage, corn, sweet, plus cob with husks removed; corn, sweet, stover; wheat, grain; wheat, hay; wheat, forage; and wheat, straw from paragraph (d) that are covered by the newly created crop group tolerances.

Also, EPA has revised the tolerance expression to clarify (1) that, as provided in FFDCA section 408(a)(3), the tolerance covers metabolites and degradates of fenamidone not specifically mentioned; and (2) that compliance with the specified tolerance levels is to be determined by measuring only the specific compounds mentioned in the tolerance expression.

## V. Conclusion

Therefore, tolerances are established for indirect or inadvertent residues of fenamidone (4–H-imidazol-4-one, 3,5-dihydro-5-methyl-2-(methylthio)-5-phenyl-3-(phenylamino, (S)-) and its metabolite RPA 717879 (2,4-imidazolidinedione, 5-methyl-5-phenyl) in or on grain, cereal, group 15, except rice at 0.1 ppm; and grain, cereal, forage, fodder and straw, group 16, except rice at 0.5 ppm.

## VI. Statutory and Executive Order Reviews

This final rule establishes tolerances under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

## VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

**List of Subjects in 40 CFR Part 180**

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 27, 2011.

**Lois Rossi,**

*Director, Registration Division, Office of Pesticide Programs.*

Therefore, 40 CFR chapter I is amended as follows:

## PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.579, revise paragraphs (a)(1) introductory text, (a)(2) introductory text, (c) introductory text, and paragraph (d) to read as follows:

**§ 180.579 Fenamidone; tolerances for residues.**

(a) *General.* (1) Tolerances are established for residues of the fungicide, fenamidone, including its metabolites and degradates, in or on the following commodities. Compliance with the tolerance levels is to be determined by measuring only fenamidone (4H-Imidazol-4-one, 3,5-dihydro-5-methyl-2-(methylthio)-5-phenyl-3 (phenylamino)-,(S)-), in or on the commodities:

* * * * *

(2) Tolerances are established for residues of the fungicide fenamidone, including its metabolites and degradates, in or on the following commodities. Compliance with the tolerance levels is to be determined by measuring fenamidone (4H-Imidazol-4-one, 3,5-dihydro-5-methyl-2-(methylthio)-5-phenyl-3 (phenylamino)-,(S)-), and its metabolite RPA 717879 (2,4-imidazolidinedione, 5-methyl-5-phenyl), in or on the commodities:

* * * * *

(c) *Tolerances with regional registrations.* A tolerance with regional registration as defined in § 180.1(l) is established for residues of the fungicide fenamidone, including its metabolites and degradates, in or on the following commodities. Compliance with the

tolerance levels is to be determined by measuring only fenamidone (4H-Imidazol-4-one, 3,5-dihydro-5-methyl-2-(methylthio)-5-phenyl-3 (phenylamino)-,(S)-), in or on the commodity:

* * * * *

(d) *Indirect or inadvertent residues.* Tolerances are established for residues of the fungicide fenamidone, including its metabolites and degradates, in or on the following commodities. Compliance with the tolerance levels is to be determined by measuring fenamidone (4H-Imidazol-4-one, 3,5-dihydro-5-methyl-2-(methylthio)-5-phenyl-3 (phenylamino)-,(S)-), and its metabolite RPA 717879 (2,4-imidazolidinedione, 5-methyl-5-phenyl), in or on the following commodities when present therein as a result of application of fenamidone to the crops in paragraph (a)(1).

| Commodity | Parts per million |
|---|---|
| Grain, cereal, group 15, except rice | 0.1 |
| Grain, cereal, forage, fodder and straw, group 16, except rice | 0.5 |
| Soybean, forage | 0.15 |
| Soybean, hay | 0.25 |
| Soybean, seed | 0.02 |
| Strawberry | 0.15 |

[FR Doc. 2011–29618 Filed 11–15–11; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 180

**[[EPA–HQ–OPP–2011–0606; FRL–8892–1]**

## Polyethylene Glycol; Tolerance Exemption

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

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes an exemption from the requirement of a tolerance for residues of α-Hydro-ω-hydroxypoly(oxyethylene), minimum number average molecular weight (in amu), 17,000; also known as polyethylene glycol, when used as an inert ingredient in a pesticide chemical formulation. Clariant Corporation submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of α-Hydro-ω-hydroxypoly(oxyethylene), minimum number average molecular weight (in amu), 17,000 on food or feed commodities.

**DATES:** This regulation is effective November 16, 2011. Objections and requests for hearings must be received on or before January 17, 2012, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2011–0606. All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Fertich, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; *telephone number:* (703) 347–8560; *email address: fertich.elizabeth@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this action apply to me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How can I get electronic access to other related information?*

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

*C. Can I file an objection or hearing request?*

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2011–0606 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before January 17, 2012. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA–HQ–OPP–2011–0606, by one of the following methods.

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries

are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

## II. Background and Statutory Findings

In the **Federal Register** of August 26, 2011 (76 FR 53372) (FRL–8884–9), EPA issued a notice pursuant to section 408 of FFDCA, 21 U.S.C. 346a, announcing the receipt of a pesticide petition (PP 1E7880) filed by Clariant Corporation, 4000 Monroe Road, Charlotte, NC 28205. The petition requested that 40 CFR 180.960 be amended by establishing an exemption from the requirement of a tolerance for residues of Poly(oxy-1,2-ethanediyl), α-Hydro-ω-hydroxy-, Mn 17000 amu; (CAS Reg. No. 25322–68–3) when used as a pesticide inert ingredient in pesticide formulations as a solubilizer without limitations. That notice included a summary of the petition prepared by the petitioner and solicited comments on the petitioner's request. The Agency did not receive any comments in response to this notice. This regulation establishes an exemption from the requirement of a tolerance for residues of the chemical α-hydro-ω-hydroxypoly(oxyethylene, minimum number average molecular weight (in amu), 17,000; also known as polyethylene glycol.

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is ''safe.'' Section 408(c)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and use in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing an exemption from the requirement of a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue.* * *'' and specifies factors EPA is to consider in establishing an exemption.

## III. Risk Assessment and Statutory Findings

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be shown that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. In the case of certain chemical substances that are defined as polymers, the Agency has established a set of criteria to identify categories of polymers expected to present minimal or no risk. The definition of a polymer is given in 40 CFR 723.250(b) and the exclusion criteria for identifying these low-risk polymers are described in 40 CFR 723.250(d). Polyethylene glycol conforms to the definition of a polymer given in 40 CFR 723.250(b) and meets the following criteria that are used to identify low-risk polymers.

1. The polymer is not a cationic polymer nor is it reasonably anticipated to become a cationic polymer in a natural aquatic environment.

2. The polymer does contain as an integral part of its composition the atomic elements carbon, hydrogen, and oxygen.

3. The polymer does not contain as an integral part of its composition, except as impurities, any element other than those listed in 40 CFR 723.250(d)(2)(ii).

4. The polymer is neither designed nor can it be reasonably anticipated to substantially degrade, decompose, or depolymerize.

5. The polymer is manufactured or imported from monomers and/or reactants that are already included on the TSCA Chemical Substance Inventory or manufactured under an applicable TSCA section 5 exemption.

6. The polymer is not a water absorbing polymer with a number average molecular weight (MW) greater than or equal to 10,000 daltons.

Additionally, the polymer also meets as required the following exemption criteria specified in 40 CFR 723.250(e).

7. The polymer's number average MW of 17,000 is greater than or equal to 10,000 daltons. The polymer contains less than 2% oligomeric material below MW 500 and less than 5% oligomeric material below MW 1,000.

Thus, polyethylene glycol meets the criteria for a polymer to be considered low risk under 40 CFR 723.250. Based on its conformance to the criteria in this unit, no mammalian toxicity is anticipated from dietary, inhalation, or dermal exposure to polyethylene glycol.

## IV. Aggregate Exposures

For the purposes of assessing potential exposure under this exemption, EPA considered that polyethylene glycol could be present in all raw and processed agricultural commodities and drinking water, and that non-occupational non-dietary exposure was possible. The number average MW of polyethylene glycol is 17,000 daltons. Generally, a polymer of this size would be poorly absorbed through the intact gastrointestinal tract or through intact human skin. Since polyethylene glycol conforms to the criteria that identify a low-risk polymer, there are no concerns for risks associated with any potential exposure scenarios that are reasonably foreseeable. The Agency has determined that a tolerance is not necessary to protect the public health.

## V. Cumulative Effects From Substances With a Common Mechanism of Toxicity

Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA has not found polyethylene glycol to share a common mechanism of toxicity with any other substances, and polyethylene glycol does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that polyethylene glycol does

not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative*.

## VI. Additional Safety Factor for the Protection of Infants and Children

Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA concludes that a different margin of safety will be safe for infants and children. Due to the expected low toxicity of polyethylene glycol, EPA has not used a safety factor analysis to assess the risk. For the same reasons the additional tenfold safety factor is unnecessary.

## VII. Determination of Safety

Based on the conformance to the criteria used to identify a low-risk polymer, EPA concludes that there is a reasonable certainty of no harm to the U.S. population, including infants and children, from aggregate exposure to residues of polyethylene glycol.

## VIII. Other Considerations

### *A. Existing Exemptions From a Tolerance*

α-Hydro-ω-hydroxypoly(oxyethylene), minimum molecular weight (in amu), 100,000 is exempted from the requirement of a tolerance under 40 CFR 180.960 when used as an inert ingredient in pesticide chemical formulations.

### *B. Analytical Enforcement Methodology*

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

### *C. International Residue Limits*

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint U.N. Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established a MRL for polyethylene glycol.

## IX. Conclusion

Accordingly, EPA finds that exempting residues of polyethylene glycol from the requirement of a tolerance will be safe.

## X. Statutory and Executive Order Reviews

This final rule establishes an exemption from the requirement of a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these rules from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* nor does it involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes, or otherwise have any unique impacts on local governments. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4).

Although this action does not require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. As such, to the extent that information is publicly available or was submitted in comments to EPA, the Agency considered whether groups or segments of the population, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticide discussed in this document, compared to the general population.

## XI. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

**List of Subjects in 40 CFR Part 180**

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 31, 2011.

**Daniel J. Rosenblatt,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

Therefore, 40 CFR chapter I is amended as follows:

## PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.960, the table is amended by revising the polymer ''α-Hydro-ω-hydroxypoly(oxyethylene), minimum molecular weight (in amu), 100,000'' to read as follows:

**§ 180.960 Polymers; exemptions from the requirement of a tolerance.**

* * * * *

| Polymer | CAS No. |
|---|---|
| * * * * * | |
| α-Hydro-ω-hydroxypoly(oxyethylene), minimum number average molecular weight (in amu), 17,000 ..... | 25322–68–3 |
| * * * * * | |

[FR Doc. 2011–29587 Filed 11–15–11; 8:45 am]

BILLING CODE 6560–50–P

## DEPARTMENT OF HOMELAND SECURITY

## Federal Emergency Management Agency

## 44 CFR Part 64

**[Docket ID FEMA–2011–0002; Internal Agency Docket No. FEMA–8205]**

## 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** | | | | |
| Virginia: | | | | |
| Suffolk, City of, Independent City | 510156 | January 22, 1975, Emerg; November 16, 1990, Reg; November 16, 2011, Susp | Nov. 16, 2011 | Nov. 16, 2011. |
| **Region V** | | | | |
| Illinois: | | | | |
| Central City, Village of, Marion County | 170452 | September 5, 1975, Emerg; November 2, 1983, Reg; November 16, 2011, Susp | ....do | Do. |
| Centralia, City of, Marion County | 170453 | July 2, 1975, Emerg; December 18, 1984, Reg; November 16, 2011, Susp | ....do | Do. |
| Salem, City of, Marion County | 170454 | September 9, 1974, Emerg; May 1, 1979, Reg; November 16, 2011, Susp | ....do | Do. |
| Indiana: | | | | |
| Culver, Town of, Marshall County | 180384 | August 15, 1975, Emerg; May 2, 1980, Reg; November 16, 2011, Susp | ....do | Do. |
| Marshall County, Unincorporated Areas | 180443 | June 14, 1979, Emerg; January 5, 1989, Reg; November 16, 2011, Susp | ....do | Do. |
| Michigan: | | | | |
| Alpena, City of, Alpena County | 260010 | August 28, 1973, Emerg; November 19, 1982, Reg; November 16, 2011, Susp | ....do | Do. |
| Minnesota: | | | | |
| Becker, City of, Sherburne County | 270710 | N/A, Emerg; June 12, 2000, Reg; November 16, 2011, Susp | ....do | Do. |
| Big Lake, City of, Sherburne County | 270663 | February 17, 1976, Emerg; December 26, 1978, Reg; November 16, 2011, Susp | ....do | Do. |
| Elk River, City of, Sherburne County | 270436 | February 19, 1974, Emerg; May 2, 1977, Reg; November 16, 2011, Susp | ....do | Do. |
| Princeton, City of, Sherburne County | 270292 | July 2, 1974, Emerg; June 15, 1981, Reg; November 16, 2011, Susp | ....do | Do. |
| Sherburne County, Unincorporated Areas. | 270435 | May 16, 1974, Emerg; May 19, 1981, Reg; November 16, 2011, Susp | ....do | Do. |
| Zimmerman, City of, Sherburne County | 270756 | N/A, Emerg; May 9, 2000, Reg; November 16, 2011, Susp | ....do | Do. |
| Wisconsin: | | | | |
| Bay City, Village of, Pierce County | 555543 | July 31, 1970, Emerg; June 11, 1971, Reg; November 16, 2011, Susp | ....do | Do. |
| Ellsworth, Village of, Pierce County | 550325 | August 28, 1974, Emerg; May 4, 1989, Reg; November 16, 2011, Susp | ....do | Do. |
| Elmwood, Village of, Pierce County | 550326 | April 29, 1975, Emerg; March 5, 1990, Reg; November 16, 2011, Susp | ....do | Do. |
| Maiden Rock, Village of, Pierce County | 550327 | July 25, 1975, Emerg; September 30, 1988, Reg; November 16, 2011, Susp | ....do | Do. |
| Pierce County, Unincorporated Areas | 555571 | December 31, 1970, Emerg; July 14, 1972, Reg; November 16, 2011, Susp | ....do | Do. |
| Plum City, Village of, Pierce County | 550328 | May 12, 1975, Emerg; January 3, 1990, Reg; November 16, 2011, Susp | ....do | Do. |
| Prescott, City of, Pierce County | 555574 | October 23, 1970, Emerg; July 9, 1971, Reg; November 16, 2011, Susp | ....do | Do. |
| River Falls, City of, Pierce County | 550330 | March 30, 1972, Emerg; December 15, 1982, Reg; November 16, 2011, Susp | ....do | Do. |
| Spring Valley, Village of, Pierce County | 550331 | July 2, 1975, Emerg; March 15, 1984, Reg; November 16, 2011, Susp | ....do | Do. |
| **Region VI** | | | | |
| New Mexico: | | | | |
| Ruidoso, Village of, Lincoln County | 350033 | July 26, 1974, Emerg; March 2, 1983, Reg; November 16, 2011, Susp | ....do | Do. |
| Texas: | | | | |

| 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 |
|---|---|---|---|---|
| Dublin, City of, Erath County | 480219 | September 10, 1975, Emerg; August 8, 1978, Reg; November 16, 2011, Susp | .....do | Do. |
| Erath County, Unincorporated Areas | 480218 | March 2, 2000, Emerg; April 1, 2004, Reg; November 16, 2011, Susp | .....do | Do. |
| Stephenville, City of, Erath County | 480220 | March 11, 1974, Emerg; July 5, 1977, Reg; November 16, 2011, Susp | .....do | Do. |
| **Region VII** | | | | |
| Iowa: | | | | |
| Albion, City of, Marshall County | 190542 | March 30, 2009, Emerg; N/A, Reg; November 16, 2011, Susp | .....do | Do. |
| Ferguson, City of, Marshall County | 190457 | July 13, 2010, Emerg; N/A, Reg; November 16, 2011, Susp | .....do | Do. |
| Le Grand, City of, Marshall County | 190606 | December 5, 1977, Emerg; September 1, 1987, Reg; November 16, 2011, Susp | .....do | Do. |
| Marshall County, Unincorporated Areas | 190890 | September 19, 1997, Emerg; June 30, 2003, Reg; November 16, 2011, Susp | .....do | Do. |
| Marshalltown, City of, Marshall County | 190200 | May 2, 1975, Emerg; April 17, 1984, Reg; November 16, 2011, Susp | .....do | Do. |
| Nebraska: | | | | |
| Indianola, City of, Red Willow County | 310382 | October 20, 1975, Emerg; November 16, 1990, Reg; November 16, 2011, Susp | .....do | Do. |
| Red Willow County, Unincorporated Areas. | 310469 | June 18, 1984, Emerg; May 1, 1988, Reg; November 16, 2011, Susp | .....do | Do. |
| **Region VIII** | | | | |
| Colorado: | | | | |
| Breckenridge, Town of, Summit County | 080172 | July 25, 1975, Emerg; June 4, 1980, Reg; November 16, 2011, Susp | .....do | Do. |
| Frisco, Town of, Summit County | 080245 | December 2, 1976, Emerg; May 15, 1980, Reg; November 16, 2011, Susp | .....do | Do. |
| Silverthorne, Town of, Summit County | 080201 | July 16, 1975, Emerg; May 1, 1980, Reg; November 16, 2011, Susp | .....do | Do. |
| Summit County, Unincorporated Areas | 080290 | November 26, 1976, Emerg; December 16, 1980, Reg; November 16, 2011, Susp | .....do | Do. |
| South Dakota: | | | | |
| Minnehaha County, Unincorporated Areas. | 460057 | November 11, 1974, Emerg; September 5, 1979, Reg; November 16, 2011, Susp | .....do | Do. |
| Sioux Falls, City of, Minnehaha County | 460060 | April 12, 1974, Emerg; January 17, 1979, Reg; November 16, 2011, Susp | .....do | Do. |
| Wyoming: | | | | |
| Afton, Town of, Lincoln County | 560068 | June 18, 1982, Emerg; February 19, 1986, Reg; November 16, 2011, Susp | .....do | Do. |
| Cokeville, Town of, Lincoln County | 560033 | November 21, 1975, Emerg; February 19, 1987, Reg; November 16, 2011, Susp | .....do | Do. |
| Diamondville, Town of, Lincoln County | 560034 | April 8, 1977, Emerg; September 29, 1978, Reg; November 16, 2011, Susp | .....do | Do. |
| Kemmerer, Town of, Lincoln County | 560035 | August 15, 1978, Emerg; August 15, 1978, Reg; November 16, 2011, Susp | .....do | Do. |
| Lincoln County, Unincorporated Areas | 560032 | June 23, 1978, Emerg; February 15, 1980, Reg; November 16, 2011, Susp | .....do | Do. |
| Opal, Town of, Lincoln County | 560098 | May 9, 1997, Emerg; May 9, 1997, Reg; November 16, 2011, Susp | .....do | Do. |
| **Region IX** | | | | |
| Nevada: | | | | |
| Ely, City of, White Pine County | 320023 | July 19, 1974, Emerg; June 15, 1984, Reg; November 16, 2011, Susp | .....do | Do. |

*.....do = Ditto.
Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

**David L. Miller,**

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

[FR Doc. 2011–29604 Filed 11–15–11; 8:45 am]

**BILLING CODE 9110–12–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 0

**[CG Docket No. 11–99; DA 11–1833]**

### Termination of Certain Proceedings as Dormant

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; termination of proceedings.

**SUMMARY:** In this document, the Commission, via the Consumer and Governmental Affairs Bureau (CGB), terminates, as dormant, certain docketed Commission proceedings. Termination of these inactive proceedings furthers the Commission's organizational goals of increasing the efficiency of its decision-making, modernizing the agency's processes in the digital age, and enhancing the openness and transparency of Commission proceedings for practitioners and the public.

**DATES:** Effective November 16, 2011.

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

**FOR FURTHER INFORMATION CONTACT:** Dorothy Stifflemire, Consumer and Governmental Affairs Bureau at (202) 418–7349, or *email: Dorothy.Stifflemire@fcc.gov*.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Order, *Termination of Certain Proceedings as Dormant,* document DA 11–1833, adopted November 1, 2011 and released on November 1, 2011, in CG Docket No. 11–99. On June 3, 2011, the Commission sought comment on whether certain listed docketed Commission proceedings should be terminated as dormant. *See* 76 FR 35892, June 20, 2011. The full text of document DA 11–1833 and copies of any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. Document DA 11–1833 and copies of subsequently filed documents in this matter may also be purchased from the Commission's duplicating contractor, Best Copying and Printing, Inc. (BCPI), at Portals II, 445 12th Street SW., Room CY–B402, Washington, DC 20554. Customers may contact BCPI at its web site, *www.bcpiweb.com*, or by calling (202) 488–5300. Document DA 11–1833 can also be downloaded in Word or Portable Document Format (PDF) at *http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-11-1833A1.doc*.

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).

### Final Paperwork Reduction Act of 1995 Analysis

This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any 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. On February 4, 2011, the Commission released *Amendment of Certain of the Commission's Part 1 Rules of Practice and Procedure and Part 0 Rules of Commission Organization,* Report and Order, FCC 11–16, in CG Docket No. 11–44, published at 76 FR 24383, May 2, 2011 (Procedure Order), which revised portions of its Part 1—Practice and Procedures and Part 0—Organizational rules. The amendment of § 0.141 of the Commission's organizational rules delegated authority to the Chief, CGB to conduct periodic review of all open dockets with the objective of terminating those that were inactive. The Commission stated that termination of such proceedings also will include the dismissal as moot of any pending petition, motion, or other request for relief in the terminated proceeding that is procedural in nature or otherwise does not address the merits of the proceeding. On June 3, 2011, CGB released *Termination of Certain Proceedings as Dormant,* Public Notice, DA 11–992, CG Docket No. 11–99, published at 76 FR 35892, June 20, 2011, (*Termination Public Notice*) which identified those dockets that could potentially be terminated and provided interested parties the opportunity to file comments on these proposed terminations. Based upon CGB's review of the six comments received in response to the *Termination Public Notice,* and for the reasons given below, CGB hereby terminates the proceedings that are listed in the Attachment to DA 11–1833, which were previously listed in DA 11–992. *See http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA–11–1833A1.doc*.

2. Commenters request that the following seven dockets remain open: RM–9246, RM–9682, RM–10995, RM–5528, RM–10412, RM–9395, and RM–10165. REC Networks asks that CGB maintain *Amendment of the Rules to Establish Event Broadcast Stations,* Media Bureau Petition for Rulemaking, RM–9246 (March 19, 1998); *Request Amendment of the Commission's Rules to Create a New Indoor Sports and Entertainment Radio Service,* Media Bureau Petition for Rulemaking, RM–9682 (July 8, 1999); and *In the Matter of the Commission's Rules to Provide for Displacement Relief for FM Translator Stations,* Media Bureau Petition for Rulemaking, RM–10995 (June 2, 2004) that relate to LPFM and FM translator services. However, on July 12, 2011, the Commission released *Creation of a Low Power Radio Service; Amendment of Service and Eligibility Rules for FM Broadcast Translator Stations,* MM Docket No. 99–25, MB Docket No. 07–172, Third Further Notice of Proposed Rulemaking in two dockets that relate specifically to those services and, given the common subject matter, the materials in each of the proceedings that REC Networks seeks to keep open may be refiled in those two dockets. For this reason, CGB denies REC Networks' request.

3. Donald J. Schellhardt and Nickolaus E. Leggett request that *Request to Consider Requirements for Shielding and By Passing Civilian Communications Systems from Electromagnetic Pulse (EMP) Effects,* Common Carrier Bureau Petition for Rulemaking, RM–5528 (October 22, 1991) remain open. Mr. Leggett also asks that the Commission keep open *Amendment of the Commission's Rules Regarding Field Repair Requirements for Commercially-built Transmitter and Transceiver Equipment for the Amateur Radio Service,* Petition for Rulemaking, RM–10412 (April 11, 2002). However, both of these requests were denied by previous Commission actions and should have already been closed; therefore CGB rejects the requests to keep them open.

4. Mr. Leggett also argues that the Commission should not publish documents without specific comment dates, rather than stating that

''comments are due X days after publication in the **Federal Register**.'' The Commission initiated the subject proceeding as a part of its commitment to improving docket management procedures. To that end, DA 11–1833 terminates almost 1,000 pending but inactive proceedings. Additionally, going forward, the Commission will monitor and expeditiously terminate any proceeding in which an order with no further notice of proposed rulemaking has been released and no petition for reconsideration of the order has been timely filed. Regarding Mr. Leggett's concern that documents are published before the comment dates are established in the **Federal Register**, such dates are readily available in EDOCS once the document has been published, and commenters may always wait for this publication to submit their filings in the record. However, CGB will continue to look for ways to increase participation in our proceedings by the public by streamlining the comment process and making deadline and other submission information more readily available.

5. Mr. Jonathan Hardis requests that *Amendment of the Commission's Rules to Permit the Introduction of Digital Audio Broadcasting in the AM and FM Broadcast Services,* Mass Media Bureau Petition for Rulemaking, RM–9395 (November 6, 1998) remain open, even though he acknowledges that there has been no activity in the proceeding in over 11 years and none is expected. Mr. Hardis maintains that the Docket may contain material that is related to ongoing MM Docket No. 99–325. *See Digital Audio Broadcasting Systems and Their Impact on the Terrestrial Radio Broadcast Service,* FCC 07–33, Second Report and Order, published at 73 FR 3652, January 22, 2008. To address this concern, the records in terminated proceedings will remain part of the Commission's official record, and the various pleadings, orders and other documents in these dockets will continue to be accessible to the public, post-termination. Since docket RM–9395 has had no activity in over a decade, CGB finds that it is dormant and rejects Mr. Hardis's request to keep it open.

6. ARRL, formerly known as the American Radio Relay League, Incorporated, objects to the dismissal of its Petition for Rulemaking, *Amendment of Part 2 and Part 97 of the Commission's Rules Regarding the 2300–2305 MHz Band,* RM–10165, in which ARRL requested that the Amateur Radio Service allocation status in the 2300–2305 MHz band be changed from secondary to primary. ARRL originally filed its Petition on May 7, 2001, and the Commission placed it on Public Notice on July 2, 2001. *See Consumer Information Bureau Reference Information Center Petitions for Rulemaking Filed, Report No. 2491* (July 2, 2001). On October 10, 2002, the Commission's Office of Engineering and Technology (OET) issued *Allocation of Electromagnetic Spectrum Pursuant to Title III of the Balanced Budget Act of 1997 and Amendment of Part 90 of the Rules to Establish a New Subpart Y—Personal Location and Monitoring Service, RM–9797; Amendment of Parts 2 and 97 of the Commission's Rules Regarding the 2300–2305 MHz Band, RM–10165; Co-Primary Allocation of 2300–2305 MHz to the Amateur Radio Service and the Miscellaneous Wireless Communications Service, RM–10166,* Order, DA 02–2587 (*OET Order*) dismissing ARRL's Petition.

7. ARRL claims that the *OET Order* did not resolve the issue of the allocation status of the Amateur Radio Service in the 2300–2305 MHz band, or ARRL's request for a primary allocation in that segment. ARRL maintains that the status of the Amateur Radio Service allocation at 2300–2305 MHz remains relevant because of actions taken by the Commission with respect to an adjacent band at 2305–2320 MHz; because ARRL has filed a Petition for Reconsideration regarding the actions taken in the 2305–2320 MHz band; and due to other unrelated proposals for use of the 2300–2305 MHz band.

8. Regarding the 2305–2320 MHz band, in May 2010, the Commission issued an Order that amended certain rules governing the Wireless Communications Service (WCS) to enable WCS licensees to provide mobile broadband services (*WCS Order*). In doing so, the Commission acknowledged that out-of-band emissions that could result from expanded use of WCS mobile devices in the 2305–2320 MHz band have the potential to increase interference to amateur radio operations in the 2300–2305 MHz band. During the course of the WCS proceeding, however, ARRL did not file any comments raising the issue of whether the Amateur Radio Service allocation status in the 2300–2305 MHz band should be modified. Although ARRL filed a Petition for Reconsideration of the *WCS Order,* it did not request a change in the status of the Amateur Radio Service allocation at 2300–2305 MHz in that filing. In its Reply Comments to the Opposition to its WCS Petition, ARRL specifically stated that it was not asking the Commission to revisit any aspect of its past decisions regarding that status.

9. CGB finds that the RM–10165 proceeding concerning ARRL's request to change the status of the Amateur Radio Service to primary in the 2300–2305 MHz band should be terminated, since its request was dismissed and ARRL did not file a petition for reconsideration of that dismissal.

10. Finally, Mr. James Whedbee suggests that termination of proceedings for dormancy is not just cause for the termination of a proceeding on the merits. Accordingly, he maintains that the Administrative Procedure Act may be violated by the dismissal of dormant dockets that are not otherwise obsolete or subsumed, and recommends that CGB leave open those docketed proceedings which are ''merely dormant for want of sufficiency of notice of their impending termination.''

11. In the *Amendment of Certain of the Commission's Part 1 Rules of Practice and Procedure and Part 0 Rules of the Commission Organization,* Notice of Proposed Rulemaking, released on February 22, 2010, published at 75 FR 14401, March 25, 2010, the Commission proposed, *inter alia,* that § 0.141 of its rules be amended to delegate authority to the Chief, CGB to terminate dormant proceedings, and invited public comment on the proposed termination process. After due consideration of the comments filed in that proceeding, the change to the rule, which was supported in the comments received, was duly adopted in the *Procedure Order.*

12. Mr. Whedbee had an opportunity but failed to file his objection to the proposed amendment to § 0.141 of the Commission rules. Because the merits of that final action are outside of the scope of the instant proceeding, CGB rejects his argument as an untimely petition for reconsideration. CGB notes that the *Termination Public Notice* provided clear notice of the intention to terminate for dormancy all of the proceedings that are the subject of DA 11–1833, and gave any interested party the opportunity to substantively comment on each such possible termination. As noted above, each such argument specific to a particular proceeding or proceedings that has been submitted has been fully considered herein.

**Regulatory Flexibility Act**

13. The Commission's action does not require notice and comment and therefore is not subject to the Regulatory Flexibility Act of 1980, as amended. *See* 5 U.S.C. 601(2), 603(a). The Commission nonetheless notes that it anticipates that the rules adopted will not have a significant economic impact on a substantial number of small entities. As described above, the Commission

primarily changes its own internal procedures and organizations and does not impose substantive new responsibilities on regulated entities. There is no reason to believe termination of certain dormant proceedings would impose significant costs on parties to Commission proceedings. To the contrary, the Commission takes the actions herein with the expectation that overall they will make dealings with the Commission quicker, easier and less costly for entities of all size.

**Congresssional Review Act**

The Commission will not send a copy of document DA 11–1833 pursuant to the Congressional Review Act, *see* 5 U.S.C. 801 (a)(1)(A) because the Commission is not adopting, amending, revising, or deleting any rules.

**Ordering Clauses**

Pursuant to sections 1, 4(i), and 4(j), of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), and (j) and § 0.141 of the Commission rules, the proceedings listed in the Attachment to DA 11–1833, which can be downloaded in Word or Portable Document Format (PDF) at: *http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-11-1833A1.doc*, *are terminated.*

Federal Communications Commission.

**Joel Gurin,**

*Chief, Consumer and Governmental Affairs Bureau.*

[FR Doc. 2011–29513 Filed 11–15–11; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 0, 1, 73, and 74

**[DA 11–1658]**

### Commission Organization; Practice and Procedure; Radio Broadcast Services; and Experimental Radio, Auxiliary, Special Broadcast and Other Program Distributional Services

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Federal Communications Commission (FCC or Commission) is making a number of nonsubstantive, editorial revisions to the Commission's rules. These revisions remove certain rule provisions that are without current legal effect and therefore are obsolete, amend rules that contain references to obsolete rules or statutory provisions, and correct rules that contain outdated terminology or typographical errors. These nonsubstantive revisions are part of the Commission's ongoing examination and improvement of FCC processes and procedures. The revisions clarify, simplify, and harmonize our rules, making the rules more readily accessible to the public and avoiding potential confusion for interested parties and Commission staff alike.

**DATES:** Effective November 16, 2011.

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

**FOR FURTHER INFORMATION CONTACT:** Royce Sherlock, (202) 418–7030.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Order amending parts 0, 1, 73, and 74 of the Commission's rules, DA 11–1658, released on September 30, 2011. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 12th Street SW., Washington, DC 20554, or online at *http://www.fcc.gov* using the EDOCS link. In addition, the full text of this document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), at Portals II, 445 12th Street SW., Room CY–B402, Washington, DC 20554. Customers may contact BCPI via email sent through its Web site, *http://www.bcpiweb.com,* by calling (800) 378–3160 or (202) 863–2893, or by facsimile at (202) 863–2898. The revisions to the Commission's rules and the specific reasons the Commission is adopting each one are set forth below.

*Part 0, Subpart B, Delegations of Authority.* The Order amends the following Commission rules in part 0, subpart B, Delegations of Authority, to delete or update references that are obsolete:

Section 0.201(c), which, among other things, pertains to appeals from presiding officers' rulings, is amended to change the reference to § 1.301 of the Commission's rules in the second sentence to §§ 1.301 and 1.302 of the Commission's rules. The referenced procedures for appeals from rulings of the presiding officer are now governed by both sections. The rule is further amended to delete the third sentence because it refers to § 1.303, which the Commission has eliminated. *See Amendment of Parts 0 and 1 of the Commission's Regulations,* 26 F.C.C.2d 331 (1970).

Section 0.211(e) of the Commission's rules, which pertains to the Chairman's delegated authority, is amended to change ''Federal Procurement Regulations'' to ''the Federal Acquisition Regulation'' because the Federal Procurement Regulations were repealed and replaced with the Federal Acquisition Regulation. *Establishing the Federal Acquisition Regulation,* 48 FR 42102, September 19, 1983.

Section 0.231(e) of the Commission's rules, which pertains to the Managing Director's delegated authority, is amended to delete the second and third sentences, which are without current legal effect and therefore are obsolete. These provisions state that the Managing Director will refer all appeals filed against final decisions regarding procurement contracts to the Armed Services Board of Contract Appeals for resolution and that such appeals will be handled in accordance with the Rules of the Board of Contract Appeals. These procedures have been superseded by the Contract Disputes Act (CDA), 41 U.S.C. 7101, *et seq.* There is no current requirement for the agency to refer appeals from the final decision of its contracting officer, nor is the Armed Services Board of Contract Appeals the correct forum for such appeals. Rather, under the CDA, the contractor may directly appeal such decisions to the Civilian Board of Contract Appeals or the United States Court of Federal Claims. *See* 41 U.S.C. 7104, 7105(e)(1)(B), 7101(8)(C).

Section 0.261 of the Commission's rules, which pertains to the International Bureau's delegated authority, is amended to delete references to part 100 of the Commission's rules, which has been eliminated. *Policies and Rules for the Direct Broadcast Satellite Service,* 17 FCC Rcd 11331 (2002).

Section 0.291(e) of the Commission's rules, which pertains to the Wireline Competition Bureau's delegated authority, is amended to change ''reporting requirements for international carriers set forth in § 43.61(d) of this chapter'' to ''reporting requirements for international carriers referenced in § 43.61(a)(3) of this chapter'' because section (d) was renumbered as section (a)(3). *International Settlement Rates,* 12 FCC Rcd 19806 (1997).

*Part 1, Subpart A, General Rules of Practice and Procedure; Part 73, Subpart H, Rules Applicable to All Broadcast Stations; Part 74, Subpart, General; Rules Applicable to All Services in Part 74.* The Order amends the following Commission rules in part 1, subpart A to delete an obsolete rule and obsolete references, and makes conforming revisions to rules in parts 73 and 74, as follows:

Section 1.115(b)(2) of the Commission's rules, which pertains to applications for review of actions taken

pursuant to delegated authority, is amended to delete ''Except as provided in paragraph (b)(5) of this section'' because paragraph (b)(5) has been deleted. *Amendment of Parts 0, 1, 19, and 22 of the Commission's Rules to Reflect the Elimination of the Review Board,* 1996 WL 207396 (FCC 1996).

Section 1.120 of the Commission's rules, which describes the Commission's former ''protest'' process, is deleted because, by its express terms, it does not apply to applications filed on or after December 12, 1960. As a result, this section is without current legal effect and is obsolete. In addition, the Order deletes references to § 1.120 from other rules. Specifically, in § 1.4(h) of the Commission's rules, the reference to § 1.120(d) is deleted. In the following rules, the references to § 1.120 are replaced with references to § 1.117: §§ 1.101, 1.207(c), 1.1317(a), 73.1010(a)(1), and 74.5(a)(1). The reference to § 1.120 in § 74.5(a)(2), which is listed as the first rule in part 1, subpart B of the Commission's rules, is changed to § 1.201, which is the next rule after § 1.120 and is also the first rule in part 1, subpart B.

*Part 1, Subpart B, Hearing Proceedings.* The Order amends the following Commission rules in Part 1, Subpart B, Hearing Proceedings, to delete obsolete rules and references and make other corrections:

Section 1.207(c) of the Commission's rules is amended, as explained above, to reflect the elimination of § 1.120.

Sections 1.227(b)(6) and 1.229(b)(2) of the Commission's rules are without current legal effect and are deleted as obsolete. These sections pertain to comparative hearings for broadcast license renewal applications. The enactment of section 309(k) of the Communications Act of 1934 eliminated comparative broadcast hearings for license renewal applicants. *See* 47 U.S.C. 309(k)(4).

Section 1.229(b)(3) of the Commission's rules, which establishes procedures for the filing of motions to modify the issues designated for hearing, is re-designated as § 1.229(b)(2) because, as discussed above, current § 1.229(b)(2) is being deleted as obsolete. For the same reason, this section is amended to delete the reference to § 1.229(b)(2).

Section 1.244(d) of the Commission's rules, which pertains to the designation of a settlement judge in broadcast comparative cases involving applicants for only new facilities, is amended to delete the words, ''their Standardized Integration Statement and/or'' because the DC Circuit invalidated the Commission's integration requirement. *Bechtel* v. *FCC,* 10 F.3d 875, 878 (DC Cir. 1993). The deleted reference is therefore obsolete. The remainder of the section is retained because the Commission retains statutory authority to award noncommercial educational broadcast licenses by comparative hearings.

Section 1.282(b)(3) of the Commission's rules is amended to correct a typographical error. The word ''oder'' is changed to ''order.''

Section 1.325(c) of the Commission's rules is without current legal effect and is deleted as obsolete because it pertains to comparative hearings involving applicants for new commercial broadcast facilities and calls for the production of a Standardized Integration Statement and other information pertaining to the Commission's former integration standard and other broadcast comparative hearing criteria. Under section 309(j) of the Communications Act, the Commission no longer has authority to conduct comparative hearings for new commercial broadcast facilities and instead awards licenses for new broadcast service using competitive bidding. 47 U.S.C. 309(j)(1). In addition, as explained above, the DC Circuit invalidated the Commission's integration requirement.

*Part 1, Subpart E, Complaints, Applications, Tariffs, and Reports Involving Common Carriers.* The Order amends the following Commission rules in Part 1, Subpart E, Complaints, Applications, Tariffs, and Reports Involving Common Carriers, to delete rules that are obsolete:

Section 1.788 of the Commission's rules, which requires common carriers to file reports regarding pensions and benefits, requires compliance with a regulation in Part 43 of the rules that the Commission has eliminated. *Elimination or Revision of Certain Reporting Requirements Under Part 43 of the Commission's Rules, Reports of Communication Common Carriers and Certain Affiliates,* 9 FCC Rcd 1838 (1994). Section 1.788 of the Commission's rules is therefore without current legal effect and is deleted as obsolete.

Section 1.805 of the Commission's rules requires common carriers engaged in public radio service operations to file reports in conformance with Part 23, which the Commission has eliminated. *Elimination of Part 23 of the Commissions Rules,* 25 FCC Rcd 541 (2010). Section 1.805 of the Commission's rules is therefore without current legal effect and is deleted as obsolete.

Section 1.811 of the Commission's rules states that carriers engaged in domestic public radio services are required to report and file documents in accordance with Part 21, which has been eliminated. *Amendment of Parts 1, 21, 73, 74, and 101 of the Commission's Rules, et al.,* 19 FCC Rcd 14165, *supplemented,* 19 FCC Rcd 22284 (2004). Section 1.811 of the Commission's rules is therefore without current legal effect and is deleted as obsolete.

Sections 1.821, 1.822, and 1.824 of the Commission's rules set forth random selection procedures for Multichannel Multipoint Distribution Service (MMDS). The Commission no longer has authority to use random selection for MMDS or its successor service, Broadband Radio Service. 47 U.S.C. 309(j)(1)–(2); *see Amendment of Parts 1, 21, 73, 74 and 101 of the Commissions Rules to Facilitate the Provision of Fixed & Mobile Broadband Access, Educ. and Other Advanced Services in the 2150–2162 & 2500–2690 MHz Bands,* 23 FCC Rcd 5992, 6062 (2008) *and sources cited at id.* n.3; 47 CFR 27.1217. These sections are therefore without current legal effect and are deleted as obsolete.

*Part 1, Subpart F, Wireless Radio Services Applications and Proceedings.* The Order amends the following Commission rules in Part 1, Subpart F, Wireless Radio Services Applications and Proceedings, to update references that are obsolete and make other corrections:

Section 1.929(b)(1) of the Commission's rules is amended to correct a typographical error. The acronym for ''cellular geographic service area'' is changed from ''COSA'' to ''CGSA.''

Section 1.931(b)(1) of the Commission's rules, which pertains to applications for special temporary authority for wireless radio services, is amended to change ''§§ 1.962(b)(5) and (f)'' to ''§§ 1.933(d)(6) and 1.939'' because § 1.962 was eliminated and its provisions were moved into §§ 1.933 and 1.939. *Biennial Regulatory Review,* 13 FCC Rcd 21027 (1998).

*Part 1, Subpart N, Enforcement of Nondiscrimination on the Basis of Disability in Programs or Activities Conducted by the Federal Communications Commission.* The Order amends the following Commission rules in Part 1, Subpart N, Enforcement of Nondiscrimination on the Basis of Disability in Programs or Activities Conducted by the Federal Communications Commission, to delete or update references that are obsolete and to make other corrections:

Section 1.1803 of the Commission's rules, which defines terms related to the enforcement of non-discrimination on the basis of disability in programs or activities conducted by the Commission, is amended to revise the definition of ''Section 504'' to read as follows: ''Section 504 means section 504 of the Rehabilitation Act of 1973, Public Law 93–112, 87 Stat. 394, 29 U.S.C. 794, as amended.'' The current definition contains an incomplete list of the amendments to the 1973 law. The revised definition encompasses all amendments.

Section 1.1840 of the Commission's rules is amended to correct a typographical error. The phrase ''Basic Negotiations Agreement'' is revised to read ''Basic Negotiated Agreement.''

Section 1.1851 of the Commission's rules, which pertains to building accessibility, is amended to change ''41 CFR 101–19.600 to 101–19.607'' to ''41 CFR 102–76.60 to 102–76.95.'' Section 1.1851 of the Commission's rules states that the definitions, requirements, and standards of the Architectural Barriers Act, 42 U.S.C. 4151–4157, ''as established in 41 CFR 101–19.600 to 101.19.607, apply to all buildings covered by this section.'' The cited regulations have been transferred to 41 CFR 102–76.60 to 102–76.95, and the citation in § 1.1851 of the Commission's rules is therefore outdated. *Real Property Policies,* General Servs. Admin., FPMR Amendments D–99 and C–1, 67 FR 76882, December 13, 2002. The amendment to § 1.1851 of the Commission's rules deletes the outdated citation and replaces it with the correct citation.

Section 1.1870(f) of the Commission's rules, which pertains to building accessibility complaints, is amended to change ''Architectural and Transportation Barriers Compliance Board'' to ''United States Access Board'' to incorporate current nomenclature as reflected in the Rehabilitation Act Amendments of 1992, Public Law 102–569, section 504, 29 U.S.C. 792.

*Part 1, Subpart O, Collection of Claims Owed the United States.* The Order amends the following Commission rules in Part 1, Subpart O, Collection of Claims Owed the United States, to update references that are obsolete and make other corrections:

Section 1.1901(e) of the Commission's rules is amended to correct a typographical error in the last sentence. The phrase ''has order'' is revised to read ''has ordered.''

Section 1.1902(a) of the Commission's rules, which pertains to the audit of transportation accounts, is amended to change ''41 CFR Part 101–41'' to ''41 CFR Part 102–118.'' Part 101–41 of Title 41 of the Code of Federal Regulations does not contain any regulations; rather, it cross-references to the Federal Management Regulation, 41 CFR Ch. 102, parts102–1 to 102–20, and with respect to ''transportation payment and audit policy,'' it cross-references to 41 CFR part 102–118. *See Transportation Payment and Audit,* General Servs. Admin., 65 FR 24568, April 26, 2000.

Section 1.1902(b), which pertains to claims arising out of acquisition contracts subject to the Federal Acquisition Regulation, is amended to replace obsolete citations to 41 U.S.C. 605, 605(a) with citations to 41 U.S.C. 7103. This revision is necessary to reflect the re-codification of Title 41, Public Law 111–350 section 3, 124 Stat. 3677, 3816–3820 (2011).

Section 1.1910(b)(2) of the Commission's rules, which pertains to the handling of applications submitted by certain debtors, is amended to correct an erroneous reference in the first sentence by changing ''§ 1.1901(j)'' to ''§ 1.1901(i).'' The first sentence of § 1.1910(b)(2) of the Commission's rules refers to delinquent debts, and the corrected reference defines the term ''delinquent.'' This section is further amended to correct two typographical errors. The word ''provisisons'' is revised to read ''provisions,'' and ''recission'' is revised to read ''rescission.''

Section 1.1910(c)(2) of the Commission's rules is amended to correct various typographical errors. The word ''Provisions'' is changed to ''The provisions''; ''paragraph'' is changed to ''paragraphs''; ''application'' is changed to ''applications''; and ''requst'' is changed to ''requests.''

*Part 1, Subpart P, Implementation of the Anti-Drug Abuse Act of 1988.* The Order amends the Commission's rules in Part 1, Subpart P, Implementation of the Anti-Drug Abuse Act of 1988, to delete § 1.2003. Section 1.2002 of the Commission's rules requires applicants for an instrument of Commission authorization to file a certification pursuant to the Anti-Drug Abuse Act of 1988, 21 U.S.C. 862. Section 1.2003 of the Commission's rules states that ''[t]he certification required by § 1.2002 must be filed with the following applications and any other requests for authorization filed with the Commission, as well as for spectrum leasing notifications and spectrum leasing applications, regardless of whether a specific form exists.'' The list of applications in § 1.2003 of the Commission's rules is outdated, and it is also unnecessary, since § 1.2002, by its express terms, applies to ''all applicants'' for an instrument of authorization from the Commission, and to spectrum lessees, whether or not the certification has been incorporated into the application form and even if there is no form. 47 CFR 1.2002(a), (d).

*Part 1, Subpart T, Exempt Telecommunications Companies.* The rules in Part 1, Subpart T, §§ 1.5000 through 1.5007, are without current legal effect and are deleted as obsolete. Subpart T, Exempt Telecommunications Companies, was adopted to implement section 34(a)(1) of the Public Utility Holding Company Act of 1935 (PUHCA 1935). 15 U.S.C. 79, *et seq.; Implementation of Section 34(a)(1) of the Pub. Util. Holding Co. Act of 1935, as Added by Section 103 of the Telecommunications Act of 1996,* 11 FCC Rcd 11377 (1996). Congress has since repealed PUHCA 1935, enacting in its place the Public Utility Holding Company Act of 2005 (PUHCA 2005), *Energy Policy Act of 2005,* Public Law 109–58, 119 Stat. 594. PUHCA 2005 does not reinstate the provisions of section 34(a) of PUHCA 1935 and does not otherwise mention exempt telecommunications companies.

*Part 1, Subpart U, Implementation of Section 325(e) of the Communications Act: Procedures Governing Complaints Filed by Television Broadcast Stations Against Satellite Carriers for Retransmission Without Consent.* The rules in Part 1, Subpart U, §§ 1.6000 through 1.6012, are without current legal effect and are deleted as obsolete. Subpart U of the Commission's rules pertains to complaints filed by television stations alleging that a satellite carrier has retransmitted their signals in violation of section 325(b)(1) of the Communications Act, 47 U.S.C. 325(b)(1). Section 1.6012 of the Commission's rules states that no complaints may be filed under this subpart after December 31, 2001 but specifies that the provisions shall continue to apply to any complaints filed on or before that date. Because no new complaints may be filed after December 31, 2001, and no complaints filed on or before that date are pending, the rules in Subpart U, §§ 1.6000 through 1.6012, are without current legal effect.

*Part 1, Subpart X, Spectrum Leasing.* The Order amends the Commission's rules in Part 1, Subpart X, by revising § 1.9001(a) of the Commission's rules, which describes the scope of Subpart X, Spectrum Leasing, to delete the reference to Part 26 of the rules because Part 26 has been eliminated. *4.9 GHz Band Transferred from Fed. Gov't Use,* 17 FCC Rcd 3955 (2002).

*Part 1, Subpart Y, International Bureau Filing System.* The Order amends § 1.10014 of the Commission's rules, which describes the procedures for providing public notice of the filing and grant or denial of applications, to delete, as obsolete, references to International Fixed Public Radio Service (IFPRS) in § 1.10014(c)(2), (f) and (h) because the rules for IFPRS have been eliminated. *Elimination of Part 23 of the Commission's Rules,* 25 FCC Rcd 541 (2010).

*Part 1, Subpart Z, Communications Assistance for Law Enforcement Act.* The Order amends § 1.20007(a)(5) of the Commission's rules to correct a typographical error. The phrase ''a digits dialed'' is replaced with ''digits dialed.''

The rule amendments adopted in the Order and set forth in the attached Appendix are nonsubstantive, editorial revisions of the rules pursuant to 47 CFR 0.231(b). These revisions delete rule provisions that are without current legal effect and therefore are obsolete, delete references to obsolete rules and statutes, and correct outdated terminology and typographical errors. Accordingly, we find good cause to conclude that notice and comment procedures are unnecessary and would not serve any useful purpose. *See* 5 U.S.C. 553(b)(3)(B). For the same reason, we also find good cause to make these nonsubstantive, editorial revisions of the rules effective upon publication in the **Federal Register**. *See* 5 U.S.C. 553(d)(3).

*Regulatory Flexibility Act.* Because the Order is being adopted without notice and comment, the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* does not apply.

*Paperwork Reduction Act.* The rules contained herein have been analyzed with respect to the Paperwork Reduction Act of 1995 and found to contain no new or modified form, information collection, and/or recordkeeping, labeling, disclosure, or record retention requirements, and will not increase or decrease burden hours imposed on the public. *See* Public Law 104–13, 44 U.S.C. 3501, *et seq.* In addition, therefore, the Order 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. *See* Public Law 107–198, 44 U.S.C. 3506(c)(4).

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

Accordingly, it is ordered that, effective November 16, 2011, Parts 0, 1, 73, and 74 of the Commission's rules are amended, as set forth below, pursuant to the authority contained in sections 4(i), 5(c), and 303(r) of the Communications Act, 47 U.S.C. 154(i), 155(c), and 303(r), and § 0.231(b) of the Commission's regulations, 47 CFR 0.231(b).

*It is further ordered* that the Secretary shall cause a copy of this Order to be published in the **Federal Register**.

**List of Subjects**

*47 CFR Part 0*

Organization and functions (government agencies).

*47 CFR Part 1*

Administrative practice and procedure, Claims, Communications common carriers, Drug abuse, Environmental impact statements, Equal employment opportunity, Federal buildings and facilities, Government employees, Individuals with disabilities, Radio, Reporting and recordkeeping requirements, Satellites, Telecommunications.

*47 CFR Part 73 and 74*

Administrative practice and procedure, Radio, Television.

Federal Communications Commission.

**David Robbins,**

*Managing Director, Office of Managing Director.*

**Final Rules**

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 parts 0, 1, 73, and 74 as follows:

## PART 0—COMMISSION ORGANIZATION

■ 1. The authority citation for part 0 continues to read as follows:

**Authority:** Secs. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155.

■ 2. Amend § 0.201 by revising paragraph (c) to read as follows:

**§ 0.201 General provisions.**

* * * * *

(c) Procedures pertaining to the filing and disposition of interlocutory pleadings in hearing proceedings are set forth in §§ 1.291 through 1.298 of this chapter. Procedures pertaining to appeals from rulings of the presiding officer are set forth in §§ 1.301 and 1.302. Procedures pertaining to reconsideration and review of actions taken pursuant to delegated authority are set forth in §§ 1.101, 1.102, 1.104, 1.106, 1.113, 1.115, and 1.117. Procedures pertaining to exceptions to initial decisions are set forth in §§ 1.276 through 1.279.

* * * * *

■ 3. Amend § 0.211 by revising paragraph (e) to read as follows:

**§ 0.211 Chairman.**

* * * * *

(e) Authority to act as ''Head of the Agency'' or ''Agency Head'' for administrative determinations required by the Federal Acquisition Regulation and Federal Management Circulars.

* * * * *

■ 4. Amend § 0.231 by revising paragraph (e) to read as follows:

**§ 0.231 Authority delegated.**

* * * * *

(e) The Managing Director is delegated authority to act as Head of the Procurement Activity and Contracting Officer for the Commission and to designate appropriate subordinate officials to act as Contracting Officers for the Commission.

* * * * *

■ 5. Amend § 0.261 by revising paragraphs (a)(4) and (b)(5)(i) to read as follows:

**§ 0.261 Authority delegated.**

(a) * * *

(4) To act upon applications for international and domestic satellite systems and earth stations pursuant to part 25 of this chapter;

* * * * *

(b) * * *

(5) * * *

(i) Mutually exclusive applications for radio facilities filed pursuant to parts 23, 25, or 73 of this chapter; and

* * * * *

■ 6. Amend § 0.291 by revising paragraph (e) to read as follows:

**§ 0.291 Authority delegated.**

* * * * *

(e) Authority concerning rulemaking and investigatory proceedings. The Chief, Wireline Competition Bureau, shall not have authority to issue notices of proposed rulemaking, notices of inquiry, or reports or orders arising from either of the foregoing, except that the Chief, Wireline Competition Bureau, shall have authority, in consultation and coordination with the Chief, International Bureau, to issue and revise a manual on the details of the reporting requirements for international carriers referenced in § 43.61(a)(3) of this chapter.

* * * * *

## PART 1—PRACTICE AND PROCEDURE

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

**Authority:** 15 U.S.C. 79 *et seq.;* 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, 227, 303(r), and 309.

■ 8. Amend § 1.4 by revising paragraph (h) to read as follows:

### § 1.4 Computation of time.

* * * * *

(h) If a document is required to be served upon other parties by statute or Commission regulation and the document is in fact served by mail (see § 1.47(f)), and the filing period for a response is 10 days or less, an additional 3 days (excluding holidays) will be allowed to all parties in the proceeding for filing a response. This paragraph (h) shall not apply to documents filed pursuant to § 1.89, § 1.315(b) or § 1.316. For purposes of this paragraph (h) service by facsimile or by electronic means shall be deemed equivalent to hand delivery.

*Example 11:* A reply to an opposition for a petition for reconsideration must be filed within 7 days after the opposition is filed. 47 CFR 1.106(h). The rules require that the opposition be served on the person seeking reconsideration. 47 CFR 1.106(g). If the opposition is served on the party seeking reconsideration by mail and the opposition is filed with the Commission on Monday, November 9, 1987, the first day to be counted is Tuesday, November 10, 1987 (the day after the day on which the event occurred, § 1.4(c)), and the seventh day is Monday, November 16. An additional 3 days (excluding holidays) is then added at the end of the 7 day period, and the reply must be filed no later than Thursday, November 19, 1987.

*Example 12:* Assume that oppositions to a petition in a particular proceeding are due 10 days after the petition is filed and must be served on the parties to the proceeding. If the petition is filed on October 28, 1993, the last day of the filing period for oppositions is Sunday, November 7. If service is made by mail, the opposition is due three days after November 7, or Wednesday, November 10.

* * * * *

■ 9. Revise § 1.101 to read as follows:

### § 1.101 General provisions.

Under section 5(c) of the Communications Act of 1934, as amended, the Commission is authorized, by rule or order, to delegate certain of its functions to a panel of commissioners, an individual commissioner, an employee board, or an individual employee. Section 0.201(a) of this chapter describes in general terms the basic categories of delegations which are made by the Commission. Subpart B of part 0 of this chapter sets forth all delegations which have been made by rule. Sections 1.102 through 1.117 set forth procedural rules governing reconsideration and review of actions taken pursuant to authority delegated under section 5(c) of the Communications Act, and reconsideration of actions taken by the Commission. As used in §§ 1.102 through 1.117, the term designated authority means any person, panel, or board which has been authorized by rule or order to exercise authority under section 5(c) of the Communications Act.

* * * * *

■ 10. Amend § 1.115 by revising paragraph (b)(2) to read as follows:

### § 1.115 Application for review of action taken pursuant to delegated authority.

* * * * *

(b) * * *

(2) The application for review shall specify with particularity, from among the following, the factor(s) which warrant Commission consideration of the questions presented:

(i) The action taken pursuant to delegated authority is in conflict with statute, regulation, case precedent, or established Commission policy.

(ii) The action involves a question of law or policy which has not previously been resolved by the Commission.

(iii) The action involves application of a precedent or policy which should be overturned or revised.

(iv) An erroneous finding as to an important or material question of fact.

(v) Prejudicial procedural error.

* * * * *

### § 1.120 [Removed]

■ 11. Remove § 1.120.

■ 12. Amend § 1.207 by revising paragraph (c) to read as follows:

### § 1.207 Interlocutory matters, reconsideration and review; cross references.

* * * * *

(c) Rules governing the reconsideration and review of actions taken pursuant to delegated authority, and the reconsideration of actions taken by the Commission, are set forth in §§ 1.101 through 1.117.

### § 1.227 [Amended]

■ 13. In § 1.227, remove paragraph (b)(6).

■ 14. Amend § 1.229 by revising paragraph (b) to read as follows:

### § 1.229 Motions to enlarge, change, or delete issues.

* * * * *

(b)(1) In comparative broadcast proceedings involving applicants for only new facilities, such motions shall be filed within 30 days of the release of the designation order, except that persons not named as parties to the proceeding in the designation order may file such motions with their petitions to intervene up to 30 days after publication of the full text or a summary of the designation order in the **Federal Register**. (*See* § 1.223 of this part).

(2) Any person desiring to file a motion to modify the issues after the expiration of periods specified in paragraphs (a) and (b)(1) of this section shall set forth the reason why it was not possible to file the motion within the prescribed period. Except as provided in paragraph (c) of this section, the motion will be granted only if good cause is shown for the delay in filing. Motions for modifications of issues which are based on new facts or newly discovered facts shall be filed within 15 days after such facts are discovered by the moving party.

* * * * *

■ 15. Amend § 1.244 by revising paragraph (d) to read as follows:

### § 1.244 Designation of a settlement judge.

* * * * *

(d) The settlement judge shall have the authority to require applicants to submit their written direct cases for review. The settlement judge may also meet with the applicants and/or their counsel, individually and/or at joint conferences, to discuss their cases and the cases of their competitors. All such meetings will be off-the-record, and the settlement judge may express an opinion as to the relative comparative standing of the applicants and recommend possible means to resolve the proceeding by settlement. The proceedings before the settlement judge shall be subject to the confidentiality provisions of 5 U.S.C. 574. Moreover, no statements, offers of settlement, representations or concessions of the parties or opinions expressed by the settlement judge will be admissible as evidence in any Commission licensing proceeding.

■ 16. Amend § 1.282 by revising paragraph (b)(3) to read as follows:

### § 1.282 Final decision of the Commission.

* * * * *

(b) * * *

(3) The appropriate rule or order and the sanction, relief or denial thereof.

* * * * *

### § 1.325 [Amended]

■ 17. In § 1.325, remove paragraph (c).

**§ 1.788 [Removed]**

■ 18. Remove § 1.788.

**§ 1.805 [Removed]**

■ 19. Remove § 1.805.

**§ 1.811 [Removed]**

■ 20. Remove § 1.811.

**§ 1.821 [Removed]**

■ 21. Remove § 1.821.

**§ 1.822 [Removed]**

■ 22. Remove § 1.822.

**§ 1.824 [Removed]**

■ 23. Remove § 1.824.

■ 24. Amend § 1.929 by revising paragraph (b)(1) to read as follows:

**§ 1.929 Classification of filings as major or minor.**

* * * * *

(b) * * *

(1) Request an authorization or an amendment to a pending application that would expand the cellular geographic service area (CGSA) of an existing cellular system or, in the case of an amendment, as previously proposed in an application, except during the applicable five-year build-out period, if any;

* * * * *

■ 25. Amend § 1.931 by revising paragraph (b)(1) to read as follows:

**§ 1.931 Application for special temporary authority.**

* * * * *

(b) *Private Wireless Services.* (1) A licensee of, or an applicant for, a station in the Private Wireless Services may request STA not to exceed 180 days for operation of a new station or operation of a licensed station in a manner which is beyond the scope of that authorized by the existing license. *See* §§ 1.933(d)(6) and 1.939. Where the applicant, seeking a waiver of the 180 day limit, requests STA to operate as a private mobile radio service provider for a period exceeding 180 days, evidence of frequency coordination is required. Requests for shorter periods do not require coordination and, if granted, will be authorized on a secondary, non-interference basis.

* * * * *

■ 26. Amend § 1.1317 by revising paragraph (a) to read as follows:

**§ 1.1317 The Final Environmental Impact Statement (FEIS).**

(a) After receipt of comments and reply comments, the Bureau will prepare a FEIS, which shall include a summary of the comments, and a response to the comments, and an analysis of the proposal in terms of its environmental consequences, and any reasonable alternatives, and recommendations, if any, and shall cite the Commission's internal appeal procedures (*See* 47 CFR 1.101–1.117).

* * * * *

■ 27. Amend § 1.1803 by revising the definition of ''Section 504'' to read as follows:

**§ 1.1803 Definitions.**

* * * * *

*Section 504* means section 504 of the Rehabilitation Act of 1973, Public Law 93–112, 87 Stat. 394, 29 U.S.C. 794, as amended. As used in this part, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

* * * * *

■ 28. Revise § 1.1840 to read as follows:

**§ 1.1840 Employment.**

No qualified individual with a disability shall, on the basis of disability, be subjected to discrimination in employment under any program or activity conducted by the Commission. The definitions, requirements and procedures of section 501 of the Rehabilitation Act of 1973, 29 U.S.C. 791, as established by the Equal Employment Opportunity Commission in 29 CFR parts 1614 and 1630, as well as the procedures set forth in the Basic Negotiated Agreement Between the Federal Communications Commission and National Treasury Employees Union, as amended, and Subchapter III of the Civil Service Reform Act of 1978, 5 U.S.C. 7121(d), shall apply to employment in federally conducted programs or activities.

■ 29. Revise § 1.1851 to read as follows:

**§ 1.1851 Building accessibility: New construction and alterations.**

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the Commission shall be designed, constructed, or altered so as to be readily accessible to and usable by individuals with disabilities. The definitions, requirements and standards of the Architectural Barriers Act, 42 U.S.C. 4151–4157, as established in 41 CFR 102–76.60 to 102–76.95, apply to buildings covered by this section.

■ 30. Amend § 1.1870 by revising paragraph (f) to read as follows:

**§ 1.1870 Compliance procedures.**

* * * * *

(f) The Commission shall notify the United States Access Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended, 42 U.S.C. 4151–4157, is not readily accessible to and usable by individuals with disabilities.

* * * * *

■ 31. Amend § 1.1901 by revising paragraph (e) to read as follows:

**§ 1.1901 Definitions and construction.**

* * * * *

(e) The terms claim and debt are deemed synonymous and interchangeable. They refer to an amount of money, funds, or property that has been determined by an agency official to be due to the United States from any person, organization, or entity, except another Federal agency. For purposes of administrative offset under 31 U.S.C. 3716, the terms ''claim'' and ''debt'' include an amount of money, funds, or property owed by a person to a State, the District of Columbia, American Samoa, Guam, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, or the Commonwealth of Puerto Rico. ''Claim'' and ''debt'' include amounts owed to the United States on account of extension of credit or loans made by, insured or guaranteed by the United States and all other amounts due the United States from fees, leases, rents, royalties, services, sales of real or personal property, overpayments, penalties, damages, interest, taxes, and forfeitures issued after a notice of apparent liability that have been partially paid or for which a court of competent jurisdiction has ordered payment and such order is final (except those arising under the Uniform Code of Military Justice), and other similar sources.

* * * * *

■ 32. Amend § 1.1902 by revising paragraphs (a) and (b) to read as follows:

**§ 1.1902 Exceptions.**

(a) Claims arising from the audit of transportation accounts pursuant to 31 U.S.C. 3726 shall be determined, collected, compromised, terminated or settled in accordance with regulations published under the authority of 31 U.S.C. 3726 (see 41 CFR part 102–118).

(b) Claims arising out of acquisition contracts subject to the Federal Acquisition Regulations (FAR) shall be determined, collected, compromised, terminated, or settled in accordance with those regulations. (See 48 CFR part 32). If not otherwise provided for in the FAR, contract claims that have been the

subject of a contracting officer's final decision in accordance with section 6(a) of the Contract Disputes Act of 1978 (41 U.S.C. 7103), may be determined, collected, compromised, terminated or settled under the provisions of this regulation, except that no additional review of the debt shall be granted beyond that provided by the contracting officer in accordance with the provisions of section 6 of the Contract Disputes Act of 1978 (41 U.S.C. 7103), and the amount of any interest, administrative charge, or penalty charge shall be subject to the limitations, if any, contained in the contract out of which the claim arose.

* * * * *

■ 33. Amend § 1.1910 by revising paragraphs (b)(2) and (c)(2) to read as follows:

**§ 1.1910 Effect of insufficient fee payments, delinquent debts, or debarment.**

* * * * *

(b) * * *

(2) Action will be withheld on applications, including on a petition for reconsideration or any application for review of a fee determination, or requests for authorization by any entity found to be delinquent in its debt to the Commission (see § 1.1901(i)), unless otherwise provided for in this regulation, *e.g.,* 47 CFR 1.1928 (employee petition for a hearing). The entity will be informed that action will be withheld on the application until full payment or arrangement to pay any non-tax delinquent debt owed to the Commission is made and/or that the application may be dismissed. See the provisions of §§ 1.1108, 1.1109, 1.1116, and 1.1118. Any Commission action taken prior to the payment of delinquent non-tax debt owed to the Commission is contingent and subject to rescission. Failure to make payment on any delinquent debt is subject to collection of the debt, including interest thereon, any associated penalties, and the full cost of collection to the Federal government pursuant to the provisions of the Debt Collection Improvement Act, 31 U.S.C. 3717.

* * * * *

(c) * * *

(2) The provisions of paragraphs (a) and (b) of this section will not apply to applications or requests for authorization to which 11 U.S.C. 525(a) is applicable.

**§ 1.2003 [Removed]**

■ 34. Remove § 1.2003.

## Subpart T—[Removed and Reserved]

■ 35. Remove and reserve Subpart T, consisting of §§ 1.5000 through 1.5007.

## Subpart U—[Removed and Reserved]

■ 36. Remove and reserve Subpart U, consisting of §§ 1.6000 through 1.6012.

■ 37. Amend § 1.9001 by revising paragraph (a) to read as follows:

**§ 1.9001 Purpose and scope.**

(a) The purpose of part 1, subpart X is to implement policies and rules pertaining to spectrum leasing arrangements between licensees in the services identified in this subpart and spectrum lessees. This subpart also implements policies for private commons arrangements. These policies and rules also implicate other Commission rule parts, including parts 1, 2, 20, 22, 24, 25, 27, 80, 90, 95, and 101 of title 47, chapter I of the Code of Federal Regulations.

* * * * *

■ 38. Amend § 1.10014 by revising paragraphs (c)(2), (f), and (h) to read as follows:

**§ 1.10014 What happens after officially filing my application?**

* * * * *

(c) * * *

(2) Each ''Accepted for Filing'' Public Notice has a report number. Examples of various types of applications and their corresponding report number (the ''x'' represents a sequential number) follow.

| Type of application | Report No. |
|---|---|
| 325–C Applications | 325–xxxxx. |
| Accounting Rate Change | ARC–xxxxx. |
| Foreign Carrier Affiliation Notification | FCN–xxxxx. |
| International High Frequency | IHF–xxxxx. |
| Recognized Operating Agency | ROA–xxxxx. |
| Satellite Space Station | SAT–xxxxx. |
| Satellite Earth Station | SES–xxxxx. |
| International Telecommunications: | |
| Streamlined | TEL–xxxxxS. |
| Non-streamlined | TEL–xxxxxNS and/or DA. |
| Submarine Cable Landing: | |
| Streamlined | SCL–xxxxxS. |
| Non-streamlined | SCL–xxxxxNS and/or DA. |

* * * * *

(f) We list most actions taken on public notices. Each ''Action Taken'' Public Notice has a report number. Examples of various types of applications and their corresponding report number (the ''x'' represents a sequential number) follow.

| Type of application | Report No. |
|---|---|
| 325–C Applications | 325–xxxxx. |
| Accounting Rate Change | No action taken PN released. |
| Foreign Carrier Affiliation Notification | No action taken PN released. |
| International High Frequency | IHF–xxxxx. |
| Recognized Operating Agency | No action taken PN released. |
| Satellite Space Station | SAT–xxxxx (occasionally). |
| Satellite Earth Station | SES–xxxxx. |
| International Telecommunications | TEL–xxxxx and DA. |
| Submarine Cable Landing | TEL–xxxxx and DA. |

(h) Issuing and Mailing Licenses for Granted Applications. Not all applications handled through IBFS and granted by the Commission result in the issuance of a paper license or authorization. A list of application types and their corresponding authorizations follows.

| Type of application | Type of license/authorization issued |
|---|---|
| 325–C Application | FCC permit mailed to permittee or contact, as specified in the application. |
| Accounting Rate Change | No authorizing document is issued by the Commission. In some cases, a Commission order may be issued related to an Accounting Rate Change filing. |
| Data Network Identification Code Filing | Letter confirming the grant of a new DNIC or the reassignment of an existing DNIC is mailed to the applicant or its designated representative. |
| Foreign Carrier Affiliation Notification | No authorizing document is issued by the Commission. In some cases, a Commission order may be issued related to a Foreign Carrier Affiliation Notification. |
| International High Frequency: | |
| Construction Permits, Licenses, Modifications, Renewals, and Transfers of Control/Assignment of License. | For all applications, an original, stamped authorization is issued to the applicant and a copy of the authorization is sent to the specified contact. |
| Recognized Operating Agency | The FCC sends a letter to the Department of State requesting grant or denial of recognized operating agency status. (The applicant is mailed a courtesy copy.) The Department of State issues a letter to both the Commission and the Applicant advising of their decision. |
| Satellite Space Station: | |
| 1. Request for Special Temporary Authority | 1. Letter, grant-stamped request, or short order. |
| 2. New Authorization | 2. Generally issued by Commission Order. |
| 3. Amendment | 3. Generally issued as part of a Commission Order acting upon the underlying application. |
| 4. Modification | 4. Generally issued by Commission Order. |
| 5. Transfer of Control/Assignment of License. | 5. Generally issued by Commission Order or Public Notice. Also, Form A–732 authorization issued and mailed to applicant (original), parties to the transaction, and the applicant's specified contact (copy). |
| Satellite Earth Station: | |
| 1. Request for Special Temporary Authority | 1. Letter, grant-stamped request, or short order. |
| 2. New Authorization | 2. License issued and mailed to applicant (original) and specified contact (copy). |
| 3. Amendment | 3. If granted, the action is incorporated into the license for the underlying application. |
| 4. Modification | 4. License issued and mailed to applicant (original) and specified contact (copy). |
| 5. Renewal | 5. License issued and mailed to applicant (original) and specified contact (copy). |
| 6. Transfer of Control/Assignment of License. | 6. If granted, Form A–732 authorization issued and mailed to applicant (original), parties to the transaction, and the applicant's specified contact (copy). |
| International Telecommunications—Section 214: | |
| 1. Streamlined (New, Transfer of Control, Assignment). | 1. Action Taken Public Notice serves as the authorization document. This notice is issued weekly and is available online both at IBFS (*http://www.fcc.gov/ibfs*) and the Electronic Document Management System (EDOCS) (*http://www.fcc.gov/e-file/*). |
| 2. Non-streamlined (New, Transfer of Control, Assignment). | 2. Decisions are generally issued by PN; some are done by Commission Order. |
| 3. Request for Special Temporary Authority | 3. Letter, grant-stamped request issued to applicant. |
| International Signaling Point Code Filing | Letter issued to applicant. |
| Submarine Cable Landing License Application: | |
| 1. Streamlined (New, Transfer of Control, Assignment). | 1. Action Taken Public Notice serves as the authorization document. This notice is issued weekly and is available online both at IBFS, which can be found at *http://www.fcc.gov/ibfs,* and the Electronic Document Management System (EDOCS), which can be found at *http://www.fcc.gov/e-file/.* |
| 2. Non-Streamlined (New, Transfer of Control, Assignment). | 2. Decisions are generally issued by PN; some are done by Commission Order. |

■ 39. Amend § 1.20007 by revising paragraph (a)(5) to read as follows:

**§ 1.20007 Additional assistance capability requirements for wireline, cellular, and PCS telecommunications carriers.**

(a) * * *

(5) Dialed digit extraction. Capability that permits a LEA to receive on the call data channel digits dialed by a subject after a call is connected to another carrier's service for processing and routing.

* * * * *

## PART 73—RADIO BROADCAST SERVICES

■ 40. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334, 336, and 339.

■ 41. Amend § 73.1010 by revising paragraph (a)(1) to read as follows:

**§ 73.1010 Cross reference to rules in other parts.**

* * * * *

(a) * * *

(1) Subpart A, ''General Rules of Practice and Procedure''. (§§ 1.1 to 1.117).

* * * * *

## PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

■ 42. The authority citation for part 74 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 307, 309, 336 and 554.

■ 43. Amend § 74.5 by revising paragraphs (a)(1) and (2) to read as follows:

**§ 74.5 Cross reference to rules in other parts.**

(a) * * *

(1) Subpart A, ''General Rules of Practice and Procedure''. (§§ 1.1 to 1.117).

(2) Subpart B, ''Hearing Proceedings''. (§§ 1.201 to 1.364).

* * * * *

[FR Doc. 2011–28144 Filed 11–15–11; 8:45 am]

**BILLING CODE 6712–01–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 648

**[Docket No. 070817467–8554–02]**

**RIN 0648–XA789**

### Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Closure of the Hudson Canyon Access Area to General Category Individual Fishing Quota Scallop Vessels

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS announces that the Hudson Canyon Scallop Access Area will close to Limited Access General Category IFQ scallop vessels for the remainder of the 2011 fishing year. As of November 12, 2011, no scallop vessel fishing under Limited Access General Category IFQ regulations may declare its intent to enter or fish for, possess, or land scallops in or from the Hudson Canyon Scallop Access Area. This action will prevent the allocation of LAGC IFQ trips in the Hudson Canyon Scallop Access Area from being exceeded during the 2011 fishing year.

**DATES:** Effective November 12, 2011, through February 29, 2012.

**FOR FURTHER INFORMATION CONTACT:** Christopher Biegel, Fishery Management Specialist, (978) 281–9112, *fax* (978) 281–9135.

**SUPPLEMENTARY INFORMATION:** Regulations governing fishing activity in the Sea Scallop Access Areas are found in §§ 648.59 and 648.60, which authorize vessels issued a valid LAGC IFQ scallop permit to fish in the Hudson Canyon Scallop Access Area under specific conditions, including a total of 593 trips that may be taken by LAGC IFQ vessels during the 2011 fishing year. Section 648.59(a)(3)(ii) requires the Hudson Canyon Scallop Access Area to be closed to LAGC IFQ vessels once the NMFS Northeast Regional Administrator has determined that the allowed number of trips are projected to be taken.

Based on trip declarations by LAGC IFQ scallop vessels fishing in the Hudson Canyon Scallop Access Area, and analysis of fishing effort, a projection concluded that 593 trips will have been taken on November 12, 2011. Therefore, in accordance with § 648.59(a)(3)(ii), the Hudson Canyon Scallop Access Area is closed to all LAGC IFQ scallop vessels as of November 12, 2011. No scallop vessel fishing under LAGC IFQ regulations may declare its intent to enter or fish for, possess, or land scallops in or from the Hudson Canyon Scallop Access Area after November 12, 2011. Any vessel that has declared into the LAGC IFQ Hudson Canyon Access Area scallop fishery, complied with all trip notification and observer requirements, and crossed the VMS demarcation line on the way to the area before 0001, November 12, 2011, may complete the trip. This closure is in effect for the remainder of the 2011 scallop fishing year under current regulations.

### Classification

This action is required by § 648 and is exempt from review under Executive Order 12866.

Section 648.59(e)(4)(ii) requires this closure to ensure that LAGC IFQ scallop vessels do not take more than their allocated number of trips in the Hudson Canyon Scallop Access Area. The Hudson Canyon Scallop Access Area opened for the 2011 fishing year on March 1, 2011. The projections of the date on which the LAGC IFQ fleet will have taken all of their allocated trips in an Access Area become more accurate with more trips into the area and as activity trends begin to appear. As a result, an accurate projection is only available very close to when the fleet has taken all of its trips. This prevents earlier announcement and making the closure announcement available for public comment before final action. In addition, proposing a closure would likely increase activity, triggering an earlier closure than predicted. To allow LAGC IFQ scallop vessels to continue to take trips in the Hudson Canyon Scallop Access Area during the period necessary to publish and receive comments on a proposed rule would likely result in vessels taking much more than the allowed number of trips in the Hudson Canyon Scallop Access Area. Excessive trips and harvest from the Hudson Canyon Scallop Access Area would result in excessive fishing effort in the Hudson Canyon Scallop Access Area, where effort controls are critical, thereby undermining conservation objectives of the FMP and requiring more restrictive future management measures. Based on the above proposed rulemaking is waived under 5 U.S.C. 553(d)(3), because it would be impracticable and contrary to the public interest to allow a period for public comment. Furthermore, for the same reasons, there is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delayed effectiveness period for this action.

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

Dated: November 10, 2011.

**Steven Thur,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2011–29583 Filed 11–10–11; 4:15 pm]

**BILLING CODE 3510–22–P**

# Proposed Rules

Federal Register
Vol. 76, No. 221
Wednesday, November 16, 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.

## NUCLEAR REGULATORY COMMISSION

### 2 CFR Chapter XX

### 5 CFR Chapter XLVIII

### 10 CFR Chapter I

**[NRC–2011–0246]**

## Retrospective Review Under Executive Order 13579

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Initial plan for retrospective analysis of existing rules.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC or the Commission) has made available its initial Plan for retrospective analysis of its existing regulations to determine whether any such regulations should be modified, streamlined, expanded, or repealed. This action is part of the NRC's voluntary implementation of Executive Order (EO) 13579, ''Regulation and Independent Regulatory Agencies,'' issued by the President on July 11, 2011. The purpose of the NRC's review is to make its regulatory program more effective and less burdensome in achieving its regulatory objectives. The NRC is not instituting a public comment period for the initial Plan at this time but anticipates issuing a revised version for public comment in Calendar Year (CY) 2012 to reflect, as appropriate, any Commission decisions related to the Fukushima Task Force Report.

**DATES:** November 16, 2011.

**ADDRESSES:** You can access publicly available documents related to this document using the following methods:

- *NRC's Public Document Room (PDR):* The public may examine and purchase copies of publicly available documents at the NRC's PDR, O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* Publicly available documents created or received at the NRC are available online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html*. From this page, the public can gain entry into ADAMS, which provides text and image files of the NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–(800) 397–4209, (301) 415–4737, or by email to *pdr.resource@nrc.gov*. The NRC's initial Plan is in ADAMS under Accession Number ML112690277.
- *Federal Rulemaking Web Site:* Supporting materials related to this document can be found at *http://www.regulations.gov* by searching on Docket ID NRC–2011–0246. Address questions about NRC dockets to Carol Gallagher, telephone: (301) 492–3668; email: *Carol.Gallagher@nrc.gov*.

The NRC's initial Plan may be viewed online on the NRC's Public Web site at *http://www.nrc.gov/about-nrc/plans-performance.html#rules*.

**FOR FURTHER INFORMATION CONTACT:** Cindy Bladey, Chief, Rules, Announcements, and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; *telephone:* (301) 492–3667 or *email: Cindy.Bladey@nrc.gov*.

**SUPPLEMENTARY INFORMATION:**

### Background

On January 18, 2011, President Obama issued EO 13563, ''Improving Regulation and Regulatory Review.'' Executive Order 13563 directs Federal agencies to develop and submit a preliminary plan to the Office of Information and Regulatory Affairs that (1) Considers how the agencies will review existing significant regulations and (2) identifies regulations that can be made more effective or less burdensome in achieving regulatory objectives. Executive Order 13563 did not, however, apply to independent regulatory agencies. Subsequently, on July 11, 2011, the President issued EO 13579, which recommends that independent regulatory agencies also develop retrospective plans similar to those required of other agencies under EO 13563. In response to EO 13579, the NRC is making available an initial Plan on the NRC's Public Web site.

### Initial Plan for Retrospective Review

The NRC's initial Plan describes the NRC's plans, processes, and activities relating to retrospective review of existing regulations, including discussion of efforts to (1) Incorporate risk assessments into regulatory decisionmaking and (2) address cumulative effects of regulation.

On July 12, 2011, ''Recommendations for Enhancing Reactor Safety in the 21st Century: The Near-Term Task Force Review of Insights from the Fukushima Dai-ichi Accident'' (Fukushima Task Force Report, ML111861807), was issued. The Commission has recently directed staff to engage promptly with stakeholders to review and assess the recommendations of the Fukushima Task Force Report for the purpose of providing the Commission with fully-informed options and recommendations. The Commission's decision regarding the options and recommendations contained in the Fukushima Task Force Report may substantially affect the NRC's near-term rulemaking activities. Once the Commission reaches a decision, the NRC will then revise the initial Plan to incorporate any changes to rulemaking activities. The NRC will update the initial Plan on the NRC's Public Web site and publish the updated Plan for public comment in the **Federal Register**. The NRC anticipates this to occur in CY 2012.

Dated at Rockville, Maryland, this 7th day of November 2011.

For the Nuclear Regulatory Commission.

**Annette L. Vietti-Cook,**

*Secretary of the Commission.*

[FR Doc. 2011–29418 Filed 11–15–11; 8:45 am]

**BILLING CODE 7590–01–P**

## FEDERAL ENERGY REGULATORY COMMISSION

### 5 CFR Chapter XXIV

### 18 CFR Chapter I

**[Docket No. AD12–6–000]**

## Retrospective Review Under Executive Order 13579

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Plan for retrospective analysis of existing rules.

**SUMMARY:** On July 11, 2011, the President issued Executive Order 13579, requesting independent regulatory agencies follow the key principles of Executive Order 13563. These principles were designed to promote public participation, improve integration and innovation, promote flexibility and freedom of choice, and ensure scientific integrity during the rulemaking process in order to create a regulatory system that protects public health, welfare, safety, and the environment while promoting economic growth, innovation, competitiveness, and job creation. The Chairman of the Federal Energy Regulatory Commission (FERC or the Commission) directed Commission staff to develop a plan in support of the principles and goals of the Executive Order.

**DATES:** Issued November 10, 2011.

**ADDRESSES:** Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

**FOR FURTHER INFORMATION CONTACT:** Kimberly D. Bose, Secretary, (202) 502–8400.

**SUPPLEMENTARY INFORMATION:**

## I. Executive Summary of Plan

On July 11, 2011, the President issued Executive Order 13579, requesting independent regulatory agencies follow the key principles of Executive Order 13563. These principles were designed to promote public participation, improve integration and innovation, promote flexibility and freedom of choice, and ensure scientific integrity during the rulemaking process in order to create a regulatory system that protects public health, welfare, safety, and the environment while promoting economic growth, innovation, competitiveness, and job creation.

As part of this effort, Executive Order 13579 requests that independent agencies issue public plans for periodic retrospective analysis of their existing ''significant regulations.'' Retrospective analysis should identify ''significant regulations'' that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in order to achieve the agency's regulatory objective. Plans for retrospective analysis should be made available to the public by November 8, 2011.

The Chairman of the Federal Energy Regulatory Commission (FERC or the Commission) directed Commission staff to develop a plan in support of the principles and goals of the Executive Orders. This plan sets forth a schedule for reassessing the Commission's regulations in order to comply with the key principles and achieve the goals of Executive Orders 13579 and 13563.

This plan summarizes the Commission's continuing efforts to identify regulations that warrant repeal or modification, or strengthening, complementing, or modernizing where necessary or appropriate. The Commission voluntarily and routinely, albeit informally, reviews its regulations to ensure that they achieve their intended purpose and do not impose undue burdens on regulated entities or unnecessary costs on those entities or their customers. In addition, the Commission considers the spirit of these Executive Orders when evaluating possible new regulations.

This plan also outlines additional steps for the future to identify regulations that warrant repeal or modification, or strengthening, complementing, or modernizing where necessary or appropriate. This plan is in addition to the Commission's current voluntary review of its regulations.

Executive Order 13579 asks independent agencies to review ''significant regulations.'' The executive order does not define what should be considered ''significant regulations.'' Commission staff considered the definition of a ''significant regulatory action'' provided in Executive Order 12866, which is the executive order that established the modern regulatory review structure.[1] Commission staff also considered the Office of Management and Budget's definition of ''major rules'' in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) to guide our review. In particular, 5 U.S.C. 610 provides for a 10-year review of rules that have a ''significant economic impact upon a substantial number of small entities.'' However, the Commission, in consultation with OMB, has determined that a very limited number of the Commission's rules are ''major rules'' because they do not have a ''significant economic impact upon a substantial number of small entities.''[2] FERC's rules, likewise, are typically not considered a ''significant regulatory action.''

Because the Commission has relatively few ''major rules'' or ''significant regulatory actions'', this plan establishes a process for reviewing both those Commission actions and other Commission rules that nonetheless would be considered of particular importance to the industry regulated by the Commission and the public. Commission staff will develop an internal list of such regulations and other actions. On a biennial basis, staff will prepare a memo detailing which of the listed regulations are ripe for evaluation based on a 10-year review cycle. This plan establishes a 10-year review cycle because that period is consistent with OMB regulations requiring a 10-year review of all major regulations. In addition, there may be sufficient changes in the industries that the Commission regulates over a 10-year period to warrant an evaluation of whether the regulations are outdated.

Commission staff will make its memo available for public comment, providing an opportunity for public input as to which of the regulations that are ripe for evaluation warrant a formal public review. This input, in addition to staff's recommendation, will inform the Commission's decision as to which regulations will be the subject of a formal public review. This public review could be initiated by a Notice of Inquiry seeking public comment on whether the regulations continue to meet their original objectives[3] or by a proposal of specific changes to the regulations, similar to the changes proposed in the Notice of Proposed Rulemaking leading to Order No. 890.[4]

## II. Scope of Plan

This plan covers existing regulations, significant guidance documents available on the Commission's Web site,

[1] Section 3(f) of Executive Order 12866 defines ''significant regulatory action'' to be one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel, legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

[2] The following rules have been considered ''major rules'': Order Nos. 888 and 889 (considered together) adopting a *pro forma* open access transmission tariff (OATT) and a related open access same-time information system (OASIS), Order No. 693 approving the first batch of Reliability Standards, and Order No. 706 approving the first batch of cyber security standards. In addition, the Smart Grid Policy Statement was considered a major rule by OMB.

[3] *See, e.g., Promoting Transmission Investment Through Pricing Reform,* 135 FERC 61,146 (2011).

[4] *See, e.g., Preventing Undue Discrimination and Preference in Transmission Service,* Order No. 890, FERC Stats. & Regs. 31,241, *order on reh'g*, Order No. 890–A, FERC Stats. & Regs. 31,261 (2007), *order on reh'g*, Order No. 890–B, 123 FERC 61,299 (2008), *order on reh'g*, Order No. 890–C, 126 FERC 61,228 (2009), *order on clarification*, Order No. 890–D, 129 FERC 61,126 (2009).

existing information collections, and unfinished proposed rules.

## III. Rules for Retrospective Review

The Commission regularly reviews its regulations to ensure that they achieve their intended purpose and do not impose undue burdens on regulated entities or unnecessary costs on those entities or their customers. To this end, the Commission has recently reviewed or is in the process of reviewing several important regulations. Those efforts are outlined in Section V, below.

*Rules Reviewed Pursuant to Executive Order 13563*

Changes to Electric Quarterly Reports

In response to the review performed pursuant to Executive Order 13563, Commission enforcement staff noted the requirement for companies to correct previously-filed Electronic Quarterly Reports (EQRs). At the time of the issuance of Executive Order 13563, if there was an inaccuracy in one or more of a company's previously-filed EQRs, the Commission had required the company to go back and correct all of its previously-filed EQRs affected by the error. Staff determined that correcting errors on all affected prior reports is not particularly useful and imposes a growing burden on filers that serves little purpose. The Commission has now implemented an informal policy of directing filers to correct the most recent 12 reports (three years of data) with a note placed in the EQR stating that other reports may also contain the error. This approach provides as much useful information to staff and the public as the previous policy of correcting all affected previously-filed EQRs, while being less burdensome to filers. This change did not necessitate a change in the Commission's regulations.

Proposed Retirement of Semi-Annual Storage Reports for Interstate and Intrastate Natural Gas Companies

On December 16, 2010, the Commission in Docket No. RM11–4–000 issued a Notice of Inquiry regarding whether to revise regulations requiring interstate and intrastate natural gas pipelines to report semi-annually on their storage activities. In analyzing the comments received in response to the Notice of Inquiry, the Commission considered the comments received and the goals of those executive orders. Subsequently, on September 15, 2011, the Commission issued a Notice of Proposed Rulemaking proposing to retire the Semi-Annual Storage Report for both interstate and intrastate natural gas companies.[5] The Commission is seeking to streamline its natural gas pipeline reporting requirements, as part of its continuing efforts to ensure Commission regulations are effective, timely, and up to date. Retiring the Semi-Annual Storage Report would reduce the filing and administrative burden on filers. More significantly, the retirement would avoid the generation of duplicative data that is available from other Commission information collections and via company web postings. The Commission is still in the process of reviewing comments to the Notice of Proposed Rulemaking and has not taken final action on this proposal.

*Review of Significant Regulations*

As stated above, the Commission, in consultation with OMB, has determined that a very limited number of the Commission's rules are considered ''major rules'' or ''significant regulatory actions.'' The actions discussed below were considered ''major rules.'' This plan calls for the Commission to review these actions at least every ten years.

Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities

Order Nos. 888 and 889, issued in 1996, were together considered major rules pursuant to section 351 of the SBREFA.[6] Order No. 888 prohibited public utilities from using their monopoly power over transmission to restrain or prevent competition. Order No. 889 established rules governing an Open Access Same-time Information System (OASIS) and prescribing standards of conduct. However, the Commission certified that these final rules would not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (RFA).[7] In 2007, the Commission undertook a 10-year review of its electric transmission open access regulations culminating in the issuance of Order No. 890, which revisited the Commission's open access policies and amended its pro forma Open Access Transmission Tariff to further improve competition in wholesale markets by, among other things: eliminating the wide discretion that transmission providers had in calculating available transfer capability; increasing the ability of customers to access new generating resources and promote efficient utilization of transmission by requiring an open, transparent, and coordinated transmission planning process; promoting more efficient use of the transmission grid by establishing a new conditional firm service; and strengthening compliance and enforcement efforts.

Mandatory Reliability Standards for the Bulk Power System

Order No. 693 was issued in 2007. This major rule concerned a Congressional mandate to adopt mandatory standards to protect electric reliability under section 215 of the Federal Power Act (FPA). That rule required compliance with 83 previously voluntary Reliability Standards developed by industry. These Reliability Standards are reviewed periodically by the entity developing mandatory reliability standards for Commission approval, the North American Electric Reliability Corporation (NERC). Any revisions to those standards come to the Commission for review and approval. According to NERC's rules of procedure, it must ''complete a review of each NERC reliability standard at least once every five years from the effective date of the standard or the latest revision to the standard, whichever is later.''[8]

Order No. 706, issued in 2008, was also issued pursuant to Part 40 of the Commission's regulations and was considered a major rule pursuant to the SBREFA, but did not have a significant economic impact on a substantial number of small entities. Order No. 706 was issued to make mandatory certain cyber security reliability standards to protect the reliability of the electric system. The rules were developed by industry consensus and have been updated several times. NERC most

[5] *Storage Reporting Requirements of Interstate and Intrastate Natural Gas Companies, Notice of Proposed Rulemaking,* 136 FERC 61,172 (2011).

[6] *See* 5 U.S.C. 804(2) (2006). Under SBREFA, if an order is a ''major rule,'' it may not go into effect until 60 Congressional days after it has been submitted to Congress. During that time, Congress may review, and potentially reject, a rule. A major rule is defined by SBREFA has the following:

a. An annual effect on the economy of $100,000,000 or more;

b. A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

c. Significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. companies to compete with foreign companies in domestic and export markets.

[7] The RFA requires agencies in drafting a proposed rule: (1) To assess the affect that their regulation will have on small entities; (2) to analyze effective alternatives that may minimize a regulation's impact; and (3) to make their analyses available for public comment. 5 U.S.C. 601–604 (2006). In its Notice of Proposed Rulemaking, the agency must either include an initial regulatory flexibility analysis (Initial RFA) or certify that the proposed rule will not have a ''significant impact on a substantial number of small entities.''

[8] *See* Rules of Procedure of the North American Electric Reliability Corporation, Rule 315.

recently filed to modify the Reliability Standards approved in Order No. 706 on February 10, 2011. Those revisions are currently under review by the Commission.'' [9]

Smart Grid Policy Statement

The Smart Grid Policy Statement that the Commission issued in 2009 is also considered by OMB to be a ''major rule.'' [10] This Policy Statement provides guidance regarding the development of a smart grid for the nation's electric transmission system, focusing on the development of key standards to achieve interoperability and functionality of smart grid systems and devices. In response to the need for urgent action on potential challenges to the bulk-power system, in this Policy Statement the Commission provided additional guidance on standards to help to realize a smart grid. The Commission also adopted an Interim Rate Policy for the period until interoperability standards are adopted by the Commission, which will encourage investment in smart grid systems.

*Review of Other Commission Regulations*

Because the Commission has relatively few rules that are considered ''major rules'' or ''significant regulatory actions,'' the review to be conducted under this plan is broader than just a review of rules considered ''major rules'' or ''significant regulatory actions.'' [11]

Commission staff will develop an internal list of other Commission rules that nonetheless would be considered of particular importance to the industry regulated by the Commission and the public. On a biennial basis, staff will prepare a memo detailing which of the listed regulations are ripe for evaluation based on a 10-year review cycle. In other words, in 2012, staff will evaluate whether those regulations last revised in 2001 and 2002 should be formally reviewed. There would be no evaluation in 2013. In 2014, staff would evaluate the regulations last revised in 2003 and 2004.

Evaluating regulations every ten years is consistent with OMB regulations requiring a 10-year review of all major regulations. It is also consistent with other agencies which review their major regulations every 10 years.[12] Further, there may be sufficient changes in the industries it regulates over a 10-year period to warrant an evaluation of whether the regulations are outdated.

There are several reasons why this plan calls for a biennial evaluation. First, while the Commission, as an economic regulator covering multiple industries, has a significant number of regulations, it has only a few major rules or significant regulatory actions. Second, as outlined in section V, the Commission regularly, voluntarily, and routinely, albeit informally, reviews its regulations to ensure that they achieve their intended purpose and do not impose undue burdens on regulated entities or unnecessary costs on those entities or their customers. The formal plan created pursuant to Executive Order 13579 is in addition to this current voluntary review. Third, evaluating regulations every year may take too many staff resources.

## IV. Public Access and Participation

As stated above, on a biennial basis, staff will prepare a memo detailing which of the Commission's regulations are ripe for evaluation based on a 10-year review cycle. Staff will make that memo available for public comment, providing an opportunity for public input as to which of the regulations that are ripe for evaluation warrant a formal public review. This input, in addition to staff's recommendation, will inform the Commission's decision as to which regulations will be the subject of a formal public review.

Of course, members of the public and industry participants always may suggest the need for revisions in existing regulations, even outside of existing proceedings. The Commission seriously considers such input. Input from the public and industry participants is often part of the Commission's determination to reevaluate existing policy and rules. Similarly, members of the public and industry participants may submit filings to the Commission if they believe that ongoing information reporting obligations may no longer be needed.

Public participation is a regular and crucial part of the Commission's rulemaking process. The Commission's rulemaking proceedings typically provide multiple opportunities for public participation through the submission of comments on Notices of Inquiry and Notices of Proposed Rulemaking; where appropriate, participation in any public outreach meetings; and the filing of requests for rehearing of final rules.

## V. Current Agency Efforts Already Underway Independent of Executive Order 13579

Since the issuance of Executive Order 13563, the Commission has made efforts to adhere to the spirit of the executive order even though, as an independent agency, it is not subject to the executive order.

Even prior to the issuance of Executive Orders 13563 and 13579, the Commission has adopted a culture of retrospective review and analysis of its regulations and processes. The Commission constantly examines ways to reduce regulatory burdens, simplify the regulatory process, remove barriers to entry, and to otherwise make its regulations more effective and less burdensome. Below are examples of measures that the Commission has taken in recent years to identify areas where burdens could be reduced.

This year, the Commission issued a Notice of Inquiry to reassess whether its electric transmission ratemaking incentive regulations are effectively encouraging the development of transmission infrastructure in a manner consistent with the intent of the Energy Policy Act of 2005 (EPAct 2005), which directed FERC to establish rules to provide incentive rates to encourage development of electric transmission infrastructure. The development of transmission infrastructure will facilitate competition in regional electricity markets, which helps ensure just and reasonable rates without burdensome regulatory oversight.

In the natural gas markets, the Commission, last year, exempted certain transactions from natural gas index reporting requirements, particularly with reference to blanket sales certificates, because it found that those transactions were burdensome to report and provided little market information. The Commission also exempted small entities that were obligated to report solely by virtue of possessing a blanket sales certificate. Thus, the Commission removed regulatory burdens on

[9] On September 15, 2011, the Commission issued a notice of proposed rulemaking proposing to approve those revisions, while providing that the electric industry, through the NERC standards development process, should continue to develop an approach to cybersecurity that is meaningful and comprehensive to assure that the nation's electric grid is capable of withstanding a cybersecurity incident. *Version 4 Critical Infrastructure Protection Reliability Standards, Notice of Proposed Rulemaking,* 136 FERC ¶ 61,184 (2011).

[10] *Smart Grid Policy Statement,* 128 FERC ¶ 61,060 (2009).

[11] The determination that a rule is suitable for the purpose of this review should be distinguished from a determination that the rule is a ''significant regulatory action'' or ''major'' for the purpose of OMB reporting.

[12] For example, the Economic Growth and Regulatory Paperwork Reduction Act of 1996 requires certain independent agencies (Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, National Credit Union Association, and the Federal Deposit Insurance Corporation) to review regulations once every 10 years to identify any outdated, unnecessary, or overly burdensome rules or requirements.

regulated entities, including small businesses.

In 2007, the Commission conducted a comprehensive review of its electric transmission open-access regulations, including its landmark Order No. 888, which prohibited public utilities from using their monopoly power over transmission to restrain or prevent competition. It reached out to the regulated industry and other stakeholders. This effort culminated in the issuance of Order No. 890, which revisited the Commission's open-access policies and amended its *pro forma* Open Access Transmission Tariff to further improve competition in wholesale markets by, among other ways, increasing the ability of customers to access new generating resources and promoting efficient utilization of transmission by requiring an open, transparent, and coordinated transmission planning process.

In the hydropower arena, the Commission has entered into a number of memoranda of understanding with other Federal agencies and state governments to reduce regulatory conflict and overlap.

In March 2010, the Commission issued a final rule to exempt generating facilities that are 1 MW and smaller from the need to file a Form 556 in order to be certified by the Commission as a Qualifying Facility (QF). This change will facilitate the development of small generating facilities. The final rule also removed the content of Form 556 from the Commission's regulations and, in their place, provided that an applicant seeking to certify QF status of a small power production or cogeneration facility must complete, and electronically file, the Form 556 that is in effect at the time of filing. The Commission stated that this change takes advantage of newer technologies that will reduce both the filing burden for applicants and the processing burden for the Commission.

In addition to reducing regulatory burdens, the Commission has sought out ways to simplify the regulatory process and provide educational resources, thereby helping entities, particularly small ones, navigate the Federal regulatory process. One example of this outreach is the Commission's encouragement of small hydropower development. In 2010, the Commission signed a memorandum of understanding with the State of Colorado to simplify procedures for the development of small-scale hydropower projects. Similarly, in response to rising public interest in small and low-impact hydropower projects, the Commission has developed a publicly available and user-friendly website that provides detailed information on how to navigate the small hydropower regulatory process. Commission staff also has been and will continue to host public tutorials and webinars tailored to the needs of entities intending to file applications to develop small hydropower projects. In addition, Commission staff conducted a study last year in coordination with the hydropower industry, government agencies, Native American tribes, non-governmental organizations, and the general public to evaluate the effectiveness of the Commission's integrated licensing process for hydroelectric facilities.

The Commission has coordinated seminars around the country on environmental review and compliance for natural gas facilities. In the past two years, over 1,000 people have attended these seminars. These seminars increase transparency, help stakeholders better understand the natural gas regulatory process, improve inter-agency coordination, and allow faster processing of applications.

The Commission has also taken various steps to simplify the regulatory process by moving from paper to electronic formats in a number of areas. Most notably, the Commission has developed and implemented a standard electronic tariff filing system known as eTariff. Electronic filing allows the public and regulated entities faster and easier access to tariffs. Similarly, the Commission is moving to automate various forms to simplify the regulatory process. For example, section 205(f) of the FPA requires respondents to submit certain information in Form 580, Interrogatory on Fuel and Energy Purchase Practices. In 2010, the Commission established Form 580 in an electronic pdf-fillable form and streamlined the information required by the Form.

The eTariff filing process described above has greatly improved public access to tariff filing documents by posting such filings in near real-time into the public record, and increased ten-fold the number of FERC regulated tariffs that are now available through the Commission's Web site.

Another way that the Commission has adopted a culture of retrospective review is to examine ways to reduce the barriers to entry for new businesses and emerging technologies. In recent years, improvements in technology have led to an increasing variety of resources being capable of contributing to reliable, efficient, and sustainable energy services. The Commission has recently initiated a number of rulemaking proceedings that are responsive to these developments to ensure that regulations do not inhibit the use of emerging technologies to provide services subject to the Commission's jurisdiction.

Last year, for example, the Commission initiated a rulemaking proceeding on issues related to the reliable integration of variable energy resources, such as solar, wind, and hydrokinetic generation, to determine whether operational and pricing reforms would result in more efficient integration of variable energy resources into the grid, which, in turn, would lay a foundation for continued development of variable energy resources.

Further, the Commission has taken steps to remove barriers to the use of emerging technologies, such as flywheels and other electric storage devices, that are capable of responding to certain transmission system needs more quickly than traditional generators. In October 2011, the Commission revised its regulations pertaining to organized wholesale electric markets of regulation service to ensure that resources that provide faster and more accurate regulation services are compensated appropriately for their performance.[13] This would result in increased competition, which will tend to place downward pressure on rates for regulation service.

Similarly, the Commission issued a Notice of Inquiry in June 2011, seeking public comment on ways in which the Commission can facilitate competition in the provision of ancillary services from all resource types, including electric storage, and whether the Commission's accounting requirements present a barrier to development of electric storage.

The Commission also has recently taken a number of steps to remove barriers to demand response participation in organized wholesale electric markets. Pursuant to a Congressional directive, Commission staff in 2009 found that the potential for peak electricity demand reductions across the country is between 38 GW and 188 GW, up to 20 percent of national peak demand, depending on the penetration of advanced metering and the applicable regulatory policies. The Commission also has amended its regulations to facilitate demand response participation in organized markets. In Order No. 719, for example, the Commission amended its regulations to eliminate certain barriers to participation by demand response

[13] *Frequency Regulation Compensation in the Organized Wholesale Power Markets,* Order No. 755, 137 FERC ¶ 61,064 (2011).

resources that are technically capable of providing ancillary services on the grid. More recently, the Commission issued Order No. 745, which addresses compensation for demand response resources participating in organized wholesale energy markets.

## VI. Elements of Plan

*Plan To Develop Culture of Retrospective Analysis*

As described in Part V of this plan, the Commission has developed a strong and longstanding culture of retrospective analysis of its existing significant regulations. The Commission currently has several proceedings in which it is examining regulations to ensure they continue to be appropriate to meet the goal of the regulations without imposing an undue burden. These proceedings were initiated in large part because the Commission has a culture of retrospective analysis of its rules. In addition, since the issuance of Executive Orders 13563 and 13579, Commission staff has sought to expand the Commission's effort to conduct regulatory reform and to make suggestions to modify, improve, or repeal regulations that may further the purpose of the executive orders. The Commission also considers the spirit of these Executive Orders when evaluating possible new regulations.

*Prioritization*

Before Commission staff identifies candidate regulations to review, it will consider a number of factors, including measures to effectively carry out the Commission's statutory responsibilities; staff resources; market dynamics; the effect of regulations on small businesses; comments from other agencies, stakeholders, and regulated entities; stakeholder actions; government actions; technological developments; and the public interest. Currently, Commission staff has not compiled a list of candidate rules for which it will recommend review in the next two years.

*Structure and Staffing*

*Name/Position Title:* Christy Walsh, Special Counsel, Office of the General Counsel.

*Email address: Christy.walsh@ferc.gov.*

*Independence*

Because of staff limitations, the Commission cannot separate staff involved with retrospective review of regulations from staff responsible for writing and implementing regulations. Instead, in order to maintain sufficient independence staff involved with the retrospective review, the Commission has created a team consisting of staff from all of the Commission's offices. In such an environment, the views of those who write and implement regulations pertaining to their respective office would be balanced by the views of the rest of the team. Such a structure ensures objective analysis of individual regulations.

*Plan for Retrospective Review and Revision of Rules*

In addition to continuing the measures described in Part V, this plan establishes a process to enhance the Commission's retrospective analysis of regulations in the future. Beginning in November 2011, Commission staff will conduct reviews on a biennial basis to identify existing regulations that have become ineffective, outmoded, or overly burdensome.

*Interagency Coordination and Peer Review*

The Commission, as an independent regulatory agency, cannot always coordinate with other federal agencies. The Commission has historically coordinated with state and other federal agencies and has harmonized related regulations, when feasible, in order to reduce redundancy and conflict. Over the last three decades, the Commission has entered into memoranda of understanding and letters of understanding with state governments and other federal agencies. This effort has lead to predictability, clarity, a decrease in costs for the public and regulated entities. The Commission will continue to look for opportunities to further promote interagency coordination.

With respect to peer review, the Commission must seek comments on any proposed change to its regulations. The Commission routinely receives comments on its proposals from industry and other interested individuals. Before issuing a final decision, the Commission must review those comments.

## VII. Components of Retrospective Analysis

Fulfilling the Commission's mission involves pursuing two primary goals: ensuring that rates, terms and conditions are just, reasonable and not unduly discriminatory or preferential, and promoting the development of safe, reliable and efficient infrastructure that serves the public interest. When evaluating whether regulations should be reviewed under this Plan, Commission staff will consider a number of factors, including measures to effectively carry out the Commission's statutory responsibilities, staff resources, whether the regulations contain barriers to entry of new market participants, whether there have been changes in market dynamics, and if there have been stakeholder actions or government actions that could warrant regulatory change. In addition, Commission staff will consider whether new technologies have emerged that may warrant changes in the Commission's regulations. Commission staff's review will also include an examination of the effect of regulations on small businesses to ensure that they are not overly burdensome. Finally, Commission staff will consider the public interest, in order to make recommendations on retrospective review.

## VIII. Publishing the Agency's Plan Online

The Commission will publish its retrospective review plan in the **Federal Register** and on its Web site, *http://www.ferc.gov.* A docket on the Commission's eLibrary, which is its filing and document management system, will be opened for this plan.

Dated: November 10, 2011.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2011–29663 Filed 11–15–11; 8:45 am]

BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

## 10 CFR Parts 429 and 430

**[Docket No. EERE–2010–BT–TP–0021]**

**RIN 1904–AC08**

## Energy Conservation Program: Test Procedures for Residential Clothes Washers

*Correction*

In proposed rule document 2011–28543 appearing on pages 69870–69893 in the issue of November 9, 2011, make the following correction:

On page 69870, in the first column, the RIN No. in the heading is corrected to read as set forth above.

[FR Doc. C1–2011–28543 Filed 11–15–11; 8:45 am]

BILLING CODE 1505–01–D

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 71**

**[Docket No. FAA–2011–0783; Airspace Docket No. 11–ANM–16]**

## Proposed Amendment of Class D and Class E Airspace, and Establishment of Class E Airspace; Bozeman, MT

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

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

**SUMMARY:** This action proposes to modify Class D and Class E airspace at Bozeman, Gallatin Field Airport, Bozeman, MT, to accommodate aircraft using Instrument Landing System (ILS) Localizer (LOC) standard instrument approach procedures at the airport. This action also would establish Class E En Route Domestic airspace to facilitate vectoring of Instrument Flight Rules (IFR) traffic from en route airspace to the airport. This action, initiated by the biennial review of the Bozeman airspace area, would enhance the safety and management of aircraft operations at the airport.

**DATES:** Comments must be received on or before January 3, 2012.

**ADDRESSES:** Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366–9826. You must identify FAA Docket No. FAA–2011–0783; Airspace Docket No. 11–ANM–16, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4537.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA 2011–0783 and Airspace Docket No. 11–ANM–16) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2011–0783 and Airspace Docket No. 11–ANM–16''. The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

### Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue SW., Renton, WA 98057.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

### The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by modifying Class D airspace, and Class E airspace extending upward from 700 feet above the surface at Bozeman, Gallatin Field Airport, Bozeman, MT. The FAA's biennial review of the airspace found that additional controlled airspace is necessary to accommodate aircraft using the ILS LOC standard instrument approach procedures at the airport. Also, this action would establish Class E en route domestic airspace extending upward from 1,200 feet above the surface to allow vectoring IFR aircraft from en route airspace to the airport.

Class D and Class E airspace designations are published in paragraph 5000, 6005 and 6006, respectively, of FAA Order 7400.9V, dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designation listed in this document will be published subsequently in this Order.

The FAA has determined this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation; (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified this proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, section 106, describes the authority for the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends

controlled airspace at Bozeman, Gallatin Field Airport, Bozeman, MT.

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

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, B, C, D AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011, and effective September 15, 2011 is amended as follows:

*Paragraph 5000 Class D airspace.*

* * * * *

**ANM MT D Bozeman, MT [Modified]**

Bozeman, Gallatin Field Airport, MT
(Lat. 45°46′39″ N., long. 111°09′07″ W.)

That airspace extending upward from the surface to and including 7,000 feet MSL within a 5.4-mile radius of Bozeman, Gallatin Field Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

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

* * * * *

**ANM MT E5 Bozeman, MT [Modified]**

Bozeman, Gallatin Field Airport, MT
(Lat. 45°46′39″ N., long. 111°09′07″ W.)

That airspace extending upward from 700 feet above the surface within a 13.5-mile radius of Bozeman, Gallatin Field Airport, and within 8 miles northeast and 13 miles southwest of the 316° bearing of the airport extending from the 13.5-mile radius to 24.4 miles northwest of the airport.

*Paragraph 6006 En route domestic airspace areas.*

* * * * *

**ANM MT E6 Bozeman, MT [New]**

Bozeman, Gallatin Field Airport, MT
(Lat. 45°46′39″ N., long. 111°09′07″ W.)

That airspace extending upward from 1,200 feet above the surface within a 50-mile radius of the Bozeman, Gallatin Field Airport; excluding existing lateral limits of controlled airspace 12,000 feet MSL and above.

Issued in Seattle, Washington, on November 8, 2011.

**William Buck,**

*Acting Manager, Operations Support Group, Western Service Center.*

[FR Doc. 2011–29637 Filed 11–15–11; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2011–1191; Airspace Docket No. 11–ANM–21]**

## Proposed Amendment of Class E Airspace; Colorado Springs, CO

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

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

**SUMMARY:** This action proposes to amend Class E airspace at City of Colorado Springs Municipal Airport, Colorado Springs, CO. Decommissioning of the Black Forest Tactical Air Navigation System (TACAN) has made this action necessary for the safety and management of Instrument Flight Rules (IFR) operations at the airport. This action also would adjust the geographic coordinates of the airport.

**DATES:** Comments must be received on or before January 3, 2012.

**ADDRESSES:** Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366–9826. You must identify FAA Docket No. FAA–2011–1191; Airspace Docket No. 11–ANM–21, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4537.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA 2011–1191 and Airspace Docket No. 11–ANM–21) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2011–1191 and Airspace Docket No. 11–ANM–21''. The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of NPRMs**

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue SW., Renton, WA 98057.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

**The Proposal**

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by amending Class E airspace designated as an extension to Class C airspace area for City of Colorado Springs Municipal Airport, Colorado Springs, CO. Airspace reconfiguration is necessary due to the decommissioning of the Black Forest TACAN. Also, the geographic coordinates of the airport would be updated to coincide with the FAA's aeronautical database. Controlled airspace is necessary for the safety and management of IFR operations at the Airport.

Class E airspace designations are published in paragraph 6003, of FAA Order 7400.9V, dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

The FAA has determined this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation; (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified this proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, section 106, describes the authority for the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend controlled airspace at City of Colorado Springs Municipal Airport, Colorado Springs, CO.

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

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, B, C, D AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011, and effective September 15, 2011 is amended as follows:

*Paragraph 6003 Class E airspace designated as an extension to Class C surface areas.*

* * * * *

**ANM CO E3 Colorado Springs, CO [Amended]**

City of Colorado Springs Municipal Airport, CO

(Lat. 38°48′21″ N., long. 104°42′03″ W.)

That airspace extending upward from the surface within 2.4 miles northwest and 1.2 miles southeast of the City of Colorado Springs Municipal Airport 025° bearing extending from the 5-mile radius of the airport to 8.9 miles northeast and within 1.4 miles each side of the airport 360° bearing extending from the 5-mile radius of the airport to 7.7 miles north of the airport.

Issued in Seattle, Washington, on November 8, 2011.

**William Buck,**

*Acting Manager, Operations Support Group, Western Service Center.*

[FR Doc. 2011–29635 Filed 11–15–11; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**24 CFR Part 100**

**[Docket No. FR–5508–P–01]**

**RIN 2529–AA96**

## Implementation of the Fair Housing Act's Discriminatory Effects Standard

**AGENCY:** Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

**ACTION:** Proposed rule.

**SUMMARY:** Title VIII of the Civil Rights Act of 1968, as amended (Fair Housing Act or Act), prohibits discrimination in the sale, rental, or financing of dwellings and in other housing-related activities on the basis of race, color, religion, sex, disability, familial status, or national origin.[1] HUD, to which Congress gave the authority and responsibility for administering the Fair Housing Act and the power to make rules implementing the Act, has long interpreted the Act to prohibit housing practices with a discriminatory effect, even where there has been no intent to discriminate.

The reasonableness of HUD's interpretation is confirmed by eleven United States Courts of Appeals, which agree that the Fair Housing Act imposes liability based on discriminatory effects. By the time the Fair Housing Amendments Act became effective in 1989, nine of the thirteen United States Courts of Appeals had determined that the Act prohibits housing practices with a discriminatory effect even absent an intent to discriminate. Two other United States Courts of Appeals have since reached the same conclusion, while another has assumed the same but did not need to reach the issue for purposes of deciding the case before it.

Although there has been some variation in the application of the discriminatory effects standard, neither HUD nor any Federal court has ever determined that liability under the Act requires a finding of discriminatory intent. The purpose of this proposed rule, therefore, is to establish uniform standards for determining when a housing practice with a discriminatory effect violates the Fair Housing Act.

**DATES:** *Comment due date:* January 17, 2012.

**ADDRESSES:** Interested persons are invited to submit written comments regarding this proposed rule to the

[1] This preamble uses the term ''disability'' to refer to what the Act and its implementing regulations term a ''handicap.''

Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410. All communications should refer to the above docket number and title. There are two methods for submitting public comments.

1. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *http://www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

2. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500.

**Note:** To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

*No Facsimile Comments.* Facsimile (FAX) comments are not acceptable.

*Public Inspection of Public Comments.* All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an appointment to review the public comments must be scheduled in advance by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at (800) 877–8339. Copies of all comments submitted are available for inspection and downloading at *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Jeanine Worden, Associate General Counsel for Fair Housing, Office of General Counsel, U.S. Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410–0500, telephone number (202) 402–5188. Persons with hearing and speech impairments may contact this phone number via TTY by calling the Federal Information Relay Service at (800) 877–8399.

**SUPPLEMENTARY INFORMATION:**

## I. Background

### *A. History of Discriminatory Effects Liability Under the Fair Housing Act*

The Fair Housing Act declares it to be ''the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States.'' [2] Congress considered the realization of this policy ''to be of the highest priority.'' [3] The language of the Fair Housing Act prohibiting discrimination in housing is ''broad and inclusive'';[4] the purpose of its reach is to replace segregated neighborhoods with ''truly integrated and balanced living patterns.'' [5] In commemorating the 40th anniversary of the Fair Housing Act and the 20th anniversary of the Fair Housing Amendments Act, the House of Representatives recognized that ''the intent of Congress in passing the Fair Housing Act was broad and inclusive, to advance equal opportunity in housing and achieve racial integration for the benefit of all people in the United States.'' [6]

In keeping with the ''broad remedial intent'' of Congress in passing the Fair Housing Act,[7] and consequently the Act's entitlement to a ''generous construction,'' [8] HUD, to which Congress gave the authority and responsibility for administering the Fair Housing Act and the power to make rules to carry out the Act,[9] has repeatedly determined that the Fair Housing Act is directed to the consequences of housing practices, not simply their purpose. Under the Act, housing practices—regardless of any discriminatory motive or intent—cannot be maintained if they operate to deny protected groups equal housing opportunity or they create, perpetuate, or increase segregation without a legally sufficient justification.

Accordingly, HUD has concluded that the Act provides for liability based on discriminatory effects without the need for a finding of intentional discrimination. For example, HUD's Title VIII Complaint Intake, Investigation and Conciliation Handbook (Handbook), which sets forth HUD's guidelines for investigating and resolving Fair Housing Act complaints, recognizes the discriminatory effects theory of liability and requires HUD investigators to apply it in appropriate cases.[10] In adjudicating charges of discrimination filed by HUD under the Fair Housing Act, HUD administrative law judges have held that the Act is violated by facially neutral practices that have a disparate impact on protected classes.[11] HUD's regulations interpreting the Fair Housing Act prohibit practices that create, perpetuate, or increase segregated housing patterns.[12] HUD also joined with the Department of Justice and nine other Federal enforcement agencies to recognize that disparate impact is among the ''methods of proof of lending discrimination under the * * * Act'' and provide guidance on how to prove a disparate impact fair lending claim.[13]

In addition, in regulations implementing the Federal Housing Enterprises Financial Safety and Soundness Act, HUD prohibited mortgage purchase activities that have a discriminatory effect. In enacting these regulations,[14] which prescribe the fair lending responsibilities of the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac), HUD noted that ''the disparate impact (or discriminatory effect) theory is firmly established by Fair Housing Act case law'' and concluded that disparate impact law ''is applicable to all

[2] *See* 42 U.S.C. 3601.

[3] *Trafficante* v. *Metro. Life Ins. Co.,* 409 U.S. 205, 211 (1972) (internal citation omitted).

[4] *Id.* at 209.

[5] *Id.* at 211.

[6] H. Res. 1095, 110th Cong., 2d Sess., 154 Cong. Rec. H2280–01 (April 15, 2008) (2008 WL 1733432).

[7] *Havens Realty Corp.* v. *Coleman,* 455 U.S. 363, 380 (1982).

[8] *City of Edmonds* v. *Oxford House, Inc.,* 514 U.S. 725, 731–732 (1995).

[9] *See* 42 U.S.C. 3608(a) and 42 U.S.C. 3614a.

[10] *See, e.g.,* Handbook at 3–25 (the Act is violated by an ''action or policy [that] has a disproportionately negative effect upon persons of a particular race, color, religion, sex, familial status, national origin or handicap status''); *id.* at 2–27 (''a respondent may be held liable for violating the Fair Housing Act even if his action against the complainant was not even partly motivated by illegal considerations''); *id.* at 2–27 to 2–45 (HUD guidelines for investigating a disparate impact claim and establishing its elements).

[11] *See e.g., HUD* v. *Twinbrook Village Apts.,* 2001 WL 1632533, at *17 (HUD ALJ Nov. 9, 2001) (''A violation of the [Act] may be premised on a theory of disparate impact.''); *HUD* v. *Ross,* 1994 WL 326437, at *5 (HUD ALJ July 7, 1994) (''Absent a showing of business necessity, facially neutral policies which have a discriminatory impact on a protected class violate the Act.''); *HUD* v. *Carter,* 1992 WL 406520, at *5 (HUD ALJ May 1, 1992) (''The application of the discriminatory effects standard in cases under the Fair Housing Act is well established.'').

[12] *See* 24 CFR 100.70.

[13] *Policy Statement on Discrimination in Lending,* 59 FR 18,266, 18,268 (Apr. 15, 1994).

[14] *See* 24 CFR 81.42.

segments of the housing marketplace, including the GSEs.'' [15]

Moreover, all Federal courts of appeals to have addressed the question have held that liability under the Act may be established based on a showing that a neutral policy or practice either has a disparate impact on a protected group [16] or creates, perpetuates, or increases segregation,[17] even if such a policy or practice was not adopted for a discriminatory purpose.

The Fair Housing Act's discriminatory effects standard is analogous to the discriminatory effects standard under Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e), which prohibits discriminatory employment practices. The U.S. Supreme Court held that Title VII reaches beyond intentional discrimination to include employment practices that have a discriminatory effect.[18] The Supreme Court explained that Title VII ''proscribes not only overt discrimination but also practices that are fair in form, but discriminatory in operation.'' [19]

It is thus well established that liability under the Fair Housing Act can arise where a housing practice is intentionally discriminatory or where it has a discriminatory effect.[20] A discriminatory effect may be found where a housing practice has a disparate impact on a group of persons protected by the Act, or where a housing practice has the effect of creating, perpetuating, or increasing segregated housing patterns on a protected basis.[21]

### *B. Application of the Discriminatory Effects Standard Under the Fair Housing Act*

While the discriminatory effects theory of liability under the Fair Housing Act is well established, there is minor variation in how HUD and the courts have applied that theory. For example, HUD has always used a three-step burden-shifting approach,[22] as do many Federal courts of appeals.[23] But some courts apply a multi-factor balancing test,[24] other courts apply a hybrid between the two,[25] and one court applies a different test for public and private defendants.[26]

Another source of variation is in the application of the burden-shifting test. Under the burden-shifting approach, the plaintiff (or, in administrative proceedings, the complainant) must make a prima facie showing of either disparate impact or perpetuation of segregation. If the discriminatory effect is shown, the burden of proof shifts to the defendant (or respondent) to justify its actions. If the defendant or respondent satisfies its burden, courts and HUD administrative law judges have differed as to which party bears the burden of proving whether a less discriminatory alternative to the challenged practice exists. The majority of Federal courts of appeals that use a burden-shifting approach place this burden on the plaintiff,[27] analogizing to Title VII's burden-shifting framework.[28] Other Federal courts of appeals have kept the burden with the defendant.[29] HUD has, at times, placed this burden of proving a less discriminatory alternative on the respondent and, at other times, on the complainant.[30]

### *C. Scope of the Proposed Rule*

This proposed rule establishes a uniform standard of liability for facially neutral housing practices that have a discriminatory effect. Under this rule, liability is determined by a burden-shifting approach. The plaintiff or complainant first must bear the burden

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[15] The Secretary of HUD's Regulation of the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac), 60 FR. 61,846, 61,867 (Dec. 1, 1995).

[16] *See, e.g., Graoch Assocs. #33, L.P.* v. *Louisville/Jefferson County Metro Human Relations Comm'n,* 508 F.3d 366, 374 (6th Cir. 2007); *Reinhart* v. *Lincoln County,* 482 F.3d 1225, 1229 (10th Cir. 2007); *Charleston Housing Auth.* v. *U.S. Dep't of Agric.,* 419 F.3d 729, 740–41 (8th Cir. 2005); *Langlois* v. *Abington Hous. Auth.,* 207 F.3d 43, 49–50 (1st Cir. 2000); *Simms* v. *First Gibraltar Bank,* 83 F.3d 1546, 1555 (5th Cir. 1996); *Jackson* v. *Okaloosa County, Fla.,* 21 F.3d 1531, 1543 (11th Cir. 1994); *Keith* v. *Volpe,* 858 F.2d 467, 484 (9th Cir. 1988); *Huntington Branch, NAACP* v. *Town of Huntington,* 844 F.2d 926, 938 (2d Cir. 1988), judgment aff'd, 488 U.S. 15 (1988); *Resident Advisory Board* v. *Rizzo,* 564 F.2d 126, 149–50 (3d Cir. 1977); *Betsey* v. *Turtle Creek Assocs.,* 736 F.2d 983, 988–89 (4th Cir. 1984); *Metro. Housing Dev. Corp.* v. *Village of Arlington Heights,* 558 F.2d 1283, 1290 (7th Cir. 1977).

[17] *See, e.g., Graoch Associates #33, L.P.* v. *Louisville/Jefferson County Metro Human Relations Comm'n,* 508 F.3d 366, 378 (6th Cir. 2007); *Hallmark Developers, Inc.* v. *Fulton County, Ga.,* 466 F.3d 1276, 1286 (11th Cir. 2006); *Huntington Branch, NAACP* v. *Town of Huntington,* 844 F.2d 926, 937 (2d Cir. 1988), *aff'd,* 488 U.S. 15 (1988) (per curium); *Betsey* v. *Turtle Creek Assocs.,* 736 F.2d 983, 987 n.3 (4th Cir. 1984); *Metro. Housing Dev. Corp.* v. *Village of Arlington Heights,* 558 F.2d 1283, 1290–1291 (7th Cir. 1977); *United States.* v. *City of Black Jack, Missouri,* 508 F.2d 1179, 1184–86 (8th Cir. 1974); *see also Trafficante,* 409 U.S. at 209–210.

[18] *See Griggs* v. *Duke Power Co.,* 401 U.S. 424, 433–34 (1971).

[19] Id. at 431.

[20] *See, e.g.,* 42 U.S.C. 3604(a), (b), (f)(1), (f)(2); 42 U.S.C. 3605; 42 U.S.C. 3606. Liability under the Fair Housing Act can also arise in other ways, for example, where a reasonable person would find a notice, statement, advertisement, or representation to be discriminatory, see 42 U.S.C. 3604(c), or where a reasonable accommodation is refused, see 42 U.S.C. 3604(f)(3). The Act also imposes an affirmative obligation on HUD and other executive departments and agencies to administer their programs and activities related to housing and urban development in a manner affirmatively to further the purposes of the Fair Housing Act. See 42 U.S.C. 3608(d); *see also* 3608(e)(5).

[21] A ''discriminatory effect'' prohibited by the Act refers to either a ''disparate impact'' or the ''perpetuation of segregation.'' *See, e.g. Graoch Associates #33, L.P.* v. *Louisville/Jefferson County Metro Human Relations Comm'n,* 508 F.3d 366, 378 (6th Cir. 2007) (there are ''two types of discriminatory effects which a facially neutral housing decision can have: The first occurs when that decision has a greater adverse impact on one racial group than on another. The second is the effect which the decision has on the community involved; if it perpetuates segregation and thereby prevents interracial association it will be considered invidious under the Fair Housing Act independently of the extent to which it produces a disparate effect on different racial groups.'').

[22] See, e.g., *HUD* v. *Pfaff,* 1994 WL 592199, at *8 (HUD ALJ Oct. 27, 1994); *HUD* v. *Mountain Side Mobile Estates P'ship,* 1993 WL 367102, at *6 (HUD ALJ Sept. 20, 1993); *HUD* v. *Carter,* 1992 WL 406520, at *6 (HUD ALJ May 1, 1992); *Twinbrook Village Apts.,* 2001 WL 1632533, at *17 (HUD ALJ Nov. 9, 2001); *see also Policy Statement on Discrimination in Lending, 59 FR. 18,266, 18,269 (Apr. 15, 1994*) (applying three-step test without specifying where the burden lies at each step).

[23] *See, e.g., Oti Kaga, Inc.* v. *S. Dakota Hous. Dev. Auth.,* 342 F.3d 871, 883 (8th Cir. 2003); *Lapid –Laurel, L.L.C.* v. *Zoning Bd. of Adjustment of Twp. of Scotch Plains,* 284 F.3d 442, 466–67 (3d Cir. 2002); *Langlois* v. *Abington Hous. Auth.,* 207 F.3d 43, 49–50 (1st Cir. 2000); *Huntington Branch NAACP* v. *Town of Huntington, N.Y.,* 844 F.2d 926, 939 (2d Cir. 1988).

[24] *See, e.g., Metro. Housing Dev. Corp.* v. *Village of Arlington Heights,* 558 F.2d 1283, 1290 (7th Cir. 1977) (four-factor balancing test).

[25] *See, e.g., Mountain Side Mobile Estates* v. *Sec'y HUD,* 56 F.3d 1243, 1252, 1254 (10th Cir. 1995) (three-factor balancing test incorporated into burden shifting framework to weigh defendant's justification); *Graoch Associates #33, L.P.* v. *Louisville/Jefferson County Metro Human Relations Comm'n,* 508 F.3d 366, 373 (6th Cir. 2007) (balancing test incorporated as elements of proof after second step of burden shifting framework).

[26] The Fourth Circuit has applied a four-factor balancing test to public defendants and a burden-shifting approach to private defendants. *See e.g., Betsey* v. *Turtle Creek Assocs.,* 736 F.2d 983, 989 n.5 (4th Cir. 1984).

[27] *See, e.g., Gallagher* v. *Magner,* 619 F.3d 823, 834 (8th Cir. 2010); *Graoch Associates # 33, L.P.* v. *Louisville/Jefferson County Metro Human Relations Comm'n,* 508 F.3d 366, 373–74 (6th Cir. 2007); *Mountain Side Mobile Estates* v. *Sec'y HUD,* 56 F.3d 1243, 1254 (10th Cir. 1995).

[28] *See, e.g., Graoch,* 508 F.3d at 373 (6th Cir. 2007) (''claims under Title VII and the [Fair Housing Act] generally should receive similar treatment''); *Mountain Side Mobile Estates* v. *Sec'y HUD,* 56 F.3d 1243, 1254 (10th Cir. 1995) (explaining that in interpreting Title VII, ''the Supreme Court has repeatedly stated that the ultimate burden of proving that discrimination against a protected group has been caused by a specific * * * practice remains with the plaintiff at all times'') (internal citation omitted).

[29] *See, e.g., Huntington Branch NAACP* v. *Town of Huntington, N.Y.,* 844 F.2d 926, 939 (2d Cir. 1988); *Resident Advisory Board* v. *Rizzo,* 564 F.2d 126, 146–48 (3d Cir. 1977).

[30] *Compare, e.g., HUD* v. *Carter,* 1992 WL 406520, at *6 (HUD ALJ May 1, 1992) (respondent bears the burden of showing that no less discriminatory alternative exists), *and Twinbrook Village Apts.,* 2001 WL 1632533, at *17 (HUD ALJ Nov. 9, 2001) (same), *with HUD* v. *Mountain Side Mobile Estates P'ship,* 1993 WL 367102, at *6 (HUD ALJ Sept. 20, 1993) (complainant bears the burden of showing that a less discriminatory alternative exists), *and HUD* v. *Pfaff,* 1994 WL 592199, at *8 (HUD ALJ Oct. 27, 1994) (same).

of proving its prima facie case of either disparate impact or perpetuation of segregation, after which the burden shifts to the defendant or respondent to prove that the challenged practice has a necessary and manifest relationship to one or more of the defendant's or respondent's legitimate, nondiscriminatory interests. If the defendant or respondent satisfies its burden, the plaintiff or complainant may still establish liability by demonstrating that these legitimate nondiscriminatory interests could be served by a policy or decision that produces a less discriminatory effect.[31]

HUD proposes this standard for several reasons. First, Title VII, enacted four years before the Fair Housing Act, has often been looked to for guidance in interpreting analogous provisions of the Fair Housing Act.[32] HUD's proposal is consistent with the discriminatory effects standard confirmed by Congress in the 1991 amendments to Title VII.[33] Second, HUD's proposal is consistent with the discriminatory effects standard applied under the Equal Credit Opportunities Act (ECOA),[34] which borrows from Title VII's burden-shifting framework.[35] There is significant overlap in coverage between ECOA, which prohibits discrimination in credit, and the Fair Housing Act, which prohibits discrimination in residential real estate-related transactions.[36] The interagency *Policy Statement on Discrimination in Lending* analyzed the standard for proving disparate impact discrimination in lending under the Fair Housing Act and under ECOA without differentiation.[37] Under HUD's proposed framework, parties litigating a claim brought under both the Fair Housing Act and ECOA will not face the burden of applying inconsistent methods of proof to factually indistinguishable claims. Third, by placing the burden of proving a necessary and manifest relationship to a legitimate, nondiscriminatory interest on the defendant or respondent and the burden of proving a less discriminatory alternative on the plaintiff or complainant, ''neither party is saddled with having to prove a negative.'' [38]

## II. This Proposed Rule

### *A. Subpart G—Discriminatory Effect*

#### 1. Discriminatory Effect Prohibited (§ 100.500)

HUD proposes adding a new subpart G, entitled ''Prohibiting Discriminatory Effects,'' to its Fair Housing Act regulations in 24 CFR part 100. Subpart G would confirm that the Fair Housing Act may be violated by a housing practice that has a discriminatory effect, as defined in § 100.500(a), regardless of whether the practice was adopted for a discriminatory purpose. The housing practice may still be lawful if supported by a legally sufficient justification, as defined in § 100.500(b). The respective burdens of proof for establishing or refuting an effects claim are set forth in § 100.500(c). Subsection 100.500(d) clarifies that a legally sufficient justification does not defeat liability for a discriminatory intent claim once the intent to discriminate has been established.[39]

This proposed rule would apply to both public and private entities because the definition of ''discriminatory housing practice'' under the Act makes no distinction between the two.[40]

#### 2. Discriminatory Effect Defined (§ 100.500(a))

Under the Fair Housing Act and this proposed rule, a ''discriminatory effect'' occurs where a facially neutral housing practice actually or predictably results in a discriminatory effect on a group of persons (that is, a disparate impact), or on the community as a whole (perpetuation of segregation).[41] Any facially neutral action, *e.g.* laws, rules, decisions, standards, policies, practices, or procedures, including those that allow for discretion or the use of subjective criteria, may result in a discriminatory effect actionable under the Fair Housing Act and this rule.

*Disparate Impact.* Examples of a housing policy or practice that may have a disparate impact on a class of persons delineated by characteristics protected by the Act include a zoning ordinance restricting private construction of multifamily housing to a largely minority area (*see Huntington Branch,* 844 F.2d at 937); the provision and pricing of homeowner's insurance (*see Ojo* v. *Farmers Group, Inc.,* 600 F.3d 1205, 1207–8 (9th Cir. 2010) (en banc)); mortgage pricing policies that give lenders or brokers discretion to impose additional charges or higher interest rates unrelated to a borrower's creditworthiness (*see Miller* v. *Countrywide Bank, N.A.,* 571 F. Supp. 2d 251, 253 (D. Mass. 2008)); credit scoring overrides provided by a purchaser of loans (*see Beaulialice* v. *Federal Home Loan Mortg. Corp.,* 2007 WL 744646, *4 (M.D. Fla. Mar. 6, 2007)); and credit offered on predatory terms, (*see Hargraves* v. *Capitol City Mortgage,* 140 F. Supp. 2d 7, 20–21 (D.D.C. 2000)). Further examples of such claims can be found in the following court cases: *Keith* v. *Volpe,* 858 F.2d 467, 484 (9th Cir. 1988), where the city's land-use decisions that prevented the construction of two housing developments for city residents displaced by a freeway had a greater adverse impact on minorities than on whites because two-thirds of the persons who would have benefited from the housing were minorities; (*Langlois,* 207 F.3d at 50, where public housing authorities' use of local residency preferences to award Section 8 Housing

[31] *See Graoch Associates #33, L.P.* v. *Louisville/Jefferson County Metro Human Relations Comm'n,* 508 F.3d 366, 373–74 (6th Cir. 2007); *Oti Kaga, Inc.* v. *S. Dakota Hous. Dev. Auth.,* 342 F.3d 871, 883 (8th Cir. 2003); *Mountain Side Mobile Estates* v. *Sec'y HUD,* 56 F.3d 1243, 1254 (10th Cir. 1995).

[32] *See, e.g., Trafficante,* 409 U.S. at 205; The Secretary of HUD's Regulation of the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac), 60 FR 61,846, 61,868 (Dec. 1, 1995). Short form cite see n. 15.

[33] *See* 42 U.S.C. 2000e–2(k).

[34] ECOA prohibits discrimination in credit on the basis of race and other enumerated criteria. *See* 15 U.S.C. 1691.

[35] *See* S. Rep. 94–589, 94th Cong., 2d Sess. (1976) (''judicial constructions of antidiscrimination legislation in the employment field, in cases such as *Griggs* v. *Duke Power Company,* 401 U.S. 424 (1971), *and Albemarle Paper Co.* v. *Moody* (U.S. Supreme Court, June 25, 1975) [422 U.S. 405], are intended to serve as guides in the application of [ECOA], especially with respect to the allocations of burdens of proof.''); 12 CFR 202.6(a), n. 2 (1997) (''The legislative history of [ECOA] indicates that the Congress intended an ''effects test'' concept, as outlined in the employment field by the Supreme Court in the cases of *Griggs* v. *Duke Power Co.,* 401 U.S. 424 (1971) and *Albemarle Paper Co.* v. *Moody,* 422 U.S. 405 (1975), to be applicable to a creditor's determination of creditworthiness.''); 12 CFR part 202, Supp. I, Official Staff Commentary, Comment 6(a)–2 (''Effects test. The effects test is a judicial doctrine that was developed in a series of employment cases decided by the Supreme Court under Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e *et seq.*), and the burdens of proof for such employment cases were codified by Congress in the Civil Rights Act of 1991 (42 U.S.C. 2000e–2).'').

[36] *See* 59 FR 18,266.

[37] *See* 59 FR 18,266, 18,269 (Apr. 15, 1994).

[38] *Hispanics United of DuPage Cnty.* v. *Vill. of Addison, Ill.,* 988 F.Supp. 1130, 1162 (N.D. Ill. 1997).

[39] It is possible to bring a claim alleging both discriminatory effect and discriminatory intent as alternative theories of liability. In addition, the discriminatory effect of a challenged practice may provide evidence of the discriminatory intent behind the practice. *See, e.g., Vill. of Arlington Heights* v. *Metro. Housing Dev. Corp.,* 429 U.S. 252, 266 (1977). But proof of intent to discriminate is not necessary to prevail on a discriminatory effects claim. *See, e.g., Black Jack,* 508 F.2d at 1184–85.

[40] *See* 42 U.S.C. 3602(f) (defining ''discriminatory housing practice'' as ''an act that is unlawful under Section 804, 805, 806, or 818,'' none of which distinguish between public and private entities); *see also Nat'l Fair Housing Alliance, Inc.* v. *Prudential Ins. Co. of Am.,* 208 F. Supp. 2d 46, 59–60 & n.7 (D.D.C. 2002) (applying the same impact analysis to a private entity as to public entities, noting that a ''distinction between governmental and non-governmental bodies finds no support in the language of the [Act] or in [its] legislative history'').

[41] *See, e.g., Graoch Associates # 33, L.P.,* 508 F.3d at 378.

Choice Vouchers likely would result in an adverse impact based on race; *United States* v. *Incorporated Village of Island Park,* 888 F. Supp. 419, 447 (E.D.N.Y. 1995), where a housing program's preference for residents of the Village, most of whom were white, had a disparate impact on African-Americans; *Charleston Housing Auth.,* 419 F.3d at 741–42, where the housing authority's plan to demolish 50 low-income public housing units—46 of which were occupied by African Americans—would disproportionately impact African Americans based on an analysis of the housing authority's waiting list population, the population of individuals income-eligible for public housing, or the current tenant population; and *Smith* v. *Town of Clarkton, N.C.,* 682 F.2d 1055, 1065–66 (4th Cir. 1982), where the town's withdrawal from a multi-municipality housing authority effectively blocked construction of 50 units of public housing, adversely affecting African American residents of the county, who were those most in need of new construction to replace substandard dwellings).

*Perpetuation of Segregation.* A person or entity may be liable for a housing policy or practice that has a discriminatory effect on the community because the practice has the effect of creating, perpetuating, or increasing housing patterns that segregate by race, color, religion, sex, familial status, national origin, or disability. Examples of such claims can be found in the following court cases: *Huntington Branch,* 844 F.2d at 934, 937, where the town's zoning ordinance, which limited private construction of multifamily housing to a largely minority neighborhood, had the effect of perpetuating segregation ''by restricting low-income housing needed by minorities to an area already 52% minority''; *Dews* v. *Town of Sunnyvale, Tex.,* 109 F. Supp. 2d 526, 567 (N.D. Tex. 2000), where the town's zoning ordinance that banned multifamily housing and required single-family lots of at least one acre had the effect of perpetuating segregation by keeping minorities out of a town that was 94 percent white; *Black Jack,* 508 F.2d at 1186, where a city ordinance preventing the construction of low-income multifamily housing ''would contribute to the perpetuation of segregation in a community which was 99% white''; and *Inclusive Communities Projects, Inc.* v. *Texas Dep't of Housing & Community Affairs,* 749 F. Supp. 2d 486, 500 (N.D. Tex. 2010), where the state's disproportionate denial of tax credits for nonelderly housing in predominately white neighborhoods had a segregative impact on the community.

3. Legally Sufficient Justification (§ 100.500(b))

A housing practice or policy found to have a discriminatory effect may still be lawful if it has a ''legally sufficient justification.'' A ''legally sufficient justification'' exists where the housing practice or policy: (1) Has a necessary and manifest relationship to the defendant's or respondent's legitimate, nondiscriminatory interests;[42] and (2) those interests cannot be served by another practice that has a less discriminatory effect.[43] A legally sufficient justification may not be hypothetical or speculative. In addition, a legally sufficient justification does not defeat liability for a discriminatory *intent* claim once the intent to discriminate has been established.

4. Burdens of Proof (§ 100.500(c))

The burden-shifting framework set forth in the proposed rule for discriminatory effect claims finds support in judicial interpretations of the Act, and is also consistent with the burdens of proof Congress assigned in disparate impact employment discrimination cases. *See* 42 U.S.C. § 2000e-2(k). In the proposed rule, the complainant or plaintiff first bears the burden of proving its prima facie case, that is, that a housing practice caused, causes, or will cause a discriminatory effect on a group of persons or a community on the basis of race, color, religion, sex, disability, familial status, or national origin.

Once the complainant or plaintiff has made its prima facie case, the burden of proof shifts to the respondent or defendant to prove that the challenged practice has a necessary and manifest relationship to one or more of the housing provider's legitimate, nondiscriminatory interests.

If the respondent or defendant satisfies its burden, the complainant or plaintiff may still establish liability by demonstrating that these legitimate, nondiscriminatory interests could be served by a policy or decision that produces a less discriminatory effect.

*B. Examples of Housing Practices With Discriminatory Effects*

Violations of various provisions of the Act may be established by proof of discriminatory effects. For example, under 42 U.S.C. subsections 3604(a) and 3604(f)(1), discriminatory effects claims may be brought under the Act's provisions that make it unlawful to ''otherwise make unavailable or deny [ ] a dwelling'' because of a protected characteristic. Discriminatory effects claims may be brought pursuant to subsections 3604(b) and 3604(f)(2) of the Act prohibiting discrimination ''in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of'' a protected characteristic. For residential real estate-related transactions, discriminatory effects claims may be brought under section 3605, which bars ''discrimination against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of'' a protected characteristic. Discriminatory effects claims may also be brought under section 3606, prohibiting discrimination in the provision of brokerage services.

HUD's existing Fair Housing Act regulations provide examples of housing practices that may violate the Act, based on an intent theory, an effects theory, or both. The proposed rule adds examples of discriminatory housing practices that may violate the new subsection G because they have a discriminatory effect. The cases cited in Section II.A.2 of this preamble identify housing practices found by courts to create discriminatory effects that violate or may violate the Act. These cases are provided as examples only and should not be viewed as the only ways to establish a violation of the Act based on a discriminatory effects theory.

## III. Solicitation of Comments

The Department welcomes comments on the standards proposed in this rule, including whether a burden-shifting approach should be used to determine when a housing practice with a discriminatory effect violates the Fair Housing Act and, where proof is required of the existence or nonexistence of a less discriminatory alternative to the challenged practice, which party should bear that burden. These comments will help the Department in its effort to craft final regulations that best serve the broad, remedial goals of the Fair Housing Act.

[42] *See, e.g., Charleston Housing Auth.,* 419 F.3d at 741 (''[u]nder the second step of the disparate impact burden shifting analysis, the [defendant] must demonstrate that the proposed action has a manifest relationship to the legitimate non-discriminatory policy objectives'' and ''is necessary to the attainment of these objectives'') (internal quotation marks omitted); *Betsey* v. *Turtle Creek Assocs.,* 736 F.2d 983, 988–89 (4th Cir. 1984); 24 CFR 100.125(c); 59 FR 18,266, 18,269; *see also* 60 FR at 61,868.

[43] *See, e.g., Oti Kaga, Inc.* v. *South Dakota Housing Dev. Auth.,* 342 F.3d 871, 883 (8th Cir. 2003).

## IV. Findings and Certifications

*Executive Order 12866, Regulatory Planning and Review*

The Office of Management and Budget (OMB) reviewed this proposed rule under Executive Order 12866 (entitled ''Regulatory Planning and Review''). The proposed rule has been determined to be a ''significant regulatory action,'' as defined in section 3(f) of the Order, but not economically significant under section 3(f)(1) of the Order. The docket file is available for public inspection in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at (202) 402–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at (800) 877–8339.

*Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule proposes to establish uniform standards for determining when a housing practice with a discriminatory effect violates the Fair Housing Act.

Discriminatory effects liability is consistent with the position of other Executive Branch agencies and has been applied by every Federal court of appeals to have reached the question. Given the variation in how the courts have applied that standard, HUD's objective in this proposed rule is to achieve consistency and uniformity in this area, and therefore reduce burden for all who may be involved in a challenged practice. Accordingly, the undersigned certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities.

*Environmental Impact*

This proposed rule sets forth nondiscrimination standards. Accordingly, under 24 CFR 50.19(c)(3), this rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

*Executive Order 13132, Federalism*

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either: (i) Imposes substantial direct compliance costs on state and local governments and is not required by statute, or (ii) preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This proposed rule would not have federalism implications and would not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

*Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This proposed rule would not impose any Federal mandates on any state, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

**List of Subjects in 24 CFR Part 100**

Civil rights, Fair housing, Individuals with disabilities, Mortgages, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, HUD proposes to amend 24 CFR part 100 as follows:

## PART 100—DISCRIMINATORY CONDUCT UNDER THE FAIR HOUSING ACT

1. The authority for 24 CFR part 100 continues to read as follows:

**Authority:** 42 U.S.C. 3535(d), 3600–3620.

2. In § 100.65, a new paragraph (b)(6) is added to as follows:

### § 100.65 Discrimination in terms, conditions and privileges and in services and facilities.

* * * * *

(b) * * *

(6) Providing different, limited, or no governmental services such as water, sewer, or garbage collection in a manner that has a disparate impact or has the effect of creating, perpetuating, or increasing segregated housing patterns on the basis of race, color, religion, sex, handicap, familial status, or national origin.

3. In § 100.70, add a new paragraph (d)(5) to read as follows:

### § 100.70 Other prohibited conduct.

* * * * *

(d) * * *

(5) Implementing land-use rules, policies, or procedures that restrict or deny housing opportunities in a manner that has a disparate impact or has the effect of creating, perpetuating, or increasing segregated housing patterns on the basis of race, color, religion, sex, handicap, familial status, or national origin.

4. In § 100.120, amend paragraph (b) to read as follows:

### § 100.120 Discrimination in the making of loans and in the provision of other financial assistance.

* * * * *

(b) Prohibited practices under this section include, but are not limited to:

(1) Failing or refusing to provide to any person, in connection with a residential real estate-related transaction, information regarding the availability of loans or other financial assistance, application requirements, procedures, or standards for the review and approval of loans or financial assistance, or providing information which is inaccurate or different from that provided others, because of race, color, religion, sex, handicap, familial status, or national origin.

(2) Providing loans or other financial assistance in a manner that results in disparities in their cost, rate of denial, or terms or conditions, or that has the effect of denying or discouraging their receipt on the basis of race, color, religion, sex, handicap, familial status, or national origin.

5. In part 100, add a subpart G as follows:

## Subpart G—Discriminatory Effect

### § 100.500 Discriminatory Effect Prohibited

Liability may be established under this subpart based on a housing practice's *discriminatory effect,* as defined in § 100.500(a), even if the housing practice is not motivated by a prohibited intent. The housing practice may still be lawful if supported by a legally sufficient justification, as defined in § 100.500(b). The burdens of proof for establishing a violation under this subpart are set forth in § 100.500(c).

(a) *Discriminatory effect defined.* A housing practice has a *discriminatory effect* where it actually or predictably:

(1) Results in a disparate impact on a group of persons on the basis of race, color, religion, sex, handicap, familial status, or national origin; or

(2) Has the effect of creating, perpetuating, or increasing segregated housing patterns on the basis of race, color, religion, sex, handicap, familial status, or national origin.

(b) *Legally sufficient justification.* A *legally sufficient justification* exists where the challenged housing practice: (1) Has a necessary and manifest relationship to one or more legitimate, nondiscriminatory interests of the respondent, with respect to claims brought under 42 U.S.C. 3610, or defendant, with respect to claims brought under 42 U.S.C. 3613 or 3614; and (2) those interests cannot be served by another practice that has a less discriminatory effect. The burdens of proof for establishing each of the two elements of a *legally sufficient justification* are set forth in § 100.500(c)(2)–(c)(3).

(c) *Burdens of proof in discriminatory effects cases.*

(1) A complainant, with respect to claims brought under 42 U.S.C. 3610, or a plaintiff, with respect to claims brought under 42 U.S.C. 3613 or 3614, has the burden of proving that a challenged practice causes a *discriminatory effect.*

(2) Once a complainant or plaintiff satisfies the burden of proof set forth in paragraph (c)(1) of this section, the respondent or defendant has the burden of proving that the challenged practice has a necessary and manifest relationship to one or more legitimate, nondiscriminatory interests of the respondent or defendant.

(3) If the respondent or defendant satisfies the burden of proof set forth in paragraph (c)(2) of this section, the complainant or plaintiff may still prevail upon demonstrating that the legitimate, nondiscriminatory interests supporting the challenged practice can be served by another practice that has a less *discriminatory effect.*

(d) *Relationship to discriminatory intent.* A demonstration that a housing practice is supported by a *legally sufficient justification,* as defined in § 100.500(b), may not be used as a defense against a claim of intentional discrimination.

Dated: October 4, 2011.

**John Trasviña,**

*Assistant Secretary for Fair Housing and Equal Opportunity.*

[FR Doc. 2011–29515 Filed 11–15–11; 8:45 am]

BILLING CODE 4210–67–P

## DEPARTMENT OF DEFENSE

### Department of the Army, Corps of Engineers

### 33 CFR Chapter II

### USACE's Plan for Retrospective Review Under E.O. 13563

**AGENCY:** U.S. Army Corps of Engineers, DoD.

**ACTION:** Notice of intent and request for comments.

**SUMMARY:** The U.S. Army Corps of Engineers (USACE) is seeking public input on its plan to retrospectively review its Regulations implementing the USACE Regulatory Program at 33 CFR parts 320–332 and 334. Executive Order 13563, ''Improving Regulation and Regulatory Review'' (E.O.), issued on January 18, 2011, directs Federal agencies to review existing significant regulations and identify those that can be made more effective or less burdensome in achieving regulatory objectives. The Regulations are essential for implementation of the Regulatory mission; thus, USACE believes they are a significant rule warranting review pursuant to E.O. 13563. The E.O. further directs each agency to periodically review its existing significant regulations to determine whether any such regulations should be modified, streamlined, expanded, or repealed so as to make the agency's regulatory program more effective or less burdensome in achieving the regulatory objectives. Section 404(e) of the Clean Water Act authorizes USACE to development general permits, including nationwide permits (NWPs), for minor activities in waters of the U.S. for a period of five years. Accordingly, every five years, USACE undergoes a reauthorization process for the NWP program and includes public notice and provides an opportunity for public hearing. Comments for the NWP program are submitted during the reauthorization process. Therefore, USACE is currently complying with the E.O. 13563 direction to periodically review its existing significant regulations. Other regulations will be reviewed on an as-needed basis in accordance with new laws, court cases, etc.

**DATES:** Written comments must be submitted on or before January 17, 2012.

**ADDRESSES:** You may submit comments, identified by docket number COE–2011–0028, by any of the following methods:

*Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

*Email: regulatory.review@usace.army.mil* Include the docket number, COE–2011–0028, in the subject line of the message.

*Mail:* U.S. Army Corps of Engineers, ATTN: CECW–CO–R (Ms. Amy S. Klein), 441 G Street NW., Washington, DC 20314–1000.

*Hand Delivery/Courier:* Due to security requirements, we cannot receive comments by hand delivery or courier.

*Instructions:* Direct your comments to docket number COE–2011–0028. All comments received will be included in the public docket without change and may be made available on-line at *http://www.regulations.gov,* including any personal information provided, unless the commenter indicates that 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 regulations.gov or email. The regulations.gov Web site is an anonymous access system, which means we will not know your identity or contact information unless you provide it in the body of your comment. If you send an email directly to the Corps without going through 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, we recommend 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 we cannot read your comment because of technical difficulties and cannot contact you for clarification, we may not be able to consider your comment. Electronic comments should avoid the use of any special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.* All documents in the docket are listed. Although listed in the index, some information is not publicly available, such as CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form.

**FOR FURTHER INFORMATION CONTACT:** Ms. Amy S. Klein, Headquarters, U.S. Army Corps of Engineers, Operations and Regulatory Community of Practice, Washington, DC 20314–1000, by phone at (202) 761–4559 or by email at *regulatory.review@usace.army.mil.*

**SUPPLEMENTARY INFORMATION:**

Executive Order 13563, ''Improving Regulation and Regulatory Review'' (E.O.), was issued to improve regulation and regulatory review, which includes public participation, integration and innovation, flexible approaches, and science. Agencies shall consider how best to promote retrospective analysis of rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand or repeal them. In accordance with the E.O., the USACE plan is to solicit comments on its Regulations to make the Regulatory Program more effective and less burdensome.

The USACE Regulatory Program's regulations are found at 33 CFR parts 320–332 and 334. The current Regulations were published in the **Federal Register** on November 13, 1986 (51 FR 41206). These Regulations describe the fundamental procedures, policies, authorities, and guidelines of the U.S. Army Corps of Engineer's Regulatory Program. Since the 1986 Regulations were issued, parts of these regulations have been modified. The changes that have occurred since 1986 include, but are not limited to: the Nationwide Permit regulations at 33 CFR part 330 were amended on November 22, 1991 (56 FR 59110); regulations governing the administrative appeal program at 33 CFR part 331 were added on March 9, 1999 (64 FR 11708) and March 28, 2000 (65 FR 16486); regulations addressing compensatory mitigation for losses of aquatic resources at 33 CFR part 332 were added on April 10, 2008 (73 FR 19594); further revisions to the Clean Water Act regulatory definition of dredged material at 33 CFR part 323 were made on January 17, 2001 (66 FR 4550); final revisions to the Clean Water Act definitions of fill materials and discharge of fill material at 33 CFR part 323 were made on May 9, 2002 (67 FR 31129); revisions to the Clean Water Act regulatory definition of ''discharge of dredged material'' Final Rule at 33 CFR part 323 were made on December 30, 2008 (73 FR 79641); updates regarding structures in fairways and anchorage areas at 33 CFR part 322 were added on Aug. 29, 1995 (60 FR 44761); a requirement for an avoidance, minimization and compensation statement in applications for activities involving discharge of dredged or fill material at 33 CFR part 325 was added on April 10, 2008 (73 FR 19670); amended Administrative Penalties on June 25, 2004 (69 FR 35518; 33 CFR part 326); the civil monetary penalty inflation adjustment rule at 33 CFR part 326 was added on June 25, 2004 (69 FR 35515); minor editorial changes to reflect the change in title of the National Ocean Service and address at 33 CFR part 325 were made on May 13, 1997 (62 FR 26230). In accordance with the E.O., the USACE plan is to solicit comments regarding the questions posed below in the Proposal Section in order to achieve the goals of the E.O. to make regulations more effective and less burdensome.

The E.O. further directs each agency to periodically review its existing significant regulations to determine whether any such regulations should be modified, streamlined, expanded, or repealed to make the agency's regulatory program more effective or less burdensome in achieving the regulatory objectives. The USACE is proposing the existing five-year reauthorization process of the NWPs, general conditions, and definitions as the periodic review of regulations.

Section 404(e) of the Clean Water Act provides the statutory authority for the Secretary of the Army, after notice and opportunity for public hearing, to issue general permits on a nationwide basis for any category of activities involving discharges of dredged or fill material into waters of the United States. Activities authorized by NWPs must be similar in nature, cause only minimal adverse environmental effects when performed separately, and cause only minimal cumulative adverse effect on the aquatic environment. The NWP program is designed to provide timely authorizations for the regulated public while protecting the Nation's aquatic resources. The NWP program allows the Corps to authorize activities with minimal adverse environmental impacts on the aquatic environment in a timely manner. The NWP program also allows the Corps to focus its limited resources on more extensive evaluation of projects that have the potential for causing environmentally damaging adverse effects.

Each five-year review of the NWPs allows for revision of the NWPs, general conditions, and definitions to facilitate clarity for the regulated public, government personnel, and interested parties, while ensuring protection of the aquatic environment. Making the text of the NWPs clearer and easier to understand also facilitates compliance with these permits, which benefits the aquatic environment.

During the NWP reissuance process, there is a request for public comments published in the **Federal Register**, which complies with the E.O. general principle of allowing for public participation and an open exchange of ideas. While anyone, at any time, may submit suggestions to Corps Headquarters for new NWPs or changes to existing NWPs, comments for the NWP program are normally submitted during the reauthorization process; the most recent notice requesting comments on the NWP program occurred in the **Federal Register** published on February 16, 2011 (76 FR 9174), with the comment period ending on April 18, 2011. Therefore, USACE is currently complying with the E.O. 13563 direction to periodically review its existing significant regulations. However, there may be additional ways in which the NWP reauthorization process may further comply with E.O. 13563.

The E.O.'s intent is to ensure that regulations are accessible, consistent, written in plain language and are easy to understand, while protecting public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation. These goals are what the Regulations improvement and the periodic reissuance of the NWP program would accomplish.

**Proposal**

To comply with E.O. 13563, the publication of the **Federal Register** notice to solicit comments on how the Regulations should be evaluated for modification, streamlining, expansion, or repeal is the USACE's first step to develop a plan that ensures that the agency's regulations are effective and not burdensome. Furthermore, comments are requested pursuant to the E.O. directing each agency to periodically review its existing significant regulations to determine whether any such regulations should be modified, streamlined, expanded, or repealed so as to make the agency's regulatory program more effective or less burdensome in achieving the regulatory objectives. The publication of the **Federal Register** notice to solicit comments on the existing NWP Program re-authorization process every five years is part of USACE's plan to ensure the periodic review of regulations.

Input from a wide variety of constituents is important, and applicants, affected landowners, the general public, consultants, tribal, state and local government, and other agencies are likely to have knowledge about the full effects of the regulations

on people and the economy, and to offer ideas on how to streamline or improve them. This request for information will inform the USACE's decision on whether adjustment to the regulation is necessary and appropriate, and whether additional guidance, education, or outreach would better assist the Regulation's users, agencies, and the public to address critical issues.

The URL for a Web site that includes the Regulations, as well as all of the Corps Regulatory Program's current regulations and supporting program data and information is *http://www.usace.army.mil/CECW/Pages/reg_materials.aspx.* Furthermore, each of the 38 Corps districts has issued local public notices announcing the publication of this **Federal Register** notice and the request for comments. The Corps will evaluate all comments received to develop its list of review priorities, and will publish a notice in the **Federal Register** that summarizes the comments received and lists the priorities. The Web site will be updated as proposed revisions and final revisions to its regulations occur.

Please email your response to the questions below to *regulatory.review@usace.army.mil* and be sure to number your responses in association with each question. These questions are not intended to be exhaustive, and respondents are encouraged to raise additional issues or make suggestions unrelated to these questions. Respondents are also encouraged to share examples and a detailed explanation of how the suggestion will support the goals of the Regulations review process. We are seeking public comment for a period of 60 days ending January 17, 2012, after which it will revise the plan and make it available to the public.

1. How should the Corps modify its Regulations to ensure that they are serving their stated purpose efficiently and effectively? Please provide specific recommendations on edits that could be made and suggestions on appropriate outreach and timing.

2. How can we reduce burdens and maintain flexibility for participants in the regulatory process in a way that will promote the protection of waters of the United States via the improvement of the Regulations?

3. How can the process set forth in the Regulations better achieve simplified and efficient outcomes?

4. How can the Regulations be changed to better harmonize with, be consistent with, and coordinate effectively with, other federal regulations and environmental review procedures?

5. How can we ensure that information developed to support findings under the Regulations are guided by objective scientific evidence?

6. Are there better ways to encourage public participation and an open exchange of views as part of the regulatory review? Please cite specific areas where improvements could be made and indicate what tools or mechanisms might be made available to achieve this goal.

7. The NWP program allows for comment and periodic review during the reauthorization process every five years. How else can the periodic review of the NWP program be utilized to comply with this E.O.?

8. How else might we modify, clarify, or improve the Regulations to reduce burdens, promote predictability, and increase efficiency?

**Authority**

We are proposing to improve the Regulations and comply with the direction to perform a periodic regulatory review with the existing reauthorization of the NWP program, which were issued under the authority of Section 404 of the Clean Water Act (33 U.S.C. 1344), Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 401 *et seq.*), and Section 103 of the Marine Protection Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).

Dated: November 10, 2011.

Approved.

**Michael G. Ensch,**

*Chief, Operations and Regulatory, Directorate of Civil Works.*

[FR Doc. 2011–29633 Filed 11–15–11; 8:45 am]

BILLING CODE 3720–58–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R03–OAR–2011–0913; FRL–9492–9]**

## Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; Regional Haze State Implementation Plan

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a revision to the District of Columbia State Implementation Plan (SIP) submitted by the District of Columbia through the District Department of the Environment (DDOE) on October 27, 2011 that addresses regional haze for the first implementation period. This revision addresses the requirements of the Clean Air Act (CAA) and EPA's rules that require states to prevent any future, and remedy any existing, anthropogenic impairment of visibility in mandatory Class I areas caused by emissions of air pollutants from numerous sources located over a wide geographic area (also referred to as the ''regional haze program''). States are required to assure reasonable progress toward the national goal of achieving natural visibility conditions in Class I areas. EPA is proposing to determine that the Regional Haze plan submitted by the District of Columbia satisfies these requirements of the CAA. EPA is also proposing to approve this revision as meeting the infrastructure requirements relating to visibility protection for the 1997 8-Hour Ozone National Ambient Air Quality Standard (NAAQS) and the 1997 and 2006 fine particulate matter ($PM_{2.5}$) NAAQS.

**DATES:** Comments must be received on or before December 16, 2011.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA–R03–OAR–2011–0913 by one of the following methods:

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

B. *Email: fernandez.cristina@epa.gov*

C. *Mail:* EPA–R03–OAR–2011–0913, Cristina Fernandez, Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA–R03–OAR–2011–0913. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you

provide it in the body of your comment. If you send an email comment directly to EPA without going through *http://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the District Department of the Environment, 1200 First Street NE., Washington, DC 20002.

**FOR FURTHER INFORMATION CONTACT:** Jacqueline Lewis, (215) 814–2037, or by email at *lewis.jacqueline@epa.gov.*

**SUPPLEMENTARY INFORMATION:** On October 27, 2011, the DDOE submitted a revision to its SIP to address Regional Haze for the first implementation period. Throughout this document, whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

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## I. What is the background for EPA's proposed action?

### *A. The Regional Haze Problem*

Regional haze is visibility impairment that is produced by a multitude of sources and activities which are located across a broad geographic area and emit fine particles ($PM_{2.5}$) (*e.g.,* sulfates, nitrates, organic carbon, elemental carbon, and soil dust) and their precursors (*e.g.,* sulfur dioxide ($SO_2$), nitrogen oxides ($NO_X$), and in some cases, ammonia ($NH_3$) and volatile organic compounds (VOC)). Fine particle precursors react in the atmosphere to form fine particulate matter, which impairs visibility by scattering and absorbing light. Visibility impairment reduces the clarity, color, and visible distance that one can see. $PM_{2.5}$ can also cause serious health effects and mortality in humans and contributes to environmental effects such as acid deposition and eutrophication.

Data from the existing visibility monitoring network, the Interagency Monitoring of Protected Visual Environments (IMPROVE) monitoring network, show that visibility impairment caused by air pollution occurs virtually all the time at most national park and wilderness areas. The average visual range [1] in many Class I areas (*i.e.,* national parks and memorial parks, wilderness areas, and international parks meeting certain size criteria) in the western United States is 100–150 kilometers or about one-half to two-thirds of the visual range that would exist without anthropogenic air pollution. In most of the eastern Class I areas of the United States, the average visual range is less than 30 kilometers or about one-fifth of the visual range that would exist under estimated natural conditions (64 FR 35714, July 1, 1999).

### *B. Background Information*

In section 169A of the 1977 Amendments to the CAA, Congress created a program for protecting visibility in the nation's national parks and wilderness areas. This section of the CAA establishes as a national goal the ''prevention of any future, and the remedying of any existing, impairment of visibility in mandatory Class I Federal areas [2] which impairment results from manmade air pollution.'' On December 2, 1980, EPA promulgated regulations to address visibility impairment in Class I areas that is ''reasonably attributable'' to a single source or small group of sources, *i.e.,* ''reasonably attributable visibility impairment'' (45 FR 80084). These regulations represented the first phase in addressing visibility impairment. EPA deferred action on regional haze that emanates from a variety of sources until monitoring, modeling, and scientific knowledge about the relationships between pollutants and visibility impairment were improved.

Congress added section 169B to the CAA in 1990 to address regional haze issues. EPA promulgated a rule to address regional haze on July 1, 1999 (64 FR 35714), the RHR. The RHR revised the existing visibility regulations to integrate into the regulation provisions addressing regional haze impairment and

[1] Visual range is the greatest distance, in kilometers or miles, at which a dark object can be viewed against the sky.

[2] Areas designated as mandatory Class I Federal areas consist of national parks exceeding 6000 acres, wilderness areas and national memorial parks exceeding 5000 acres, and all international parks that were in existence on August 7, 1977. 42 U.S.C. 7472(a). In accordance with section 169A of the CAA, EPA, in consultation with the Department of Interior, promulgated a list of 156 areas where visibility is identified as an important value (44 FR 69122, November 30, 1979). The extent of a mandatory Class I area includes subsequent changes in boundaries, such as park expansions. 42 U.S.C. 7472(a). Although states and tribes may designate as Class I additional areas which they consider to have visibility as an important value, the requirements of the visibility program set forth in section 169A of the CAA apply only to ''mandatory Class I Federal areas.'' Each mandatory Class I Federal area is the responsibility of a ''Federal Land Manager.'' 42 U.S.C. 7602(i). When we use the term ''Class I area'' in this action, we mean a ''mandatory Class I Federal area.''

established a comprehensive visibility protection program for Class I areas. The requirements for regional haze, found at 40 CFR 51.308 and 51.309, are included in EPA's visibility protection regulations at 40 CFR 51.300–309. Some of the main elements of the regional haze requirements are summarized in Section II of this notice. The requirement to submit a regional haze SIP applies to all 50 states, the District of Columbia, and the Virgin Islands. Section 51.308(b) requires states to submit the first implementation plan addressing regional haze visibility impairment no later than December 17, 2007.

*C. Roles of Agencies in Addressing Regional Haze*

Successful implementation of the regional haze program will require long-term regional coordination among states, tribal governments, and various Federal agencies. As noted above, pollution affecting the air quality in Class I areas can be transported over long distances, even hundreds of kilometers. Therefore, to effectively address the problem of visibility impairment in Class I areas, states need to develop strategies in coordination with one another, taking into account the effect of emissions from one jurisdiction on the air quality in another.

Because the pollutants that lead to regional haze can originate from sources located across broad geographic areas, EPA has encouraged the states and tribes across the United States to address visibility impairment from a regional perspective. Five regional planning organizations (RPOs) were developed to address regional haze and related issues. The RPOs first evaluated technical information to better understand how their states and tribes impact Class I areas across the country, and then pursued the development of regional strategies to reduce emissions of particulate matter (PM) and other pollutants leading to regional haze.

The Mid-Atlantic Region Air Management Association (MARAMA), the Northeast States for Coordination Air Use Management (NESCAUM), and the Ozone Transport Commission (OTC) established the Mid-Atlantic/Northeast Visibility Union (MANE–VU) RPO. MANE–VU is a collaborative effort of state governments, tribal governments, and various Federal agencies established to initiate and coordinate activities associated with the management of regional haze, visibility, and other air quality issues in the Mid-Atlantic and Northeast corridor of the United States. Member states and tribal governments include: Connecticut, Delaware, the District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Penobscot Indian Nation, Rhode Island, St. Regis Mohawk Tribe, and Vermont.

*D. Interstate Transport for Visibility*

Sections 110(a)(1) and 110(a)(2)(D)(i)(II) of the CAA require that within three years of promulgation of a NAAQS, a state must ensure that its SIP, among other requirements, ''contains adequate provisions prohibiting any source or other types of emission activity within the State from emitting any air pollutant in amounts which will interfere with measures required to be included in the applicable implementation plan for any other State to protect visibility.'' Similarly, section 110(a)(2)(J) requires that such SIP ''meet the applicable requirements of part C of (Subchapter I) (relating to visibility protection).''

EPA's 2006 Guidance, entitled ''Guidance for State Implementation Plan (SIP) Submissions to Meet Current Outstanding Obligations Under section 110(a)(2)(D)(i) for the 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards,'' recognized the possibility that a state could potentially meet the visibility portions of section 110(a)(2)(D)(i)(II) through its submission of a Regional Haze SIP, as required by sections 169A and 169B of the CAA. EPA's 2009 guidance, entitled ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS),'' recommended that a state could meet such visibility requirements through its Regional Haze SIP. EPA's rationale supporting this recommendation was that the development of the regional haze SIPs was intended to occur in a collaborative environment among the states, and that through this process states would coordinate on emissions controls to protect visibility on an interstate basis. The common understanding was that, as a result of this collaborative environment, each state would take action to achieve the emissions reductions relied upon by other states in their reasonable progress demonstrations under the RHR. This interpretation is consistent with the requirement in the RHR that a state participating in a regional planning process must include ''all measures needed to achieve its apportionment of emission reduction obligations agreed upon through that process.'' *See,* 40 CFR 51.308(d)(3)(ii).

The regional haze program, as reflected in the RHR, recognizes the importance of addressing the long-range transport of pollutants for visibility and encourages states to work together to develop plans to address haze. The regulations explicitly require each state to address its ''share'' of the emission reductions needed to meet the reasonable progress goals for neighboring Class I areas. States working together through a regional planning process, are required to address an agreed upon share of their contribution to visibility impairment in the Class I areas of their neighbors. *See,* 40 CFR 51.308(d)(3)(ii). Given these requirements, appropriate regional haze SIPs will contain measures that will achieve these emissions reductions and will meet the applicable visibility related requirements of section 110(a)(2).

As a result of the regional planning efforts in the MANE–VU, all states in the MANE–VU region contributed information to a Technical Support System (TSS) which provides an analysis of the causes of haze, and the levels of contribution from all sources within each state to the visibility degradation of each Class I area. The MANE–VU states consulted in the development of reasonable progress goals, using the products of this technical consultation process to co-develop their reasonable progress goals for the MANE–VU Class I areas. The modeling done by MANE–VU relied on assumptions regarding emissions over the relevant planning period and embedded in these assumptions were anticipated emissions reductions in each of the states in MANE–VU, including reductions from BART and other measures to be adopted as part of the state's long term strategy for addressing regional haze. The reasonable progress goals in the regional haze SIPs that have been prepared by the states in the MANE–VU region are based, in part, on the emissions reductions from nearby states that were agreed on through the MANE–VU process.

The District of Columbia submitted a Regional Haze SIP on October 27, 2011, to address the requirements of the RHR. On December 6, 2007 and January 11, 2008, the District of Columbia submitted its 1997 Ozone NAAQS infrastructure SIP. On August 25, 2008 and September 22, 2008, the District of Columbia submitted its 1997 $PM_{2.5}$ NAAQS infrastructure SIP. On September 21, 2009, the District of Columbia submitted an infrastructure SIP for the 2006 $PM_{2.5}$ NAAQS. EPA will act on these

submittals in a separate rulemaking action.

In the October 27, 2011 submittal, the District of Columbia indicated that its Regional Haze SIP would meet the requirements of the CAA, section 110(a)(2)(D)(i)(II), regarding visibility for the 1997 8-Hour Ozone NAAQS and the 1997 and 2006 $PM_{2.5}$ NAAQS. EPA has reviewed the District of Columbia's Regional Haze SIP and, as explained in section IV of this action, proposes to find that the District of Columbia's Regional Haze submittal meets the portions of the requirements of the CAA sections 110(a)(2) relating to visibility protection for the 1997 8-Hour Ozone NAAQS and the 1997 and 2006 $PM_{2.5}$ NAAQS.

## II. What are the requirements for the regional haze SIPs?

### *A. The CAA and the Regional Haze Rule*

Regional haze SIPs must assure reasonable progress towards the national goal of achieving natural visibility conditions in Class I areas. Section 169A of the CAA and EPA's implementing regulations require states to establish long-term strategies for making reasonable progress toward meeting this goal. Implementation plans must also give specific attention to certain stationary sources that were in existence on August 7, 1977, but were not in operation before August 7, 1962, and require these sources, where appropriate, to install BART controls for the purpose of eliminating or reducing visibility impairment. The specific regional haze SIP requirements are discussed in further detail below.

### *B. Determination of Baseline, Natural, and Current Visibility Conditions*

The RHR establishes the deciview as the principal metric or unit for expressing visibility. This visibility metric expresses uniform changes in haziness in terms of common increments across the entire range of visibility conditions, from pristine to extremely hazy conditions. Visibility expressed in deciviews is determined by using air quality measurements to estimate light extinction and then transforming the value of light extinction using a logarithm function. The deciview is a more useful measure for tracking progress in improving visibility than light extinction itself because each deciview change is an equal incremental change in visibility perceived by the human eye. Most people can detect a change in visibility at one deciview.[3] The deciview is used in expressing RPGs (which are interim visibility goals towards meeting the national visibility goal), defining baseline, current, and natural conditions, and tracking changes in visibility. The regional haze SIPs must contain measures that ensure ''reasonable progress'' toward the national goal of preventing and remedying visibility impairment in Class I areas caused by anthropogenic air pollution by reducing anthropogenic emissions that cause regional haze. The national goal is a return to natural conditions, *i.e.,* anthropogenic sources of air pollution would no longer impair visibility in Class I areas.

To track changes in visibility over time at each of the 156 Class I areas covered by the visibility program (40 CFR 81.401–437), and as part of the process for determining reasonable progress, states must calculate the degree of existing visibility impairment at each Class I area at the time of each regional haze SIP submittal and periodically review progress every five years midway through each 10-year implementation period. To do this, the RHR requires states to determine the degree of impairment (in deciviews) for the average of the 20 percent least impaired (''best'') and 20 percent most impaired (''worst'') visibility days over a specified time period at each of their Class I areas. In addition, states must also develop an estimate of natural visibility conditions for the purpose of comparing progress toward the national goal. Natural visibility is determined by estimating the natural concentrations of pollutants that cause visibility impairment and then calculating total light extinction based on those estimates. EPA has provided guidance to states regarding how to calculate baseline, natural and current visibility conditions in documents entitled, EPA's *Guidance for Estimating Natural Visibility conditions under the Regional Haze Rule,* September 2003, (EPA–454/B–03–005 located at *http://www.epa.gov/ttncaaa1/t1/memoranda/rh_envcurhr_gd.pdf*), (hereinafter referred to as ''EPA's 2003 Natural Visibility Guidance'') and *Guidance for Tracking Progress Under the Regional Haze Rule,* September 2003, (EPA–454/B–03–004 located at *http://www.epa.gov/ttncaaa1/t1/memoranda/rh_tpurhr_gd.pdf*), (hereinafter referred to as ''EPA's 2003 Tracking Progress Guidance'').

[3] The preamble to the RHR provides additional details about the deciview (64 FR 35714, 35725, July 1, 1999).

For the first regional haze SIPs that were due by December 17, 2007, ''baseline visibility conditions'' were the starting points for assessing ''current'' visibility impairment. Baseline visibility conditions represent the degree of visibility impairment for the 20 percent least impaired days and 20 percent most impaired days for each calendar year from 2000 to 2004. Using monitoring data for 2000 through 2004, states are required to calculate the average degree of visibility impairment for each Class I area, based on the average of annual values over the five-year period. The comparison of initial baseline visibility conditions to natural visibility conditions indicates the amount of improvement necessary to attain natural visibility, while the future comparison of baseline conditions to the then current conditions will indicate the amount of progress made. In general, the 2000–2004 baseline period is considered the time from which improvement in visibility is measured.

### *C. Determination of Reasonable Progress Goals (RPGs)*

The vehicle for ensuring continuing progress towards achieving the natural visibility goal is the submission of a series of regional haze SIPs from the states that establish two RPGs (*i.e.,* two distinct goals, one for the ''best'' and one for the ''worst'' days) for every Class I area for each (approximately) 10-year implementation period. The RHR does not mandate specific milestones or rates of progress, but instead calls for states to establish goals that provide for ''reasonable progress'' toward achieving natural (*i.e.,* ''background'') visibility conditions. In setting RPGs, states must provide for an improvement in visibility for the most impaired days over the (approximately) 10-year period of the SIP, and ensure no degradation in visibility for the least impaired days over the same period.

States have significant discretion in establishing RPGs but are required to consider the following factors established in section 169A of the CAA and in EPA's RHR at 40 CFR 51.308(d)(1)(i)(A): (1) The costs of compliance; (2) the time necessary for compliance; (3) the energy and non-air quality environmental impacts of compliance; and (4) the remaining useful life of any potentially affected sources. States must demonstrate in their SIPs how these factors are considered when selecting the RPGs for the best and worst days for each applicable Class I area. States have considerable flexibility in how they take these factors into consideration, as noted in EPA's *Guidance for Setting*

*Reasonable Progress Goals under the Regional Haze Program,* (''EPA's Reasonable Progress Guidance''), July 1, 2007, memorandum from William L. Wehrum, Acting Assistant Administrator for Air and Radiation, to EPA Regional Administrators, EPA Regions 1–10 (pp. 4–2, 5–1). In setting the RPGs, states must also consider the rate of progress needed to reach natural visibility conditions by 2064 (referred to as the ''uniform rate of progress'' or the ''glidepath'') and the emission reduction measures needed to achieve that rate of progress over the 10-year period of the SIP. Uniform progress towards achievement of natural conditions by the year 2064 represents a rate of progress which states are to use for analytical comparison to the amount of progress they expect to achieve. In setting RPGs, each state with one or more Class I areas (''Class I state'') must also consult with potentially ''contributing states,'' *i.e.,* other nearby states with emission sources that may be affecting visibility impairment at the Class I state's areas. *See,* 40 CFR 51.308(d)(1)(iv).

*D. Best Available Retrofit Technology (BART)*

Section 169A of the CAA directs states to evaluate the use of retrofit controls at certain larger, often uncontrolled, older stationary sources in order to address visibility impacts from these sources. Specifically, section 169A(b)(2)(A) of the CAA requires states to revise their SIPs to contain such measures as may be necessary to make reasonable progress towards the natural visibility goal, including a requirement that certain categories of existing major stationary sources [4] built between 1962 and 1977 procure, install, and operate the ''Best Available Retrofit Technology'' as determined by the state. Under the RHR, states are directed to conduct BART determinations for such ''BART-eligible'' sources that may be anticipated to cause or contribute to any visibility impairment in a Class I area. Rather than requiring source-specific BART controls, states also have the flexibility to adopt an emissions trading program or other alternative program as long as the alternative provides greater reasonable progress towards improving visibility than BART.

On July 6, 2005, EPA published the *Guidelines for BART Determinations Under the Regional Haze Rule* at Appendix Y to 40 CFR part 51 (hereinafter referred to as the ''BART Guidelines'') to assist states in determining which of their sources should be subject to the BART requirements and in determining appropriate emission limits for each applicable source. *See,* 70 FR 39104. In making a BART determination for a fossil fuel-fired electric generating plant with a total generating capacity in excess of 750 megawatts (MW), a state must use the approach set forth in the BART Guidelines. A state is encouraged, but not required, to follow the BART Guidelines in making BART determinations for other types of sources.

States must address all visibility-impairing pollutants emitted by a source in the BART determination process. The most significant visibility impairing pollutants are $SO_2$, $NO_X$, and PM. EPA has stated that states should use their best judgment in determining whether VOC or $NH_3$ compounds impair visibility in Class I areas.

Under the BART Guidelines, states may select an exemption threshold value for their BART modeling, below which a BART eligible source would not be expected to cause or contribute to visibility impairment in any Class I area. The state must document this exemption threshold value in the SIP and must state the basis for its selection of that value. Any source with emissions that model above the threshold value would be subject to a BART determination review. The BART Guidelines acknowledge varying circumstances affecting different Class I areas. States should consider the number of emission sources affecting the Class I areas at issue and the magnitude of the individual sources' impacts. Any exemption threshold set by the state should not be higher than 0.5 deciview.

In their SIPs, states must identify potential BART sources, described as ''BART eligible sources'' in the RHR, and document their BART control determination analyses. In making BART determinations, section 169A(g)(2) of the CAA requires that states consider the following factors: (1) The costs of compliance, (2) the energy and non-air quality environmental impacts of compliance, (3) any existing pollution control technology in use at the source, (4) the remaining useful life of the source, and (5) the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology. States are free to determine the weight and significance to be assigned to each factor.

A regional haze SIP must include source-specific BART emission limits and compliance schedules for each source subject to BART. Once a state has made its BART determination, the BART controls must be installed and in operation as expeditiously as practicable, but no later than five years after the date of EPA approval of the regional haze SIP. CAA section 169(g)(4). 40 CFR 51.308(e)(1)(iv). In addition to what is required by the RHR, general SIP requirements mandate that the SIP must also include all regulatory requirements related to monitoring, recordkeeping, and reporting for the BART controls on the source.

As noted above, the RHR allows states to implement an alternative program in lieu of BART so long as the alternative program can be demonstrated to achieve greater reasonable progress toward the national visibility goal than would BART. Under regulations issued in 2005 revising the regional haze program, EPA made just such a demonstration for the Clean Air Interstate Rule (CAIR) (70 FR 39104, July 6, 2005). EPA's regulations provide that states participating in the CAIR cap and trade program under 40 CFR part 96 pursuant to an EPA-approved CAIR SIP or which remain subject to the CAIR Federal Implementation Plan (FIP) in 40 CFR part 97, do not require affected BART eligible electric generating units (EGUs) to install, operate, and maintain BART for emissions of $SO_2$ and $NO_X$ (40 CFR 51.308(e)(4)). Since CAIR is not applicable to emissions of PM, states were still required to conduct a BART analysis for PM emissions from EGUs subject to BART for that pollutant.

CAIR, as originally promulgated, required 28 states and the District of Columbia to reduce emissions of $SO_2$ and $NO_X$ that significantly contributed to, or interfered with maintenance of the 1997 NAAQS for fine particulates and/or the 1997 NAAQS for 8-hour ozone in any downwind state. *See,* 70 FR 25162 (May 12, 2005). CAIR established emissions budgets for $SO_2$ and $NO_X$ for states found to contribute significantly to nonattainment in downwind states and required these states to submit SIP revisions that implemented these budgets. States had the flexibility to choose which control measures to adopt to achieve the budgets, including participation in EPA-administered cap-and-trade programs addressing $SO_2$, $NO_X$-annual, and $NO_X$-ozone season emissions. In 2006, EPA promulgated FIPs for all states covered by CAIR to ensure the reductions were achieved in a timely manner. On July 11, 2008, the DC Circuit issued its decision to vacate and remand both CAIR and the associated CAIR FIPs in their entirety. *See, North Carolina* v. *EPA,* 531 F.3d 836 (DC Cir. 2008). However, in

[4] The set of ''major stationary sources'' potentially subject to BART is listed in CAA section 169A(g)(7).

response to EPA's petition for rehearing, the Court issued an order remanding CAIR to EPA without vacating either CAIR or the CAIR FIPs. The Court thereby left the EPA CAIR rule and CAIR SIPs and FIPs in place in order to ''temporarily preserve the environmental values covered by CAIR'' until EPA replaces it with a rule consistent with the court's opinion. *See, North Carolina* v. *EPA,* 550 F.3d at 1178. The Court directed EPA to ''remedy CAIR's flaws'' consistent with its July 11, 2008, opinion but declined to impose a schedule on EPA for completing that action.

In response to the Court's decision, EPA has issued a new rule to address interstate transport of $NO_X$ and $SO_2$ in the eastern United States. *See,* 76 FR 48208 (August 8, 2011). EPA explained in that action that EPA is promulgating the Cross-State Air Pollution Rule (CSAPR) as a replacement for (not a successor to) CAIR's $SO_2$ and $NO_X$ emissions reduction and trading programs. In other words, the CAIR and CAIR FIP requirements only remain in force to address emissions through the 2011 control periods. As part of the CSAPR, EPA finalized regulatory changes to sunset the CAIR and CAIR FIPs for control periods in 2012 and beyond. *See,* 76 FR 48322. EPA also stated in this final action that it has not conducted a technical analysis to determine whether compliance with the CSAPR would satisfy the requirements of the RHR addressing alternatives to BART. For that reason, EPA did not make a determination or establish a presumption that compliance with the CSAPR satisfies BART-related requirements for EGUs. EPA is now in the process of determining whether compliance with the CSAPR will provide for greater reasonable progress toward improving visibility than source-specific BART controls for EGUs but no such determination has yet been proposed.

*E. Long-Term Strategy*

Consistent with the requirement in section 169A(b) of the CAA that states include in their regional haze SIP a 10 to 15 year strategy for making reasonable progress, section 51.308(d)(3) of the RHR requires that states include a long-term strategy in their regional haze SIPs. The long-term strategy is the compilation of all control measures a state will use during the implementation period of the specific SIP submittal to meet applicable RPGs. The long-term strategy must include ''enforceable emissions limitations, compliance schedules, and other measures as necessary to achieve the reasonable progress goals'' for all Class I areas within, or affected by emissions from, the state. *See,* 40 CFR 51.308(d)(3).

When a state's emissions are reasonably anticipated to cause or contribute to visibility impairment in a Class I area located in another state, the RHR requires the impacted state to coordinate with the contributing states in order to develop coordinated emissions management strategies. *See,* 40 CFR 51.308(d)(3)(i). In such cases, the contributing state must demonstrate that it has included, in its SIP, all measures necessary to obtain its share of the emission reductions needed to meet the RPGs for the Class I area. The RPOs have provided forums for significant interstate consultation, but additional consultations between states may be required to sufficiently address interstate visibility issues. This is especially true where two states belong to different RPOs.

States should consider all types of anthropogenic sources of visibility impairment in developing their long-term strategy, including stationary, minor, mobile, and area sources. At a minimum, states must describe how each of the following seven factors listed below are taken into account in developing their long-term strategy: (1) Emission reductions due to ongoing air pollution control programs, including measures to address RAVI; (2) measures to mitigate the impacts of construction activities; (3) emissions limitations and schedules for compliance to achieve the RPG; (4) source retirement and replacement schedules; (5) smoke management techniques for agricultural and forestry management purposes including plans as currently exist within the state for these purposes; (6) enforceability of emissions limitations and control measures; and (7) the anticipated net effect on visibility due to projected changes in point, area, and mobile source emissions over the period addressed by the long-term strategy. *See,* 40 CFR 51.308(d)(3)(v).

*F. Coordinating Regional Haze and Reasonably Attributable Visibility Impairment Long-Term Strategy*

As part of the RHR, EPA revised 40 CFR 51.306(c) regarding the long-term strategy for RAVI to require that the RAVI plan must provide for a periodic review and SIP revision not less frequently than every three years until the date of submission of the state's first plan addressing regional haze visibility impairment, which was due December 17, 2007, in accordance with 40 CFR 51.308(b) and (c). On or before this date, the state must revise its plan to provide for review and revision of a coordinated long-term strategy for addressing RAVI and regional haze, and the state must submit the first such coordinated long-term strategy with its first regional haze SIP. Future coordinated long-term strategy's, and periodic progress reports evaluating progress towards RPGs, must be submitted consistent with the schedule for SIP submission and periodic progress reports set forth in 40 CFR 51.308(f) and 51.308(g), respectively. The periodic review of a state's long-term strategy must report on both regional haze and RAVI impairment and must be submitted to EPA as a SIP revision.

*G. Monitoring Strategy and Other Implementation Plan Requirements*

Section 51.308(d)(4) of the RHR includes the requirement for a monitoring strategy for measuring, characterizing, and reporting of regional haze visibility impairment that is representative of all mandatory Class I Federal areas within the state. The strategy must be coordinated with the monitoring strategy required in section 51.305 for RAVI. Compliance with this requirement may be met through ''participation'' in the IMPROVE network, *i.e.,* review and use of monitoring data from the network. The monitoring strategy is due with the first regional haze SIP and it must be reviewed every five years. The monitoring strategy must also provide for additional monitoring sites if the IMPROVE network is not sufficient to determine whether RPGs will be met.

The SIP must also provide for the following:

- Procedures for using monitoring data and other information in a state with mandatory Class I areas to determine the contribution of emissions from within the state to regional haze visibility impairment at Class I areas both within and outside the state;
- Procedures for using monitoring data and other information in a state with no mandatory Class I areas to determine the contribution of emissions from within the state to regional haze visibility impairment at Class I areas in other states;
- Reporting of all visibility monitoring data to the Administrator at least annually for each Class I area in the state, and where possible, in electronic format;
- Developing a statewide inventory of emissions of pollutants that are reasonably anticipated to cause or contribute to visibility impairment in any Class I area. The inventory must include emissions for a baseline year, emissions for the most recent year for

which data are available, and estimates of future projected emissions. A state must also make a commitment to update the inventory periodically; and

• Other elements, including reporting, recordkeeping, and other measures necessary to assess and report on visibility.

The RHR requires control strategies to cover an initial implementation period extending to the year 2018, with a comprehensive reassessment and revision of those strategies, as appropriate, every 10 years thereafter. Periodic SIP revisions must meet the core requirements of section 51.308(d) with the exception of BART. The requirement to evaluate sources for BART applies only to the first regional haze SIP. Facilities subject to BART must continue to comply with the BART provisions of section 51.308(e), as noted above. Periodic SIP revisions will assure that the statutory requirement of reasonable progress will continue to be met.

*H. Consultation With States and Federal Land Managers (FLMs)*

The RHR requires that states consult with FLMs before adopting and submitting their SIPs. *See,* 40 CFR 51.308(i). States must provide FLMs an opportunity for consultation, in person and at least 60 days prior to holding any public hearing on the SIP. This consultation must include the opportunity for the FLMs to discuss their assessment of impairment of visibility in any Class I area and to offer recommendations on the development of the RPGs and on the development and implementation of strategies to address visibility impairment. Further, a state must include in its SIP a description of how it addressed any comments provided by the FLMs. Finally, a SIP must provide procedures for continuing consultation between the state and FLMs regarding the state's visibility protection program, including development and review of SIP revisions, five-year progress reports, and the implementation of other programs having the potential to contribute to impairment of visibility in Class I areas.

## III. What is EPA's analysis of the District of Columbia's regional haze submittal?

On October 27, 2011, the DDOE submitted revisions to the District of Columbia SIP to address regional haze as required by EPA's RHR.

*A. Affected Class I Areas*

The District of Columbia has no Class I areas within its borders. There are, however, five Class I areas within 300 kilometers of the District. These five Class I areas are Shenandoah National Park, Dolly Sods Wilderness, Otter Creek Wilderness, Brigantine Wilderness, and James River Face Wilderness. Shenandoah National Park in Virginia is the closest Class I area to the District of Columbia. The next closest areas are the Brigantine Wilderness Area in New Jersey, the Dolly Sods and Otter Creek Wilderness Areas in West Virginia, and James River Face Wilderness Area in Virginia.

EPA's RHR requires states to address regional haze in each mandatory Class I Federal area located within its state and in each mandatory Class I Federal area located outside the state, which may be affected by emissions from its facilities. The RHR requires states that may reasonably cause or contribute to visibility impairment in one or more Class I areas to develop a long-term strategy that addresses regional haze visibility impairment for each affected Class I area. The MANE–VU states with Class I areas established a contribution threshold for determining whether a state could be considered to affect an area. The criteria for contribution was established by the MANE–VU states to be greater than 0.1 microgram per cubic meter ($\mu g/m^3$) or two percent of sulfate pollution to a Class I area. MANE–VU concluded that the District did not contribute greater than 0.1 $\mu g/m^3$ or two percent sulfate contribution to any nearby Class I areas, and so the District of Columbia was not identified as influencing the visibility impairment of any Class I area. However, the District of Columbia is responsible for developing a regional haze SIP that describes its long-term emission strategy, its role in the consultation processes, and how the SIP meets the other requirements in EPA's regional haze regulations. As the District of Columbia has no Class I areas within its borders, the District is not required to address the following Regional Haze SIP elements: (a) The calculation of baseline and natural visibility conditions, (b) the establishment of reasonable progress goals, (c) monitoring requirements, and (d) RAVI requirements.

*B. Long-Term Strategy/Strategies*

As described in Section II. E of this action, the long-term strategy is a compilation of all the control measures relied on by the state to achieve the RPG for the Class I areas affected by emissions from the District. The District of Columbia's long-term strategy for the first implementation period addresses the emissions reductions from Federal, state, and local controls that take effect in the District from the baseline period starting in 2002 until 2018. The District of Columbia also participated in the MANE–VU regional strategy development process. As a participant, the District of Columbia supported a regional approach towards deciding which control measures to pursue for regional haze. The decision as to appropriate control measures was based on technical analyses documented in the following reports by MANE–VU and included as appendices to the District of Columbia's regional haze SIP revision: (a) Contributions to Regional Haze in the Northeast and Mid-Atlantic United States; (b) Assessment of Reasonable Progress for Regional Haze in MANE–VU Class I Areas; (c) Five-Factor Analysis of BART-Eligible Sources: Survey of Options for Conducting BART Determinations; and (d) Assessment of Control Technology Options for BART-Eligible Sources: Steam Electric Boilers, Industrial Boilers, Cement Plants, and Paper and Pulp Facilities.

The District of Columbia developed its long-term strategy in coordination with MANE–VU. As part of this process, the District and MANE–VU identified the emissions units within the District of Columbia likely to have the largest impacts currently on visibility at any of the nearby Class I areas. The District and MANE–VU, also estimated emissions reductions from sources in the District for 2018 as a result of all controls required under Federal and state regulations for the 2002–2018 period (including BART), and compared projected visibility improvement with the uniform rate of progress for the nearby Class I areas.

1. Emissions Inventory for 2018 With Federal and State Control Requirements

The emissions inventory used in the regional haze technical analyses was developed by MARAMA for MANE–VU with assistance from the District of Columbia. The 2018 emissions inventory was developed by projecting 2002 emissions, and assuming emissions growth due to projected increases in economic activity as well as applying reductions expected from Federal and state regulations affecting the emissions of VOC and the visibility-impairing pollutants $NO_X$, $PM_{10}$, $PM_{2.5}$, and $SO_2$. The BART guidelines direct states to exercise judgment in deciding whether VOC and $NH_3$ impair visibility in their Class I area(s). MANE–VU demonstrated that anthropogenic emissions of sulfates are the major contributor to $PM_{2.5}$ mass and visibility impairment at Class I areas in the Northeast and Mid-Atlantic region. MANE–VU determined that the total ammonia emissions in the MANE–VU

region are extremely small. In addition, since VOC emissions are aggressively controlled through the District of Columbia SIP, the pollutants the District of Columbia considered under BART and RPG are $NO_X$, $PM_{10}$, $PM_{2.5}$, and $SO_2$.

MANE–VU developed emissions inventories for four inventory source classifications: (1) Stationary point sources, (2) stationary area sources, (3) off-road mobile sources, and (4) on-road mobile sources. The New York Department of Environmental Conservation also developed an inventory of biogenic emissions for the entire MANE–VU region. Stationary point sources are those sources that emit greater than a specified tonnage per year, depending on the pollutant, with data provided at the facility level. Stationary area sources are those sources whose individual emissions are relatively small, but due to the large number of these sources, the collective emissions from the source category could be significant. Off-road mobile sources are equipment that can move but do not use the roadways. On-road mobile source emissions are automobiles, trucks, and motorcycles that use the roadway system. The emissions from these sources are estimated by vehicle type and road type. Biogenic sources are natural sources like trees, crops, grasses, and natural decay of plants. Stationary point sources emission data is tracked at the facility level. For all other source types emissions are summed on the county level.

There are many Federal and state control programs being implemented that MANE–VU and the District of Columbia anticipate will reduce emissions between the baseline period and 2018. To assess emissions reductions from ongoing air pollution control programs, BART, and reasonable progress goals, MANE–VU developed two 2018 emission control scenarios called ''on-the-books/on-the-way'' (OTB/W) scenario and ''beyond on the way'' (BOTW) scenario.

The OTB/W scenario included emissions growth and control measures that were either already ''on the books'' (promulgated as of June 15, 2005) or were considered well ''on the way'' to being implemented because they were proposed, but not yet final. The emissions inventory provided by the District of Columbia for the OTB/W 2018 projections is based on adopted and enforceable requirements. The ongoing air pollution control programs relied upon by the District of Columbia for the OTB/W projections include the $NO_X$ SIP Call; $NO_X$ and/or VOC reductions from the control rules in the 1-hour and 8-hour ozone SIPs for the District of Columbia; $NO_X$ OTC 2001 Model Rule for Industrial, Commercial, and Institutional (ICI) Boilers; and Industrial Boiler/Process Heater Maximum Achievable Control Technology (MACT). Non-EGU point source control factors were not included in the inventory for the District. Area source control factors that applied for the District of Columbia included the 2001 OTC model rules (consumer products, architectural and industrial maintenance (AIM) coatings, portable fuel containers, and mobile equipment repair and refinishing; and solvent cleaning); and on-board vapor recovery. In addition, Federally-enforceable controls were incorporated in the EGU and mobile source models. These include CAIR; the Federal 2007 heavy duty diesel engine standards for non-road trucks and buses; the Federal Tier 2 tailpipe controls for the on-road vehicles; Federal large spark ignition and recreational vehicle controls; and EPA's non-road diesel rules.

The District of Columbia also relied on emission reductions from various Federal MACT rules in the development of the 2018 emission inventory projections. These MACT rules include the combustion turbine and reciprocating internal combustion engines MACT, the industrial boiler and process heaters MACT and the 2, 4, 7, and 10 year MACT standards. On July 30, 2007, the U.S. District Court of Appeals mandated the vacatur and remand of the Industrial Boiler MACT Rule.[5] This MACT was vacated since it was directly affected by the vacatur and remand of the Commercial and Industrial Solid Waste Incinerator (CISWI) Definition Rule. EPA proposed a new Industrial Boiler MACT rule to address the vacatur on June 4, 2010, (75 FR 32006) and issued a final rule on March 21, 2011 (76 FR 15608). The District of Columbia's modeling included emission reductions from the vacated Industrial Boiler MACT rule. The District of Columbia did not redo its modeling analysis when the rule was re-issued. However, the expected reductions in $SO_2$ and PM are small relative to the District of Columbia's inventory. Therefore, EPA finds the expected reductions of the new rule acceptable since the final rule requires compliance by 2014, it provides the District of Columbia time to assure the required controls are in place prior to the end of the first implementation period in 2018. In addition, the RHR requires that any resulting differences between emissions projections and actual emissions reductions that may occur will be addressed during the five-year review prior to the next 2018 regional haze SIP.

The other emissions control scenario MANE–VU considered was a ''beyond on the way'' (BOTW) scenario that included potential additional control measures to attain the ozone and fine particulate NAAQS and to meet regional haze goals. Non-EGU point source controls included $NO_X$ measures (asphalt production plants; cement kilns; glass and fiberglass furnaces; low sulfur heating oil for commercial and institutional units; and ICI boilers using natural gas, #2 or #4 or #6 fuel oil, and coal); one primary $PM_{10}$ and $PM_{2.5}$ measure (commercial heating oil); $SO_2$ measures (commercial heating oil and ICI boilers using #2 or #4 or #6 fuel oil and coal); and a VOC measure (adhesives and sealants application). Area source control factors included $NO_X$ measures (ICI boilers using natural gas, #2 and #4 and #6 fuel oil, and coal; and residential and commercial home heating oil); primary $PM_{10}$ and $PM_{2.5}$ measures (residential and commercial home heating oil); $SO_2$ measures (residential and commercial home heating oil and ICI boilers using distillate oil); and VOC measures (adhesives and sealants; emulsified and cutback asphalt paving; consumer products; and portable fuel containers). Additional potential and reasonable measures were analyzed using a four factor analysis. The list of measures was further refined and incorporated into a second BOTW, or ''best and final'' inventory, and included a ''top 167 EGU stacks strategy''; a low sulfur fuel strategy (including second phase, to 15 parts per million (ppm) limit); a BART implementation strategy; and a continued evaluation of additional control measures. For the District of Columbia, the difference between the two BOTW inventories is negligible.

Since the District of Columbia does not contribute more than 0.1 $\mu g/m^3$ to visibility impairment at any Class I area, the District chose not to adopt some measures in the BOTW or ''best and final'' scenarios and selected as its long-term strategy the OTB/W scenario. EPA is proposing to find that the control measures in the OTB/W scenario are reasonable for the District's long-term strategy because the District's contribution to regional haze is less than the 0.1 $\mu g/m^3$ and two percent sulfate thresholds established by MANE–VU. The District's long-term strategy is not the same as the long-term strategy recommended by MANE–VU, but emission reductions will provide sufficient emissions reductions for the

[5] *NRDC* v. *EPA,* 489F.3d 1250.

District to obtain its share of the of the emissions reductions needed to meet the reasonable progress goal for the five Class I areas within 300 kilometers of the District of Columbia. Tables 1 and 2 are summaries of the 2002 baseline and 2018 estimated emissions inventories for the District of Columbia based on the OTB/W scenario. The 2018 estimated emissions include emission growth as well as emission reductions due to ongoing emission control strategies, BART, and reasonable progress goals.

TABLE 1—2002 EMISSION INVENTORY SUMMARY FOR THE DISTRICT OF COLUMBIA IN TONS PER YEAR

| | VOC | $NO_X$ | $PM_{2.5}$ | $PM_{10}$ | $NH_3$ | $SO_2$ |
|---|---|---|---|---|---|---|
| Point | 69 | 780 | 132 | 161 | 4 | 963 |
| Area | 6,432 | 1,644 | 805 | 3,269 | 14 | 1,337 |
| On-Road Mobile | 4,895 | 8,902 | 153 | 222 | 398 | 271 |
| Off-Road Mobile | 2,073 | 3,571 | 299 | 310 | 2 | 375 |
| Biogenic | 1,726 | 30 | ..... | ..... | ..... | ..... |
| Total | 14,033 | 15,689 | 1,389 | 3,962 | 422 | 2,946 |

TABLE 2—2018 EMISSION SUMMARY FOR THE DISTRICT OF COLUMBIA "OTB/W" IN TONS PER YEAR

| | VOC | $NO_X$ | $PM_{2.5}$ | $PM_{10}$ | $NH_3$ | $SO_2$ |
|---|---|---|---|---|---|---|
| Point | 90 | 630 | 263 | 302 | 17 | 863 |
| Area | 5,255 | 2,259 | 917 | 3,825 | 17 | 1,632 |
| On-Road Mobile | 1,797 | 1,717 | 58 | 65 | 438 | 41 |
| Off-Road Mobile | 1,369 | 1,815 | 124 | 135 | 3 | 5 |
| Biogenic | 1,726 | 30 | ..... | ..... | ..... | ..... |
| Total | 10,237 | 6,551 | 1,362 | 4,326 | 474 | 2,541 |

2. Modeling to Support the Long-Term Strategy and Determine Visibility Improvement for Uniform Rate of Progress

MANE–VU performed modeling for the regional haze long-term strategy for the 11 Mid-Atlantic and Northeast states and the District of Columbia. The modeling analysis is a complex technical evaluation that began with selection of the modeling system. MANE–VU used the following modeling system:

- *Meteorological Model:* The Fifth-Generation Pennsylvania State University/National Center for Atmospheric Research (NCAR) Mesoscale Meteorological Model (MM5) version 3.6 is a nonhydrostatic, prognostic meteorological model routinely used for urban- and regional-scale photochemical, $PM_{2.5}$, and regional haze regulatory modeling studies.
- *Emissions Model:* The Sparse Matrix Operator Kernel Emissions (SMOKE) version 2.1 modeling system is an emissions modeling system that generates hourly gridded speciated emission inputs of mobile, non-road mobile, area, point, fire, and biogenic emission sources for photochemical grid models.
- *Air Quality Model:* The EPA's Models-3/Community Multiscale Air Quality (CMAQ) version 4.5.1 is a photochemical grid model capable of addressing ozone, PM, visibility and acid deposition at a regional scale.
- *Air Quality Model:* The Regional Model for Aerosols and Deposition (REMSAD), version 8, is an Eulerian grid model that was primarily used to determine the attribution of sulfate species in the Eastern U.S. via the species-tagging scheme.
- *Air Quality Model:* The California Puff Model (CALPUFF), version 5 is a non-steady-state Lagrangian puff model used to access the contribution of individual states' emissions to sulfate levels at selected Class I receptor sites.

CMAQ modeling of regional haze in the MANE–VU region for 2002 and 2018 was carried out on a grid of 12 x 12 kilometer (km) cells that covers the 11 MANE–VU states (Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont) and the District of Columbia and states adjacent to them. This grid is nested within a larger national CMAQ modeling grid of 36 x 36 km grid cells that covers the continental United States, portions of Canada and Mexico, and portions of the Atlantic and Pacific Oceans along the east and west coasts. Selection of a representative period of meteorology is crucial for evaluating baseline air quality conditions and projecting future changes in air quality due to changes in emissions of visibility-impairing pollutants. MANE–VU conducted an in-depth analysis which resulted in the selection of the entire year of 2002 (January 1–December 31) as the best period of meteorology available for conducting the CMAQ modeling. The MANE–VU states modeling was developed consistent with EPA's *Guidance on the Use of Models and Other Analyses for Demonstrating Attainment of Air Quality Goals for Ozone,* $PM_{2.5}$, *and Regional Haze*, located at *http://www.epa.gov/scram001/guidance/guide/final-03-pm-rh-guidance.pdf*, (EPA–454/B–07–002), April 2007, and EPA document, *Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations,* located at *http://www.epa.gov/ttnchie1/eidocs/eiguid/index.html*, EPA–454/R–05–001, August 2005, updated November 2005 ("EPA's Modeling Guidance").

MANE–VU examined the model performance of the regional modeling for the areas of interest before determining whether the CMAQ model results were suitable for use in the regional haze assessment of the long-term strategy and for use in the modeling assessment. The modeling assessment predicts future levels of emissions and visibility impairment used to support the LTS and to compare predicted, modeled visibility levels with those on the uniform rate of progress. In keeping with the objective of the CMAQ modeling platform, the air quality model performance was evaluated using

graphical and statistical assessments based on measured ozone, fine particles, and acid deposition from various monitoring networks and databases for the 2002 base year. MANE–VU used a diverse set of statistical parameters from the EPA's Modeling Guidance to stress and examine the model and modeling inputs. Once MANE–VU determined the model performance to be acceptable, MANE–VU used the model to assess the 2018 RPGs using the current and future year air quality modeling predictions, and compared the RPGs to the uniform rate of progress.

In accordance with 40 CFR 51.308(d)(3), the District of Columbia provided the appropriate supporting documentation for all required analyses used to determine the District's long-term strategy. The technical analyses and modeling used to develop the glidepath and to support the long-term strategy are consistent with EPA's RHR, and interim and final EPA Modeling Guidance. EPA accepts the MANE–VU technical modeling to support the long-term strategy and determine visibility improvement for the uniform rate of progress because the modeling system was chosen and used according to EPA Modeling Guidance. EPA agrees with the MANE–VU model performance procedures and results, and that the CMAQ is an appropriate tool for the regional haze assessments for the District of Columbia long-term strategy and regional haze SIP.

3. Relative Contributions of Pollutants to Visibility Impairment

An important step toward identifying reasonable progress measures is to identify the key pollutants contributing to visibility impairment at each Class I area. To understand the relative benefit of further reducing emissions from different pollutants, MANE–VU developed emission sensitivity model runs using CMAQ to evaluate visibility and air quality impacts from various groups of emissions and pollutant scenarios in the Class I areas on the 20 percent worst visibility days. Regarding which pollutants are most significantly impacting visibility in the MANE–VU region, MANE–VU's contribution assessment, demonstrated that sulfate is the major contributor to $PM_{2.5}$ mass and visibility impairment at Class I areas in the Northeast and Mid-Atlantic Region. Sulfate particles commonly account for more than 50 percent of particle-related light extinction at northeastern Class I areas on the clearest days and for as much as or more than 80 percent on the haziest days. In particular, for the Brigantine National Wildlife Refuge Class I area, on the 20 percent worst visibility days in 2000–2004, sulfate accounted for 66 percent of the particle extinction. After sulfate, organic carbon (OC) consistently accounts for the next largest fraction of light extinction. Organic carbon accounted for 13 percent of light extinction on the 20 percent worst visibility days for Brigantine, followed by nitrate that accounts for 9 percent of light extinction.

The emissions sensitivity analyses conducted by MANE–VU predict that reductions in $SO_2$ emissions from EGU and non-EGU industrial point sources will result in the greatest improvements in visibility in the Class I areas in the MANE–VU region, more than any other visibility-impairing pollutant. As a result of the dominant role of sulfate in the formation of regional haze in the Northeast and Mid-Atlantic Region, MANE–VU concluded that an effective emissions management approach would rely heavily on broad-based regional $SO_2$ control efforts in the eastern United States. As stated above, the District of Columbia relied on technical analyses developed by MANE–VU to demonstrate the District's emissions impact on neighboring Class I areas. The ''Contributions to Regional Haze in the Northeast and Mid-Atlantic United States'' document used several analytical techniques, such as REMSAD, emissions divided by distance (Q/D), and CALPUFF, to analyze visibility at MANE–VU and neighboring Class I areas. These findings resulted in the identification of the most significant contributors to visibility impairment in MANE–VU and other neighboring Class I areas. Table 3 shows the overall percent contribution of sulfate from the District of Columbia to the three closest Class I areas. The District of Columbia does not contribute more than two percent of sulfate to any nearby Class I area, which is the threshold established by MANE–VU states with Class I areas for contributing to meet the RPG for 2018. The highest impacts, at the Brigantine Wilderness Area and Shenandoah National Park, are well below this threshold. For this reason, no MANE–VU states asked the District of Columbia for emissions reductions to the RPGs in these Class I areas. The Shenandoah National Park is in Virginia and the Dolly Sods Wilderness Area is in West Virginia. Both, Virginia and West Virginia are members of the Visibility Improvement State and Tribal Association of the Southeast (VISTAS) RPO. VISTAS conducted its own contribution assessment and similarly concluded that no additional emission reductions from the District of Columbia were necessary in this first planning period.

TABLE 3—PERCENT ANNUAL AVERAGE SULFATE CONTRIBUTION FROM THE DISTRICT OF COLUMBIA SOURCES IN 2002

| Class I area | REMSAD % | Q/D % | CALPUFF (NWS) % | CALPUFF (MM5) % |
|---|---|---|---|---|
| Shenandoah National Park | 0.04 | 0.05 | 0.07 | 0.07 |
| Dolly Sods Wilderness | 0.01 | 0.02 | 0.02 | NA |
| Brigantine Wilderness | 0.04 | 0.05 | 0.07 | 0.07 |

4. Reasonable Progress Goals

Since the District of Columbia does not have a Class I area, it is not required to establish RPGs. Although the District of Columbia was not identified as influencing the visibility impairment of any Class I area, as a member of MANE–VU, the District of Columbia worked in cooperation with the MANE–VU Class I states as those states established reasonable progress goals for their Class I areas.

5. BART

BART is an element of the District of Columbia's long-term strategy. The BART regional haze requirements consist of three components: (a) Identification of all the BART eligible sources; (b) an assessment of whether the BART eligible sources are subject to BART; and (c) the determination of the BART controls.

The first component of a BART evaluation is to identify all the BART eligible sources. The BART eligible sources were identified by utilizing the criteria in the BART Guidelines as follows:

• Determine whether one or more emissions units at the facility fit within

one of the 26 categories listed in the BART Guidelines (70 FR 39158–39159);

• Determine whether the emission unit(s) was in existence on August 7, 1977 and begun operation after August 6, 1962;

• Determine whether potential emissions of $SO_2$, $NO_X$, and $PM_{10}$ from subject units are 250 tons or more per year.

The BART guidelines recommend addressing $SO_2$, $NO_X$, and $PM_{10}$ as visibility-impairment pollutants and leave it up to the discretion of states to evaluate VOC or ammonia emissions. MANE–VU demonstrated that anthropogenic emissions of sulfates are the major contributor to $PM_{2.5}$ mass and visibility impairment at Class I areas in the Northeast and Mid-Atlantic region. MANE–VU determined that the total ammonia emissions in the MANE–VU region are extremely small. In addition, since VOC emissions are aggressively controlled through the District of Columbia SIP, the pollutants the District of Columbia considered under BART are $NO_X$, $PM_{10}$, $PM_{2.5}$, and $SO_2$.

Based on a review of emissions inventory data, air quality permits, and other data on the air pollution sources, the District of Columbia identified two BART eligible sources located at one facility, the Benning Road Generating Station (BRGS). Potomac Power Resources, LLC (PPR) owns the BRGS. PPR is a wholly owned but unregulated subsidiary of Pepco Energy Services, Inc. (PES), which manages the assets of BRGS on behalf of PPR. The BRGS typically operates only during high demand periods, mostly during hot spells in the summer or perhaps during very cold conditions of the winter months. The two BART-eligible units at BRGS are two oil-fired steam electric generating units (EGUs), Units 15 and 16. Units 15 and 16 were installed in 1968 and 1972, respectively, and both have a potential to emit of more than 250 tons per year of a visibility impairing pollutant.

The second component of the BART evaluation is to determine whether a BART eligible source may reasonably be anticipated to cause or contribute to visibility impairment at any Class I area. Those sources that do are subject to BART. *See* 40 CFR 51.308(e)(1)(ii). As discussed in the BART guidelines, a state may choose to consider all BART eligible sources to be subject to BART (70 FR 39161). In June 2004, the MANE–VU Board decided that because of the collective importance of BART sources, BART determinations should be made by the MANE–VU states for each BART eligible source. Consistent with that decision, the District of Columbia identified the two BART eligible sources at the BRGS as subject to BART.

The final component of a BART evaluation is making BART determinations for all BART subject sources. Initially, the District of Columbia planned to use its participation in CAIR to meet the BART requirements for $SO_2$ and $NO_X$ for Units 15 and 16 at BRGS. For PM, PES agreed to a permit condition to address emissions. PES agreed that it would either shut down the two EGUs by December 17, 2012 or accept a *de minimis* cap on actual emissions of $PM_{10}$ of 15 tons per year from both Units 15 and 16.

More recently, however, PES committed to accept a permit condition that would require the two BART units at the BRGS to cease operation by December 17, 2012, with no alternative conditions in lieu of shutting down. In response to the PES commitment, the District of Columbia established federally enforceable terms and conditions in a Title V permit for Units 15 and 16 at the BRGS, and as part of its Regional Haze SIP revision included condition III.a.2.D. *Compliance with Requirements for Protection of Visibility* of the Title V Operation Permit/Chapter 3 Permit, No.026–R1, for BRGS. Condition III.a.2.D is the only condition of the permit that the District of Columbia requested to be considered as part of the SIP revision to address the CAA's requirements for Regional Haze.

The shutdown of Units 15 and 16 will result in more emissions reductions than would have resulted from CAIR and in more emissions reductions than the reductions modeled by MANE–VU in the OTB/W control scenario. Table 4 demonstrates that the closure of the units will result in 83 tons of $SO_2$ reductions and 103 tons of $NO_X$ reductions, in addition to those anticipated under the OTB/W scenario in the inventory of emissions for the District of Columbia. There will also be additional PM reductions. These reductions beyond those anticipated earlier will further help states with Class I areas meet the reasonable progress goals for 2018.

TABLE 4—ESTIMATED EGU EMISSIONS REDUCTIONS

[Tons/Year]

| Pollutant | 2002 | 2018 OTB/W | EGU reductions needed without CAIR | Total EGU reductions due to closure of BRGS | 2018 surplus reductions |
|---|---|---|---|---|---|
| $NO_X$ | 300 | 103 | 197 | 300 | 103 |
| $SO_2$ | 345 | 83 | 262 | 345 | 83 |

*C. Consultation With States and Federal Land Managers*

On May 10, 2006, the MANE–VU State Air Directors adopted the Inter-RPO State/Tribal and FLM Consultation Framework that documented the consultation process within the context of regional haze planning, and was intended to create greater certainty and understanding among RPOs. MANE–VU states held ten consultation meetings and/or conference calls from March 1, 2007 through March 21, 2008. In addition to MANE–VU members attending these meetings and conference calls, participants from VISTAS, Midwest RPO, and the relevant Federal Land Managers were also in attendance. In addition to the conference calls and meeting, the FLMs were given the opportunity to review and comment on each of the technical documents developed by MANE–VU.

On September 8, 2011, the District of Columbia submitted a draft Regional Haze SIP to the relevant FLMs for review and comment pursuant to 40 CFR 51.308(i)(2). The FLMs provided comments on the draft Regional Haze SIP in accordance with 40 CFR 51.308(i)(3). The comments received from the FLMs were addressed and incorporated in the District of Columbia's SIP revision. On October 11, 2011, District of Columbia made its Regional Haze SIP available for public comment. No comments were received. To address the requirement for continuing consultation procedures with the FLMs under 40 CFR 51.308(i)(4), the District of Columbia commits in their SIP to ongoing

consultation with the FLMs on Regional Haze issues throughout the implementation period of the SIP.

*D. Periodic SIP Revisions and Five-Year Progress Reports*

Consistent with the requirements of 40 CFR 51.308(g), the District of Columbia has committed to submitting a report on reasonable progress (in the form of a SIP revision) to the EPA every five years following the initial submittal of its regional haze SIP.

## IV. What action is EPA proposing to take?

EPA is proposing to approve the revision to the District of Columbia SIP submitted by the District of Columbia through the DDOE on October 27, 2011 that addresses regional haze for the first implementation period. EPA is proposing to make a determination that the District of Columbia Regional Haze SIP contains the emission reductions needed to achieve the District of Columbia's share of emission reductions agreed upon through the regional planning process. Furthermore, the District of Columbia's Regional Haze Plan ensures that emissions from the District of Columbia will not interfere with the reasonable progress goals for neighboring states' Class I areas. Accordingly, EPA is proposing to find that this revision meets the applicable visibility related requirements of CAA section 110(a)(2) including but not limited to 110(a)(2)(D)(i)(II) and 110(a)(2)(J), relating to visibility protection for the 1997 8–Hour Ozone NAAQS and the 1997 and 2006 p.m.$_{2.5}$ NAAQS. EPA is also proposing to conclude that the Regional Haze Plan submitted by the District of Columbia also satisfies the BART requirements of section 169A of the CAA. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

## V. Statutory and Executive Order Reviews

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

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

In addition, this proposed rule approving the District of Columbia's Regional Haze Plan does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

## List of Subjects in 40 CFR Part 52

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

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

Dated: November 8, 2011.

**W.C. Early,**

*Acting, Regional Administrator, Region III.*

[FR Doc. 2011–29595 Filed 11–15–11; 8:45 am]

BILLING CODE 6560–50–P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA–R06–OAR–2008–0637; FRL -9492–8]**

# Approval and Promulgation of Air Quality Implementation Plans; Oklahoma; Infrastructure Requirements for 1997 8-Hour Ozone and the 1997 and 2006 $PM_{2.5}$ NAAQS

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve submittals from the State of Oklahoma pursuant to the Clean Air Act (CAA or Act) that address the infrastructure elements specified in the CAA section 110(a)(2), necessary to implement, maintain, and enforce the 1997 8-hour ozone and the 1997 and 2006 fine particulate matter ($PM_{2.5}$) national ambient air quality standards (NAAQS or standards). We are proposing to find that the current Oklahoma State Implementation Plan (SIP) meets the following infrastructure elements for the 1997 8-hour ozone NAAQS and the 1997 and 2006 $PM_{2.5}$ NAAQS: 110(a)(2)(A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). EPA is also proposing to find that emissions from sources in Oklahoma do not interfere with measures required in the SIP of any other state under part C of the Act to prevent significant deterioration of air quality, with regard to the 2006 $PM_{2.5}$ NAAQS. This action is being taken under section 110 and part C of the Act.

**DATES:** Comments must be received on or before December 16, 2011.

**ADDRESSES:** Submit your comments, identified by Docket No. EPA–R06–OAR–2008–0637, by one of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *U.S. EPA Region 6 ''Contact Us'' Web site: http://epa.gov/region6/r6comment.htm.* Please click on ''6PD (Multimedia)'' and select ''Air'' before submitting comments.
- *Email:* Mr. Guy Donaldson at *donaldson.guy@epa.gov.* Please also send a copy by email to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.
- *Fax:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), at fax number (214) 665–7263.
- *Mail:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.

• *Hand or Courier Delivery:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Such deliveries are accepted only between the hours of 8 a.m. and 4 p.m. weekdays, and not on legal holidays. Special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA–R06–OAR–2008–0637. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. The *http://www.regulations.gov* web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *http://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

*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 Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at (214) 665–7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a fee of 15 cents per page for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittal is also available for public inspection during official business hours, by appointment, at the Oklahoma Department of Environmental Quality (ODEQ), Air Quality Division, 707 North Robinson, P.O. Box 1677, Oklahoma City, Oklahoma 73101–1677.

**FOR FURTHER INFORMATION CONTACT:** Mr. Terry Johnson, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, *telephone* (214) 665–2154; *fax number* (214) 665–6762; *email address johnson.terry@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Throughout this document, ''we,'' ''us,'' and ''our'' means EPA.

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## I. Background

### *A. What are the National Ambient Air Quality Standards?*

Section 109 of the Act requires EPA to establish NAAQS for pollutants that ''may reasonably be anticipated to endanger public health and welfare,'' and to develop a primary and secondary standard for each NAAQS. The primary standard is designed to protect human health with an adequate margin of safety, and the secondary standard is designed to protect public welfare and the environment. EPA has set NAAQS for six common air pollutants, referred to as criteria pollutants: carbon monoxide, lead, nitrogen dioxide, ozone, particulate matter (PM), and sulfur dioxide. These standards present state and local governments with the minimum air quality levels they must meet to comply with the Act. Also, these standards provide information to residents of the United States about the air quality in their communities.

### *B. What is a SIP?*

The SIP is a set of air pollution regulations, control strategies, other means or techniques, and technical analyses developed by the state, to ensure that the state meets the NAAQS. The SIP is required by section 110 and other provisions of the Act. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emissions inventories, monitoring networks, and modeling demonstrations. Each state must submit these regulations and control strategies to EPA for approval and incorporation into the Federally-enforceable SIP. Each Federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin.

### *C. What is the background for this rulemaking?*

Under sections 110(a)(1) and (2) of the Act, states are required to submit SIPs that provide for the implementation, maintenance, and enforcement (the infrastructure) of a new or revised NAAQS within three years following the promulgation of the NAAQS, or within such shorter period as EPA may prescribe. Section 110(a)(2) lists the specific infrastructure elements that must be incorporated into the SIPs, including for example, requirements for emission inventories, new source review (NSR), air pollution control measures, and monitoring that are designed to assure attainment and maintenance of the NAAQS. Table 1 in Section D of this rulemaking provides a list of all 14 infrastructure elements.[1]

On July 18, 1997, we published new and revised NAAQS for ozone (62 FR 38856) and PM (62 FR 38652). For ozone, we set an 8-hour standard of 0.08

[1] Two elements identified in section 110(a)(2) are not governed by the 3-year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within 3 years after promulgation of a new or revised NAAQS, but rather are due at the time the nonattainment area plan requirements are due pursuant to section 172 of the CAA. These elements are: (1) Submissions required by section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D Title I of the CAA and (2) submissions required by section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D Title I of the CAA. Therefore, this action does not cover these specific SIP elements.

parts per million (ppm) to replace the 1-hour standard of 0.12 ppm. For PM we set a new annual and a new 24-hour NAAQS for particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers (denoted $PM_{2.5}$). The annual $PM_{2.5}$ standard was set at 15 micrograms per cubic meter (μg/m³). The 24-hour $PM_{2.5}$ standard was set at 65 μg/m³. On October 17, 2006, we published revised standards for PM (71 FR 61144). For $PM_{2.5}$, the annual standard of 15 μg/m³ was retained, and the 24-hour standard was revised to 35 μg/m³. For $PM_{10}$ the annual standard was revoked, and the 24-hour standard (150 μg/m³) was retained. For more information on these standards, please see the 1997 and 2006 **Federal Register** notices (62 FR 38856, 62 FR 38652, and 71 FR 61144).

Thus, states were required to submit such SIPs for the 1997 8-hour ozone and $PM_{2.5}$ NAAQS to EPA no later than June 2000.[2] However, intervening litigation over the 1997 8-hour ozone and $PM_{2.5}$ NAAQS created uncertainty about how to proceed, and many states did not provide the required ''infrastructure'' SIP submission for these newly promulgated NAAQS.

On March 4, 2004, Earthjustice submitted a notice of intent to sue related to EPA's failure to issue findings of failure to submit related to the infrastructure requirements for the 1997 8-hour ozone and $PM_{2.5}$ NAAQS. EPA entered into a consent decree with Earthjustice which required EPA, among other things, to complete a **Federal Register** notice announcing EPA's determinations pursuant to section 110(k)(1)(B) of the Act as to whether each state had made complete submissions to meet the requirements of section 110(a)(2) for the 1997 8-hour ozone NAAQS by December 15, 2007. Subsequently, EPA received an extension of the date to complete this **Federal Register** notice until March 17, 2008, based upon agreement to make the findings with respect to submissions made by January 7, 2008. In accordance with the consent decree, EPA made completeness findings for each state based upon what the Agency had received from each state as of January 7, 2008. With regard to the 1997 $PM_{2.5}$ NAAQS, EPA entered into a consent decree with Earthjustice, which required EPA, among other things, to complete a **Federal Register** notice announcing EPA's determinations pursuant to section 110(k)(1)(B) of the Act as to whether each state had made complete submissions to meet the requirements of section 110(a)(2) for the 1997 $PM_{2.5}$ NAAQS by October 5, 2008.

On March 27, 2008, and October 22, 2008, we published findings concerning whether states had made the 110(a)(2) submissions for the 1997 ozone (73 FR 16205) and $PM_{2.5}$ standards (73 FR 62902). In the March 27, 2008 action, we found that Oklahoma made submissions that addressed some, but not all of the requirements of section 110(a)(2) of the Act necessary to implement the 1997 8-hour ozone NAAQS. As required by section 110(a)(2)(C) and (J), Oklahoma had failed to submit a SIP addressing changes to the part C Prevention of Significant Deterioration (PSD) permit program required by the November 29, 2005 (70 FR 71612, page 71699) final rule that made nitrogen oxides ($NO_X$) a precursor for ozone in the part C regulations at 40 CFR 51.166 and in 40 CFR 52.21. In the October 22, 2008 action, we found that Oklahoma failed to make a submittal to satisfy the requirements of section 110(a)(2) of the Act necessary to implement the 1997 $PM_{2.5}$ NAAQS.

On October 2, 2007 we issued ''Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards,'' Memorandum from William T. Harnett, Director, Air Quality Policy Division (AQPD), Office of Air Quality Planning and Standards (OAQPS).[3] On September 25, 2009, we issued ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS),'' Memorandum also from William T. Harnett, Director, AQPD, OAQPS. Each of these guidance memos addresses the SIP elements found in 110(a)(2). In each of these guidance memos, the guidance states that, to the extent that existing SIPs already meet the requirements, states need only certify that fact to us.

On December 5, 2007 the ODEQ submitted a letter certifying that the Oklahoma SIP includes all the requirements in section 110(a)(1) and (2) of the Act for implementation of the 1997 8-hour ozone NAAQS. The letter also stated that ODEQ would evaluate the particulate matter provisions of the Oklahoma SIP for consistency with Federal requirements.

On June 24, 2010 the ODEQ submitted a letter certifying that the Oklahoma SIP includes all the requirements in section 110(a)(1) and (2) of the Act for implementation of the 1997 $PM_{2.5}$ NAAQS. Attached to the certification letter was supporting information that identified the Oklahoma SIP provisions, regulations and statutes that support the section 110(a)(2) infrastructure elements for the NAAQS. At this time, ODEQ also submitted revisions to their PSD SIP that addressed $NO_X$ as a precursor to ozone. EPA approved the SIP revisions incorporating $NO_X$ as an ozone precursor (see 75 FR 72695, November 26, 2010).

On April 5, 2011 the ODEQ submitted a letter, including supporting information, certifying that the Oklahoma SIP includes all the requirements in section 110(a)(1) and (2) of the Act for implementation of the 2006 revisions to the $PM_{2.5}$ NAAQS.

*Additional information:* EPA is currently acting upon SIPs that address the infrastructure requirements of CAA section 110(a)(1) and (2) for ozone and $PM_{2.5}$ NAAQS for various states across the country. Commenters on EPA's recent proposals for some states raised concerns about EPA statements that it was not addressing certain substantive issues in the context of acting on those infrastructure SIP submissions.[4] Those commenters specifically raised concerns involving provisions in existing SIPs and with EPA's statements in other proposals that it would address two issues separately and not as part of actions on the infrastructure SIP submissions: (i) Existing provisions related to excess emissions during periods of start-up, shutdown, or malfunction at sources, that may be contrary to the CAA and EPA's policies addressing such excess emissions (''SSM''); and (ii) existing provisions related to ''director's variance'' or ''director's discretion'' that purport to permit revisions to SIP approved emissions limits with limited public process or without requiring further approval by EPA, that may be contrary to the CAA (''director's discretion''). EPA notes that there are two other

[2] EPA issued a revised 8-hour ozone standard on March 27, 2008 (73 FR 16436). On September 16, 2009, the EPA Administrator announced that EPA would take rulemaking action to reconsider the 2008 primary and secondary ozone NAAQS. On January 19, 2010, EPA proposed to set different primary and secondary ozone standards than those set in 2008 to provide requisite protection of public health and welfare, respectively (75 FR 2938). On September 22, 2011, EPA clarified that the current ozone standard is set at 75 ppb. This rulemaking does not address the 2008 ozone standard.

[3] This and any other guidance documents referenced in this action are in the docket for this rulemaking.

[4] See, Comments of Midwest Environmental Defense Center, dated May 31, 2011. Docket # EPA–R05–OAR–2007–1179 (adverse comments on proposals for three states in Region 5). EPA notes that these public comments on another proposal are not relevant to this rulemaking and do not have to be directly addressed in this rulemaking. EPA will respond to these comments in the appropriate rulemaking action to which they apply.

substantive issues for which EPA likewise stated in other proposals that it would address the issues separately: (i) Existing provisions for minor source new source review programs that may be inconsistent with the requirements of the CAA and EPA's regulations that pertain to such programs (''minor source NSR''); and (ii) existing provisions for Prevention of Significant Deterioration programs that may be inconsistent with current requirements of EPA's ''Final NSR Improvement Rule,'' 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007) (''NSR Reform''). In light of the comments, EPA believes that its statements in various proposed actions on infrastructure SIPs with respect to these four individual issues should be explained in greater depth. It is important to emphasize that EPA is taking the same position with respect to these four substantive issues in this action on the infrastructure SIP submittals for the 1997 8-hour ozone NAAQS and the 1997 and 2006 $PM_{2.5}$ NAAQS submissions from Oklahoma.

EPA intended the statements in the other proposals concerning these four issues merely to be informational, and to provide general notice of the potential existence of provisions within the existing SIPs of some states that might require future corrective action. EPA did not want states, regulated entities, or members of the public to be under the misconception that the Agency's approval of the infrastructure SIP submission of a given state should be interpreted as a reapproval of certain types of provisions that might exist buried in the larger existing SIP for such state. Thus, for example, EPA explicitly noted that the Agency believes that some states may have existing SIP approved SSM provisions that are contrary to the CAA and EPA policy, but that ''in this rulemaking, EPA is not proposing to approve or disapprove any existing State provisions with regard to excess emissions during SSM of operations at facilities.'' EPA further explained, for informational purposes, that ''EPA plans to address such State regulations in the future.'' EPA made similar statements, for similar reasons, with respect to the director's discretion, minor source NSR, and NSR Reform issues. EPA's objective was to make clear that approval of an infrastructure SIP for these ozone and $PM_{2.5}$ NAAQS should not be construed as explicit or implicit reapproval of any existing provisions that relate to these four substantive issues. EPA is reiterating that position in this action on these infrastructure SIP submittals for Oklahoma.

Unfortunately, the commenters and others evidently interpreted these statements to mean that EPA considered action upon the SSM provisions and the other three substantive issues to be integral parts of acting on an infrastructure SIP submission, and therefore that EPA was merely postponing taking final action on the issues in the context of the infrastructure SIPs. This was not EPA's intention. To the contrary, EPA only meant to convey its awareness of the potential for certain types of deficiencies in existing SIPs, and to prevent any misunderstanding that it was reapproving any such existing provisions. EPA's intention was to convey its position that the statute does not require that infrastructure SIPs address these specific substantive issues in existing SIPs and that these issues may be dealt with separately, outside the context of acting on the infrastructure SIP submission of a state. To be clear, EPA did not mean to imply that it was not taking a full final agency action on the infrastructure SIP submission with respect to any substantive issue that EPA considers to be a required part of acting on such submissions under section 110(k) or under section 110(c). Given the confusion evidently resulting from EPA's statements in those other proposals, however, we want to explain more fully the Agency's reasons for concluding that these four potential substantive issues in existing SIPs may be addressed separately from actions on infrastructure SIP submissions.

The requirement for the SIP submissions at issue arises out of CAA section 110(a)(1). That provision requires that states must make a SIP submission ''within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof)'' and that these SIPS are to provide for the ''implementation, maintenance, and enforcement'' of such NAAQS. Section 110(a)(2) includes a list of specific elements that ''[e]ach such plan'' submission must meet. EPA has historically referred to these particular submissions that states must make after the promulgation of a new or revised NAAQS as ''infrastructure SIPs.'' This specific term does not appear in the statute, but EPA uses the term to distinguish this particular type of SIP submission designed to address basic structural requirements of a SIP from other types of SIP submissions designed to address other different requirements, such as ''nonattainment SIP'' submissions required to address the nonattainment planning requirements of part D, ''regional haze SIP'' submissions required to address the visibility protection requirements of CAA section 169A, new source review permitting program submissions required to address the requirements of part D, and a host of other specific types of SIP submissions that address other specific matters.

Although section 110(a)(1) addresses the timing and general requirements for these infrastructure SIPs, and section 110(a)(2) provides more details concerning the required contents of these infrastructure SIPs, EPA believes that many of the specific statutory provisions are facially ambiguous. In particular, the list of required elements provided in section 110(a)(2) contains a wide variety of disparate provisions, some of which pertain to required legal authority, some of which pertain to required substantive provisions, and some of which pertain to requirements for both authority and substantive provisions.[5] Some of the elements of section 110(a)(2) are relatively straightforward, but others clearly require interpretation by EPA through rulemaking, or recommendations through guidance, in order to give specific meaning for a particular NAAQS.[6]

Notwithstanding that section 110(a)(2) provides that ''each'' SIP submission must meet the list of requirements therein, EPA has long noted that this literal reading of the statute is internally inconsistent, insofar as section 110(a)(2)(I) pertains to nonattainment SIP requirements that could not be met on the schedule provided for these SIP submissions in section 110(a)(1).[7] This

[5] For example, section 110(a)(2)(E) provides that states must provide assurances that they have adequate legal authority under state and local law to carry out the SIP; section 110(a)(2)(C) provides that states must have a substantive program to address certain sources as required by part C of the CAA; section 110(a)(2)(G) provides that states must have both legal authority to address emergencies and substantive contingency plans in the event of such an emergency.

[6] For example, section 110(a)(2)(D)(i) requires EPA to be sure that each state's SIP contains adequate provisions to prevent significant contribution to nonattainment of the NAAQS in other states. This provision contains numerous terms that require substantial rulemaking by EPA in order to determine such basic points as what constitutes significant contribution. See, *e.g.,* ''Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the $NO_X$ SIP Call; Final Rule,'' 70 FR 25162 (May 12, 2005) (defining, among other things, the phrase ''contribute significantly to nonattainment'').

[7] See, *e.g.,* Id., 70 FR 25162, at 63–65 (May 12, 2005) (explaining relationship between timing

Continued

illustrates that EPA must determine which provisions of section 110(a)(2) may be applicable for a given infrastructure SIP submission. Similarly, EPA has previously decided that it could take action on different parts of the larger, general ''infrastructure SIP'' for a given NAAQS without concurrent action on all subsections, such as section 110(a)(2)(D)(i), because the Agency bifurcated the action on these latter ''interstate transport'' provisions within section 110(a)(2) and worked with states to address each of the four prongs of section 110(a)(2)(D)(i) with substantive administrative actions proceeding on different tracks with different schedules.[8] This illustrates that EPA may conclude that subdividing the applicable requirements of section 110(a)(2) into separate SIP actions may sometimes be appropriate for a given NAAQS where a specific substantive action is necessitated, beyond a mere submission addressing basic structural aspects of the state's SIP. Finally, EPA notes that not every element of section 110(a)(2) would be relevant, or as relevant, or relevant in the same way, for each new or revised NAAQS and the attendant infrastructure SIP submission for that NAAQS. For example, the monitoring requirements that might be necessary for purposes of section 110(a)(2)(B) for one NAAQS could be very different than what might be necessary for a different pollutant. Thus, the content of an infrastructure SIP submission to meet this element from a state might be very different for an entirely new NAAQS, versus a minor revision to an existing NAAQS.[9]

Similarly, EPA notes that other types of SIP submissions required under the statute also must meet the requirements of section 110(a)(2), and this also demonstrates the need to identify the applicable elements for other SIP submissions. For example, nonattainment SIPs required by part D likewise have to meet the relevant subsections of section 110(a)(2) such as section 110(a)(2)(A) or (E). By contrast, it is clear that nonattainment SIPs would not need to meet the portion of section 110(a)(2)(C) that pertains to part C, *i.e.,* the PSD requirements applicable in attainment areas. Nonattainment SIPs required by part D also would not need to address the requirements of section 110(a)(2)(G) with respect to emergency episodes, as such requirements would not be limited to nonattainment areas. As this example illustrates, each type of SIP submission may implicate some subsections of section 110(a)(2) and not others.

Given the potential for ambiguity of the statutory language of section 110(a)(1) and (2), EPA believes that it is appropriate for EPA to interpret that language in the context of acting on the infrastructure SIPs for a given NAAQS. Because of the inherent ambiguity of the list of requirements in section 110(a)(2), EPA has adopted an approach in which it reviews infrastructure SIPs against this list of elements ''as applicable.'' In other words, EPA assumes that Congress could not have intended that each and every SIP submission, regardless of the purpose of the submission or the NAAQS in question, would meet each of the requirements, or meet each of them in the same way. EPA elected to use guidance to make recommendations for infrastructure SIPs for these ozone and $PM_{2.5}$ NAAQS.

On October 2, 2007, EPA issued guidance making recommendations for the infrastructure SIP submissions for both the 1997 8-hour ozone NAAQS and the 1997 $PM_{2.5}$ NAAQS.[10] Within this guidance document, EPA described the duty of states to make these submissions to meet what the Agency characterized as the ''infrastructure'' elements for SIPs, which it further described as the ''basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance of the standards.''[11] As further identification of these basic structural SIP requirements, ''attachment A'' to the guidance document included a short description of the various elements of section 110(a)(2) and additional information about the types of issues that EPA considered germane in the context of such infrastructure SIPs. EPA emphasized that the description of the basic requirements listed on attachment A was not intended ''to constitute an interpretation of'' the requirements, and was merely a ''brief description of the required elements.''[12] EPA also stated its belief that with one exception, these requirements were ''relatively self explanatory, and past experience with SIPs for other NAAQS should enable States to meet these requirements with assistance from EPA Regions.''[13] For the one exception to that general assumption, however, *i.e.,* how states should proceed with respect to the requirements of section 110(a)(2)(G) for the 1997 $PM_{2.5}$ NAAQS, EPA gave much more specific recommendations. But for other infrastructure SIP submittals, and for certain elements of the submittals for the 1997 $PM_{2.5}$ NAAQS, EPA assumed that each State would work with its corresponding EPA regional office to refine the scope of a State's submittal based on an assessment of how the requirements of section 110(a)(2) should reasonably apply to the basic structure of the State's SIP for the NAAQS in question.

On September 25, 2009, EPA issued guidance to make recommendations to states with respect to the infrastructure SIPs for the 2006 $PM_{2.5}$ NAAQS.[14] In the 2009 Guidance, EPA addressed a number of additional issues that were not germane to the infrastructure SIPs for the 1997 8-hour ozone and 1997 $PM_{2.5}$ NAAQS, but were germane to these SIP submissions for the 2006 $PM_{2.5}$ NAAQS, *e.g.,* the requirements of section 110(a)(2)(D)(i) that EPA had bifurcated from the other infrastructure elements for those specific 1997 ozone and $PM_{2.5}$ NAAQS.

Significantly, neither the 2007 Guidance nor the 2009 Guidance explicitly referred to the SSM, director's discretion, minor source NSR, or NSR Reform issues as among specific substantive issues EPA expected states to address in the context of the infrastructure SIPs, nor did EPA give any more specific recommendations with respect to how states might address such issues even if they elected to do so. The SSM and director's discretion issues implicate section 110(a)(2)(A),

requirement of section 110(a)(2)(D) versus section 110(a)(2)(I)).

[8] EPA issued separate guidance to states with respect to SIP submissions to meet section 110(a)(2)(D)(i) for the 1997 ozone and 1997 $PM_{2.5}$ NAAQS. See, ''Guidance for State Implementation Plan (SIP) Submissions to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards,'' from William T. Harnett, Director Air Quality Policy Division OAQPS, to Regional Air Division Director, Regions I–X, dated August 15, 2006.

[9] For example, implementation of the 1997 $PM_{2.5}$ NAAQS required the deployment of a system of new monitors to measure ambient levels of that new indicator species for the new NAAQS.

[10] See, ''Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards,'' from William T. Harnett, Director Air Quality Policy Division, to Air Division Directors, Regions I–X, dated October 2, 2007 (the ''2007 Guidance'').

[11] Id., at page 2.

[12] Id., at attachment A, page 1.

[13] Id., at page 4. In retrospect, the concerns raised by commenters with respect to EPA's approach to some substantive issues indicates that the statute is not so ''self explanatory,'' and indeed is sufficiently ambiguous that EPA needs to interpret it in order to explain why these substantive issues do not need to be addressed in the context of infrastructure SIPs and may be addressed at other times and by other means.

[14] See, ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS),'' from William T, Harnett, Director Air Quality Policy Division, to Regional Air Division Directors, Regions I–X, dated September 25, 2009 (the ''2009 Guidance'').

and the minor source NSR and NSR Reform issues implicate section 110(a)(2)(C). In the 2007 Guidance and the 2009 Guidance, however, EPA did not indicate to states that it intended to interpret these provisions as requiring a substantive submission to address these specific issues in existing SIP provisions in the context of the infrastructure SIPs for these NAAQS. Instead, EPA's 2007 Guidance merely indicated its belief that the states should make submissions in which they established that they have the basic SIP structure necessary to implement, maintain, and enforce the NAAQS. EPA believes that states can establish that they have the basic SIP structure, notwithstanding that there may be potential deficiencies within the existing SIP. Thus, EPA's proposals for other states mentioned these issues not because the Agency considers them issues that must be addressed in the context of an infrastructure SIP as required by section 110(a)(1) and (2), but rather because EPA wanted to be clear that it considers these potential existing SIP problems as separate from the pending infrastructure SIP actions. The same holds true for this action on the infrastructure SIP submittals for Oklahoma.

EPA believes that this approach to the infrastructure SIP requirement is reasonable, because it would not be feasible to read section 110(a)(1) and (2) to require a top to bottom, stem to stern, review of each and every provision of an existing SIP merely for purposes of assuring that the state in question has the basic structural elements for a functioning SIP for a new or revised NAAQS. Because SIPs have grown by accretion over the decades as statutory and regulatory requirements under the CAA have evolved, they may include some outmoded provisions and historical artifacts that, while not fully up to date, nevertheless may not pose a significant problem for the purposes of ''implementation, maintenance, and enforcement'' of a new or revised NAAQS when EPA considers the overall effectiveness of the SIP. To the contrary, EPA believes that a better approach is for EPA to determine which specific SIP elements from section 110(a)(2) are applicable to an infrastructure SIP for a given NAAQS, and to focus attention on those elements that are most likely to need a specific SIP revision in light of the new or revised NAAQS. Thus, for example, EPA's 2007 Guidance specifically directed states to focus on the requirements of section 110(a)(2)(G) for the 1997 $PM_{2.5}$ NAAQS because of the absence of underlying EPA regulations for emergency episodes for this NAAQS and an anticipated absence of relevant provisions in existing SIPs.

Finally, EPA believes that its approach is a reasonable reading of section 110(a)(1) and (2) because the statute provides other avenues and mechanisms to address specific substantive deficiencies in existing SIPs. These other statutory tools allow the Agency to take appropriate tailored action, depending upon the nature and severity of the alleged SIP deficiency. Section 110(k)(5) authorizes EPA to issue a ''SIP call'' whenever the Agency determines that a state's SIP is substantially inadequate to attain or maintain the NAAQS, to mitigate interstate transport, or otherwise to comply with the CAA.[15] Section 110(k)(6) authorizes EPA to correct errors in past actions, such as past approvals of SIP submissions.[16] Significantly, EPA's determination that an action on the infrastructure SIP submittal is not the appropriate time and place to address all potential existing SIP problems does not preclude the Agency's subsequent reliance on provisions in section 110(a)(2) as part of the basis for action at a later time. For example, although it may not be appropriate to require a state to eliminate all existing inappropriate director's discretion provisions in the course of acting on the infrastructure SIP, EPA believes that section 110(a)(2)(A) may be among the statutory bases that the Agency cites in the course of addressing the issue in a subsequent action.[17]

### *D. What elements are required under section 110(a)(2)?*

Pursuant to the October 2, 2007, EPA guidance for addressing the SIP infrastructure elements required under sections 110(a)(1) and (2) for the 1997 ozone and 1997 and 2006 $PM_{2.5}$ NAAQS, there are 14 essential components that must be included in the SIP. These are listed in Table 1 below.

TABLE 1—SECTION 110(a)(2) ELEMENTS REQUIRED IN SIPS

| Clean Air Act citation | Brief description |
|---|---|
| Section 110(a)(2)(A) | Emission limits and other control measures. |
| Section 110(a)(2)(B) | Ambient air quality monitoring/data system. |
| Section 110(a)(2)(C) | Program for enforcement of control measures. |
| Section 110(a)(2)(D) | Interstate transport. |
| Section 110(a)(2)(E) | Adequate resources. |
| Section 110(a)(2)(F) | Stationary source monitoring system. |
| Section 110(a)(2)(G) | Emergency power. |
| Section 110(a)(2)(H) | Future SIP revisions. |
| Section 110(a)(2)(J)[18] | Consultation with government officials. |
| Section 110(a)(2)(J) | Public notification. |
| Section 110(a)(2)(J) | Prevention of significant deterioration (PSD) and visibility protection. |
| Section 110(a)(2)(K) | Air quality modeling/submission of such data. |
| Section 110(a)(2)(L) | Permitting fees. |

[15] EPA has recently issued a SIP call to rectify a specific SIP deficiency related to the SSM issue. See, ''Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revision,'' 74 FR 21639 (April 18, 2011).

[16] EPA has recently utilized this authority to correct errors in past actions on SIP submissions related to PSD programs. See, ''Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule,'' 75 FR 82536 (December 30, 2010). EPA has previously used its authority under CAA 110(k)(6) to remove numerous other SIP provisions that the Agency determined it had approved in error. See, *e.g.,* 61 FR 38664 (July 25, 1996) and 62 FR 34641 (June 27, 1997) (corrections to American Samoa, Arizona, California, Hawaii, and Nevada SIPs); 69 FR 67062 (November 16, 2004) (corrections to California SIP); and 74 FR 57051 (November 3, 2009) (corrections to Arizona and Nevada SIPs).

[17] EPA has recently disapproved a SIP submission from Colorado on the grounds that it would have included a director's discretion provision inconsistent with CAA requirements, including section 110(a)(2)(A). See, *e.g.,* 75 FR 42342 at 42344 (July 21, 2010) (proposed disapproval of director's discretion provisions); 76 FR 4540 (January 26, 2011) (final disapproval of such provisions).

[18] Section 110(a)(2)(I) is omitted from the list. Section 110(a)(2)(I) pertains to the nonattainment planning requirements of part D, Title I of the Act. This section is not governed by the 3-year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within 3 years after promulgation of a new or revised NAAQS, but are due at the time the nonattainment area plan requirements are due pursuant to section 172. Thus this action does not cover section 110(a)(2)(I).

TABLE 1—SECTION 110(a)(2) ELEMENTS REQUIRED IN SIPS—Continued

| Clean Air Act citation | Brief description |
|---|---|
| Section 110(a)(2)(M) | Consultation/participation by affected local entities. |

## II. What action is EPA proposing?

EPA is proposing to approve the Oklahoma SIP submittals of December 5, 2007, June 24, 2010, and April 5, 2011, that identify where and how the 14 basic infrastructure elements are in the EPA-approved SIP as specified in section 110(a)(2) of the Act. The Oklahoma submittals do not include revisions to the SIP, but document how the current Oklahoma SIP already includes the required infrastructure elements. In today's action, we are proposing to find that the following section 110(a)(2) elements are contained in the current Oklahoma SIP and provide the infrastructure for implementing the 1997 ozone and the 1997 and 2006 $PM_{2.5}$ standards: emission limits and other control measures (section 110(a)(2)(A)); ambient air quality monitoring/data system (section 110(a)(2)(B)); the program for enforcement of control measures (section 110(a)(2)(C)); international and interstate pollution abatement (section 110(a)(2)(D)(ii)); adequate resources (section 110(a)(2)(E)); stationary source monitoring system (section 110(a)(2)(F)); emergency power (section 110(a)(2)(G)); future SIP revisions (section 110(a)(2)(H)); consultation with government officials (section 110(a)(2)(J)); public notification (section 110(a)(2)(J)); PSD and visibility protection (section 110(a)(2)(J)); air quality modeling/data (section 110(a)(2)(K)); permitting fees (section 110(a)(2)(L)); and consultation/participation by affected local entities (section 110(a)(2)(M)).

We are also proposing to approve the Oklahoma SIP provisions that address the requirement of section (110)(a)(2)(D)(i)(II) of the Act that emissions from sources in Oklahoma do not interfere with measures required in the SIP of any other state under part C of the Act to prevent significant deterioration of air quality for the 2006 $PM_{2.5}$ NAAQS.

## III. How has Oklahoma addressed the elements of section 110(a)(2)?

The Oklahoma submittal addresses the elements of Section 110(a)(2) as described below. We provide a more detailed review and analysis of the Oklahoma infrastructure SIP elements in the Technical Support Document (TSD), located in the docket for this rulemaking.

*Enforceable emission limits and other control measures, section 110(a)(2)(A):* Section 110(a)(2)(A) requires that all measures and other elements in the SIP be enforceable. This provision does not require the submittal of regulations or emission limits developed specifically for attaining the 1997 8-hour ozone and 1997 and 2006 $PM_{2.5}$ standards. Those regulations are due later as part of attainment demonstrations. Additionally, as explained earlier (see footnote 1), EPA does not consider SIP requirements triggered by the nonattainment area mandates in part D of Title I of the CAA to be governed by the submission deadline of section 110(a)(1). Nevertheless, Oklahoma has included some SIP provisions originally submitted in response to part D in its submission documenting its compliance with the infrastructure requirements of section 110(a)(1) and (2). Oklahoma has continually updated the elements of its SIP revisions submitted in response to the infrastructure requirements of section 110(a)(2) and the nonattainment requirements of part D. For the purposes of this action, EPA is reviewing any rules originally submitted in response to part D solely for the purposes of determining whether they support a finding that the state has met the basic infrastructure requirements under section 110(a)(2).

The Oklahoma Environmental Quality Act and the Oklahoma Environmental Quality Code designate the Oklahoma Department of Environmental Quality (ODEQ) as the state air pollution control agency having jurisdiction for air quality matters.[19] The Oklahoma Environmental Quality Code establishes that ODEQ establish an air quality program for air quality. Further, the Oklahoma Clean Air Act designates ODEQ to establish and implement air quality programs and provides enforcement authority for regulations promulgated under the Act.[20]

The ODEQ has promulgated rules to limit and control emissions of, among other things, PM, sulfur compounds (including sulfur dioxide or $SO_2$), nitrogen compounds (including $NO_X$), and VOCs.[21] These rules include emission limits, control measures, permits, fees, and compliance schedules and are found within Title 252, Chapter 100 of the Oklahoma Administrative Code (denoted 252:100 OAC).

In this action, EPA is not proposing to approve or disapprove any existing state provisions with regard to excess emissions during startup, shutdown, or malfunction (SSM) of operations at a facility. EPA believes that a number of states may have SSM SIP provisions which are contrary to the Act and inconsistent with existing EPA guidance,[22] and the Agency plans to address such state regulations in the future. In the meantime, EPA encourages any state having a deficient SSM provision to take steps to correct it as soon as possible. Similarly, in this proposed action EPA does not include a review of, and also does not propose to take any action to approve or disapprove, any existing SIP rules with regard to director's discretion or variance provisions. EPA believes that a number of states have such provisions that are contrary to the Act and not consistent with existing EPA guidance (52 FR 45044, November 24, 1987)[23] and the Agency plans to take action in the future to address such state regulations. In the meantime, EPA encourages any state having a director's discretion or variance provision in its SIP that is contrary to the Act and inconsistent with EPA guidance to take steps to correct the deficiency as soon as possible.

A detailed list of the applicable rules at 252:100 OAC, listed above, is provided in the TSD. The Oklahoma SIP contains enforceable emission limits and other control measures, which are in the federally enforceable SIP. EPA is

[19] Except for indoor air quality and asbestos as regulated for worker safety by the Federal Occupational Safety and Health Act and by Chapter 11 of Title 40 of the Oklahoma statutes.

[20] See 27A O.S.Supp.1995, § 1–1–101; 27A O.S.Supp.1995, § 2–1–101; Title 27A, §§ 2–5–101 to 2–5–107.

[21] $NO_X$ and VOCs are precursors to ozone. PM can be emitted directly and secondarily formed; the latter is the result of $NO_X$ and $SO_2$ precursors combining with ammonia to form ammonium nitrate and ammonium sulfate.

[22] ''State Implementation Plans (SIPs): Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown,'' Memorandum from Steven A. Herman, Assistant Administrator for Enforcement and Compliance Assurance, and Robert Perciasepe, Assistant Administrator for Air and Radiation, dated September 20, 1999.

[23] The section addressing exemptions and variances is found on p. 45109 of the 1987 rulemaking.

proposing to determine that the Oklahoma SIP meets the requirements of section 110(a)(2)(A) of the Act with respect to the 1997 8-hour ozone and 1997 and 2006 $PM_{2.5}$ NAAQS.

*Ambient air quality monitoring/data system, section 110(a)(2)(B):* Section 110(a)(2)(B) requires SIPs to include provisions for establishment and operation of ambient air quality monitors, collecting and analyzing ambient air quality data, and making these data available to EPA upon request. The ODEQ operates and maintains a state-wide network of air quality monitors; data are collected, results are quality assured and the data are submitted to EPA's Air Quality System [24] on a regular basis. The Oklahoma Statewide Air Quality Surveillance Network was approved by EPA at 37 FR 10842, 10887 and revised on March 28, 1979 (44 FR 18490) and January 12, 1981 (46 FR 2655). Oklahoma's monitoring network includes the State and Local Air Monitoring Stations (SLAMS), which measure ambient concentrations of those pollutants for which standards have been established in 40 CFR part 50 (46 FR 2655). Oklahoma's air quality surveillance network consists of stations that measure ambient concentrations of the criteria pollutants, including ozone [25] and $PM_{2.5}$. The ODEQ Web site provides the ozone and $PM_{2.5}$ monitor locations and current and historical data, including ozone design values for current [26] and past trienniums. On June 30, 2010, ODEQ submitted its 2010 Annual Air Monitoring Network Plan (AAMNP) that addresses each of the criteria pollutants, including 8-hour ozone and $PM_{2.5}$ and thus allows the state to measure its air quality for compliance with the 1997 ozone and 1997 and 2006 $PM_{2.5}$ NAAQS. EPA approved the 2010 AAMNP on January 12, 2011.[27]

In summary, Oklahoma meets the requirements to establish, operate, and maintain an ambient air monitoring network, collect and analyze the monitoring data, and make the data available to EPA upon request. The EPA is proposing to find that the current Oklahoma SIP meets the requirements of section 110(a)(2)(B) of the Act for the 1997 ozone and 1997 and 2006 $PM_{2.5}$ NAAQS.

*Program for enforcement of control measures and regulation of the modification and construction of stationary sources, including a permit program, pursuant to section 110(a)(2)(C):* In its submittal for the 1997 8-hour ozone NAAQS, the ODEQ did not specifically address this element of section 110(a)(2)(C). The ODEQ did, however, include a review of enforcement of control measures, including review of proposed new sources, contained in its SIP in its June 24, 2010 and April 5, 2011 certifications regarding the 1997 and 2006 $PM_{2.5}$ NAAQS, respectively.

The ODEQ has requisite enforcement authority as provided under the Oklahoma Environmental Quality Act, Oklahoma Environmental Quality Code and the Oklahoma Clean Air Act.[28] The administrative proceedings for enforcement actions, including administrative compliance orders and determination of penalty, are provided under 252 OAC chapter 4, subchapter 9. Among the issues addressed in 252 OAC chapter 100, subchapters 3, 5, 8, 9, 13, 17, 19, 23, 24, 25, 31, 33, 37, 39, 43, and Appendices A, C–G and L, are allowable emission rates, compliance, control plan requirements, control schedules, monitoring and testing requirements, and reporting and recordkeeping requirements. These clarify the boundaries beyond which regulated entities in Oklahoma can expect enforcement action.

To meet the requirement for having a program for the regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that NAAQS are achieved, including a permit program as required by Parts C and D, generally, the State is required to have SIP-approved PSD, Nonattainment, and Minor NSR permitting programs adequate to implement the 1997 8-hour ozone and the 1997 and 2006 $PM_{2.5}$ NAAQS. As discussed previously, we are not evaluating nonattainment-related provisions, such as the nonattainment NSR program required by part D in 110(a)(2)(C) and measures for attainment required by section 110(a)(2)(I), as part of the infrastructure SIPs for these three NAAQS because these submittals are required beyond the date (3 years from NAAQS promulgation) that section 110 infrastructure submittals are required.

PSD programs apply in areas that are meeting the NAAQS or are unclassifiable, referred to as areas in attainment. PSD applies to new major sources and major modifications at existing sources. Oklahoma's PSD program was initially approved into the SIP on August 25, 1983 (see 48 FR 38635), giving the State authority to issue PSD permits and enforce them under its approved PSD SIP. Subsequent revisions to Oklahoma's PSD program were found to be consistent with Federal regulations, and as such, were approved by EPA into the SIP on February 12, 1991 (see 56 FR 05653) and July 23, 1991 (see 56 FR 33715).

To implement section 110(a)(2)(C) for the 1997 ozone NAAQS, a state must have updated its PSD rules to address $NO_X$ as an ozone precursor (70 FR 71612). To meet this requirement Oklahoma submitted updated PSD rules for ozone on June 24, 2010, and EPA approved them on November 26, 2010 (75 FR 72695).

To implement section 110(a)(2)(C) for the $PM_{2.5}$ NAAQS, a state must provide revisions to implement the NAAQS, due May 16, 2011 (73 FR 28321 May 16, 2008). On July 16, 2010, ODEQ submitted revisions to the Oklahoma SIP that amended their PSD program to meet these $PM_{2.5}$ NAAQS implementation requirements. We will act on this submission in a separate rulemaking. Previously, on December 29, 2008, EPA approved revisions to the values for PM significant deterioration increments in accordance with 40 CFR 51.166.[29] We determined these revisions to the PM PSD increments complied with EPA's PSD regulations.

In this action, EPA is not proposing to approve or disapprove any state rules with regard to the NSR Reform requirements. EPA will act on SIP submittals that were made for purposes of adopting NSR Reform through a separate rulemaking process.

Oklahoma has the authority to issue permits under the SIP-approved PSD program to sources of GHG emissions (75 FR 82536, December 30, 2010; 75 FR 77698, December 13, 2010).[30] The Tailoring Rule established thresholds that phase in the applicability of PSD

[24] The Air Quality System (AQS) is EPA's repository of ambient air quality data. AQS stores data from over 10,000 monitors, 5,000 of which are currently active. State, Local and Tribal agencies collect the data and submit it to AQS on a periodic basis.

[25] During the ozone monitoring season, the ozone monitors are constantly running and recording one-hour ozone averages. Oklahoma submits the hourly data into AQS, where the 8-hour averages are computed. Oklahoma also computes the 8-hour averages and posts the data at *http://www.deq.state.ok.us/AQDnew/monitoring/index.htm*.

[26] The current design values reflect the 2008–2010 ozone season data.

[27] A copy of our approval letter is in the docket for this rulemaking. At the time of this writing, the review of the 2011 AAMNP has not been completed.

[28] See 59 FR 32365 EPA incorporation by reference, the Oklahoma Environmental Quality Act; Oklahoma Clean Air Act of 1992.

[29] See 73 FR 79400.

[30] To view Oklahoma's letter, in which the State told EPA it had this authority, please see *http://www.epa.gov/nsr/2010letters/ok.pdf*.

requirements to GHG sources, starting with the largest GHG emitters, and were designed to relieve the overwhelming administrative burdens and costs associated with the dramatic increase in permitting burden that would have resulted from applying PSD requirements to GHG emission increases at or above only the mass-based statutory thresholds of 100/250 tons per year generally applicable to all PSD-regulated pollutants starting on January 2, 2011. However, EPA recognized that even after it finalized the Tailoring Rule, many SIPs with approved PSD programs would, until they were revised, continue to apply PSD at the statutory thresholds, even though the States would not have sufficient resources to implement the PSD program at those levels. EPA consequently implemented its ''PSD SIP Narrowing Rule'' and narrowed its approval of those provisions of previously approved SIPs that apply PSD to GHG emissions increases from sources emitting GHGs below the Tailoring Rule thresholds (75 FR 82536, December 30, 2010). Through the PSD SIP Narrowing Rule, EPA withdrew its previous approvals of those programs to the extent the SIPs apply PSD to increases in GHG emissions from GHG-emitting sources below the Tailoring Rule thresholds. The portions of the PSD programs regulating GHGs from GHG-emitting sources with emission increases at or above the Tailoring Rule thresholds remained approved. The effect of EPA narrowing its approval in this manner is that the provisions of previously approved SIPs that apply PSD to GHG emissions increases from sources emitting GHGs below the Tailoring Rule thresholds have the status of having been submitted by the State but not yet acted upon by EPA (75 FR 82536, December 30, 2010).

Oklahoma submitted to EPA a supplemental certification, dated October 24, 2011, certifying that the portion of the GHG PSD program in the State's submittal under infrastructure SIP review is only the portion that remained approved after EPA's promulgation of the PSD SIP Narrowing Rule, which is the portion that regulates GHG-emitting sources with GHG emissions at or above the Tailoring Rule thresholds. Therefore, we are proposing to find that the current Oklahoma PSD SIP meets section 110(a)(2)(C) with respect to the 1997 8-hour ozone and $PM_{2.5}$ NAAQS.

EPA has determined that Oklahoma's minor NSR program adopted pursuant to section 110(a)(2)(C) of the Act regulates emissions of ozone and $PM_{2.5}$ and their precursors. EPA has also been made aware of concerns that certain provisions of some states' minor NSR programs adopted pursuant to section 110(a)(2)(C) of the Act may not meet all the requirements found in EPA's regulations implementing that provision. See 40 CFR 51.160–51.164. EPA has approved Oklahoma's minor NSR program into the SIP and various revisions pertaining to the minor program.[31] Oklahoma and EPA have relied upon Oklahoma's existing minor NSR program to assure that new and modified sources not captured by the major NSR permitting programs do not interfere with attainment and maintenance of the NAAQS. In this action, EPA is proposing to approve Oklahoma's infrastructure SIP for the 1997 ozone and 1997 and 2006 $PM_{2.5}$ standards with respect to the general requirement in section 110(a)(2)(C) to include a program in the SIP that regulates the modification and construction of any stationary source as necessary to assure that the NAAQS are achieved. EPA is not proposing to approve or disapprove Oklahoma's existing minor NSR program itself to the extent that it is inconsistent with EPA's regulations governing this program. EPA believes that a number of states may have minor NSR provisions that are contrary to the existing EPA regulations for this program. EPA intends to work with states to reconcile state minor NSR programs with EPA's regulatory provisions for the program. The statutory requirements of section 110(a)(2)(C) provide for considerable flexibility in designing minor NSR programs, and EPA believes it may be time to revisit the regulatory requirements for this program in order to give the states an appropriate level of flexibility to design programs that meet their particular air quality concerns, while assuring reasonable consistency across the country in protecting the NAAQS with respect to new and modified minor sources.

*Interstate transport, section 110(a)(2)(D):* Section 110(a)(2)(D) has two components, 110(a)(2)(D)(i) and 110(a)(2)(D)(ii). Section 110(a)(2)(D)(i) requires SIPs to include provisions prohibiting any source or other type of emissions activity in one state from contributing significantly to nonattainment, interfering with maintenance of the NAAQS in another state, or from interfering with measures required to prevent significant deterioration of air quality or to protect visibility in another state. Section 110(a)(2)(D)(ii) requires SIPs to include provisions insuring compliance with sections 115 and 126 of the Act, relating to interstate and international pollution abatement.

On April 25, 2005 (70 FR 21147), EPA published a finding that all States had failed to submit new SIPs addressing interstate transport for the 1997 8-hour ozone and 1997 $PM_{2.5}$ NAAQS, as required by section 110(a)(2)(D)(i) of the CAA. Section 110(a)(2)(D)(i) pertains to interstate transport of certain emissions. On August 15, 2006, EPA issued its ''Guidance for State Implementation Plan (SIP) Submission to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards'' (2006 Guidance). EPA developed the 2006 Guidance to make recommendations to states for making submissions to meet the requirements of section 110(a)(2)(D)(i) for the 1997 8-hour ozone standards and the 1997 $PM_{2.5}$ standards. As identified in the 2006 Guidance, the ''good neighbor'' provisions in section 110(a)(2)(D)(i) require each state to submit a SIP that prohibits emissions that adversely affect another state in the ways contemplated in the statute. Section 110(a)(2)(D)(i) contains four distinct requirements related to the impacts of interstate transport. The SIP must prevent sources in the state from emitting pollutants in amounts which will: (1) Contribute significantly to nonattainment of the NAAQS in other states; (2) interfere with maintenance of the NAAQS in other states; (3) interfere with provisions to prevent significant deterioration of air quality in other states; and (4) interfere with efforts to protect visibility in other states.

On November 26, 2010, we found for the 1997 ozone and $PM_{2.5}$ standards, that emissions from sources in Oklahoma do not interfere with measures required in the SIP of any other state under part C of the CAA to prevent significant deterioration of air quality (75 FR 72695). On October 17, 2011, we proposed that Oklahoma has sufficient measures to prevent significant contribution to nonattainment or significant interference with maintenance for the 1997 and 2006 $PM_{2.5}$ standards (76 FR 64065). In the same action, we proposed that emissions from Oklahoma do not contribute to nonattainment of the 1997 ozone standard. We also proposed that emissions from Oklahoma do, or in the alternative, do not interfere with maintenance of the 1997 ozone standard and also took comment on whether emissions from Oklahoma do not

[31] See Regulation 1.4 at 48 FR 38635 (0825–1983); 56 FR 33715 (07–23–1991).

interfere with maintenance.[32] In this rulemaking, we are addressing only the requirement that pertains to preventing sources in Oklahoma from emitting pollutants that will interfere with measures required to prevent significant deterioration of air quality in other states for the 2006 $PM_{2.5}$ standard. In its April 5, 2011, submission, Oklahoma indicated that its current NSR SIP is adequate to prevent such interference.

The 2006 Guidance states that the PSD permitting program is the primary measure that each state must include to prevent interference with other State's programs to prevent significant deterioration of air quality in accordance with section 110(a)(2)(D)(i)(II). EPA believes that Oklahoma's April 5, 2011, submission is consistent with the 2006 Guidance, when considered in conjunction with the State's PSD program. As discussed previously in this rulemaking with regards to section 110(a)(2)(C) and in the TSD, the State's PSD program is in the SIP and meets the basic requirements for implementing the $PM_{2.5}$ NAAQS . Therefore, EPA is proposing that Oklahoma has sufficient measures in place to prevent interference with other State's programs to prevent significant deterioration of the 2006 $PM_{2.5}$ standard.

Section 110(a)(2)(D)(ii) of the Act requires compliance with sections 115 and 126 of the Act, relating to interstate and international pollution abatement. Section 115(a) addresses endangerment of public health or welfare in foreign countries from pollution emitted in the United States. Pursuant to section 115, the Administrator has neither received nor issued a formal notification that emissions from Oklahoma are endangering public health or welfare in a foreign country. Section 126(a) of the Act requires new or modified sources to notify neighboring states of potential impacts from such sources. Oklahoma PSD permitting regulations at 252 OAC chapter 100 require that affected states be notified of permitting actions and be provided with a copy of the draft permit no later than the commencement of the public comment period.[33] (75 FR 72695). The state also has no pending obligations under section 126 of the Act.

EPA is proposing to find that the Oklahoma SIP meets the requirements of section 110(a)(2)(D)(ii) of the Act for the 1997 ozone and 1997 and 2006 $PM_{2.5}$ NAAQS.

*Adequate resources, section 110(a)(2)(E):* Chapter 9, titled ''Resources,'' of the Oklahoma SIP was originally approved on May 31, 1972, and provides assurances that the State has the adequate resources, *i.e.,* personnel and funding, to carry out their SIP.[34] The Oklahoma Environmental Quality Act, the Oklahoma Environmental Code and the Oklahoma Clean Air Act are codified at Title 27A of the Oklahoma Statutes, titled Environment and Natural Resources.[35] Together, these laws name the ODEQ as the state air control agency, with principal authority in the state on matters relating to the quality of air resources, and charge the ODEQ with preparing and implementing the SIP. The Oklahoma Clean Air Act also authorizes the ODEQ to establish fees to review and act on permit applications; amend and review permits; conduct inspections of facilities; and enforce the rules and orders of permits.

Additionally, there are Federal sources of funding for the implementation of the 1997 8-hour ozone and 1997 and 2006 $PM_{2.5}$ NAAQS through, for example, the CAA sections 103 and 105 grant funds. The ODEQ receives Federal funds on an annual basis, under section 105 of the Act, to support its air quality programs. Fees collected for the Title V and non-Title V permit programs also provide necessary funds to help implement the State's air programs. EPA fully approved Oklahoma's Title V program at 66 FR 63170 (12/05/01). EPA approved Oklahoma's Title 1 program at 48 FR 38635 and 64 FR 59629. More specific information on permitting fees is provided in the discussion for 110(a)(2)(L) below and in the TSD.

Section 110(a)(2)(E)(ii) requires that the state comply with section 128. Section 128 requires: (1) That the majority of members of the state body which approves permits or enforcement orders do not derive any significant portion of their income from entities subject to permitting or enforcement orders under the CAA; and (2) any potential conflicts of interest by such body be adequately disclosed. In 1982, the EPA approved into the SIP the Oklahoma Code of Ethics for State Officials and Employees (47 FR 20771), and in 1994 EPA incorporated by reference the Oklahoma Clean Air Act of 1992 and Oklahoma Environmental Quality Act that contain, among other things, financial disclosures, conflicts of interest and ethical conduct for the Executive Director of the ODEQ and classified employees of the agency (See 59 FR 32365 for reference to the Acts).

EPA is proposing to find that the Oklahoma SIP meets the requirements of section 110(a)(2)(E) of the Act for the 1997 8-hour ozone and the 1997 and 2006 $PM_{2.5}$ NAAQS.

*Stationary source monitoring system, section 110(a)(2)(F):* The Oklahoma rules at 252 OAC chapter 100, subchapters 5, 8, 9, 17, 23, 24, 25, and 43 require that stationary sources monitor for compliance, provide recordkeeping and reporting, and provide for enforcement of ozone, $PM_{2.5}$, and precursors to these pollutants ($SO_2$, ammonia, volatile organic compounds and $NO_X$). The ODEQ uses this data to track progress towards maintaining the NAAQS, develop control and maintenance strategies, identify sources and general emission levels, and determine compliance with Oklahoma and EPA requirements. These rules have been approved by EPA for incorporation into the SIP.

Under the Oklahoma Clean Air Act at Section 27A–2–5–105, the ODEQ is required to analyze the emissions data from point, area, mobile, and biogenic (natural) sources. The ODEQ uses this data to track progress towards maintaining the NAAQS, develop control and maintenance strategies, identify sources and general emission levels, and determine compliance with Oklahoma and EPA requirements. Emissions data are available electronically: *http://www.epa.gov/ttn/chief/eiinformation.html*. Oklahoma's point source emission inventory (EI) is available at *http://www.deq.state.ok.us/AQDnew/Emissions/Data.htm*.

EPA is proposing to find that the Oklahoma SIP meets the requirements of section 110(a)(2)(F) for the 1997 8-hour ozone and the 1997 and 2006 $PM_{2.5}$ NAAQS.

*Emergency power, section 110(a)(2)(G):* Section 110(a)(2)(G) requires states to provide for authority to address activities causing imminent and substantial endangerment to public health, including contingency plans to implement the emergency episode provisions in their SIPs. The Executive Director of the ODEQ is empowered by the Oklahoma Environmental Quality Code to respond to air pollution episodes and other air quality

[32] In the **Federal Register** notice we stated our intent to base our interference with maintenance decision on the final determination for our July 11, 2011, supplemental notice of proposed rulemaking to include Oklahoma in the Cross State Air Pollution Rule for the 1997 ozone NAAQS (76 FR 40662).

[33] OAC 252:100–8–8(e): Transmission of notice of draft permit to affected states.

[34] See 37 FR 10887.

[35] See 59 FR 32365 (June 23, 1994) for incorporation by reference of the Oklahoma Clean Air Act of 1992 and the Oklahoma Environmental Quality Act.

emergencies,[36] and the ODEQ has contingency plans to implement emergency episode provisions in the SIP. Oklahoma's Emergency Episode Plan was approved into the SIP by EPA on February 12, 1991 (56 FR 05653). Oklahoma's Emergency Episode Plan includes alert, warning, and emergency levels for emergency episodes involving $PM_{10}$ and ozone concentrations. The episode criteria and contingency measures are found in the Emergency Episode Plan. The criteria for ozone are based on a 1-hour average ozone level. These episode criteria and contingency measures are adequate to address ozone emergency episodes and are in the federally approved SIP. We propose that the Oklahoma Emergency Episode Plan provides for the pollutants specified under 40 CFR 51.150 and is consistent with the provisions of 40 CFR 51.151 and 152, and Appendix L to Part 51.

The 2009 Infrastructure SIP Guidance for $PM_{2.5}$ recommends that a state with at least one monitored 24-hour $PM_{2.5}$ value exceeding 140.4 μg/m$^3$ since 2006 establish an emergency episode plan and contingency measures to be implemented should such level be exceeded again. The 2006–2010 ambient air quality monitoring data[37] for Oklahoma do not exceed 140.4 μg/m$^3$. The $PM_{2.5}$ levels have consistently remained below this level (140.4 μg/m$^3$), and furthermore, the state has appropriate general emergency powers to address $PM_{2.5}$ related episodes to protect the environment and public health. Given the state's monitored $PM_{2.5}$ levels, EPA is proposing that Oklahoma is not required to submit an emergency episode plan and contingency measures at this time, for the 1997 and 2006 $PM_{2.5}$ standards. Additional detail is provided in the TSD.

EPA is proposing to find that the Oklahoma SIP meets the requirements of section 110(a)(2)(G) for the 1997 8-hour ozone and 1997 and 2006 $PM_{2.5}$ NAAQS.

*Future SIP revisions, section 110(a)(2)(H):* The Oklahoma Environmental Quality Code and the Oklahoma Clean Air Act direct the ODEQ to prepare and develop the SIP and provide ODEQ with the necessary authority to carry out other duties, requirements and responsibilities necessary for the implementation of the Oklahoma Clean Air Act and fulfilling the requirements of the Federal Clean Air Act (OS 27A 2–5–105). Thus, Oklahoma has the authority to revise its SIP from time to time as may be necessary to take into account revisions of primary or secondary NAAQS, or the availability of improved or more expeditious methods of attaining such standards. Furthermore, Oklahoma also has the authority under these Oklahoma Clean Air Act provisions to revise its SIP in the event the EPA, pursuant to the Federal Clean Air Act, finds the SIP to be substantially inadequate to attain the NAAQS.

EPA is proposing to find that the Oklahoma SIP meets the requirements of section 110(a)(2)(H) for the 1997 8-hour ozone and 1997 and 2006 $PM_{2.5}$ NAAQS.

*Consultation with government officials, section 110(a)(2)(J):* Section 2–5–105 of the 1992 Oklahoma Clean Air Act gives the ODEQ the authority to advise, consult, and cooperate with other agencies of the State, towns, cities and counties, industries, other states and the Federal government, and with affected groups in the prevention and control of new and existing air contamination sources within the State. Chapter 10 of the original Oklahoma SIP approved on May 31, 1972 (37 FR 10887), provides for intergovernmental cooperation. Oklahoma's Intergovernmental Consultation Plan was revised and approved by EPA on May 14, 1982 (47 FR 20771). The 1990 Oklahoma Visibility Plan was approved by EPA into the SIP on November 8, 1999 (64 FR 60683), and requires the ODEQ to notify the FLM of the receipt of any analysis of the anticipated impacts on visibility in any Federal Class I area, and requires the ODEQ to consider any timely analysis performed by the FLM and to coordinate with the FLM in conducting any monitoring of visibility in the mandatory Federal Class I area. The Attainment Demonstration for the Central Oklahoma Early Action Compact (EAC) Area[38] incorporated a Memorandum of Agreement (MOA) between the ODEQ and the Association of Central Oklahoma Governments (ACOG) into the Oklahoma SIP, outlining the duties and responsibilities of each party for implementation of pollution control measures for the Central Oklahoma EAC area. The Attainment Demonstration for the Tulsa EAC Area[39] incorporated a MOA between the ODEQ and the Indian Nation Council of Governments (INCOG) into the Oklahoma SIP, outlining the duties and responsibilities of each party for implementation of pollution control measures for the Tulsa Metropolitan Area EAC area.

EPA is proposing to find that the Oklahoma SIP meets this portion of the section 110(a)(2)(J) requirements for the 1997 8-hour ozone and the 1997 and 2006 $PM_{2.5}$ NAAQS.[40]

*Public notification if NAAQS are exceeded, pursuant to section 110(a)(2)(J):* Public notification begins with the air quality forecasts, which advise the public of conditions capable of exceeding the 8-hour ozone and $PM_{2.5}$ NAAQS. The air quality forecasts can be found on the ODEQ Web site and consist of an Air Quality Index (AQI) forecast with specific information on individual pollutants of concern, such as ozone and fine particulate matter. The AQI forecast includes three areas in the State.[41] AQI forecasts are made daily throughout the year, and ozone-specific forecasts are made daily during the ozone season for each of the three forecast areas. The ozone forecasts are made, in most cases, a day in advance by 2 p.m. local time and are valid for the next day. When the forecast indicates that ozone or fine particulate levels will be above their respective standards, the State notifies the National Weather Service, who then broadcasts the information across its weather wire. The AQI forecasts and pollutant-specific advisories are available through email and pager notification. Furthermore, the ODEQ publishes an annual Air Data Report, which summarizes observations made by the State's ambient monitoring network.[42] EPA is proposing to find that the Oklahoma SIP meets this portion of the section 110(a)(2)(J) requirements for the 1997 8-hour ozone and 1997 and 2006 $PM_{2.5}$ NAAQS.

*PSD and visibility protection, section 110(a)(2)(J):* This portion of section 110(a)(2)(J) in part requires that a state's SIP meet the applicable requirements of section 110(a)(2)(C) as relating to PSD programs. As discussed previously in this rulemaking with regards to section 110(a)(2)(C) and in the TSD, Oklahoma operates its EPA-approved PSD program under Regulation 1.4.4 ''Major Sources—Prevention of Significant

[36] See Oklahoma Environmental Quality Code at OS27A–2–3–502E.

[37] The ozone and PM data are available through AQS and the state Web site (*http://www.deq.state.ok.us/AQDnew/monitoring/index.htm*). The AQS data for PM are provided in the docket for this rulemaking.

[38] The Attainment Demonstration for the Central Oklahoma EAC Area was approved by EPA on August 16, 2005 (70 FR 48078).

[39] The Attainment Demonstration for the Tulsa EAC Area was approved by EPA on August 19, 2005 (70 FR 48645).

[40] Section 110(a)(2)(J) is divided into three segments: consultation with government officials; public notification; and PSD and visibility protection.

[41] There are three forecast areas in Oklahoma: Lawton, Oklahoma City, and Tulsa. For more information, please see *http://www.deq.state.ok.us/aqdnew/AQIndex/AQI.htm*.

[42] The Annual Air Data Report is available online at the ODEQ Web site at: *http://www.deq.state.ok.us/mainlinks/reports.htm*

Deterioration (PSD) Requirements for Attainment Areas'' (now OAC 252:100–8, Part 7 and elsewhere in OAC 252:100).

On November 8, 1999 (64 FR 60683), EPA approved Oklahoma's Visibility Protection Plan for the Federal Class I area.[43] In that rulemaking, EPA determined that Oklahoma's Visibility Protection Plan meets the visibility monitoring and NSR provisions under 40 CFR 51.305 and 51.307, as well as the visibility implementation control strategy and long-term strategy requirements under 40 CFR 51.302 and 51.306. The State's most recent SIP revision of its Regional Haze program was submitted to EPA on February 19, 2010, and we proposed action on it on March 22, 2011 (76 FR 16168). We expect to take final action on the Regional Haze submittal by December 16, 2011. With regard to the applicable requirements for visibility protection, EPA recognizes that states are subject to visibility and regional haze program requirements under part C of the Act (which includes sections 169A and 169B). In the event of the establishment of a new NAAQS, however, the visibility and regional haze program requirements under part C do not change. Thus, we find that there is no new visibility obligation ''triggered'' under section 110(a)(2)(J) when a new NAAQS becomes effective. This would be the case even in the event a secondary $PM_{2.5}$ NAAQS for visibility is established, because this NAAQS would not affect visibility requirements under part C. EPA is therefore proposing to find that the Oklahoma SIP meets the visibility protection requirements of section 110(a)(2)(J) for the 1997 8-hour ozone and 1997 and 2006 $PM_{2.5}$ NAAQS.

*Air quality and modeling/data, section 110(a)(2)(K):* The Oklahoma Environmental Quality Act, Oklahoma Environmental Quality Code and the Oklahoma Clean Air Act provide ODEQ with principal authority in the state on matters relating to the quality of air resources, and charges the ODEQ with preparing and implementing the SIP, which includes modeling to inform decisions on nonattainment area boundaries and demonstrate effectiveness of SIP control strategies.[44]

The ODEQ has demonstrated its capacity to perform modeling in past submitted SIP revisions. For example, Oklahoma submitted modeling in SIP revisions for the Oklahoma City and Tulsa Early Action Compact (EAC) Areas to demonstrate attainment of the 1997 ozone standard. The modeling in these SIPs was approved by EPA and adopted into the SIP.[45]

EPA is proposing to find that the Oklahoma SIP meets the requirements of section 110(a)(2)(K) for the 1997 8-hour ozone and the 1997 and 2006 $PM_{2.5}$ NAAQS.

*Permitting fees, section 110(a)(2)(L):* The Oklahoma Environmental Quality Code authorizes the ODEQ, through the Board of Environmental Quality, to promulgate rules regarding permit fees. See 2–2–101. Whereas 2–5–113 of the Oklahoma Clean Air Act establishes that the owner or operator of any source required to have a permit must pay a permit fee to cover the cost of implementing and enforcing Oklahoma's permit program. EPA originally approved Regulation 1.4.1(d) of the Oklahoma Air Pollution Control Regulations that provides for permit fees into the Oklahoma SIP on August 25, 1983 (48 FR 38635). The Oklahoma regulations have since been reorganized, and the current fee provisions for annual operating fees for area and non-area sources are found at OAC 252:100–5–2; fee provisions for PSD applications are found at OAC 252:100–7–3, and fee provisions for Part 70 sources are found at OAC 252:100–8–1. EPA is proposing to find that the Oklahoma SIP meets the requirements of section 110(a)(2)(L) for the 1997 8-hour ozone and the 1997 and 2006 $PM_{2.5}$ NAAQS.

*Consultation/participation by affected local entities, section 110(a)(2)(M):* Section 2–5–105 of the Oklahoma Clean Air Act authorizes the ODEQ to advise, consult and cooperate with other agencies of the State, towns, cities and counties, industries, other states and the Federal government, and with affected groups in the prevention and control of new and existing air contamination sources within the State. Oklahoma's Intergovernmental Consultation plan was approved by EPA on May 14, 1982 (47 FR 20771), and consisted of a process for consultation and planning with relevant local governmental organizations having responsibility for any SIP revision process. As part of the plan, the State entered into formal agreements with designated metropolitan planning organizations for air quality planning in their respective areas of the State. EPA is proposing to find that the Oklahoma SIP meets the requirements of section 110(a)(2)(M) for the 1997 8-hour ozone and the 1997 and 2006 $PM_{2.5}$ NAAQS.

## VII. Proposed Action

We are proposing to approve the SIP submittals provided by the State of Oklahoma to demonstrate that the Oklahoma SIP meets the requirements of section 110(a)(1) and (2) of the Act for the 1997 ozone and the 1997 and 2006 $PM_{2.5}$ NAAQS.

We are proposing to find that the current Oklahoma SIP meets the infrastructure elements for the 1997 ozone and 1997 and 2006 $PM_{2.5}$ NAAQS:

Emission limits and other control measures (110(a)(2)(A) of the Act);

Ambient air quality monitoring/data system (110(a)(2)(B) of the Act);

Program for enforcement of control measures (110(a)(2)(C) of the Act);

Interstate transport, pursuant to section 110(a)(2)(D)(ii) of the Act;

Adequate resources (110(a)(2)(E) of the Act);

Stationary source monitoring system (110(a)(2)(F) of the Act);

Emergency power (110(a)(2)(G) of the Act);

Future SIP revisions (110(a)(2)(H) of the Act);

Consultation with government officials (110(a)(2)(J) of the Act);

Public notification (110(a)(2)(J) of the Act);

Prevention of significant deterioration and visibility protection (110(a)(2)(J) of the Act);

Air quality modeling data (110(a)(2)(K) of the Act);

Permitting fees (110(a)(2)(L) of the Act); and

Consultation/participation by affected local entities (110(a)(2)(M) of the Act).

We are also proposing to approve the Oklahoma SIP provisions that address the requirement of section (110)(a)(2)(D)(i)(II) of the Act that emissions from sources in Oklahoma do not interfere with measures required in the SIP of any other state under part C of the Act to prevent significant deterioration of air quality for the 2006 $PM_{2.5}$ NAAQS.

## V. 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

[43] Oklahoma has one mandatory Class I area. It is the Wichita Mountains National Wildlife Refuge in Comanche County near Fort Sill Military Reservation.

[44] Except for indoor air quality and asbestos as regulated for worker safety by the Federal Occupational Safety and Health Act and by Chapter 11 of Title 40 of the Oklahoma statutes.

[45] The Oklahoma City and Tulsa areas were designated as attainment and participated in the EAC program. EPA approved the modeling for these areas on August 16, 2005 (70 FR 48078) and on August 19, 2005 (70 FR 48645), respectively.

the criteria of the Clean Air Act. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

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

In addition, this 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.

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

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

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

Dated: November 7, 2011.

**Al Armendariz,**

*Regional Administrator, Region 6.*

[FR Doc. 2011–29638 Filed 11–15–11; 8:45 am]

**BILLING CODE 6560–50–P**

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R06–OAR–2008–0727; FRL–9493–8]**

## Extension of Public Comment Period for Proposed Action on Arkansas Regional Haze State Implementation Plan and Interstate Transport State Implementation Plan To Address Pollution Affecting Visibility and Regional Haze

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

**ACTION:** Proposed rule; extension of comment period.

**SUMMARY:** On October 17, 2011, EPA published in the **Federal Register** a proposed rule proposing to partially approve and partially disapprove the Arkansas Regional Haze (RH) State Implementation Plan (SIP) and to partially approve and partially disapprove Arkansas' Interstate Transport SIP to address pollution affecting visibility, and requested comment by November 16, 2011. EPA is extending the public comment period for the proposed rule until December 22, 2011.

**DATES:** Comments must be received on or before December 22, 2011.

**ADDRESSES:** Submit your comments, identified by Docket No. EPA–R06–OAR–2008–0727, by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *EPA Region 6 ''Contact Us'' Web site: http://epa.gov/region6/r6comment.htm.* Please click on ''6PD (Multimedia)'' and select ''Air'' before submitting comments.
- *Email:* Mr. Guy Donaldson at *donaldson.guy@epa.gov.* Please also send a copy by email to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.
- *Fax:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), at fax number (214) 665–7263.
- *Mail:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue Suite 1200, Dallas, Texas 75202–2733.
- Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Such deliveries are accepted only between the hours of 8 a.m. and 4 p.m. weekdays, and not on legal holidays. Special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA–R06–OAR–2008–0727. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *http://www.regulations.gov*, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

**FOR FURTHER INFORMATION CONTACT:** Ms. Dayana Medina, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–7241; fax number (214) 665–7263; email address *medina.dayana@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Throughout this document wherever ''we,'' ''us,'' or ''our'' is used, we mean the EPA. On October 17, 2011, we published in the **Federal Register** a proposed rule proposing to partially approve and partially disapprove the Arkansas RH SIP and to partially approve and partially disapprove

Arkansas' Interstate Transport SIP to address pollution affecting visibility (76 FR 64186). In the proposal we requested comment by November 16, 2011. The proposal and supporting documentation for our proposal can be accessed at *http://www.regulations.gov* (Docket No. EPA–R06–OAR–2008–0727).

The EPA is extending the comment period due to public requests that have been made stating that additional time is needed in order to fully evaluate our proposed rule and provide substantive comment. We are extending the comment period for our proposed rule until December 22, 2011.

Dated: November 9, 2011.

**Carl E. Edlund,**

*Multimedia Planning and Permitting Division Director, Region 6.*

[FR Doc. 2011–29724 Filed 11–15–11; 8:45 am]

**BILLING CODE 6560–50–P**

## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

### 49 CFR Part 192

**[Docket ID PHMSA–2011–0023]**

**RIN 2137–AE72**

### Pipeline Safety: Safety of Gas Transmission Pipelines

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

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

**SUMMARY:** On August 25, 2011, (76 FR 53086) PHMSA published in the **Federal Register** an Advance Notice of Proposed Rulemaking (ANPRM) titled: ''Safety of Gas Transmission Pipelines'' seeking comments on the need for changes to the regulations covering gas transmission pipelines. PHMSA has received requests to extend the comment period in order to have more time to evaluate the ANPRM. PHMSA is extending the comment period from December 2, 2011, to January 20, 2012.

**DATES:** The closing date for filing comments is extended from December 2, 2011, until January 20, 2012.

**ADDRESSES:** Comments should reference Docket No. PHMSA–2011–0023 and may be submitted in the following ways:

- *E-Gov Web Site: http://www.Regulations.gov.* This site allows the public to enter comments on any **Federal Register** notice issued by any agency.
- *Fax:* 1 (202) 493–2251.
- *Mail:* DOT Docket Management System: U.S. DOT, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

*Hand Delivery:* U.S. DOT Docket Management System; West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Instructions:* You should identify the Docket No. PHMSA–2011–0023 at the beginning of your comments. If you submit your comments by mail, submit two copies. To receive confirmation that PHMSA received your comments, include a self-addressed stamped postcard. Internet users may submit comments at *http://www.regulations.gov.*

**Note:** Comments are posted without changes or edits to *http://www.regulations.gov,* including any personal information provided. There is a privacy statement published on *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** For further information contact Mike Israni at (202) 366–4566 or by email at *mike.israni@dot.gov.*

**SUPPLEMENTARY INFORMATION:** On August 25, 2011, (76 FR 53086), PHMSA published an ANPRM seeking comments on the need for changes to the regulations covering gas transmission pipelines. Within this ANPRM, PHMSA is seeking public comment on 15 specific topic areas in two broad categories (integrity management (IM) and Non-IM requirements). In particular, PHMSA is interested in knowing whether IM requirements should be changed, more prescriptive language added in some areas, and non-IM requirements strengthened or expanded. Among the specific issues PHMSA is considering concerning IM requirements is whether the definition of a high-consequence area should be revised, and whether additional restrictions should be placed on the use of specific pipeline assessment methods. With respect to non-IM requirements, PHMSA is considering whether revised requirements are needed on new construction or existing pipelines concerning mainline valves, whether requirements for corrosion control of steel pipelines should be strengthened, and whether new regulations are needed to govern the safety of gathering lines and underground gas storage facilities.

On September 9, 2011, the Interstate Natural Gas Association of America (INGAA) and the American Gas Association (AGA) requested that PHMSA extend the comment period of the ANPRM by 90 days. INGAA and AGA supported their request stating that the ANPRM poses a large number of multi-part questions that cover 15 separate topic areas. They stated that to thoughtfully and thoroughly address the issues, significant effort on the part of all stakeholders is required, and may include industry-wide surveys. They stated that questions regarding cost implications and various other impacts will entail an integrated effort within the industry to provide a quality, validated, and vetted answer. Also, they stated that timing supports their request because they are currently in the initial phases of implementing the Control Room Management regulations, and completing and verifying their 2011 projects and conducting maintenance, budget and planning activities that will directly impact their pipeline safety compliance efforts this year and next. In addition, they stated that PHMSA granted an extension of time allowing parties four months to comment on the hazardous liquid ANPRM and, therefore, a 90-day extension of the comment period is further justified by the depth and scope of the issues addressed in the natural gas ANPRM.

Through this ANPRM, PHMSA has raised several important and complex public safety issues, many of which, if implemented, could impose significant cost on the pipeline industry. PHMSA needs very thorough responses to the questions we have posed in the ANPRM in order to facilitate PHMSA's decision making on these very important and complex issues. Based on the reasons given by INGAA and AGA in their request to extend the comment period, and PHMSA's need to have the best data possible to facilitate its decisions relative to these issues, PHMSA believes that extension of the comment period is warranted. Therefore, PHMSA has extended the comment period from December 2, 2011, to January 20, 2012.

Issued in Washington, DC, on November 3, 2011.

**Jeffrey D. Wiese,**

*Associate Administrator for Pipeline Safety.*

[FR Doc. 2011–29497 Filed 11–15–11; 8:45 am]

**BILLING CODE 4910–60–P**

# Notices

Federal Register

Vol. 76, No. 221

Wednesday, November 16, 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

### Forest Service

### Idaho Panhandle National Forests, Idaho; Idaho Panhandle National Forest Noxious Weed Treatment Project

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent to prepare an environmental impact statement.

**SUMMARY:** The Forest Service will prepare an Environmental Impact Statement (EIS) for a proposal to manage non-native invasive plant (NNIP) species on National Forest System (NFS) lands within the boundaries of the Idaho Panhandle National Forests (IPNF). This area is approximately 2.5 million acres in size and includes portions of the following states and counties; Benewah, Bonner, Boundary, Clearwater, Shoshone, Kootenai and Latah counties in Idaho; Lincoln and Sanders counties in Montana; and Pend Oreille County in Washington. The proposal includes both an Integrated Weed Management (IWM) approach as well as an adaptive management strategy to prevent or limit the introduction, establishment and/or spread of NNIP. The use of registered herbicides is one of the various treatment methods that are proposed. The overall project goal is to reduce the undesirable impacts that these invasive species can have on native plant communities and other ecological, social or economic values.

**DATES:** Comments concerning the scope of the analysis must be received by December 16, 2011. The draft environmental impact statement is expected March 2012 and the final environmental impact statement is expected September 2012.

**ADDRESSES:** Send written comments to David Cobb, Idaho Panhandle National Forests Noxious Weed Treatment Project Team Leader, at the Priest Lake Ranger District, 32203 Highway 57, Priest River, ID 83856; Fax (208) 443–6845. You may also hand-deliver your comments to the above address during normal business hours from 8 a.m. to 4:30 p.m. Monday through Friday, excluding federal holidays. Electronic comments may be submitted to *comments-northern-idpanhandle-priest-lake@fs.fed.us*. in a format such as an email message, plain text (.txt), rich text format (.rtf), or Word (.doc).

**FOR FURTHER INFORMATION CONTACT:** David Cobb, Priest Lake Ranger District, 32203 Highway 57, Priest River, ID 83856, phone (208) 443–6854, email *dcobb@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 Time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:**

#### Purpose and Need for Action

The overall goal for proposing this project is to reduce the undesirable impacts that these NNIP species have on native plant communities and other ecological, social or economic values. The specific purpose of this project is to: (1) Reduce the likelihood that new NNIP species (i.e. potential invaders) are introduced and become established; (2) prevent or limit the spread of existing invaders and established NNIP species into areas with few or no infestations, and/or into areas where the potential to harm ecological, social or economic values is high; (3) rapidly respond to new, small or recently discovered infestations before they become well established, and respond utilizing the most efficient and effective treatment method(s); (4) encourage beneficial native vegetation and weed resistant plant communities and; (5) increase public and agency use of weed prevention practices and general awareness of weeds. Currently, each of the five Ranger Districts on the IPNF has an approved NNIP management plan and supporting EIS. Those plans were adopted between 11 and 16 years ago. Since then, numerous NNIP species have been added to the potential and new invader list, and new treatment tools, methods and adaptive management strategies have been developed that are currently not authorized for use on the IPNF. In order to be more effective and efficient in reducing the undesirable impacts of NNIP, the Forest needs to be able to utilize these newer tools and strategies. Given that funding for control has been declining in recent years, this need has become even stronger. The proposed action would allow the IPNF to become more responsive to Federal, State, and Forest Service laws, regulations, policies and direction regarding the management of NNIP.

#### Proposed Action

The IPNF proposes to implement a Forest-wide, Integrated Weed Management (IWM) approach to manage NNIP species on National Forest System lands within the boundaries of the IPNF. The IWM approach incorporated into the proposal includes: Inventory and assessment activities, prevention and education elements, treatment actions, implementation and effectiveness monitoring, and restoration activities. The IWM program is based on ecological factors and includes consideration of site conditions, other resource values and uses, NNIP characteristics, and potential effectiveness of control measures for specific circumstances. The proposal includes both non-treatment and treatment practices such as: Strategies for awareness and education in order to prevent new infestations; early detection of and rapid response to newly discovered infestations; control of outbreaks of existing infestations that threaten sensitive and native habitats; containment of established infestations by maintaining treatments along spread pathways and previously treated areas; use of all treatment ''tools'' such as chemical, manual and biological treatment followed by restoration and revegetation (as appropriate), as well as monitoring of NNIP-impacted lands; and close coordination across jurisdictional boundaries through cooperative partnerships. The treatment activities that are proposed are based on integrated pest management principles and methods known to be effective for each target NNIP species. They include, but are not limited to, manual techniques such as pulling; cultural practices such as the use of certified noxious weed-free hay; biological control agents such as pathogens and insects; and herbicides that target specific invasive plant species. The application of herbicides would be

ground based only. No aerial treatment activities are proposed. Spot and selective spraying would be the primary method of applying herbicide in order to target individual and groups of invasive plants; however some broadcast herbicide spraying (from trucks or ATV equipment) would occur. Specific design features would be applied to minimize or eliminate the potential for plant treatments to adversely affect non-target plants, animals, human health, water quality and aquatic organisms. Mulching, seeding and planting of competitive, desirable vegetation may occur to restore previously infested sites. In addition to using an IWM approach, the proposal incorporates an adaptive management strategy in order to quickly respond to new NNIP species and new infestations that are located during the life of the project. This quick reaction is known as an Early Detection Rapid Response (EDRR) and is designed to allow timely control so that new infestations can be treated when they are small in order to reduce costs as well as any detrimental effects of treatment. The adaptive strategy would also allow the use of new treatment tools and methods that are developed during the life of the project. The proposal allows most types of treatments to occur anywhere on Forest Service system lands on the IPNF. However, the use of herbicides in the Salmo-Priest wilderness area would be restricted to trailheads, roads immediately adjacent to the wilderness boundary, and short distances along trails near trailhead locations. Based on current funding levels, it is expected that approximately 3,000 acres would be treated annually across the Forest with the majority of these acres being treated using some form of a ground-based herbicide application method. If a significant amount of additional funding were available and monitoring efforts identify the need, up to an additional 3,000 acres could potentially be treated annually. The proposal would treat a maximum of 5,500 acres annually with herbicides (less than a quarter of one percent of the IPNF). No limit is proposed on the number of acres that may be treated using non-herbicide treatment methods. Most of the treatment activities would occur along travel or utility corridors (e.g. roads, trails, powerline clearings) or other disturbed areas such as campgrounds, trailheads, recent timber harvest areas, gravel pits, ski areas, fire camps, mines, helispots, ranger stations and burned areas. One of the prevention elements incorporated into the proposed action includes requiring any hay or straw type products that are stored or possessed on NFS lands be state certified weed free. Where opportunities exist, activities would be planned and implemented in cooperation with other federal, state, and local agencies as well as private individuals.

**Responsible Official**

Forest Supervisor, Idaho Panhandle National Forests, 3815 Schreiber Way, Coeur d'Alene, ID 83815.

**Nature of Decision To Be Made**

Given the purpose and need, the environmental analysis in the EIS and consideration of public comments, the Forest Supervisor will make the following decisions; (1) Whether or not to expand or modify the current efforts to manage NNIP species; (2) whether to use one, or a combination of several methods of control including mechanical, chemical, or biological methods, and if so: (a) When and under what terms and conditions the Forest Service would conduct such activities; (b) what, if any, measures would be needed to meet Forest Plan Goals and Standards; and (c) what mitigation and monitoring measures would be required? Decisions that would not be made based on the analysis are: (1) Changes in land use and Forest Plan direction; (2) changes in the level of wildfire suppression, strategies, tactics, and whether or not to control wildfire; (3) changes in travel management, road use, and forest access; (4) prevention measures that minimize the establishment and spread of NNIP that are already part of Forest Service policy and recent decisions; (5) environmental protection agency established Reference Doses and related EPA toxicological thresholds; and (6) ecological and toxicological conclusions and data included in the Forest Service/Syracuse Environmental Research Associates Human Health and Ecological Risk Assessments.

**Permits or Licenses Required**

Pesticide application licenses will be required for those implementing this project. Pesticide Use Proposals for wilderness areas would need to be signed by the Regional Forester; otherwise Pesticide Use Proposals are signed by the Forest Supervisor. This project may involve riparian herbicide applications that are subject to the National Pollutant Discharge Elimination System (NPDES) permit requirements. If needed, NPDES permits would be acquired prior to project implementation.

**Scoping Process**

This notice of intent initiates the scoping process which guides the development of the environmental impact statement. Comments that would be most useful are those concerning developing or refining the proposed action, in particular those that can help us develop treatments that would be responsive to our goal to control, contain, or eradicate NNIP. It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the environmental impact statement. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions. No public meetings are planned for the scoping effort.

Comments received in response to this solicitation, including names and addresses of those who comment, become part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered, however.

Dated: October 21, 2011.

**Mary Farnsworth,**

*Forest Supervisor.*

[FR Doc. 2011–29552 Filed 11–15–11; 8:45 am]

BILLING CODE 3410–11–P

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Helena Nation Forest: Dalton Mountain Forest Restoration & Fuels Reduction Project

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent to prepare an environmental impact statement.

**SUMMARY:** The Helena National Forest (HNF) is proposing on the Lincoln Ranger District both commercial and non-commercial treatments using mechanical harvesting, pre-commercial thinning, hand felling, and prescriber burning within a project boundary encompassing about 18,240 acres to improve vegetative structure and fuels arrangement; enhance composition of aspen, whitebark pine, and ponderosa pine species; modify fire behavior to enhance community protection while creating conditions to allow reestablishment of controlled periodic fire; and capturing the value of removed trees in an economical approach.

**DATES:** Comments concerning the scope of the analysis and to be most helpful in this due process must be received by

November 30, 2011. The draft environmental impact statement is expected February 2013 and the final environmental impact statement is expected June of 2013.

**ADDRESSES:** Send written comments to Amber Kamps, Helena National Forest, 1569 Hwy. 200, Lincoln, MT 59639. Comments may also be sent via email to *comments-northern-helena@fs.fed.us,* or via facsimile to (406) 362–4253. Please indicate 'Dalton Scoping' on the subject line. Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposal.

**FOR FURTHER INFORMATION CONTACT:** Amber Kamps at (406) 362–7000 or Jan FauntLeRoy at (406) 449–5201.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–(800) 877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** The Forest Service, using agency data, has implemented a collaborative approach in the preliminary development of this proposed action. Involved in this due process was the Lincoln Restoration Committee (LRC) of the Montana Forest Restoration Committee (MFRC). The MFRC is a collaborative group with representatives from diverse interests who came together in 2007 to help address stewardship issues. The LRC is a group of private citizens with diverse community interests and was formed in 2008 with the purpose of working within the framework developed by the MFRC and developing recommendations for restoration projects on the Lincoln Ranger District, HNF. Please go to the Web site *http://www.montanarestoration.org* for further information regarding this group. The HNF has been working collaboratively with this group in compliance with Executive Order 13352–Facilitation of Cooperative Conservation.

## Purpose and Need for Action

Forest restoration and fuel reduction in the Dalton Mountain area is needed to move toward the goals of the HNF, Forest Plan, specifically II.A.14: Provide a fire protection and use program which is responsive to land and resource management goals and objectives; II.A.17: Coordinate Forest management activities with the land and resource management efforts of other Federal agencies, state and local governments, and adjacent private landowners; and II.A: Provide sustained timber yield that is responsive to local industry and national needs.

Much of the area's current condition is a mixed-severity fire regime that is dominated by lodgepole pine. Tree mortality from a mountain pine beetle epidemic is extensive. This area lacks the desired forest structure and species diversity. Some other tree species native to the area including aspen, whitebark pine, and ponderosa pine do not occur in the numbers desired and as envisioned by the HNF, Forest Plan.

*The specific needs for this proposal are:*

- Improve vegetative structure and fuels arrangement resulting in diversity of structure, patterns, and patch sizes across the landscape.
- Enhance composition of aspen, whitebark pine, and ponderosa pine species and their habitats.
- Modify fire behavior to enhance community protection while creating conditions that may allow the reestablishment of fire as a natural process on the landscape.
- Utilize economic value of trees with economic removal.

## Proposed Action

The Forest Supervisor on the HNF is proposing forest restoration and fuels reduction on the Lincoln Ranger District about five miles southwest of Lincoln, Montana.

The actions in this proposal include mechanical harvesting, pre-commercial thinning, fuels reduction by hand felling, and prescribed burning. About 6.4 miles of road would be built to facilitate commercial removal, then would be obliterated following implementation of this project. This proposal also includes treatments within the boundaries of Ogden Mountain and Nevada Mountain Inventoried Roadless Areas (IRA). These treatments include about 1,815 acres of prescribed burning and non-commercial hand slashing in the Nevada Mountain IRA and about 4,906 acres of fuels reduction by hand felling and prescribed fire with non-commercial hand slashing applied in the Ogden Mountain IRA. No commercial removal or road construction would occur within these IRAs.

This proposed action also includes 'control' units along with managed units with the purpose to compare their results in treating or not treating similar sites. Studying these results would strengthen the learning and collaborative adaptive management of restoration in the mixed severity fire regime.

## Responsible Official

Helena National Forest Supervisor.

## Nature of Decision To Be Made

Whether or not to implement the proposed action or an alternative to the proposed action, what monitoring would be appropriate to evaluate implementation of this project, and whether a Forest Plan amendment would be necessary as a result of the decision for this project.

## Preliminary Issues

- Proposed activities reducing wildlife habitat *e.g.* lynx.
- Configuration of treatment and control units that effectively meets or moves the project area toward the purpose and need for this project.

## Scoping Process

This notice of intent initiates the scoping process, which guides the development of the environmental impact statement. A scoping package has been mailed to interested publics, tribes and other agencies in October of 2011. A community open house conducted by the Lincoln Restoration Group and supported/participated by the Forest Service was held in early November 2011. Pertinent project information and more detail is also posted on the Helena National Forest Web site at *http://www.fs.fed.us/r1/helena.* Please provide comments specific to the actions proposed to meet the purpose and need for this project.

It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the environmental impact statement. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions.

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered; however, anonymous comments will not provide the Agency with the ability to provide the respondent with subsequent environmental documents.

Dated: November 9, 2011.

**Kevin T. Riordan,**

*Forest Supervisor.*

[FR Doc. 2011–29564 Filed 11–15–11; 8:45 am]

BILLING CODE 3410–11–P

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[Docket 73–2011]**

### Foreign-Trade Zone 277—Western Maricopa County, AZ; Application for Manufacturing Authority, Sub-Zero, Inc. (Refrigerators and Freezers), Goodyear, AZ

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Greater Maricopa County Foreign Trade Zone, Inc., grantee of FTZ 277, requesting manufacturing authority on behalf of Sub-Zero, Inc. (Sub-Zero), located in Goodyear, Arizona. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on November 10, 2011.

The Sub-Zero facility (260 employees, 10 acres, 150,000 units/year) is located at 4295 N. Cotton Lane within the Palm Valley 303 Industrial Park in Goodyear, Arizona (Site 3). The facility is used to manufacture refrigerators, freezers, and wine storage units for export and the domestic market. Components and materials sourced from abroad (representing 14% of the value of the finished products) include: Oils, greases, paints, varnishes, caulking, sealants, cleansers, glues/adhesives, epoxies, chemical binding agents, polyethylenes, polystyrenes, polyvinyl acetates, polyamides, articles of plastic, silicones, boxes, cases, crates, pallets, ethylene bags, stoppers/lids/caps, table utensils, articles of rubber, articles of paper, printed materials, slag/rock wools, safety glass, silver, fasteners, springs, wire, articles of steel, copper tubes/pipes/fittings/profiles, aluminum bars/rods/profiles/fasteners/foil/fittings, structures of aluminum, articles of zinc, articles of magnesium, locks, base metal mountings, automatic door actuators, pumps, compressors, fans, air conditioners, heat pumps, refrigerator parts, filters, process controllers, taps, valves, bearings, gears, electric motors and parts thereof, transformers, semiconductor devices, converters, magnets, electrical components, lamps, coaxial cable, insulators, regulators, thermostats, timers, and lighters (duty rate range: Free—10.7%; 14.8¢/kg + 3.5%; 45¢ ea. + 6.4% + 2.5¢/jewel).

FTZ procedures could exempt Sub-Zero from customs duty payments on foreign materials and components used in export production. The company anticipates that some 10 percent of the plant's shipments will be exported. On its domestic sales, Sub-Zero would be able to choose the duty rate during customs entry procedures that applies to refrigerators, freezers, and wine storage units (duty rate—free) for the foreign inputs noted above. Sub-Zero would also be exempt from duty payments on any of the foreign inputs that become scrap or waste during manufacturing. FTZ designation would further allow Sub-Zero to realize logistical benefits through the use of weekly customs entry procedures. Customs duties also could possibly be deferred or reduced on foreign status production equipment. The application indicates that the savings from FTZ procedures would help improve the plant's international competitiveness.

In accordance with the Board's regulations, Pierre Duy of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is January 17, 2012. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to January 30, 2012.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *http://www.trade.gov/ftz.*

For further information, contact Pierre Duy at *Pierre.Duy@trade.gov* or (202) 482–1378.

Dated: November 10, 2011.

**Andrew McGilvray,**

*Executive Secretary.*

[FR Doc. 2011–29619 Filed 11–15–11; 8:45 am]

**BILLING CODE P**

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–898]**

### Chlorinated Isocyanurates From the People's Republic of China: Final Results of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on chlorinated isocyanurates (chlorinated isos) from the People's Republic of China (PRC). The period of review (POR) for this administrative review is June 1, 2009, through May 31, 2010. We invited interested parties to comment on our *Preliminary Results.*[1] Based on our analysis of the comments received, we have made changes to the margin calculations. Therefore, the final results differ from the preliminary results. The final dumping margin for this review is listed in the ''Final Results of Review'' section below.

**DATES:** *Effective Date:* November 16, 2011.

**FOR FURTHER INFORMATION CONTACT:** Emily Halle, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; *telephone:* (202) 482–0176.

**SUPPLEMENTARY INFORMATION:**

### Background

On July 11, 2011, the Department published its *Preliminary Results.* On August 1, 2011, Clearon Corporation and Occidental Chemical Corporation (Petitioners) timely filed surrogate value information.[2] The Department notified parties that it had clarified its separate rate methodology for non-reviewed companies on August 30, 2011.[3] On September 9, 2011, Hebei Jiheng Chemical Company, Ltd. (Jiheng), Juancheng Kangtai Chemical Co., Ltd. (Kangtai), Zhucheng Taisheng Chemical Co., Ltd. (Zhucheng), and Petitioners filed case briefs. Kangtai also filed new factual information on September 9, 2011,[4] which the Department rejected as untimely on September 16, 2011.[5] On

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[1] *See Chlorinated Isocyanurates From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review,* 76 FR 40689 (July 11, 2011) (*Preliminary Results*).

[2] *See* Letter from Petitioners regarding ''Chlorinated Isocyanurates from The People's Republic of China: Fifth Administrative Review: Information Regarding Surrogate Values for Factors of Production,'' dated August 1, 2011 (Petitioners Surrogate Value Letter).

[3] *See* Memorandum to Barbara E. Tillman, Director, AD/CVD Operations, Office 6, regarding ''Rate for Non-Selected Companies,'' dated August 30, 2011 (Separate Rate Memorandum).

[4] *See* Letter from Juancheng Kangtai Chemical Co., Ltd. regarding ''Certain Chlorinated Isocyanurates from the People's Republic of China Rebuttal of New Facts by Juancheng Kangtai,'' dated September 9, 2011.

[5] *See* Letter to Juancheng Kangtai Chemical Co., Ltd. regarding ''2009–2010 Administrative Review of the Antidumping Duty Order on Chlorinated

Continued

September 15, 2011, rebuttal case brief deadlines were extended to September 19, 2011. Arch Chemicals (China) Co., Ltd. (Arch China), Zhucheng, Kangtai and Petitioners timely filed rebuttal briefs on September 19, 2011. On August 10, 2011, and September 19, 2011, the Department received requests for a public hearing from Zhucheng and Kangtai, respectively.[6] The Department conducted a public hearing on October 14, 2011.[7]

**Scope of the Order**

The products covered by the order are chlorinated isocyanurates (chlorinated isos), which are derivatives of cyanuric acid, described as chlorinated s-triazine triones. There are three primary chemical compositions of chlorinated isos: (1) Trichloroisocyanuric acid ($Cl_3(NCO)_3$), (2) sodium dichloroisocyanurate (dihydrate) ($NaCl_2(NCO)_3(2H_2O)$, and (3) sodium dichloroisocyanurate (anhydrous) ($NaCl_2(NCO)_3$). Chlorinated isos are available in powder, granular, and tableted forms. The order covers all chlorinated isos.

Chlorinated isos are currently classifiable under subheadings 2933.69.6015, 2933.69.6021, 2933.69.6050, 3808.40.50, 3808.50.40 and 3808.94.5000 of the Harmonized Tariff Schedule of the United States (HTSUS). The tariff classification 2933.69.6015 covers sodium dichloroisocyanurates (anhydrous and dihydrate forms) and trichloroisocyanuric acid. The tariff classifications 2933.69.6021 and 2933.69.6050 represent basket categories that include chlorinated isos and other compounds including an unfused triazine ring. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

**Analysis of Comments Received**

All issues raised in the post-preliminary comments by parties in this review are addressed in the memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Import Administration, entitled ''Issues and Decision Memorandum for the Final Results of the Administrative Review of Chlorinated Isocyanurates from the People's Republic of China,'' dated concurrently with this notice (Decision Memorandum), which is hereby adopted by this notice. A list of the issues that parties raised and to which we responded in the Decision Memorandum is attached to this notice as an appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in the public memorandum, which is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Services System (IA ACCESS). Access to IA ACCESS is available in the Central Records Unit (CRU), main Commerce Building, Room 7046, and is also accessible on the Web at *http://ia.ita.doc.gov/frn.* The paper copy and electronic versions of the Decision Memorandum are identical in content.

**Changes Since the Preliminary Results**

The Department has made several programming adjustments.[8] First, we corrected the constructed entered value amount to include materials for which Jiheng was reimbursed by the U.S. customer and materials provided free of charge. Next, by applying the inland freight surrogate value, measured in U.S. dollars per metric ton per kilometer, to certain packing and packaging materials that were reported in kilograms, we overstated the values for these materials. We adjusted the inland freight value by dividing it by 1,000 and applying this adjusted value to all packing and packaging materials that were reported in kilograms. Finally, in the Petitioners Surrogate Value Letter, Petitioners provided two additional financial statements to value chlorine and hydrogen factors of production along with the financial statements used in the *Preliminary Results.*[9] No parties objected to the use of the cholorine and hydrogen values in these additional financial statements. After reviewing these financial statements, the Department adjusted the surrogate values for chlorine and hydrogen to include the sales values of chlorine and hydrogen reported in these financial statements. *See Decision Memorandum.*

**Separate Rates**

In proceedings involving non-market economy (NME) countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of subject merchandise in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be eligible for a separate rate.[10] In the *Preliminary Results,* the Department found that Arch China, Kangtai, and Zhucheng demonstrated their eligibility for separate rate status.[11]

For these final results, we continue to find that the evidence placed on the record of this review by Arch China, Kangtai and Zhucheng demonstrates both a *de jure* and *de facto* absence of government control, with respect to their exports of the merchandise under review, and, thus, these companies are eligible for separate rate status.

**Margin for the Separate Rate Companies**

The rate for the individually examined respondent, Jiheng, continues to be *de minimis* and, accordingly, the Department must determine a reasonable alternative method for assigning a rate to Arch China, Kangtai and Zhucheng. In the Separate Rate Memorandum, the Department announced that the method used to determine the rate for the non-selected companies in the *Preliminary Results* was not consistent with current practice, as recently clarified.[12] In previous cases, the Department has determined that a ''reasonable method'' to use when, as here, the rates of the mandatory respondents are zero and *de minimis,* is to apply to those companies not selected for individual review (but

Isocyanurates from the People's Republic of China,'' dated September 16, 2011.

[6] *See* Letter from Zhucheng Taisheng Chemical Co., Ltd., regarding ''Request for Hearing: Chlorinated Isocyanurates from the People's Republic of China, June 1, 2009–May 31, 2010 Period of Review,'' dated August 10, 2011. *See also* Letter from Juancheng Kangtai Chemical Co., Ltd., regarding ''Certain Chlorinated Isocyanurates from the People's Republic of China Request for Hearing,'' dated September 19, 2011.

[7] *See* Public Hearing in the matter ''Chlorinated Isocyanurates from the People's Republic of China,'' dated October 14, 2011.

[8] *See* Memorandum to Mark Hoadley, Program Manager, AD/CVD Operations, Office 6, regarding ''Analysis for the Final Results of the 2009–2010 Administrative Review of the Antidumping Duty Order on Chlorinated Isocyanurates from the People's Republic of China: Hebei Jiheng Chemical Company Ltd.,'' dated November 8, 2011 (Analysis Memorandum) for a detailed discussion of these changes.

[9] *See Preliminary Results,* 76 FR at 40695.

[10] *See Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China,* 56 FR 20588 (May 6, 1991), as further developed in *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China,* 59 FR 22585 (May 2, 1994).

[11] *See Preliminary Results,* 76 FR at 40693.

[12] *See Administrative Review of Certain Frozen Warmwater Shrimp From the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review,* 76 FR 51940, 51942 (August 19, 2011).

eligible for a separate rate in NME cases) the average of the most recently determined rates that are not zero, *de minimis* or based entirely on facts available (which may be from a prior administrative review or a new shipper review).[13] However, if any such non-selected company had its own calculated rate that is contemporaneous with or more recent than such prior determined rates, the Department has applied such an individual rate to the non-selected company in the review in question, including when that rate is zero or *de minimis.*[14]

The most recently published rate on the record of these proceedings for other companies that is not zero, *de minimis* or based entirely on facts available is the 2.66 percent rate calculated for Jiheng in the 2008–2009 administrative review.[15] Therefore, the Department is now assigning Arch China, Kangtai, and Zhucheng a weighted-average margin of 2.66 percent as their separate rate.[16]

**Final Results of Review**

We determine that the following weighted-average dumping margins exist for the period June 1, 2009, through May 31, 2010.

| Exporter | Weighted-average margin percentage |
|---|---|
| Hebei Jiheng Chemical Co., Ltd | [1] 0.03 |
| Juancheng Kangtai Chemical Co., Ltd | 2.66 |
| Arch Chemicals (China) Co., Ltd | 2.66 |
| Zhucheng Taisheng Chemical Co., Ltd | 2.66 |

[1] (*de minimis*).

**Assessment Rates**

Pursuant to section 751(a)(2)(A) of the Act and 19 CFR 351.212(b), the Department will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. The Department will direct CBP to assess importer-specific assessment rates based on the resulting per-unit (*i.e.,* per metric ton) amount (for Jiheng) or *ad valorem* rate (for separate rate respondents) on each entry of the subject merchandise during the POR. The Department intends to issue assessment instructions directly to CBP 15 days after the publication of this notice.

**Cash Deposit Requirements**

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For the exporter's listed above, the cash deposit rate will be the rate established in the final results of this review (except, if the rate is zero or *de minimis, i.e.,* less than 0.5 percent, a zero cash deposit rate will be required for that company); (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 285.63 percent;[17] and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter(s) that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

**Notification to Importers**

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

**Notification to Interested Parties**

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with regulations and terms of an APO is a violation which is subject to sanction.

**Disclosure**

In accordance with 19 CFR 351.224(b), we will disclose the calculations performed for these final results to parties in this proceeding within five days of the date of publication of this notice.

We are issuing and publishing these final results of review in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: November 8, 2011.

**Paul Piquado,**

*Assistant Secretary for Import Administration.*

**Appendix**

**List of Comments and Issues in the Issues and Decision Memorandum**

Comment 1: Respondent Selection.

Comment 2: Kangtai's New Shipper Review Rate is not Representative of its Current Behavior.

[13] *See id.; see also Amanda Foods (Vietnam) Ltd.* v. *United States,* Slip Op. 2011–39, 2011 Ct. Intl. Trade LEXIS 37 at 12 (CIT April 14, 2011).

[14] *Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Notice of Preliminary Results of the New Shipper Review and Fourth Antidumping Duty Administrative Review and Partial Rescission of the Fourth Administrative Review,* 73 FR 52015 (September 8, 2008) (changed in the final results as the final calculated rate for the mandatory respondent was above *de minimis,* which remained unchanged in the amended final results). *See also Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review,* 74 FR 47191, 47195 (September 15, 2009) and accompanying Issues and Decision Memorandum.

[15] *See Chlorinated Isocyanurates From the People's Republic of China: Final Results of 2008–2009 Antidumping Administrative Review,* 75 FR 70212, 70213 (November 17, 2010).

[16] *See* Decision Memorandum at Comments 2, 3 and 4 (which further explain the use of this rate as the separate rate).

[17] For an explanation on the derivation of the PRC-wide rate, *see Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates From the People's Republic of China,* 70 FR 24502, 24505 (May 10, 2005).

Comment 3: Jiheng's Prior Administrative Review Rate is not Representative of the Current Behavior of Arch China and Zhucheng.

Comment 4: Exclusion of *De Minimis* Rates from Consideration as Separate Rates for Non-Reviewed Companies.

Comment 5: Use of Multiple Separate Rates.

Comment 6: Calculation of Entered Value.

Comment 7: Calculation of Inland Freight.

Comment 8: Per-Unit Assessment Rate in Draft Liquidation Instructions.

Comment 9: Zeroing Methodology in Reviews.

Comment 10: Kangtai's New Factual Submission Should Not Have Been Rejected.

[FR Doc. 2011–29621 Filed 11–15–11; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–979]**

### Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Initiation of Antidumping Duty Investigation

Dates: *Effective Date:* November 16, 2011.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey Pedersen or Drew Jackson, AD/CVD Operations, Office 4, (202) 482–2769 or (202) 482–4406, respectively; Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:** On October 19, 2011, the Department of Commerce (''Department'') received a petition concerning imports of crystalline silicon photovoltaic cells, whether or not assembled into modules (''solar cells'') from the People's Republic of China (''PRC'') filed in proper form by SolarWorld Industries America Inc. (''Petitioner'').[1] On October 21, 24, and 31, and November 4, 2011, the Department issued supplemental questionnaires requesting information and clarification of certain areas of the Petition. Petitioner timely filed additional information on October 25, 2011, (''Supplement I'') October 28, 2011, (''Supplement II–A—General Issues'' and ''Supplement II–B—AD Issues''), November 2, 2011, (''Supplement III''), November 4, 2011 (''Supplement IV''), and November 7, 2011 (''Supplement V–A—AD Issues'' and (''Supplement V–B—General Issues'').

#### Period of Investigation

The period of investigation (''POI'') is April 1, 2011, through September 30, 2011.[2]

#### The Petition

In accordance with section 732(b) of the Tariff Act of 1930, as amended (''the Act''), Petitioner alleges that imports of solar cells from the PRC are being, or are likely to be, sold in the United States at less than fair value, within the meaning of section 731 of the Act, and that such imports are materially injuring, or threatening material injury to, an industry in the United States. Also, consistent with section 732(b)(1) of the Act, the Petition is accompanied by information reasonably available to Petitioner supporting its allegations.

The Department finds, as an interested party, as defined in section 771(9)(C) of the Act, that Petitioner filed the Petition on behalf of the domestic industry and has demonstrated sufficient industry support with respect to the Petition (see ''Determination of Industry Support for the Petition'' section below).

#### Scope of Investigation

The products covered by the scope of this investigation are solar cells from the PRC. For a full description of the scope of the investigation, see ''Scope of Investigation'' in Appendix I of this notice.

#### Comments on Scope of Investigation

During our review of the Petition, we discussed the scope with Petitioner to ensure that it is an accurate reflection of the products for which the domestic industry is seeking relief. Petitioner submitted revised scope language on November 4, 2011, and November 7, 2011. The November 7, 2011, submission included various revisions. Among these revisions was the following substantive provision:

> These proceedings cover crystalline silicon PV cells, whether exported directly to the United States or via third countries; crystalline silicon PV modules/panels produced in the PRC, regardless of country of manufacture of the cells used to produce the modules or panels, and whether exported directly to the United States or via third countries, and crystalline silicon PV modules or panels produced in a third country from crystalline silicon PV cells manufactured in the PRC, whether exported directly to the United States or via third countries.

The Department has not adopted this specific revision recommended by Petitioner for the purposes of initiation.[3] Because Petitioner's November 7, 201l, scope submission was filed one day prior to the statutory deadline for initiation, the Department has had neither the time nor the administrative resources to evaluate Petitioner's proposed language regarding merchandise produced using inputs from third-country markets, or merchandise processed in third-country markets. Petitioner's November 7, 2011, scope submission also contained the following language:

> Unless explicitly excluded from the scope of these proceedings, crystalline silicon PV cells possessing the physical characteristics of subject merchandise are covered by these proceedings.

The Department has not adopted this specific revision recommended by Petitioner for the purposes of initiation because this language is superfluous, and appears to add no additional clarification as to the description of merchandise covered by the scope of the Petition. However, as discussed in the preamble to the regulations,[4] we are setting aside a period for interested parties to raise issues regarding product coverage. The Department encourages interested parties to submit such comments by Monday, November 28, 2011, which is 20 calendar days from the signature date of this notice. All comments must be filed on the records of both the PRC antidumping duty investigation as well as the PRC countervailing duty investigation. Comments should be filed electronically using Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS''). The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and to consult with parties prior to the issuance of the preliminary determination.

#### Comments on Product Characteristics for Antidumping Duty Questionnaires

We are requesting comments from interested parties regarding the appropriate physical characteristics of solar cells to be reported in response to the Department's antidumping questionnaires. This information will be used to identify the key physical characteristics of the merchandise under consideration in order to more

[1] See Petition for the Imposition of Antidumping and Countervailing Duties: Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China dated October 19, 2011 (''Petition'').

[2] See 19 CFR 351.204(b)(1).

[3] We note that the Department has independent authority to determine the scope of its investigations. See *Diversified Products Corp.* v. *United States,* 572 F. Supp. 883, 887 (CIT 1983).

[4] *See Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

accurately report the relevant factors of production, as well as to develop appropriate product comparison criteria.

Interested parties may provide information or comments that they believe are relevant to the development of an accurate listing of physical characteristics. Specifically, they may provide comments as to which characteristics are appropriate to use in defining unique products. We note that it is not always appropriate to use all product characteristics to define products. We base product comparison criteria on meaningful commercial differences among products. In other words, while there may be some physical product characteristics utilized by manufacturers to describe solar cells, it may be that only a select few product characteristics take into account commercially meaningful physical characteristics.

In order to consider the suggestions of interested parties in developing and issuing the antidumping duty questionnaires, we must receive comments filed electronically using IA ACCESS by November 28, 2011. Additionally, rebuttal comments must be received by December 5, 2011.

**Determination of Industry Support for the Petition**

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the industry.

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The U.S. International Trade Commission (''ITC''), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (see section 771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.[5]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation'' (*i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, Petitioner does not offer a definition of domestic like product distinct from the scope of the investigation. Based on our analysis of the information submitted on the record, we have determined that solar cells constitute a single domestic like product and we have analyzed industry support in terms of that domestic like product.[6]

In determining whether Petitioner has standing under section 732(c)(4)(A) of the Act, we considered the industry support data contained in the Petition with reference to the domestic like product as defined in the ''Scope of Investigation'' section above. To establish industry support, Petitioner provided its production volume of the domestic like product in 2010, and compared this to the estimated total production volume of the domestic like product for the entire domestic industry.[7] Petitioner estimated 2010 production volume of the domestic like product by non-petitioning companies based on production data published by an industry source, Photon International, along with affidavits of support for the petition, and its knowledge of the industry. We have relied upon data Petitioner provided for purposes of measuring industry support.[8]

On November 2, 2011, in consultations with the Department held with respect to the companion countervailing duty case, the Government of China raised the issue of industry support.[9] In addition, on November 8, 2011, we received two submissions on behalf of Chinese producers/exporters and affiliated importers of Solar Cells, interested parties to this proceeding as defined in section 771(9)(A) of the Act, questioning the industry support calculation.[10]

Based on information provided in the Petition, supplemental submissions, and other information readily available to the Department, we determine that the Petitioner has met the statutory criteria for industry support under section 732(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like product. Because the Petition did not establish support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product, the Department was required to take further action in order to evaluate industry support.[11] In this case, the Department was able to rely on other information, in accordance with section 732(c)(4)(D)(i) of the Act, to determine industry support.[12] Based on information provided in the Petition, supplemental submissions, and additional information obtained by the Department, the domestic producers and workers have met the statutory criteria for industry support under section 732(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petition account for more than 50 percent of the

[5] See *USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001), citing *Algoma Steel Corp., Ltd.* v. *United States,* 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989), *cert. denied* 492 U.S. 919 (1989).

[6] For a discussion of the domestic like product analysis in this case, see Antidumping Duty Investigation Initiation Checklist: Crystalline Silicon Photovoltaic Cells from the People's Republic of China (''Initiation Checklist''), at Attachment II, Analysis of Industry Support for the Petitions Covering Solar Cells from the People's Republic of China, on file in the Central Records Unit (CRU), Room 7046 of the main Department of Commerce building.

[7] *See* Initiation Checklist at Attachment II.

[8] For further discussion, *see* Initiation Checklist at Attachment II.

[9] *See* Memorandum to the File from Meredith Rutherford, dated November 8, 2011, titled ''Placing Consultations Memorandum on the AD Record''; *see also* Initiation Checklist at Attachment II.

[10] For further discussion of these submissions *see* Initiation Checklist at Attachment II.

[11] *See* section 732(c)(4)(D) of the Act.

[12] *See* Initiation Checklist at Attachment II.

production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition. Accordingly, the Department determines that the Petition was filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.[13]

The Department finds that Petitioner filed the Petition on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act and it has demonstrated sufficient industry support with respect to the antidumping duty investigation that it is requesting the Department initiate.[14]

## Allegations and Evidence of Material Injury and Causation

Petitioner alleges that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at less than normal value (''NV''). In addition, Petitioner alleges that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.

Petitioner contends that the industry's injured condition is illustrated by reduced market share, reduced shipments, unused capacity, underselling and price depression or suppression, reduced employment, a decline in financial performance, lost sales and revenue, and an increase in import penetration.[15] We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation.[16]

## Allegations of Sales at Less Than Fair Value

The following is a description of the allegations of sales at less than fair value upon which the Department based its decision to initiate this investigation of imports of solar cells from the PRC. The sources of data for the deductions and adjustments relating to the U.S. price and the factors of production are also discussed in the Initiation Checklist.[17]

### U.S. Price

Petitioner calculated constructed export price (''CEP'') based on sales offers of three types of solar cells to unaffiliated U.S. customers by the U.S. affiliates of three PRC producers of solar cells. Petitioners substantiated the U.S. price quotes with declarations.[18] Petitioners further provided a detailed description of the merchandise corresponding to the price quotes,[19] and an explanation and declaration of why the sales prices should be considered CEPs.[20] Based on stated sales and delivery terms, Petitioner adjusted these CEPs for discounts, freight, credit expenses, domestic brokerage and handling, ocean freight, CEP selling expenses, and CEP profit.[21]

### Normal Value

Petitioner claims the PRC is a non-market economy (''NME'') country and that this designation remains in effect today.[22] The presumption of NME status for the PRC has not been revoked by the Department and, therefore, in accordance with section 771(18)(C)(i) of the Act, remains in effect for purposes of the initiation of this investigation. Accordingly, the NV of the product for the PRC investigation is appropriately based on factors of production valued in a surrogate market-economy country in accordance with section 773(c) of the Act. In the course of this investigation, all parties, including the public, will have the opportunity to provide relevant information related to the issues of the PRC's NME status and the granting of separate rates to individual exporters.

Petitioner contends that India is the appropriate surrogate country for the PRC because: (1) It is at a level of economic development comparable to that of the PRC and (2) it is a significant producer of identical merchandise and (3) that the availability and quality of data are good.[23] Based on the information provided by Petitioner, we believe that it is appropriate to use India as a surrogate country for initiation purposes. After initiation of the investigation, interested parties will have the opportunity to submit comments regarding surrogate country selection and, pursuant to 19 CFR 351.301(c)(3)(i), will be provided an opportunity to submit publicly available information to value factors of production within 40 days after the date of publication of the preliminary determination.

Petitioner calculated NV and the dumping margins using the Department's NME methodology as required by 19 CFR 351.202(b)(7)(i)(C) and 19 CFR 351.408. In calculating NV, Petitioner based the quantity of each of the inputs used to manufacture the domestic like product on reasonably available information, which Petitioner asserts that, to the best of its knowledge, is similar to the consumption of PRC producers.[24]

Petitioner valued most of the factors of production based on reasonably available, public surrogate country data, specifically, Indian import data from the Global Trade Atlas (''GTA'').[25] In addition, Petitioner made currency conversions, where necessary, based on the POI-average rupees/U.S. dollar exchange rate based on Federal Reserve exchange rates.[26] The Department determines that the surrogate values used by Petitioner are reasonably available and, thus, acceptable for purposes of initiation. With regard to the main input, Petitioner contends that solar grade polysilicon is a specialized product and used world market prices to value the input. Petitioner contends that Indian import data from the GTA did not adequately reflect the uniqueness of the input. Also, Petitioner valued silicon wafers using world market prices. The use of these data raises significant issues that the Department believes are better addressed in the context of the investigation. Therefore, for the purposes of this initiation, the Department finds that is more appropriate to rely on our standard methodology and use Indian import data to value polysilicon and solar wafers. During the course of the investigation, the Department will consider record information to determine the most appropriate surrogate value for polysilicon, solar wafers, and all other factors of production used to produce solar cells.

Petitioner determined energy costs using reasonably available information. Petitioner valued electricity using the Indian electricity rate for small,

[13] *See* Initiation Checklist at Attachment II.

[14] *Id.*

[15] *See* Volume I of the Petition, at 1–4, 25–44, and Exhibits I–6, I–8–9, I–14–16, I–17a, I–18a, I–19–20, I–21a, I–21b, I–22 and I–24, and Supplement II–A—General Issues, at 1–2.

[16] *See* Initiation Checklist at Attachment III, Injury.

[17] *See* Initiation Checklist, at 5–8.

[18] *See* Volume II of the Petition, at Exhibits II–1 and II–2.

[19] *See* Volume II of the Petition, at Exhibit II–3.

[20] *See* Volume II of the Petition, at 1 and Exhibit II–1.

[21] *See* Initiation Checklist at 5–6; *see also* Volume II of the Petition, at 2–16, and Exhibits II–I through II–15; *see also* Supplement I, at 19, and Exhibits 19–20, and Supplement II–B—AD Issues, at 1–7 and Exhibits 1, 4–7, and 9–11; *see also* Supplement V–A—AD Issues, at 1, 4, and Exhibit 1.

[22] *See* Volume II of the Petition, at 17.

[23] *See* Volume II of the Petition, at 18–19, and Supplement I, at 1–12.

[24] *See* Volume II of the Petition, at 20.

[25] *See* Initiation Checklist; *see also* Volume II of the Petition, at Exhibit II–21; *see also* Supplement V, at Exhibit 3.

[26] *See* Initiation Checklist; *see also* Volume II of the Petition, at Exhibit II–11; *see also* Supplement II–B—AD Issues at Exhibit 9.

medium, and large companies reported by the Central Electric Authority of the Government of India.[27]

Petitioner determined labor consumption, in hours, using reasonably available information. Petitioner valued labor using data collected by the International Labor Organization (''ILO'') and disseminated in Chapter 6A of the ILO Yearbook of Labor Statistics.[28] Petitioner adjusted labor costs using consumer price index data published by the International Monetary Fund.

Petitioner determined packing material consumption using reasonably available information and valued the relevant factors using data from GTA.[29]

Petitioner calculated factory overhead, selling, general and administrative expenses, and profit by using data from the 2009–2010 financial statement of Bharat Heavy Electricals Ltd., an Indian producer of solar cells.[30]

**Fair Value Comparisons**

Based on the data provided by Petitioner, there is reason to believe that imports of solar cells from the PRC are being, or are likely to be, sold in the United States at less than fair value. Based on a comparison of U.S. prices and NV calculated in accordance with section 773(c) of the Act, as described above, the estimated CEP dumping margins range from 49.88 percent and 249.96 percent.[31]

**Initiation of Antidumping Duty Investigation**

Based upon our examination of the Petition on solar cells from the PRC, the Department finds the Petition meets the requirements of section 732 of the Act. Therefore, we are initiating an antidumping duty investigation to determine whether imports of solar cells from the PRC are being, or are likely to be, sold in the United States at less than fair value. In accordance with section 733(b)(1)(A) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determination no later than 140 days after the date of this initiation.

**Critical Circumstances**

Petitioner alleges, based on trade statistics since August 2010 and prior knowledge of an impending trade case, that there is a reasonable basis to believe or suspect that critical circumstances exist with regard to imports of solar cells from the PRC.[32]

Section 733(e)(1) of the Act states that if a petitioner alleges critical circumstances, the Department will find that such circumstances exist, at any time after the date of initiation, when there is a reasonable basis to believe or suspect that under, subparagraph (A)(i), there is a history of dumping and there is material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period. Section 351.206(h) of the Department's regulations defines ''massive imports'' as imports that have increased by at least 15 percent over the imports during an immediately preceding period of comparable duration. Section 351.206(i) of the Department's regulations states that a relatively short period will normally be defined as the period beginning on the date the proceeding begins and ending at least three months later. But if the Department finds that importers, or exporters and producers, had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, then the regulation permits the Department to consider a period of not less than three months from that earlier time.

With regard to the criteria of massive imports over a relatively short period of time, Petitioner argues that the Department should evaluate the level of imports during a period prior to the filing of the petition because importers and foreign exporters and producers had reason to believe that a dumping or countervailing duty proceeding was likely.[33] Petitioner contends that there were newspaper articles beginning in August 2009 that discussed unfair pricing on behalf of Chinese product.[34] Petitioner further notes that the very widely publicized closure of a large solar cell producer resulted in much media discussion of the effects of unfair trade in January 2011. Therefore, Petitioner states that ''the effects of any behavioral shifts of Chinese producers would be likely to manifest themselves in February 2011 as shipments of goods ordered in the days immediately following Evergreen's demise in January 2011 would not have reached the United States until February.'' [35] Thus, Petitioner demonstrates massive imports over a relatively short period of time by comparing imports of subject merchandise between the six-month period of August 2010 and January 2011 (base period) and the six-month period of February 2011 and July 2011 (comparison period). Based on Petitioner's calculation, imports surged 220 percent between base period and comparison period, which is greater than the 15 percent threshold defined in the Department's regulations.[36]

With regard to the requirement of history or knowledge of dumping, Petitioner alleges that importers knew, or should have known, that solar cells were being sold at less than fair value. While there have been no determinations of dumping of solar cells by the Chinese in any foreign markets, Petitioner's claim that the margins being calculated in the dumping allegation are at a level high enough to impute importer knowledge that merchandise was being sold at less than its fair value. The estimated dumping margins range between 49.88 and 249.96 percent.[37] These margins exceed the 25 percent threshold used by the Department to impute knowledge of dumping.[38] In addition, Petitioner references the media coverage discussing unfair pricing in the industry which indicates that importers had knowledge that Chinese companies were most likely selling at less than fair value.[39] With regard to injury, Petitioner acknowledges that there is no preliminary determination by the ITC at this time, however, Petitioner argues that in the past the Department ''has considered the extent of the increase in the volume of imports of the subject

[27] *See* Initiation Checklist; *see also* Volume II of the Petition, at 31, and Exhibit II–25.

[28] *See* Initiation Checklist; *see also* Volume II of the Petition, at 31 and Exhibit II–26.

[29] *See* Initiation Checklist; *see also* Volume II of the Petition, at Exhibit II–21; Supplement V–A—AD Issues at Exhibit 6.

[30] *See* Initiation Checklist; *see also* Supplement I, at 19, and Exhibit 20; *see also* Supplement V–A—AD Issues, at Exhibit AD Supp—3–3.

[31] *See* Initiation Checklist; *see also* Supplement V–A—AD Issues, at Exhibit AD—Supp—3–2.

[32] *See* Volume IV of the Petition, at 1, 7, and 10.

[33] *See* Volume IV of the Petition, at 3–9, and Exhibits IV–1 through IV–16; *see also* 19 CFR 351.206(i).

[34] *See* Volume IV of the Petition, at 4, and Exhibits IV–1 and IV–2.

[35] See Supplement II–A—General Issues, at 6.

[36] See Volume IV of the Petition, at 10–11; see also 19 CFR 351.206(h).

[37] See Volume IV of the Petition, at 11–12, and Volume II of the Petition; see also Initiation Checklist; see also Supplement V, at Exhibit 2.

[38] See *e.g., Final Determination of Sales at Less than Fair Value and Affirmative Determination of Critical Circumstances: Small Diameter Graphite Electrodes from the People's Republic of China,* 74 FR 2049 (Jan. 14, 2009) and accompanying Issue and Decisions Memorandum at Issue 4.

[39] See Volume IV of the Petition, at 12, and Exhibits IV–1 and IV–3.

merchandise, as well as the magnitude of the dumping margins, in determining whether a reasonable basis exists to impute knowledge that material injury was likely.'' [40] Petitioner alleges that because imports have increased by 220 percent from base period to comparison period, and because the margins alleged in the Petition exceed the 25 percent threshold used by the Department to impute knowledge of dumping, there is therefore, adequate basis to determine that importers knew or should have known that material injury was likely due to the unfairly traded sales.[41]

Petitioner requests that the Department examine the information it has provided and make a preliminary finding of critical circumstances on an expedited basis, within 45 days of the filing of the Petition.[42] Section 732(e) of the Act states that when there is a reasonable basis to believe or suspect (1) there is a history of dumping in the United States or elsewhere of the subject merchandise, or (2) the person by whom, or for whose account, the merchandise was imported knew, or should have known, that the exporter was selling the subject merchandise at less than its fair value, the Department may request Customs and Border Protection (CBP) to compile information on an expedited basis regarding entries of the subject merchandise.

Taking into consideration the foregoing, we will analyze this matter further. We will monitor imports of solar cells from the PRC and we will request that CBP compile information on an expedited basis regarding entries of subject merchandise.[43] If, at any time, the criteria for a finding of critical circumstances are established, we will issue a critical circumstances finding at the earliest possible date.[44]

**Targeted Dumping Allegations**

On December 10, 2008, the Department issued an interim final rule for the purpose of withdrawing 19 CFR 351.414(f) and (g), the regulatory provisions governing the targeted dumping analysis in antidumping duty investigations, and the corresponding regulation governing the deadline for targeted dumping allegations, 19 CFR 351.301(d)(5).[45] The Department stated that ''{w}ithdrawal will allow the Department to exercise the discretion intended by the statute and, thereby, develop a practice that will allow interested parties to pursue all statutory avenues of relief in this area.'' [46]

In order to accomplish this objective, if any interested party wishes to make a targeted dumping allegation in this investigation pursuant to section 777A(d)(1)(B) of the Act, such allegation is due no later than 45 days before the scheduled date of the preliminary determination.

**Respondent Selection**

Petitioner identified 75 PRC producers/exporters of solar cells. The Department will issue quantity and value questionnaires to each of the 75 producers/exporters of solar cells named in the Petition, and will make its respondent selection decision based on the responses to the questionnaires it receives. Parties that do not receive a quantity and value questionnaire from the Department may file a quantity and value questionnaire by the applicable deadline if they wish to be included in the pool of companies from which the Department will select mandatory respondents.

The Department requires that the respondents submit a response to both the quantity and value questionnaire and the separate-rate application by the respective deadlines in order to receive consideration for separate-rate status. On the date of the publication of this initiation notice in the **Federal Register**, the Department will post the quantity and value questionnaire along with the filing instructions on the Import Administration Web site at *http://ia.ita.doc.gov/ia-highlights-and-news.html*. A response to the quantity and value questionnaire is due no later than November 29, 2011.[47]

Interested parties must submit applications for disclosure under administrative protective order (''APO'') in accordance with 19 CFR 351.305. Instructions for filing such applications may be found on the Department's Web site at *http://ia.ita.doc.gov/apo*.

**Separate-Rate Application**

In order to obtain separate-rate status in NME investigations, exporters and producers must submit a separate-rate status application.[48] The specific requirements for submitting the separate-rate application in this investigation are outlined in detail in the application itself, which will be available on the Department's Web site at *http://ia.ita.doc.gov/ia-highlights-and-news.html* on the date of publication of this initiation notice in the **Federal Register**. The separate-rate application will be due 60 days after publication of this initiation notice. For exporters and producers who submit a separate-rate status application and subsequently are selected as mandatory respondents, these exporters and producers will no longer be eligible for consideration for separate rate status unless they respond to all parts of the questionnaire as mandatory respondents. As noted in the ''Respondent Selection'' section above, the Department requires that respondents submit a response to both the quantity and value questionnaire and the separate-rate application by the respective deadlines in order to receive consideration for separate-rate status. The quantity and value questionnaire will be available on the Department's Web site at *http://ia.ita.doc.gov/ia-highlights-and-news.html* on the date of the publication of this initiation notice in the **Federal Register**.

*Use of Combination Rates in an NME Investigation*

The Department will calculate combination rates for certain respondents that are eligible for a separate rate in this investigation. The Policy Bulletin states:

> While continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME investigations will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of ''combination rates'' because such rates apply to specific combinations of exporters and one or more

[40] *See* Volume IV of the Petition, at 12; see also *Final Determination of Sales at Less than Fair Value: Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China,* 62 FR 61964, 61967 (Nov. 20, 1997).

[41] *See* Volume IV of the Petition, at 13.

[42] *See* Volume IV of the Petition, at 1, 2, and 16; *see also* 19 CFR 351.206(c)(2)(iii).

[43] *See* Section 732(e) of the Act.

[44] *See* Policy Bulletin 98/4, 63 FR 55364 (Oct. 15, 1998).

[45] *See Withdrawal of the Regulatory Provisions Governing Targeted Dumping in Antidumping Duty Investigations,* 73 FR 74930 (December 10, 2008).

[46] *Id.* at 74931.

[47] *See Circular Welded Austenitic Stainless Pressure Pipe From the People's Republic of China: Initiation of Antidumping Duty Investigation,* 73 FR 10221, 10225 (February 26, 2008); *Initiation of Antidumping Duty Investigation: Certain Artist Canvas From the People's Republic of China,* 70 FR 21996, 21999 (April 28, 2005).

[48] *See* Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries, dated April 5, 2005 (''Policy Bulletin''), available on the Department's Web site at *http://ia.ita.doc.gov/policy/bull05-1.pdf.*

producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question and produced by a firm that supplied the exporter during the period of investigation.[49]

*Distribution of Copies of the Petition*

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), copies of the public versions of the Petition have been provided to the representatives of the Government of the PRC. Because of the large number of producers/exporters identified in the Petition, the Department considers the service of the public version of the Petition to the foreign producers/exporters satisfied by the delivery of the public version to the Government of the PRC, consistent with 19 CFR 351.203(c)(2).

**ITC Notification**

We have notified the ITC of our initiation, as required by section 732(d) of the Act.

**Preliminary Determinations by the ITC**

The ITC will preliminarily determine, no later than December 5, 2011, whether there is a reasonable indication that imports of solar cells from the PRC are materially injuring, or threatening material injury to a U.S. industry. A negative ITC determination will result in the investigation being terminated; otherwise, this investigation will proceed according to statutory and regulatory time limits.

**Notification to Interested Parties**

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305. On January 22, 2008, the Department published Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures, 73 FR 3634. Parties wishing to participate in this investigation should ensure that they meet the requirements of these procedures (*e.g.,* the filing of letters of appearance as discussed at 19 CFR 351.103(d)).

Any party submitting factual information in an antidumping duty or countervailing duty proceeding must certify to the accuracy and completeness of that information.[50] Parties are hereby reminded that revised certification requirements are in effect for company/government officials as well as their representatives in all segments of any antidumping duty or countervailing duty proceedings initiated on or after March 14, 2011.[51] The formats for the revised certifications are provided at the end of the Interim Final Rule. The Department intends to reject factual submissions in any proceeding segments initiated on or after March 14, 2011, if the submitting party does not comply with the revised certification requirements.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: November 8, 2011.

**Paul Piquado**

*Assistant Secretary for Import Administration.*

## Appendix I

## Scope of the Investigation

The merchandise covered by this investigation are crystalline silicon photovoltaic cells, and modules, laminates, and panels, consisting of crystalline silicon photovoltaic cells, whether or not partially or fully assembled into other products, including, but not limited to, modules, laminates, panels and building integrated materials.

This investigation covers crystalline silicon photovoltaic cells of thickness equal to or greater than 20 micrometers, having a p/n junction formed by any means, whether or not the cell has undergone other processing, including, but not limited to, cleaning, etching, coating, and/or addition of materials (including, but not limited to, metallization and conductor patterns) to collect and forward the electricity that is generated by the cell.

Subject merchandise may be described at the time of importation as parts for final finished products that are assembled after importation, including, but not limited to, modules, laminates, panels, building-integrated modules, building-integrated panels, or other finished goods kits. Such parts that otherwise meet the definition of subject merchandise are included in the scope of this investigation.

Excluded from the scope of this investigation are thin film photovoltaic products produced from amorphous silicon (a-Si), cadmium telluride (CdTe), or copper indium gallium selenide (CIGS).

Also excluded from the scope of this investigation are crystalline silicon photovoltaic cells, not exceeding 10,000mm$^2$ in surface area, that are permanently integrated into a consumer good whose function is other than power generation and that consumes the electricity generated by the integrated crystalline silicon photovoltaic cell. Where more than one cell is permanently integrated into a consumer good, the surface area for purposes of this exclusion shall be the total combined surface area of all cells that are integrated into the consumer good.

Merchandise covered by this investigation is currently classified in the Harmonized Tariff System of the United States (''HTSUS'') under subheadings 8501.61.0000, 8507.20.80, 8541.40.6020 and 8541.40.6030. These HTSUS subheadings are provided for convenience and customs purposes; the written description of the scope of this investigation is dispositive.

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[49] *See* Policy Bulletin at 6 (emphasis added).

[50] See section 782(b) of the Act.

[51] 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).

## DEPARTMENT OF COMMERCE

## International Trade Administration

**[A–549–821]**

## Polyethylene Retail Carrier Bags From Thailand: Correction to the Amended Final Results of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** On November 3, 2011, the Department of Commerce (the Department) published in the **Federal Register** the amended final results of the administrative review of the antidumping duty order on polyethylene retail carrier bags from Thailand for the period August 1, 2009, through July 31, 2010. The notice did not include the names and margins of two companies subject to the amended final results of the review. The names and the respective margins are indicated below.

**FOR FURTHER INFORMATION CONTACT:** Bryan Hansen, 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) 482–3683.

**SUPPLEMENTARY INFORMATION:**

## Background

On November 3, 2011, the Department of Commerce (the Department) published the amended final results of the administrative review of the antidumping duty order on polyethylene retail carrier bags from Thailand. *See Polyethylene Retail Carrier Bags From Thailand: Amended Final Results of Antidumping Duty Administrative Review,* 76 FR 68137 (November 3, 2011) (*Amended Final Results*). The period of review is August 1, 2009, through July 31, 2010.

Subsequent to the publication of the *Amended Final Results* we identified an inadvertent error in the notice. The names and margins of the following two

companies not selected for individual examination were omitted:

Trinity Pac Co. Ltd.

U. Yong Industry Co., Ltd.

The weighted-average margin the Department determined for these companies is 28.74 percent. *See* Memorandum to the File ''Polyethylene Retail Carrier Bags from Thailand—Amended Final Results, Margin Calculation for Respondents Not Selected for Individual Examination'' dated October 27, 2011. Accordingly, the complete list of companies subject to the *Amended Final Results* with their respective margin rates is as follows:

| Producer/exporter | Percent margin |
|---|---|
| First Pack Co. Ltd | 28.74 |
| K International Packaging Co., Ltd | 28.74 |
| Landblue (Thailand) Co., Ltd | 25.73 |
| Praise Home Industry, Co. Ltd | 28.74 |
| Siam Flexible Industries Co., Ltd | 28.74 |
| Thai Jirun Co., Ltd | 28.74 |
| Trinity Pac Co. Ltd | 28.74 |
| U. Yong Industry Co., Ltd | 28.74 |

**Cash Deposit Requirements and Assessment Rates**

The deposit rates will be effective retroactively on any entries made on or after September 28, 2011, the date of publication of the final results of review, for shipments of polyethylene retail carrier bags from Thailand entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) The cash-deposit rates for the companies subject to the review will be the rates shown above; (2) for previously investigated or reviewed companies not listed above, the cash-deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this or a previous 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 period for the manufacturer of the merchandise; (4) the cash-deposit rate for all other manufacturers or exporters will be 4.69 percent, the all-others rate from the amended final determination of the LTFV investigation revised as a result of the Section 129 determination published on August 12, 2010. *See Notice of Implementation of Determination Under Section 129 of the Uruguay Round Agreements Act and Partial Revocation of the Antidumping Duty Order on Polyethylene Retail Carrier Bags From Thailand,* 75 FR 48940 (August 12, 2010). These deposit requirements, when imposed, shall remain in effect until further notice.

The Department intends to issue liquidation instructions to U.S. Customs and Border Protection 15 days after publication of this correction to the amended final results of review.

This correction to the amended final results of administrative review is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended.

November 9, 2011.

**Paul Piquado,**

*Assistant Secretary for Import Administration.*

[FR Doc. 2011–29620 Filed 11–15–11; 8:45 am]

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## DEPARTMENT OF COMMERCE

## International Trade Administration

**[C–570–980]**

## Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Initiation of Countervailing Duty Investigation

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**DATES:** *Effective Date:* November 16, 2011.

**FOR FURTHER INFORMATION CONTACT:** Gene Calvert, Jun Jack Zhao or Emily Halle, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3586, (202) 482–1396 or (202) 482–0176, respectively.

**SUPPLEMENTARY INFORMATION:**

**The Petition**

On October 19, 2011, the Department of Commerce (Department) received a countervailing duty (CVD) petition concerning imports of crystalline silicon photovoltaic cells, whether or not assembled into modules (solar cells), from the People's Republic of China (PRC) filed in proper form by SolarWorld Industries America Inc. (Petitioner). *See* Petition for the Imposition of Antidumping and Countervailing Duties Against Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China, dated October 19, 2011 (Petition).

On October 21, 24 and 31, 2011, and November 4, 2011, the Department issued supplemental questionnaires requesting information and clarification of certain areas of the Petition.

On October 24, 2011, the Department issued requests to Petitioner for additional information and for clarification of certain areas of the general issues, antidumping (AD), and CVD sections of the Petition. Based on the Department's requests, Petitioner filed a supplement to the Petition regarding the CVD section on October 26, 2011 (Supplement I), and requested an extension until October 28, 2011, for the AD and general issues supplemental questionnaire. On October 28, 2011, Petitioner filed the supplement to the Petition regarding the AD and general issues section (Supplement II–A—General Issues and Supplement II–B—AD Issues). On October 31, 2011, the Department issued an additional request for information, which Petitioner filed on November 2, 2011 (Supplement III), November 4, 2011 (Supplement IV) and November 7, 2011 (Supplement V–A—AD Issues and Supplement V–B—General Issues).

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended (the Act), Petitioner alleges that producers/exporters of solar cells from the PRC received countervailable subsidies within the meaning of sections 701 and 771(5) of the Act, and that imports from these producers/exporters materially injure, and threaten further material injury to, an industry in the United States.

The Department finds that Petitioner filed the Petition on behalf of the domestic industry because Petitioner is an interested party, as defined in section 771(9)(C) of the Act, and has demonstrated sufficient industry support with respect to the investigation that it requests the Department to initiate. *See* ''Determination of Industry Support for the Petition,'' below.

**Period of Investigation**

The period of investigation (POI) is January 1, 2010, through December 31, 2010.

**Scope of the Investigation**

The products covered by the scope of this investigation are solar cells from the PRC. For a full description of the scope of the investigation, *see* the ''Scope of the Investigation,'' in Appendix I of this notice.

**Comments on Scope of the Investigation**

During our review of the Petition, we discussed the scope with Petitioner to ensure that it is an accurate reflection of the products for which the domestic industry is seeking relief. Petitioner submitted revised scope language on

November 4, 2011, and November 7, 2011. The November 7, 2011, submission included various revisions. Among these revisions was the following substantive provision:

> These proceedings cover crystalline silicon PV cells, whether exported directly to the United States or via third countries; crystalline silicon PV modules/panels produced in the PRC, regardless of country of manufacture of the cells used to produce the modules or panels, and whether exported directly to the United States or via third countries, and crystalline silicon PV modules or panels produced in a third country from crystalline silicon PV cells manufactured in the PRC, whether exported directly to the United States or via third countries.

The Department has not adopted this specific revision recommended by Petitioner for the purposes of initiation.[1] Because Petitioner's November 7, 2011, scope submission was filed one day prior to the statutory deadline for initiation, the Department has had neither the time nor the administrative resources to evaluate Petitioner's proposed language regarding merchandise produced using inputs from third-country markets, or merchandise processed in third-country markets. Petitioner's November 7, 2011, scope submission also contained the following language:

> Unless explicitly excluded from the scope of these proceedings, crystalline silicon PV cells possessing the physical characteristics of subject merchandise are covered by these proceedings.

The Department has not adopted this specific revision recommended by Petitioner for the purposes of initiation because this language is superfluous, and appears to add no additional clarification as to the description of merchandise covered by the scope of the Petition. However, as discussed in the preamble to the regulations, we are setting aside a period for interested parties to raise issues regarding product coverage. *See Antidumping Duties; Countervailing Duties,* 62 FR 27296, 27323 (May 19, 1997). The Department encourages interested parties to submit such comments by Monday, November 28, 2011, which is twenty calendar days from the signature date of this notice. All comments must be filed on the records of both the PRC AD investigation as well as the PRC CVD investigation. Comments must be filed electronically through Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS), *http://iaaccess.trade.gov,* in accordance with 19 CFR 351.303. *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011). The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and to consult with parties prior to the issuance of the preliminary determination.

**Consultations**

Pursuant to section 702(b)(4)(A)(ii) of the Act, on October 20, 2011, the Department invited representatives of the Government of the PRC (GOC) for consultations with respect to the CVD petition. On November 2, 2011, the Department held consultations with representatives of the GOC via conference call. *See* Memorandum to the File, regarding ''Consultations with Officials from the Government of the People's Republic of China on the Countervailing Duty Petition Regarding Certain Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules,'' dated November 4, 2011 (Consultations Memorandum).

**Determination of Industry Support for the Petition**

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the industry.

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The U.S. International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (*see* section 771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law. See *USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001), citing *Algoma Steel Corp., Ltd.* v. *United States,* 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989), *cert. denied* 492 U.S. 919 (1989).

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation'' (*i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, Petitioner does not offer a definition of domestic like product distinct from the scope of the investigation. Based on our analysis of the information submitted on the record, we have determined that solar cells constitute a single domestic like product and we have analyzed industry support in terms of that domestic like product. For a discussion of the domestic like product analysis in this case, *see* ''Countervailing Duty Investigation Initiation Checklist: Certain Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China'' (Initiation Checklist), at Attachment II, Analysis of Industry Support for the Petitions Covering Crystalline Silicon Photovoltaic Cells from the People's Republic of China, on file electronically on IA ACCESS, accessible via the Central Records Unit, Room 7046 of the main Commerce building, and also accessible on the Web at *http://ia.ita.doc.gov/frn.* The paper copy and electronic versions of the Initiation Checklist are identical in content.

In determining whether Petitioner has standing under section 702(c)(4)(A) of the Act, we considered the industry

[1] We note that the Department has independent authority to determine the scope of its investigations. *See Diversified Products Corp.* v. *United States,* 572 F. Supp. 883, 887 (CIT 1983).

support data contained in the Petition with reference to the domestic like product as defined in the ''Scope of Investigation'' section, above. To establish industry support, Petitioner provided its production volume of the domestic like product in 2010, and compared this to the estimated total production volume of the domestic like product for the entire domestic industry. *See* Initiation Checklist at Attachment II. Petitioner estimated 2010 production volume of the domestic like product by non-petitioning companies based on production data published by an industry source, Photon International, along with affidavits of support for the Petition, and its knowledge of the industry. We have relied upon data Petitioner provided for purposes of measuring industry support. For further discussion, *see* Initiation Checklist at Attachment II.

On November 2, 2011, in its consultations with the Department, the Government of China raised the issue of industry support. *See* Consultations Memorandum; *see also* Initiation Checklist at Attachment II. On November 7, 2011, certain Chinese producers/exporters and affiliated importers of Solar Cells, interested parties to this proceeding as defined in section 771(9)(A) of the Act filed comments regarding industry support. Because the comments did not include certifications as required under 19 CFR 351.303(g), we allowed the parties to re-file the comments. On November 8, 2011, we received comments with proper certifications. On November 8, 2011, the same Chinese producers/exporters filed additional comments regarding industry support. However, those comments were not limited to industry support as required by section 732(c)(4)(E) of the Act. Accordingly, we rejected the comments as improperly filed. The interested parties re-filed this submission on November 8 and properly limited their comments to industry support.[2]

Based on information provided in the Petition, supplemental submissions, and other information readily available to the Department, we determine that the domestic producers and workers have met the statutory criteria for industry support under section 702(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like product. Because the Petition did not establish support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product, the Department was required to take further action in order to evaluate industry support. *See* section 702(c)(4)(D) of the Act. In this case, the Department was able to rely on other information, in accordance with section 702(c)(4)(D)(i) of the Act, to determine industry support. *See* Initiation Checklist at Attachment II; *see also* Memorandum to the File from Stephen Bailey, titled ''Conference Call,'' dated November 3, 2011. Based on information provided in the Petition, supplemental submissions, and additional information obtained by the Department, the domestic producers and workers have met the statutory criteria for industry support under section 702(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition. Accordingly, the Department determines that the Petition was filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act. *See* Initiation Checklist at Attachment II.

The Department finds that Petitioner filed the Petition on behalf of the domestic industry because it is an interested party as defined in sections 771(9)(C) of the Act and it has demonstrated sufficient industry support with respect to the CVD investigation that it is requesting the Department initiate. *Id.*

**Injury Test**

Because the PRC is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to this investigation. Accordingly, the ITC must determine whether imports of subject merchandise from the PRC materially injure, or threaten material injury to, a U.S. industry.

**Allegations and Evidence of Material Injury and Causation**

Petitioner alleges that imports of solar cells from the PRC are benefitting from countervailable subsidies and that such imports are causing, or threaten to cause, material injury to the domestic industry producing solar cells. In addition, Petitioner alleges that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.

Petitioner contends that the industry's injured condition is illustrated by reduced market share, reduced shipments, unused capacity, underselling and price depression or suppression, reduced employment, a decline in financial performance, lost sales and revenue, and an increase in import penetration. *See* Volume I of the Petition, at 1–4, 25–44, and Exhibits I–6, I–8–9, I–14–16, I–17a, I–18a, I–19–20, I–21a, I–21b, I–22 and I–24, and Supplement II–A–General Issues, at 1–2. We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation. *See* Initiation Checklist at Attachment III, Injury.

**Initiation of Countervailing Duty Investigation**

Section 702(b)(i) of the Act requires the Department to initiate a CVD proceeding whenever an interested party files a petition on behalf of an industry that: (1) Alleges the elements necessary for an imposition of a duty under section 701(a) of the Act; and (2) is accompanied by information reasonably available to the petitioner(s) supporting the allegations. The Department has examined the CVD Petition on solar cells from the PRC and finds that it complies with the requirements of section 702(b) of the Act. Therefore, in accordance with section 702(b) of the Act, we are initiating a CVD investigation to determine whether manufacturers, producers, or exporters of solar cells in the PRC receive countervailable subsidies. For a discussion of evidence supporting our initiation determination, *see* Initiation Checklist.

We are including in our investigation the following programs alleged in the Petition to have provided countervailable subsidies to producers and exporters of the subject merchandise in the PRC:

A. Grant Programs

1. Export Product Research and Development Fund
2. Subsidies for Development of ''Famous Brands'' and ''China World Top Brands''
3. Sub-Central Government Subsidies for Development of ''Famous Brands'' and ''China World Top Brands''
4. Special Energy Fund (Established by Shandong Province)
5. Funds for Outward Expansion of Industries in Guangdong Province
6. Golden Sun Demonstration Program

[2] For further discussion of these submissions *see* Initiation Checklist at Attachment II.

B. Government Provision of Goods and Services for Less Than Adequate Remuneration (LTAR)
1. Government Provision of Polysilicon for LTAR
2. Government Provision of Aluminum for LTAR
3. Government Provision of Power for LTAR
C. Government Provision of Land for LTAR
D. Policy Lending to the Renewable Energy Industry
E. Income and Other Direct Tax Exemption and Reduction Programs
1. ''Two Free, Three Half'' Program for Foreign Invested Enterprises (FIEs)
2. Income Tax Reductions for Export-Oriented FIEs
3. Income Tax Benefits for FIEs Based on Geographic Location
4. Local Income Tax Exemption and Reduction Programs for ''Productive'' FIEs
5. Tax Reductions for FIEs Purchasing Chinese-Made Equipment
6. Tax Offsets for Research and Development by FIEs
7. Tax Refunds for Reinvestment of FIE Profits in Export-Oriented Enterprises
8. Preferential Tax Programs for FIEs Recognized as High or New Technology Enterprises
9. Tax Reductions for High and New-Technology Enterprises Involved in Designated Projects
10. Preferential Income Tax Policy for Enterprises in the Northeast Region
11. Guangdong Province Tax Programs
F. Indirect Tax and Tariff Exemption Programs
1. Value Added Tax (VAT) Exemptions for Use of Imported Equipment
2. VAT Rebates on FIE Purchases of Chinese-Made Equipment
3. VAT and Tariff Exemptions for Purchases of Fixed Assets Under the Foreign Trade Development Fund Program
G. Export Credit Subsidy Programs
H. Export Guarantees and Insurance for Green Technology

For a description of each of these programs and a full discussion of the Department's decision to initiate an investigation of these programs, *see* Initiation Checklist.

We are not including in our investigation the following programs alleged to benefit producers/exporters of the subject merchandise in the PRC.

A. Grant Programs
1. Fund for Economic, Scientific, and Technology Development (Established by Foshan City)
2. Provincial Fund for Fiscal and Technological Innovation (Established by Guangdong Province)
B. Government Provision of Water for LTAR
C. Currency Undervaluation

For further information explaining why the Department is not initiating an investigation of these programs, *see* Initiation Checklist.

**Critical Circumstances**

Petitioner alleges, based on trade statistics since August 2010 and prior knowledge of an impending trade case, that there is a reasonable basis to believe or suspect that critical circumstances exist with regard to imports of solar cells from the PRC. *See* Volume IV of the Petition, at 1, 7, and 10.

Section 703(e)(1) of the Act states that if a petitioner alleges critical circumstances, the Department will find that such circumstances exist, at any time after the date of initiation, when there is a reasonable basis to believe or suspect that under, subparagraph (A) the alleged countervailable subsidy is inconsistent with the Subsidies Agreement, and (B) there have been massive imports of the subject merchandise over a relatively short period. Section 351.206(h) of the Department's regulations defines ''massive imports'' as imports that have increased by at least 15 percent over the imports during an immediately preceding period of comparable duration. Section 351.206(i) of the Department's regulations states that a relatively short period will normally be defined as the period beginning on the date the proceeding begins and ending at least three months later.

With regard to the subsidies alleged in the Petition, Petitioner notes that the subsidies alleged include subsidies based on export performance, subsidies for inputs provided for LTAR, as well as interest free or low interest loans that are not otherwise available to the general public. *See* Volume IV of the Petition, at 13. Petitioner argues that based on information provided in the Petition, it is clear that Chinese exporters and producers of subject merchandise have received subsidies that are inconsistent with the Agreement on Subsidies and Countervailing Measures. *See* Volume IV of the Petition, at 13–15; *see also* Volume III of the Petition.

With regard to the criteria of massive imports over a relatively short period of time, Petitioner argues that the Department should evaluate the level of imports during a period prior to the filing a petition because importers and foreign exporters and producers had reason to believe that an AD or CVD proceeding was likely. *See* Volume IV of the Petition, at 3–9, and Exhibits IV–1 through IV–16; *see also* 19 CFR 351.206(i). Petitioner contends that there were newspaper articles beginning in August 2009 that discussed unfair pricing on behalf of Chinese producers. *See* Volume IV of the Petition, at 4, and Exhibits IV–1 and IV–2. Petitioner further notes that the very widely publicized closure of a large solar cell producer resulted in much media discussion of the effects of unfair trade in January 2011. Therefore, Petitioner states that ''the effects of any behavioral shifts of Chinese producers would be likely to manifest themselves in February 2011 as shipments of goods ordered in the days immediately following Evergreen's demise in January 2011 would not have reached the United States until February.'' *See* Supplement II–A–General Issues, at 6. Thus, Petitioner demonstrates massive imports over a relatively short period of time by comparing imports of subject merchandise between the six-month period of August 2010 and January 2011 (base period) and the six-month period of February 2011 and July 2011 (comparison period). Based on Petitioner's calculation, imports surged 220 percent between base period and comparison period, which is greater than the 15 percent threshold defined in the Department's regulations. *See* Volume IV of the Petition, at 10–11; *see also* 19 CFR 351.206(h).

Petitioner requests that the Department examine the information it has provided and make a preliminary finding of critical circumstances on an expedited basis, within 45 days of the filing of the Petition. *See* Volume IV of the Petition, at 1, 2, and 16; *see also* 19 CFR 351.206(c)(2)(iii). Section 702(e) of the Act states that when there is a reasonable basis to suspect that the alleged countervailable subsidy is inconsistent with the Subsidies Agreement, the Department may request U.S. Customs and Border Protection (CBP) to compile information on an expedited basis regarding entries of the subject merchandise.

Taking into consideration the foregoing, we will analyze this matter further. We will monitor imports of solar cells from the PRC and we will request that CBP compile information on an expedited basis regarding entries of subject merchandise. *See* Section 702(e) of the Act. If, at any time, the criteria for a finding of critical circumstances are established, we will issue a critical circumstances finding at the earliest possible date. *See Change in*

*Policy Regarding Timing of Issuance of Critical Circumstances Determinations,* 63 FR 55364 (October 15, 1998).

**Respondent Selection**

For this investigation, the Department expects to select respondents based on CBP data for U.S. imports during the POI. We intend to make our decision regarding respondent selection within 20 days of publication of this **Federal Register** notice. The Department will release CBP data under Administrative Protective Order shortly after the signature date of this notice. Given that certain Harmonized Tariff Schedule of the United States headings used in the description of the scope of this investigation are for broad ''basket categories'' of merchandise (*e.g.,* headings 8501.61.0000 and 8507.20.80), the Department intends to rely only on headings 8541.40.6020 and 8541.40.6030, which cover solar cells exclusively, in selecting respondents. Therefore, we will only release CBP data under those same two headings as well. The Department invites comments regarding the CBP data and respondent selection to be submitted to the Department within seven calendar days of publication of this **Federal Register** notice.

**Distribution of Copies of the Petition**

In accordance with section 702(b)(4)(A)(i) of the Act and 19 CFR 351.202(f), a copy of the public version of the Petition has been provided to representatives of the GOC. Because of the particularly large number of producers/exporters identified in the Petition, the Department considers the service of the public version of the Petition to the foreign producers/exporters satisfied by the delivery of the public version to the GOC, consistent with 19 CFR 351.203(c)(2).

**ITC Notification**

We have notified the ITC of our initiation, as required by section 702(d) of the Act.

**Preliminary Determination by the ITC**

The ITC will preliminarily determine, within 45 days after the date on which the Petition was filed, whether there is a reasonable indication that imports of subsidized solar cells from the PRC are causing material injury, or threatening to cause material injury, to a U.S. industry. *See* section 703(a)(2) of the Act. A negative ITC determination will result in the investigation being terminated; otherwise, the investigation will proceed according to statutory and regulatory time limits.

**Notification to Interested Parties**

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305. On January 22, 2008, the Department published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures,* 73 FR 3634. Parties wishing to participate in this investigation should ensure that they meet the requirements of these procedures (*e.g.,* the filing of letters of appearance as discussed at 19 CFR 351.103(d)).

Any party submitting factual information in an AD or 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 segments of any antidumping duty or countervailing duty proceedings initiated on or after March 14, 2011. *See Certification of Factual Information to Import Administration during Antidumping and Countervailing Duty Proceedings: Interim Final Rule,* 76 FR 7491 (February 10, 2011) (Interim Final Rule) amending 19 CFR 351.303(g)(1) and (2). The formats for the revised certifications are provided at the end of the Interim Final Rule. The Department intends to reject factual submissions in any proceeding segments initiated on or after March 14, 2011, if the submitting party does not comply with the revised certification requirements.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: November 8, 2011.

**Paul Piquado,**

*Assistant Secretary for Import Administration.*

## Appendix I

## Scope of the Investigation

The merchandise covered by this investigation are crystalline silicon photovoltaic cells, and modules, laminates, and panels, consisting of crystalline silicon photovoltaic cells, whether or not partially or fully assembled into other products, including, but not limited to, modules, laminates, panels and building integrated materials.

This investigation covers crystalline silicon photovoltaic cells of thickness equal to or greater than 20 micrometers, having a p/n junction formed by any means, whether or not the cell has undergone other processing, including, but not limited to, cleaning, etching, coating, and/or addition of materials (including, but not limited to, metallization and conductor patterns) to collect and forward the electricity that is generated by the cell.

Subject merchandise may be described at the time of importation as parts for final finished products that are assembled after importation, including, but not limited to, modules, laminates, panels, building-integrated modules, building-integrated panels, or other finished goods kits. Such parts that otherwise meet the definition of subject merchandise are included in the scope of this investigation.

Excluded from the scope of this investigation are thin film photovoltaic products produced from amorphous silicon (a-Si), cadmium telluride (CdTe), or copper indium gallium selenide (CIGS).

Also excluded from the scope of this investigation are crystalline silicon photovoltaic cells, not exceeding 10,000mm$^2$ in surface area, that are permanently integrated into a consumer good whose function is other than power generation and that consumes the electricity generated by the integrated crystalline silicon photovoltaic cell. Where more than one cell is permanently integrated into a consumer good, the surface area for purposes of this exclusion shall be the total combined surface area of all cells that are integrated into the consumer good.

Merchandise covered by this investigation is currently classified in the Harmonized Tariff System of the United States (HTSUS) under subheadings 8501.61.0000, 8507.20.80, 8541.40.6020 and 8541.40.6030. These HTSUS subheadings are provided for convenience and customs purposes; the written description of the scope of this investigation is dispositive.

[FR Doc. 2011–29624 Filed 11–15–11; 8:45 am]

BILLING CODE 3510–DS–P

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## DEPARTMENT OF COMMERCE

### National Institute of Standards and Technology

### Technology Innovation Program Advisory Board

**AGENCY:** National Institute of Standards and Technology, Department of Commerce.

**ACTION:** Notice of public meeting.

**SUMMARY:** The Technology Innovation Program (TIP) Advisory Board will hold a meeting via teleconference on Tuesday, December 6, 2011, from 10 a.m. to 12 noon, Eastern time. The primary purpose of this meeting is to discuss the future of TIP. Interested members of the public will be able to participate in the meeting from remote locations by calling into a central phone number.

**DATES:** The TIP Advisory Board will hold a meeting via teleconference meeting on Tuesday, December 6, 2011, from 10 a.m. to 12 noon, Eastern time. The meeting will be open to the public.

Interested parties may participate in the meeting from their remote location.

**ADDRESSES:** Questions regarding the meeting should be sent to the Technology Innovation Program Acting Deputy Director, National Institute of Standards and Technology, 100 Bureau Drive, MS 4700, Gaithersburg, Maryland 20899–8630. For instructions on how to participate in the meeting, please see the **SUPPLEMENTARY INFORMATION** section of this notice.

**FOR FURTHER INFORMATION CONTACT:** Dr. Robert Sienkiewicz, Acting Deputy Director, Technology Innovation Program National Institute of Standards and Technology, Gaithersburg, Maryland 20899–8630, telephone number (301) 975–2162. Dr. Sienkiewicz's email address is *robert.sienkiewicz@nist.gov*.

**SUPPLEMENTARY INFORMATION:** The Technology Innovation Program (TIP) Advisory Board was established in accordance with the requirements the America Creating Opportunities to Meaningfully Promote Excellence in Technology, Education, and Science (COMPETES) Act, Public Law 110–69 (August 9, 2007), 15 U.S.C. 278n, the legislation that created TIP. The Board is composed of ten members appointed by the Director of NIST who are eminent in such fields as business, research, science and technology, engineering, education, and management consulting. Background information on the TIP Advisory Board is available at: *http://www.nist.gov/tip/*.

Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the TIP Advisory Board will hold a meeting via teleconference on Tuesday, December 6, 2011, from 10 a.m. to 12 noon, Eastern time. There will be no central meeting location. The public is invited to participate in the meeting by calling in from remote locations. The primary purpose of this meeting is to discuss the future of TIP.

Individuals and representatives of organizations who would like to offer comments are invited to request detailed instructions on how to dial in from a remote location to participate in the meeting. Approximately fifteen minutes will be reserved from 11:45–12:00 noon Eastern Standard Time for public comments, and speaking times will be assigned on a first-come, first-serve basis. The amount of time per speaker will be determined by the number of requests received, but is likely to be about 3 minutes each. Questions from the public will not be considered during this period. Speakers who wish to expand upon their oral statements, those who had wished to speak but could not be accommodated, and those who were unable to participate are invited to submit written statements to the Technology Innovation Program Advisory Board, Technology National Institute of Standards and Technology, 100 Bureau Drive, MS 4700, Gaithersburg, Maryland 20899–8630, via fax (301) 975–1150, or electronically by email to *rene.cesaro@nist.gov*.

All persons wishing to participate in the meeting are required to pre-register to be admitted. Anyone wishing to participate must register by close of business Monday, December 5, 2011, in order to be admitted. Please submit your name, time of participation, email address, and phone number to Rene S. Cesaro. At the time of registration, participants will be provided with detailed instructions on how to dial in from a remote location in order to participate. Rene Cesaro's email address is *rene.cesaro@nist.gov* and her phone number is (301) 975–2162.

Dated: November 10, 2011.

**Phillip Singerman,**

*Associate Director for Innovation and Industry Services.*

[FR Doc. 2011–29651 Filed 11–15–11; 8:45 am]

**BILLING CODE 3510–13–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Proposed Information Collection; Comment Request; Societal Response to Tornado Warnings

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA).

**ACTION:** Notice.

**SUMMARY:** The National Weather Service, seeking to expand on existing developing social science, wishes to examine the societal impacts of tornado warnings, specifically the methods of receipt, response, and the impact of false alarms on the rate in which protective actions are followed.

**DATES:** Written comments must be submitted on or before January 17, 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 and instructions should be directed to Justin Gibbs, (702) 263–9744 or *Justin.gibbs@noaa.gov.*

**SUPPLEMENTARY INFORMATION:**

#### I. Abstract

Following a particularly deadly year of tornadoes in the United States despite the existence of adequate warning information, the need is apparent for specialized survey data involving the societal response to the National Weather Service warning system. The agency currently operates with theoretical understanding of warning response from previous social science studies from scholars such as Drabek, Lindell, Gruntfest, and others. More recent data involving the false alarm ratio as a hindrance to the seeking of protective action has been released by Simmons and Sutter. All of these data however lack specific, direct responses from the public regarding how they handle weather related phenomena, specifically tornado warnings. Approximately 16,000 surveys would be distributed to four different cities. The results would be compared from one area of forecast responsibility to another to determine if differing verification statistics indicate any change in response and readiness.

This project seeks to enhance our understanding by focusing specifically on the tornado warning program and its response in an effort to take steps to reduce loss of life in future tornado events.

#### II. Method of Collection

A questionnaire and a self-addressed postage-paid envelope will be mailed to respondents.

#### III. Data

*OMB Control Number:* None.

*Form Number:* None.

*Type of Review:* Regular (new information collection).

*Affected Public:* Individuals or households.

*Estimated Number of Respondents:* 2,000.

*Estimated Time per Response:* 2 minutes.

*Estimated Total Annual Burden Hours:* 67.

*Estimated Total Annual Cost to Public:* $0 in recordkeeping/reporting costs.

#### 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: November 10, 2011.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 2011–29575 Filed 11–15–11; 8:45 am]

**BILLING CODE 3510–NK–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XA642**

### Fisheries of the Exclusive Economic Zone off Alaska; Application for an Exempted Fishing Permit

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

**ACTION:** Notice; receipt of application for exempted fishing permit.

**SUMMARY:** This notice announces receipt of an exempted fishing permit (EFP) application from the Alaska Seafood Cooperative (AKSC). If granted, this permit would allow AKSC to evaluate how various fishing and handling practices affect halibut mortality. Operators from up to seven AKSC nonpelagic trawl vessels would remove halibut from a codend on the deck, and release those fish back to the water in a timely manner to increase survivability. These halibut will be sampled for length and physical condition using standard International Pacific Halibut Commission (IPHC) halibut mortality assessment methodology. This activity has the potential to promote the objectives of the Magnuson-Stevens Fishery Conservation and Management Act and the Pacific Halibut Act by assessing techniques for improving survival of halibut caught incidentally in nonpelagic trawl fisheries.

**DATES:** Comments on this EFP application must be submitted to NMFS by 5 p.m. A.S.T., December 13, 2011. Comments on the EFP application also will be accepted by NMFS during the North Pacific Fishery Management Council's (Council's) December 5, 2011 to December 13, 2011 meeting in Anchorage, AK.

**ADDRESSES:** The Council meeting will be held at the Hilton Hotel, 500 West Third Ave., Anchorage, AK. The agenda for the Council meeting is available at *http://www.fakr.noaa.gov/npfmc/PDF documents/meetings/1211agenda.pdf.*

You may submit comments on this document, identified by FDMS Docket Number NOAA–NMFS–2011–0203, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal *www.regulations.gov.* To submit comments via the e-Rulemaking Portal, first click the ''submit a comment'' icon, then enter FDMS Docket Number NOAA–NMFS–2011–0203, in the keyword search. Locate the document you wish to comment on from the resulting list and click on the ''Submit a Comment'' icon on that line.
- *Mail:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.
- *Fax:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Fax comments to (907) 586–7557.
- *Hand delivery to the Federal Building:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Deliver comments to 709 West 9th Street, Room 420A, Juneau, AK.

*Instructions:* Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on *http://www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the EFP application and the basis for a categorical exclusion under the National Environmental Policy Act are available from the Alaska Region, NMFS Web site at *http://alaskafisheries.noaa.gov/.*

**FOR FURTHER INFORMATION CONTACT:** Jeff Hartman, (907) 586–7442.

**SUPPLEMENTARY INFORMATION:** NMFS manages the domestic groundfish fisheries in the Bering Sea and Aleutian Islands management area (BSAI) under the Fishery Management Plan for Groundfish of the BSAI Management Area (FMP), which the Council prepared under the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing the BSAI groundfish fisheries appear at 50 CFR parts 600 and 679. The FMP and the implementing regulations at § 600.745(b) and § 679.6 allow the NMFS Regional Administrator to authorize, for limited experimental purposes, fishing that would otherwise be prohibited. Procedures for issuing EFPs are contained in the implementing regulations.

The International Pacific Halibut Commission (IPHC) and NMFS manage fishing for Pacific halibut (*Hippoglossus stenolepis*) through regulations established under the authority of the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (Convention) and the Northern Pacific Halibut Act of 1982 (Halibut Act). The IPHC promulgates regulations pursuant to the Convention. The IPHC's regulations are subject to approval by the Secretary of State with concurrence from the Secretary of Commerce (Secretary).

### Background

Regulations implemented by the IPHC allow Pacific halibut to be commercially harvested by the directed North Pacific longline fishery. Halibut is a prohibited species in the groundfish fishery, requiring immediate return to the sea with a minimum of injury. Halibut caught incidentally by catcher/processors in the nonpelagic trawl groundfish fisheries must be weighed on a NMFS- approved scale, sampled by observers, and returned to the ocean as soon as possible. The Council establishes annual maximum halibut bycatch allowances and seasonal apportionments adjusted by an

estimated halibut discard mortality rate (DMR) for groundfish fisheries. The DMRs are based on the best information available, including information contained in the annual Stock Assessment and Fishery Evaluation report, available at, *http://www.fakr.noaa.gov/*. NMFS approves the halibut DMRs developed and recommended by the IPHC and the Council for the BSAI groundfish fisheries for use in monitoring the halibut bycatch allowances and seasonal apportionments. The IPHC developed these DMRs for the BSAI groundfish fisheries using the 10-year mean DMRs for those fisheries.

Directed fishing in a groundfish fishery closes when it reaches the halibut mortality apportionment for the fishery, even if the target species catch is less than the seasonal or annual quota for the directed fishery. In the case of the Bering Sea flatfish fishery, seasons have been closed before fishery quotas have been reached to prevent the fishery from reaching the halibut mortality apportionment. Reducing halibut mortality is a high priority management goal for the IPHC, the Council, and NMFS.

Before halibut are returned to the sea, at-sea observers must first estimate halibut and groundfish catch amounts. Regulations in 50 CFR part 679 assure that observer halibut and groundfish estimates are credible and accurate, and that potential bias is minimized. For example, NMFS requires that all catch be made available for sampling by an observer; prohibits tampering with observer samples; prohibits removal of halibut from a cod end, bin, or conveyance system prior to being observed and counted by an at-sea observer; and prohibits fish (including halibut) from remaining on deck unless an observer is present.

With the implementation of Amendment 80 to the FMP on September 14, 2007 (72 FR 52668), halibut mortality limits were established for the Amendment 80 sector and for Amendment 80 cooperatives. Amendment 80 is a catch share program established in 2007 to allocate several BSAI non-pollock trawl groundfish fisheries among fishing sectors, and facilitate the formation of harvesting cooperatives in the non-American Fisheries Act (AFA) trawl catcher/processor sector. Though halibut mortality limit allocations provide Amendment 80 cooperatives more flexibility to use available mortality, halibut mortality continues to constrain fishing in some Amendment 80 fisheries. The Amendment 80 sector received an initial halibut mortality allocation of 2,525 metric tons (mt) in 2008, but that allocation is reduced by 50 mt per year until it reaches 2,325 mt in 2012 and subsequent years. In certain years, this amount is less than the sector's average annual historic catch. Additionally, changing environmental conditions may alter halibut distributions, causing halibut bycatch rates to increase in some target fisheries. Therefore, this sector is actively exploring ways to continue to reduce halibut mortality.

In 2009, a halibut mortality experiment was conducted by members of the Amendment 80 sector under EFP 09–02 (74 FR 12113, March 23, 2009). Normally, all catch including halibut is moved across a flow scale below deck before the halibut is returned to the sea. Under EFP 09–02, experimental methods for sorting on a vessel's deck allowed for halibut to be quickly returned to the sea. The EFP was applied to fisheries where halibut were sorted on deck from groundfish catch, on vessels with a length overall between150 to 215 ft. The halibut mortality estimated during flatfish fishing under the EFP 09–02 was approximately 17 mt less than the amount from the DMR for that fishery due to improved condition of the halibut observed during the experiment.

**Proposed Action**

NMFS received an application from the AKSC to conduct a new halibut mortality experiment in 2012. This EFP would expand on results of EFP 09–02 to explore the feasibility of deck sorting halibut in additional fisheries, on different sized vessels, and during a longer interval of time during the fishing season. EFP results would inform the operational practicality and cost of various fishing and fish handling practices, and their effect on halibut mortality. The EFP would allow researchers onboard catcher/processor vessels to sort halibut removed from a codend on the deck of the vessel. Those sorted halibut could then be released back to the water after the halibut are measured for length and tested for physical condition using standard IPHC viability assessment methods.

The objectives for this EFP are to: (1) Evaluate the degree to which changes in fishing and catch handling procedures are operationally feasible and effective in reducing halibut mortality rates on Amendment 80 vessels; (2) evaluate the quality of data collected through sampling halibut sorted on deck for estimating halibut catch, variability in weight, and viability under commercial conditions; (3) inform future changes in vessel design or technological innovations to enable catch handling procedures to reduce halibut mortality; and (4) generate insights into how new deck sorting and halibut catch and viability sampling procedures may be incorporated into the observer and catch accounting systems.

The applicant proposes to begin EFP fishing on April 1, 2012, and end on September 30, 2012. The EFP would allow halibut sorting, sampling, and release prior to weighing on a flow scale, to assess the practicality of reducing halibut mortality. If issued, the permit associated with this EFP application would authorize 75 metric tons (mt) of halibut to be caught by the permitted vessels engaged in experimental fishing. However, the AKSC has agreed to reduce its 2012 halibut allocation by 75 mt, resulting in no additional halibut mortality under this EFP and the Amendment 80 fishery.

The applicant would be required to enter into contract with an independent NMFS-approved reviewer to determine halibut mortality amounts from EFP permitted vessels. These amounts would reflect actual halibut mortality amounts sampled during the experiment, and accrue against the 75 mt EFP halibut mortality limit. Before the 75 mt halibut mortality limit is reached, the EFP permit holder would notify NMFS and end EFP fishing.

This proposed action would exempt catcher/processors Federal Fisheries Permit number (FFP) 2134 Ocean Peace, FFP 4092 Constellation, FFP 2110 Cape Horn. FFP 2123 Vaerdal, FFP 2800 U.S. Intrepid, FFP 3835 Seafisher, FFP 3694 ARICA from selected 50 CFR 679 prohibitions, monitoring and observer requirements. Should the Regional Administrator issue a permit based on this EFP application, the conditions of the permit will be designed to minimize halibut mortality, and any potential for biasing estimates of groundfish and halibut mortality. The exemptions may include:

1. The prohibition to bias the sampling procedure employed by an observer through sorting of catch before sampling by an observer, at § 679.7(g)(2);

2. The requirements to weigh all catch by an Amendment 80 vessel on a NMFS-approved scale at § 679.27(j)(5)(ii) and § 679.28(b);

3. The requirement for all catch to be made available for sampling by an observer at § 679.93(c)(1); and

4. The requirement for halibut to not be allowed on deck without an observer present at § 679.93(c)(5).

The EFP would require the use of sea samplers for conducting monitoring and data collection activities under the EFP.

Sea samplers are NMFS-certified observers that conduct activities under an EFP rather than normal observer activities on an Amendment 80 vessel.

The AKSC would be required to submit a report in 2012 of the EFP results after EFP experimental fishing has ended in 2011, including an estimate of halibut mortality from halibut sampled during the EFP, and halibut mortality under standard IPHC halibut mortality rates for those target fisheries.

AKSC will be required to contract with a third party familiar with NMFS in-season management protocols to track halibut catch amounts, assign a fishery target, calculate what halibut mortality would have been based on NMFS published mortality rates, and calculate actual halibut mortality based on the sampled halibut and calculations described in the EFP application. This third party would be approved by NMFS as part of the permit process after review of that party's experience and knowledge of the Amendment 80 catch accounting system.

The AKSC would be limited to no more than the AKSC's Amendment 80 groundfish allocation. The amount of halibut mortality accrued by the AKSC and under the EFP would not exceed the 75 mt halibut mortality limit. The amount of halibut mortality applied to the EFP activities would be subject to review and approval by NMFS.

This EFP would apply for the period of time required to complete the experiment during 2012, in areas of the BSAI open to directed fishing by the Amendment 80 cooperative. It would be of limited scope and duration and would not be expected to change the nature or duration of the groundfish fishery, gear used, or the amount or species of fish caught by the Amendment 80 cooperative.

The activities that would be conducted under this EFP are not expected to have a significant impact on the human environment as detailed in the categorical exclusion issued for this action (see **ADDRESSES**).

In accordance with § 679.6, NMFS has determined that the proposal warrants further consideration and has forwarded the application to the Council to initiate consultation. The Council is scheduled to consider the EFP application during its December 2011 meeting, which will be held at the Hilton Hotel, Anchorage, Alaska. The applicant has been invited to appear in support of the application.

## Public Comments

Interested persons may comment on the application at the December 2011 Council meeting during public testimony. Information regarding the meeting is available at the Council's Web site at *http://alaskafisheries.noaa.gov/npfmc/council.htm.* Copies of the application and categorical exclusion are available for review from NMFS (see **ADDRESSES**). Comments also may be submitted directly to NMFS (see **ADDRESSES**) by the end of the comment period (see **DATES**).

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

Dated: November 9, 2011.

**Steven Thur,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2011–29611 Filed 11–15–11; 8:45 am]

**BILLING CODE 3510–22–P**

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–AW91**

### Taking and Importing Marine Mammals; U.S. Navy Training in the Northwest Training Range Complex

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

**ACTION:** Notice of issuance of a Letter of Authorization.

**SUMMARY:** In accordance with the Marine Mammal Protection Act (MMPA), as amended, and implementing regulations, notice is hereby given that NMFS has issued a Letter of Authorization (LOA) to the U.S. Navy (Navy) to take marine mammals incidental to Navy training and research activities to be conducted within the Northwest Training Range Complex (NWTRC), off the coasts of Washington, Oregon, and northern California. These activities are considered military readiness activities pursuant to the Marine Mammal Protection Act (MMPA), as amended by the National Defense Authorization Act of 2004 (NDAA).

**DATES:** This Authorization is effective from November 12, 2011, through November 11, 2012.

**ADDRESSES:** The LOA and supporting documentation may be obtained by writing to P. Michael Payne, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, or by telephoning one of the contacts listed here.

**FOR FURTHER INFORMATION CONTACT:** Michelle Magliocca, Office of Protected Resources, NMFS, (301) 427–8401.

**SUPPLEMENTARY INFORMATION:**

## Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs NMFS to allow, upon request, the incidental taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing), if certain findings are made by NMFS and regulations are issued. Under the MMPA, the term ''take'' means to harass, hunt, capture, or kill or to attempt to harass, hunt, capture, or kill marine mammals.

Regulations governing the taking of marine mammals by the Navy incidental to training and research activities in the NWTRC became effective on November 10, 2010 (75 FR 69296), and remain in effect through November 9, 2015. For detailed information on this action, please refer to that document. These regulations include mitigation, monitoring, and reporting requirements and establish a framework to authorize incidental take through the issuance of LOAs.

## Summary of Request

On June 27, 2011, NMFS received a request from the Navy for a renewal of an LOA issued on November 12, 2010, for the taking of marine mammals incidental to training and research activities conducted within the NWTRC under regulations issued on November 10, 2010 (75 FR 69296). The Navy has complied with the measures required in 50 CFR 216.274 and 216.275, as well as the associated 2010 LOA, and submitted the reports and other documentation required in the final rule and the 2010 LOA.

## Summary of Activity Under the 2010 LOA

As described in the Navy's exercise reports (both classified and unclassified), from November 12, 2010 to May 1, 2011, the training activities conducted by the Navy were within the scope and amounts indicated in the 2010 LOA and the levels of take remain within the scope and amounts contemplated by the final rule.

## Planned Activities and Estimated Take for 2011

In 2011, the Navy expects to conduct the same type and amount of training identified in the 2010 LOA. While the Navy requested the same amount of take that was authorized in the 2010 LOA, NMFS has slightly adjusted those numbers to account for the exposure analysis contained in the Biological Opinion. However, the authorized take remains within the annual estimates analyzed in the final rule.

**Summary of Monitoring, Reporting, and other Requirements Under the 2010 LOA Annual Exercise Reports**

The Navy submitted their classified and unclassified 2010 exercise reports within the required timeframes and the unclassified report is posted on NMFS Web site: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.* NMFS has reviewed both reports and they contain the information required by the 2010 LOA. The reports indicate the amounts of different types of training that occurred from November 12, 2010, to May 1, 2011. The Navy conducted zero Sinking Exercises (SINKEX) and all other exercise types conducted (classified data) fell within the amount indicated in the LOA.

**2010 Monitoring**

The Navy conducted the monitoring required by the 2010 LOA and described in the Monitoring Plan, which included passive acoustic monitoring utilizing high-frequency acoustic recording packages (HARPs) and marine mammal tagging and tracking. The Navy submitted their 2010 Monitoring Report, which is posted on NMFS' Web site (*http://www.nmfs.noaa.gov/pr/permits/incidental.htm*), within the required timeframe. Because data is gathered through May 1 and the report is due in July, some of the data analysis will occur in the subsequent year's report. Navy-funded marine mammal monitoring accomplishments within NWTRC for the past year consisted of the following:

*Passive Acoustic Monitoring*

Two high-frequency acoustic monitoring packages (HARP) were deployed by Scripps Institute of Oceanography (SIO) within the NWTRC. The first HARP was deployed in January 2011 approximately 25 nm from the coast in the southern part of NOAA's Olympic Coast National Marine Sanctuary. SIO has had HARPs in the same approximate location periodically since 2004. A second HARP was deployed in May 2011 near the edge of an underwater canyon west of the Olympic Coast National Marine Sanctuary boundary. Vocalization data from these HARPs is currently undergoing analysis by SIO and results will be presented in next year's Monitoring Report.

*Tagging*

The Navy purchased a total of 10 satellite tracking tags suitable for deployment on a number of marine mammal species within the NWTRC. Field deployment for tagging marine mammals should occur before the end of summer 2011 and will result in a three-year joint project between the Navy, NMFS, Cascadia Research Collective, Washington Department of Fish and Wildlife, and Oregon Department of Fish and Wildlife.

In conclusion, the Navy successfully implemented the monitoring requirements for the NWTRC by the end of the first monitoring period. Over the next year, the Navy will continue to maintain the two HARPs that are currently in the water, while analyzing and presenting results from previously recorded data. Furthermore, the Navy will continue the joint tagging study of marine species within the NWTRC.

**Adaptive Management**

The Navy's adaptive management of the NWTRC monitoring program involves close coordination with NMFS to align marine mammal monitoring with the overall objectives of the monitoring plan. Monitoring under the 2010 LOA only represents the beginning of the first year of a planned five-year effort. Therefore, it would be premature to draw detailed conclusions or initiate comprehensive monitoring changes before more monitoring and data analysis is complete.

**Authorization**

The Navy complied with the requirements of the 2010 LOA. Based on our review of the record, NMFS has determined that the marine mammal take resulting from the 2010 military readiness training and research activities falls within the levels previously anticipated, analyzed, and authorized. Further, the level of taking authorized in 2011 for the Navy's NWTRC activities is consistent with our previous findings made for the total taking allowed under the NWTRC regulations. Finally, the record supports NMFS' conclusion that the total number of marine mammals taken by the 2010 activities in the NWTRC will have no more than a negligible impact on the affected species or stock of marine mammals and will not have an unmitigable adverse impact on the availability of these species or stocks for taking for subsistence uses. Accordingly, NMFS has issued an LOA for Navy training and research activities conducted in the NWTRC from November 12, 2011, through November 11, 2012.

Dated: November 9, 2011.

**James H. Lecky,**

*Deputy Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2011–29614 Filed 11–15–11; 8:45 am]

BILLING CODE 3510–22–P

## CONSUMER PRODUCT SAFETY COMMISSION

**[CPSC Docket Number: CPSC–2011–0087]**

## Petition Requesting Exception From Lead Content Limits

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice.

**SUMMARY:** The Consumer Product Safety Commission (''Commission'' or ''CPSC'' or ''we'') has received a petition requesting an exception from the 100 ppm lead content limit under section 101(b) of the Consumer Product Safety Improvement Act of 2008 (''CPSIA''), as amended by Public Law 112–28. We invite written comments concerning the petition.

**DATES:** Submit comments by December 16, 2011.

**ADDRESSES:** You may submit comments, identified by Docket No. CPSC–2011–0087, by any of the following methods:

**Electronic Submissions**

Submit electronic comments in the following way:

*Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

To ensure timely processing of comments, the Commission is no longer accepting comments submitted by electronic mail (email), except through *http://www.regulations.gov.*

**Written Submissions**

Submit written submissions in the following way:

*Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions), preferably in five copies, to:* Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

*Instructions:* All submissions received must include the agency name and docket number for this notice. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to *http://www.regulations.gov.* Do not submit confidential business information, trade secret information, or other sensitive or protected information electronically. Such information should be submitted in writing.

*Docket:* For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Kristina Hatlelid, Ph.D., M.P.H.,

Directorate for Health Sciences, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; *email: khatlelid@cpsc.gov.*

**SUPPLEMENTARY INFORMATION:** Under section 101(a) of the CPSIA, consumer products designed or intended primarily for children 12 years old and younger that contain lead content in excess of 100 ppm are considered to be banned hazardous substances under the Federal Hazardous Substances Act (''FHSA'').

Section 101(b)(1) of the CPSIA provides for a functional purpose exception from lead content limits under certain circumstances. The exception allows us, on our own initiative, or upon petition by an interested party, to exclude a specific product, class of product, material, or component part from the lead limits established for children's products under the CPSIA if, after notice and a hearing, we determine that: (i) The product, class of product, material, or component part requires the inclusion of lead because it is not practicable or not technologically feasible to manufacture such product, class of product, material, or component part, as the case may be, in accordance with section 101(a) of the CPSIA by removing the excessive lead or by making the lead inaccessible; (ii) the product, class of product, material, or component part is not likely to be placed in the mouth or ingested, taking into account normal and reasonably foreseeable use and abuse of such product, class of product, material, or component part by a child; and (iii) an exception for the product, class of product, material, or component part will have no measurable adverse effect on public health or safety, taking into account normal and reasonably foreseeable use and abuse. Under section 101(b)(1)(B) of the CPSIA, there is no measurable adverse effect on public health or safety if the exception will result in no measurable increase in blood lead levels of a child. Given the highly technical nature of the information sought, including data on the lead content of the product and test methods used to obtain those data, we believe that the notice and solicitation for written comments would provide the most efficient process for obtaining the necessary information, as well as provide adequate opportunity for all interested parties to participate in the proceedings. However, we would have the option to hold a public hearing or public meeting, if appropriate, to determine whether a petition for a functional purpose exception should be granted.

On September 29, 2011, Joseph L. Ertl, Inc., Corporate office of divisions: Scale Models and Dyersville Die Cast (''petitioner''), submitted a petition requesting an exception from the lead content limit of 100 ppm under section 101(b) of the CPSIA for its die-cast ride-on pedal tractors, scaled for children ages 3–10. The petitioner states that the components of its pedal tractors are made of aluminum metal die castings, which are the best alloy of choice for pedal tractor production, based on weight, cost, structural properties, surface finish and coatings, corrosion resistance, and bearing properties and wear resistance. The pedal tractor components are manufactured via the aluminum die-casting process. Although the petitioner states that it is able to meet the lead content requirements of 300 ppm for its pedal tractor components, it is unable to meet consistently the 100 ppm lead content limits, due to alloys used in the aluminum die-cast process. Accordingly, the petitioner requests an exception from the 100 ppm lead content limit to continue to manufacture its pedal tractors with components up to the 300 ppm lead content limit.

Through this notice, we invite written comments on the petition. Interested parties may view a copy of the petition under supporting and related materials identified by Docket No. CPSC–2011–0087, through *http://www.regulations.gov* or on the CPSC Web site at: *http://www.cpsc.gov/library/foia/foia12/brief/ertlpetition.pdf.* Interested parties also may obtain a copy of the petition by writing or calling the Office of the Secretary, Consumer Product Safety Commission, Bethesda, MD 20184; *telephone* (301) 504–7923.

Dated: November 9, 2011.

**Todd A. Stevenson,**

*Secretary, Consumer Product Safety Commission.*

[FR Doc. 2011–29504 Filed 11–15–11; 8:45 am]

**BILLING CODE 6355–01–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket ID DOD–2011–OS–0125]**

### Proposed Collection; Comment Request

**AGENCY:** Defense Security Service, DoD.

**ACTION:** Notice.

**SUMMARY:** In compliance with Section 3506 (c) (2) (A) of the Paperwork Reduction Act of 1995, the Defense Security Service (DSS) announces the proposed extension of a public information collection and seeks public comments on the provision thereof. Comments are invited on: (a) Whether the proposed collection 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 information to be collected; and (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by January 17, 2012.

**ADDRESS:** You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal Rule Making Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, 2nd Floor, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

*Instructions:* All submissions received must include agency name, docket number and title for this **Federal Register** document. The general policy of comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contract information.

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed data collection or obtain a copy of the proposal and associated collection instrument, please write to Defense Security Service, OCIO, Attn: Mr. Prakash Kollaram, Russell-Knox Building, 27130 Telegraph Road, Quantico, VA 22134–2253, or call Defense Security Service at (571) 305–6445.

*Title, Associated Form, and OMB Number:* ''Department of Defense Security Agreement,'' ''Appendage to Department of Defense Security Agreement,'' ''Certificate Pertaining to Foreign Interests;'' DD Forms, 441, 441–1 and SF 328; OMB No. 0704–0194.

*Needs and Uses:* Executive Order (EO) 12829, ''National Industrial Security Program (NISP),'' stipulates that the Secretary of Defense shall serve as the Executive Agent for inspecting and monitoring the contractors, licensees, and grantees who require or will require access to or, who store or will store

classified information; and for determining the eligibility for access to classified information of contractors, licensees, and grantees and their respective employees. The specific requirements necessary to protect classified information released to private industry are set forth in DoD 5220.22–M, ''National Industrial Security Program Operating Manual (NISPOM),'' dated February 28, 2006. Respondents must execute DD Form 441, ''Department of Defense Security Agreement,'' which is the initial agreement between the contractor and the government regarding security requirements necessary to protect classified information associated with the contract. This legally binding document details the responsibility of both parties and obligates the contractor to fulfill the requirements outlined in DoD 5220.22–M. The DD Form 441–1, ''Appendage to Department of Defense Security Agreement,'' is used to extend the agreement to branch offices of the contractor. The SF Form 328, ''Certificate Pertaining to Foreign Interests,'' must be submitted to provide certification regarding elements of Foreign Ownership, Control or Influence (FOCI) as stipulated in paragraph 2–302 of the NISPOM.

DSS proposes to make changes to the DD Form 441 and SF 328. The requirement for execution of the corporate ''Certificate'' section and the use of a corporate seal is being deleted. Currently the government does not require all corporations to execute the corporate Certificate portion of the Forms. Only those corporations who are in possession of a seal were being required to execute the Certificate. Corporations that do not have a seal and other types of businesses structures such as limited liability companies, partnership and sole proprietors are only required to have the signing of the agreement witnessed. DSS proposes that a witness is sufficient for all companies whether or not they are a corporation.

*Affected Public:* Business, or other profit and non-profit organizations under Department of Defense Security Cognizance.

*Total Annual Burden Hours:* 12,246.

*Number of Respondents:* 4,128.

*Responses per Respondent:* 2.

*Average Burden Hours per Respondent:* 1.5.

*Frequency:* One time and/or on occasion (*e.g.* initial facility clearance processing, when the respondent changes: Name, organizational structure, or address; or there is a material change pertaining to its Foreign Ownership, Control or Influence, *etc.*).

**SUPPLEMENTARY INFORMATION:**

**Summary of Information Collection**

The execution of the DD Form 441, 441–1 and SF 328 is a factor in making a determination as to whether a contractor is eligible to have a facility security clearance. It is also a legal basis for imposing NISP security requirements on eligible contractors. These requirements are necessary in order to preserve and maintain the security of the United States through establishing standards to prevent the improper disclosure of classified information.

Dated: November 10, 2011.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2011–29531 Filed 11–15–11; 8:45 am]

BILLING CODE 5001–06–P

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket ID: DOD–2011–OS–0126]**

### Proposed Collection; Comment Request

**AGENCY:** Defense Security Service, DoD.

**ACTION:** Notice.

**SUMMARY:** In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, DSS announces the proposed extension of a public information collection and seeks public comments on the provision thereof. Comments are invited on: (a) Whether the proposed collection 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 information to be collected; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by January 17, 2012.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

• *Federal Rule Making Portal: http://www.regulations.gov*

Follow the instructions for submitting comments

• *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, 2nd Floor, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

*Instructions:* All submissions received must include agency name, docket number, and title for this **Federal Register** document. The general policy of comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contract information.

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or obtain a copy of the proposal and associated collection instrument, please write to: Defense Security Service, OCIO, ATTN: Mr. Prakash Kollaram, Russell-Knox Building, 27130 Telegraph Road, Quantico, VA 22134–2253, or call Defense Security Service at (571) 305–6445.

*Title and OMB Number:* ''Defense Security Service Industrial Security Review Data'' and ''Defense Security Service Industrial Security Facility Clearance Survey Data,'' OMB No. 0704–0427.

*Needs and Uses:* The conduct of an Industrial Security Review and/or Industrial Security Facility Security Survey assists in determining whether a contractor is eligible to establish its facility security clearance and/or retain its participation in the National Industrial Security Program (NISP). It is also the basis for verifying whether contractors are appropriately implementing NISP security requirements. These requirements are necessary in order to preserve and maintain the security of the United States through establishing standards to prevent the improper disclosure of classified information.

In accordance with Department of Defense (DoD), 5220.22–R, ''Industrial Security Regulation,'' DSS is required to maintain a record of the results of surveys and security reviews. Documentation for each survey and/or security review will be compiled addressing areas applicable to the contractor's security program. Portions of the data collected will be stored in databases. All data collected will be handled and marked ''For Official Use Only.''

*Affected Public:* Businesses, universities, partnerships, or other profit and non-profit organizations under DoD security cognizance

*Respondent burden:*

*Industrial security review data:*

*Total annual burden hours:* 41,536 hours.

*Total number of respondents:* 13,140.

Possessors of classified: 4,623.
*Non-Possessors of classified:* 8,517.
*Responses per respondent:* 1.
*Average burden hours per respondent:*
*Possessors of classified:* 5.3 hours.
*Non-Possessors of classified:* 2 hours.
*Frequency:* Periodic (*e.g.,* Possessors—annually, Non-Possessors—18 months, compliance reviews, or when directed).

*Industrial security facility clearance survey data:*
*Total annual burden hours:* 4,902 hours.
*Number of respondents:* 2,451.
*Responses per respondent:* 1.
*Average burden hours per respondent:* 2 hours.
*Frequency:* On occasion (*e.g.,* initial eligibility determination and when condition significantly changes, such as a change in ownership).

**SUPPLEMENTARY INFORMATION:**

**Summary of Information Collection**

Executive Order (EO) 12829, ''National Industrial Security Program (NISP),'' January 6, 1993, as amended by EO 12885, December 14, 1993, established the NISP to safeguard federal government classified information released to contractors, licensees, and grantees of the US government. Section 202(a) of EO 12829 stipulates that the Secretary of Defense shall serve as the Executive Agent for inspecting and monitoring the contractors, licensees, and grantees who require or will require access to or who store or will store classified information; and for determining the eligibility for access to classified information of contractors, licensees, grantees, and their respective employees. The specific requirements necessary to protect classified information released to private industry are set forth in DoD 5220.22M, ''National Industrial Security Program Operating Manual (NISPOM),'' February 28, 2006. The Executive Agent has the authority to issue, after consultation with affected agencies, standard forms or other standardization that will promote the implementation of the NISP. Contractors operating under DoD security cognizance are subject to an initial facility clearance survey and periodic government security reviews to determine their eligibility to participate in the NISP and ensure that safeguards employed are adequate for the protection of classified information.

DoD Directive 5105.42, ''Defense Security Service,'' August 30, 2010, incorporating Change 1, March 31, 2011, delineates the mission, functions, and responsibilities of DSS. DSS is an agency of the DoD under authority, direction, and control of the Under Secretary of Defense for Intelligence. DSS functions and responsibilities include the administration and implementation of the Defense portion of the NISP pursuant to EO 12829.

DSS is the office of record for the maintenance of information pertaining to contractor facility clearance records and industrial security information regarding cleared contractors under its cognizance. To the extent possible, information required as part of the survey or security review is obtained as a result of observation by the representative of the Cognizant Security Agency or its designated Cognizant Security Office. Some of the information may be obtained based on conferences with Key Management Personnel and/or other employees of the company. The information is used to respond to all inquires regarding the facility clearance status and classified information storage capability of cleared contractors. It is also used to assess and/or advise Government Contracting Activities regarding any particular contractor's continued ability to protect classified information.

Dated: November 10, 2011.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2011–29532 Filed 11–15–11; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Department of the Army

### Environmental Impact Statement for Disposition of Hangars 2 and 3, Fort Wainwright, AK

**AGENCY:** Department of the Army, DoD.

**ACTION:** Notice of Intent.

**SUMMARY:** The Department of the Army announces its intent to conduct public scoping under the National Environmental Policy Act to gather information to prepare an Environmental Impact Statement (EIS) related to the disposition of Hangars 2 and 3 at Fort Wainwright, Alaska. Hangars 2 and 3 are contributing elements to the Ladd Field World War II National Historic Landmark (NHL). The Department of the Army will use the analysis in the EIS to determine which alternative to implement. There may be significant impacts to historic properties.

**ADDRESSES:** Written comments should be forwarded to Ms. Carrie McEnteer, Directorate of Public Works, Attention: IMPC–FWA–PWE (McEnteer), 1060 Gaffney Road #4500, Fort Wainwright, AK 99703–4500; fax (907) 361–9867; email: *carrie.mcenteer@us.army.mil.*

**FOR FURTHER INFORMATION CONTACT:** Please contact Ms. Linda Douglass, Public Affairs Office (PAO), IMPC–FWA–PAO (Douglass), 1060 Gaffney Road #5900, Fort Wainwright, AK 99703–5900; telephone (907) 353–6701, email: *linda.douglass@us.army.mil.*

**SUPPLEMENTARY INFORMATION:** The decision to be made by the Army is regarding the disposition of two historic aircraft hangars located at Fort Wainwright. The EIS will assess the direct, indirect, and cumulative environmental impacts associated with various proposed facility disposition options to meet safety, funding, facilities management, land use, and cultural resources management objectives. The condition of the facilities warrants a decision on the disposition that meets the aforementioned management objectives.

The implementation of the proposed action would determine the disposition for the historic hangars. Based on the decision, a management strategy would be developed. A range of reasonable alternatives, including a No Action Alternative, will be developed and analyzed in the EIS. Alternatives to be considered include converting both hangars to another use, demolishing both hangars, demolishing one hangar and retaining one hangar, indefinite mothballing of the buildings, and transferring facilities and management responsibility to another agency. Other reasonable alternatives raised during the scoping process and capable of meeting the project purpose and need and criteria will be considered for evaluation in the EIS.

*Scoping and public comments:* Native Americans, Alaska Natives, federal, state, and local agencies, organizations, and the public are invited to be involved in the scoping process for the preparation of this EIS by participating in scoping meetings and/or submitting written comments. The scoping process will help identify possible alternatives, potential environmental impacts, and key issues of concern to be analyzed in the EIS. Written comments will be accepted within 60 days of publication of the Notice of Intent in the **Federal Register**. Scoping meetings will be held in Fairbanks, AK. Notification of the times and locations for the scoping meetings will be locally published.

**Brenda S. Bowen,**

*Army Federal Register Liaison Officer.*

[FR Doc. 2011–29410 Filed 11–15–11; 8:45 am]

**BILLING CODE 3710–08–P**

## DEPARTMENT OF DEFENSE

### Department of the Army, U.S. Army Corps of Engineers

### Notice of Availability of the Draft Environmental Impact Statement for the Proposed Point Thomson Project, North Slope Borough, AK

**AGENCY:** Corps of Engineers, Department of the Army, Department of Defense.

**ACTION:** Notice of Availability.

**SUMMARY:** In accordance with the National Environmental Policy Act (NEPA), the U.S. Army Corps of Engineers, Alaska District, has prepared a Draft Environmental Impact Statement (EIS) on the proposed development by the Exxon Mobil Corporation and PTE Pipeline LLC (Applicant). The Draft EIS evaluates project alternatives and potential impacts to the environment which may occur from the Applicant's proposal to construct industrial infrastructure and produce liquid hydrocarbon resources near Point Thomson, Alaska. The proposed project includes the construction of structures in navigable waters of the United States (U.S.) and the discharge of dredged and/or fill materials into waters of the U.S., including wetlands. The proposed work requires authorization from the Corps of Engineers under Section 10 of the Rivers and Harbors Act (RHA) of 1899 and Section 404 of the Clean Water Act (CWA). The Draft EIS will be used to evaluate the Applicant's Department of the Army permit application and compliance with NEPA.

*Draft EIS Availability:* Electronically available for viewing, copying, or printing at: *http://www.pointthomsonprojecteis.com*.

A printed Executive Summary, which includes 2 Compact Discs containing the entire Draft EIS, can be obtained electronically through the project Web site address immediately above.

*Draft EIS Comment Period:* The 45-day review and comment period begins on November 18, 2011 and ends on January 3, 2012.

Send written comments, postmarked by January 3, 2012, to: Harry A. Baij Jr., U.S. Army Corps of Engineers, Alaska District, Regulatory Division, Post Office Box 6898, JBER, AK 99506–0898.

Send electronic comments, received by January 3, 2012, to: *comments@pointthomsonprojecteis.com*.

**FOR FURTHER INFORMATION CONTACT:** Contact Mr. Baij by email message at *harry.a.baij@usace.army.mil,* by telephone at (800) 478–2712 (toll free within AK), (907) 753–2784 (office), or (907) 350–5097 (cell).

**SUPPLEMENTARY INFORMATION:** The Corps of Engineers, Alaska District, has published a Public Notice of Application for Permit for the Applicant's proposal to coincide with this Notice of Availability. The Public Notice can be viewed at *http://www.poa.usace.army.mil/reg*. Navigate to the ''Public Notice'' button and file number POA–2001–1082–M1, Beaufort Sea. Comments on the Public Notice can be submitted by clicking on the Submit Comments button at the Public Notice Web page. The comment period is identical to the Draft EIS comment period.

1. *Authorities:* Section 404 of the Clean Water Act (33 U.S.C. 1344) and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).

2. *Background Information:* The Corps of Engineers, Alaska District, received the Applicant's complete permit application on November 1, 2011. The Applicant's purpose is to produce liquid hydrocarbons and delineate and evaluate hydrocarbon resources in the Point Thomson area. Two natural gas production wells have been previously authorized, drilled, and tested at an existing gravel pad at Point Thomson, AK. Other previously authorized gravel pads and exploration wells also exist in the general area.

3. *Location:* Alaska's Arctic Coastal Plain, Beaufort seacoast, approximately 60 miles east Prudhoe Bay. Most of the reservoir is located under the Beaufort Sea in State of Alaska waters. The proposed facilities would be located primarily onshore, on State of Alaska lands, leased to the Applicant. Kaktovik, AK is located approximately 60 miles east. The Arctic National Wildlife Refuge is approximately 2 miles east.

4. *Proposed Project:* Industrial development involving gravel fill placement in tundra waters and wetlands and marine structures.

Construct a large gravel mine; a mile-long gravel airstrip; 3 production and/or processing gravel pads; several miles of in-field gravel roads; similar length in-field above-ground pipelines; a marine bulkhead, service pier, and mooring dolphins; navigational dredging; and other industrial infrastructure. Processed liquid hydrocarbons would be transported through a new 22-mile long elevated pipeline to existing facilities to the west and further connections to the Trans Alaska Pipeline System.

Construct temporary and permanent camps (lodging); offices, warehouses, and shops; electric power generation and distribution facilities; fuel, water, and chemical storage; a water and wastewater treatment facility; a grind and inject drilling waste facility; a solid waste facility; and communications facilities.

Directionally drill a minimum of five wells on three gravel pads: Central, East, and West. The Central Pad would be the largest and the primary location for construction and operations, processing fluids, locating a gas injection well for recycling natural gas, and a wastewater disposal well. The East and West Pads would include wells to delineate and evaluate the hydrocarbon reservoir for additional oil and gas resources and facilitate production.

5. *Draft EIS Alternatives:* Four alternatives were developed and evaluated in the Draft EIS that would meet the Applicant's purpose and need. The No Action Alternative is used for comparison of the environmental effects of the action alternatives and involves long term monitoring and maintenance of the existing wells and gravel pads. Three Action Alternatives were developed. Two action alternatives would minimize impacts to coastal resources by locating infrastructure components inland from the coastline and reducing coastal access. These 2 alternatives consider alternative transportation routes, such as ice roads and an all-season gravel road in-lieu of barge access. A third alternative was developed to reduce impacts to waters and wetlands by minimizing the total gravel fill footprint. A complete description of the alternatives development, screening process, and the alternatives carried forward for detailed study, is disclosed in Section 2 of the Draft EIS.

6. *Scoping Process:* A Notice of Intent to prepare a Draft EIS for the Proposed Point Thomson Project was published on December 4, 2009. The Corps of Engineers conducted public, Tribal, and agency scoping meetings in AK prior to preparing the Draft EIS. Results from the scoping process were summarized a Public Scoping Document and are addressed in the Draft EIS.

7. *Public Locations for Draft EIS:* The Draft EIS is available for review at the following public libraries and schools:

a. Harold Kaveolook School, Kaktovik, AK
b. Nuiqsut Trapper School, Nuiqsut, AK
c. Tuzzy Consortium Library, Barrow, AK
d. Noel Wein Library, Fairbanks, AK
e. Z.J. Loussac Library, Anchorage, AK
f. Alaska Resources Library and Information Services, Anchorage, AK
g. University of Alaska, Anchorage Library, Anchorage, AK

8. *Public Meetings:* Open house and public comment meetings will be held at the following times and locations:

| | | | |
|---|---|---|---|
| 05 December 2011 | Anchorage, AK | Open House | 4–6 p.m. |
| | Loussac Library | Public Comment | 6:30–8 p.m. |
| 07 December 2011 | Fairbanks, AK | Open House | 4–6 p.m. |
| | Westmark Hotel | Public Comment | 6:30–8 p.m. |
| 12 December 2011 | Kaktovik, AK | Open House | 6–7:30 p.m. |
| | Marsh Creek Inn | Public Comment | 8–9 p.m. |
| 13 December 2011 | Nuiqsut, AK | Open House | 4–6 p.m. |
| | Trapper School | Public Comment | 6:30–8 p.m. |
| 15 December 2011 | Barrow, AK | Open House | 4–6 p.m. |
| | Hobson Middle School | Public Comment | 6:30–8 p.m. |

Review and comment of this Draft EIS is encouraged. Requests to be placed on a mailing list for future announcements can be sent to Mr. Baij at the contact information above. The Corps of Engineers will give full consideration to all public comments received on the Draft EIS. A summary of the public meetings, written comment letters, and responses will be incorporated into the Final EIS, as appropriate.

Dated: November 7, 2011.

**Harry A. Baij, Jr.,**

*Project Manager, US Army Corps of Engineers, Alaska District.*

[FR Doc. 2011–29632 Filed 11–15–11; 8:45 am]

**BILLING CODE 3720–58–P**

## DEPARTMENT OF DEFENSE

### Department of the Navy

### Meeting of the U.S. Naval Academy Board of Visitors

**AGENCY:** Department of the Navy, DoD.

**ACTION:** Notice of Partially Closed Meeting.

**SUMMARY:** The U.S. Naval Academy Board of Visitors will meet to make such inquiry, as the Board shall deem necessary, into the state of morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, and academic methods of the Naval Academy. The executive session of this meeting from 11 a.m. to 12 p.m. on December 5, 2011, will include discussions of disciplinary matters, law enforcement investigations into allegations of criminal activity, and personnel issues at the Naval Academy, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. For this reason, the executive session of this meeting will be closed to the public.

**DATES:** The open session of the meeting will be held on December 5, 2011, from 8 a.m. to 11 a.m. The closed session of this meeting will be the executive session held from 11 a.m. to 12 p.m.

**ADDRESSES:** The meeting will be held in the Bo Coppege Room at the Naval Academy in Annapolis, Maryland. The meeting will be handicap accessible.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Commander Travis Haire, USN, Executive Secretary to the Board of Visitors, Office of the Superintendent, U.S. Naval Academy, Annapolis, MD 21402–5000, (410) 293–1503.

**SUPPLEMENTARY INFORMATION:** This notice of meeting is provided per the Federal Advisory Committee Act, as amended (5 U.S.C. App. 2). The executive session of the meeting from 11 a.m. to 12 p.m. on December 5, 2011, will consist of discussions of law enforcement investigations into allegations of criminal activity, new and pending administrative/minor disciplinary infractions and nonjudicial punishments involving the Midshipmen attending the Naval Academy to include, but not limited to, individual honor/conduct violations within the Brigade, and personnel issues. The discussion of such information cannot be adequately segregated from other topics, which precludes opening the executive session of this meeting to the public. Accordingly, the Secretary of the Navy has determined in writing that the meeting shall be partially closed to the public because the discussions during the executive session from 11 a.m. to 12 p.m. will be concerned with matters coming under sections 552b(c)(5), (6), and (7) of Title 5, United States Code.

Dated: November 8, 2011.

**L.M. Senay,**

*Lieutenant, Office of the Judge Advocate General, U.S. Navy, Alternate Federal Register Liaison Officer.*

[FR Doc. 2011–29559 Filed 11–15–11; 8:45 am]

**BILLING CODE 3810–FF–P**

## DEPARTMENT OF EDUCATION

### Applications for New Awards; Race to the Top Fund Phase 3

**AGENCY:** Office of the Deputy Secretary, Department of Education

**ACTION:** Notice.

### Overview Information

*Race to the Top Fund Phase 3*

Notice inviting applications for new awards for fiscal year (FY) 2011.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.395A.

**DATES:** *Applications Available:* November 16, 2011.

*Date of Meetings for Prospective Applicants:* November 16, 2011.

*Deadline for Transmittal of Part I Applications:* November 22, 2011, 4:30:00 p.m., Washington, DC time.

*Deadline for Transmittal of Part II Applications:* December 16, 2011, 4:30:00 p.m., Washington, DC time.

### Full Text of Announcement

### I. Funding Opportunity Description

*Purpose of Program:* The Race to the Top program, the largest competitive education grant program in U.S. history, is designed to provide incentives to States to implement system-changing reforms that result in improved student achievement, narrowed achievement gaps, and increased high school graduation and college enrollment rates.

On April 15, 2011, President Obama signed into law Public Law 112–10, the Department of Defense and Full-Year Continuing Appropriations Act, 2011 (FY 2011 Appropriations Act), which made $698.6 million available for the Race to the Top Fund, authorized the Secretary to make awards on ''the basis of previously submitted applications,'' and amended the American Recovery and Reinvestment Act of 2009 (ARRA) to permit the Secretary to make grants for improving early childhood care and learning under the program. On May 25, 2011, the Department announced that

approximately $500 million of these funds would support the new Race to the Top—Early Learning Challenge program and that approximately $200 million would be made available to some or all of the nine unfunded finalists from the 2010 Race to the Top Phase 2 competition. While $200 million is not sufficient to support full implementation of the plans submitted during the Phase 2 competition, the Department believes that making these funds available to the remaining nine finalists is the best way to reward these States for the ambitious reforms they have begun and enable them to carry out meaningful portions of the plans proposed in their applications. The Department may use any unused funds from Race to the Top Phase 3 to make awards in the Race to the Top—Early Learning Challenge program. Conversely, the Department may use any unused funds from the Race to the Top—Early Learning Challenge program to make awards for Race to the Top Phase 3.

*Requirements:* Except where otherwise indicated in this notice inviting applications or in the notice of final requirements for the Race to the Top Phase 3 program, published elsewhere in this issue of the **Federal Register,** the applicable final requirements and definitions of key terms from the notice of final priorities, requirements, definitions, and selection criteria, published in the **Federal Register** on November 18, 2009 (74 FR 59688), apply to the Race to the Top Phase 3 application process.

The following application requirements are from the Race to the Top Phase 3 notice of final requirements published elsewhere in this issue of the **Federal Register** and apply to this program.

*Award Process:* The Department will make awards through a two-part application process. States that meet the eligibility requirements must submit Part I of the application. Part I must meet the requirements in part A of the *Application Requirements* section and provide the required assurances in the *Application Assurances* section.

The Department will notify eligible applicants that met the application requirements and provided the required application assurances, and it will provide an estimate of the Race to the Top Phase 3 funds available to each based on the number of qualified applicants.

Qualified applicants then must submit Part II of the application for review and approval by the Secretary. Part II must meet the requirements in Part B of the *Application Requirements* section. It must also include a detailed plan and budget describing the activities selected from the State's Race to the Top Phase 2 application that will be implemented with Race to the Top Phase 3 funding in accordance with the budget requirements in the Race to the Top Phase 3 notice of final requirements published elsewhere in this issue of the **Federal Register** and repeated in the *Budget Requirements* section in this notice.

*Eligibility Requirements:* States that were finalists, but did not receive grant awards, in the 2010 Race to the Top Phase 2 competition are eligible to receive Race to the Top Phase 3 awards. Therefore, only the States of Arizona, California, Colorado, Illinois, Kentucky, Louisiana, New Jersey, Pennsylvania, and South Carolina are eligible to apply for Race to the Top Phase 3 awards.

*Application Requirements:* To receive Race to the Top Phase 3 funding, an eligible applicant must meet two application requirements:

A. In Part I of the application, a State must submit the signatures of the Governor, the State's chief school officer, and the president of the State board of education, or their authorized representatives.

B. In Part II of the application, a State must include performance measures, by sub-criteria, for any activities selected for funding under Race to the Top Phase 3 for which such measures were not included in the State's Phase 2 application.

*Application Assurances:* The Governor (or the Governor's authorized representative) must provide the following assurances in the State's Race to the Top Phase 3 application:

(a) The State is in compliance with the Education Jobs Fund maintenance-of-effort requirements in section 101(10)(A) of Public Law 111–226.

(b) The State is in compliance with the State Fiscal Stabilization Fund Phase 2 requirements with respect to Indicator (b)(1) regarding the State's statewide longitudinal data system. (*See* notice of final requirements, definitions, and approval criteria for the State Fiscal Stabilization Fund Program published in the **Federal Register** on November 12, 2009 (74 FR 58436)), and the interim final requirement and request for comments for the State Fiscal Stabilization Fund Program published in the **Federal Register** on September 23, 2011 (76 FR 59036).

(c) At the time the State submits its application, there are no legal, statutory, or regulatory barriers at the State level to linking data on student achievement or student growth to teachers and principals for the purpose of teacher and principal evaluation.

(d) The State will maintain its commitment to improving the quality of its assessments, evidenced by the State's participation in a consortium of States that—

(i) Is working toward jointly developing and implementing common, high-quality assessments aligned with a common set of K–12 standards that prepare students for college and careers; and

(ii) Includes a significant number of States.

(e) The State will maintain, at a minimum, the conditions for reform described in its Race to the Top Phase 2 application, including—

(i) The State's adoption and implementation of a common set of K–12 standards that prepare students for college and careers, as specified in section (B)(1)(ii) of the State's Race to the Top Phase 2 application;

(ii) The State's statutory and regulatory framework related to improving teacher and school leader effectiveness and ensuring an equitable distribution of effective teachers and leaders, as described in section D of the State's Race to the Top Phase 2 application;

(iii) The State's statutory and regulatory framework for implementing effective school and LEA turnaround measures, as described in section E of the State's Race to the Top Phase 2 application; and

(iv) The State's statutory and regulatory framework for supporting the creation and expansion of high-performing charter schools and other innovative schools, as described in section (F)(2) of its Race to the Top Phase 2 application.

(f) The State will maintain its commitment to comprehensive reforms and innovation designed to increase student achievement and to continued progress in the four reform areas specified in the ARRA, including the adoption and implementation of college and career-ready standards and high-quality assessments, improving the collection and use of data, increasing teacher effectiveness and equity in the distribution of effective teachers, and turning around the State's lowest achieving schools.

(g) The State will select activities for funding that are consistent with the commitment to comprehensive reform and innovation that the State demonstrated in its Race to the Top Phase 2 application, including activities that are most likely to improve science, technology, engineering and mathematics (STEM) education.

(h) The State will comply with all of the accountability, transparency, and reporting requirements that apply to the Race to the Top program (*See* the notice of final priorities, requirements, definitions, and selection criteria for the Race to the Top Fund published in the **Federal Register** on November 18, 2009 (74 FR 59688)), with the exception of reporting requirements applicable solely to funds provided under the ARRA. (*Note:* The ARRA section 1512 reporting requirements do not apply to the funds we will award under the Race to the Top Phase 3 award process).

(i) The State will comply with the requirements of any evaluation of the program, or of specific activities pursued as part of the program, conducted and supported by the Department.

*Budget Requirements:* An eligible applicant must apply for a proportional share of the approximately $200 million available for Race to the Top Phase 3 awards based primarily on its share of the population of children ages 5 through 17 across the nine States. The estimated amounts for which each eligible State could apply are shown in the following table. The amounts provided in this table are based on the assumption that all eligible States will apply for a share of available funding; the amounts will increase if one or more eligible States do not apply or do not meet the application requirements.

| State | Amount |
|---|---|
| Colorado | $12,250,000 |
| Louisiana | 12,250,000 |
| South Carolina | 12,250,000 |
| Kentucky | 12,250,000 |
| Arizona | 17,500,000 |
| Illinois | 28,000,000 |
| Pennsylvania | 28,000,000 |
| New Jersey | 28,000,000 |
| California | 49,000,000 |

Once the Department notifies an applicant of the final amount of funds it is eligible to receive, the applicant must submit a Part II application that includes a detailed plan and budget. The plan and budget must describe the activities the applicant has selected from its Race to the Top Phase 2 application that it proposes to implement with Race to the Top Phase 3 funding, including how the State will allocate a meaningful share of its Phase 3 award to advance STEM education in the State.

The plan and budget must also provide—

(a) An explanation of why the applicant has selected these activities; and

(b) An explanation of why the applicant believes these activities will have the greatest impact on advancing its overall statewide reform plan.

*Program Authority:* American Recovery and Reinvestment Act of 2009, Division A, Section 14006, Public Law 111–5, as amended by section 310 of Division D, Title III of Public Law 111–117, the Consolidated Appropriations Act, 2010, and section 1832(a)(2) of Public Law 112–10, the Department of Defense and Full-Year Continuing Appropriations Act, 2011. (**Note:** In the ARRA, the Race to the Top program is referred to as ''State Incentive Grants.'')

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 97, 98, and 99. (b) The notice of final requirements for the Race to the Top Phase 3 program published elsewhere in this issue of the **Federal Register**. (c) The notice of final priorities, requirements, definitions, and selection criteria, published in the **Federal Register** on November 18, 2009 (74 FR 59688).

## II. Award Information

*Type of Award:* Discretionary grants.

*Estimated Available Funds:* $200,000,000.

*Estimated Range of Awards:* $12,250,000–$49,000,000.

*Estimated Average Size of Awards:* $22,000,000.

*Maximum Award:* Up to $200,000,000, depending on the number of applicants.

*Estimated Number of Awards:* Up to nine.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* Up to 48 months.

## III. Eligibility Information

1. *Eligible Applicants:* States that were finalists, but did not receive grant awards, in the 2010 Race to the Top Phase 2 competition are eligible to receive Race to the Top Phase 3 awards. Therefore, only the States of Arizona, California, Colorado, Illinois, Kentucky, Louisiana, New Jersey, Pennsylvania, and South Carolina are eligible to apply for Race to the Top Phase 3 awards.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

## IV. Application and Submission Information

1. *Address to Request Application Package:* The Race to the Top Phase 3 application is divided into two parts—Part I and Part II. In Part I of the application, the applicant provides the required signatures and assurances. In Part II of the application, the applicant provides its Race to the Top Phase 3 plan, budget, and performance measure information.

An applicant may obtain Part I and Part II of the application package via the Internet, using the following address: *http://www2.ed.gov/programs/racetothetop/phase3-resources.html.* Alternatively, an applicant may obtain Part I of the application package by contacting: Meredith Farace, U.S. Department of Education, 400 Maryland Avenue SW., room 7E208, Washington, DC 20202–0200, (202) 453–6690.

2. *Content and Form of Application Submission:*

Requirements concerning the content of the application, together with the forms a State must submit, are in the application package for this program. For information about how to submit your application by mail or hand delivery, please refer to 7. *Other Submission Requirements* in this section.

3. *Submission Dates and Times:*

*Applications Available:* November 16, 2011. Date of Meetings for Prospective Applicants: November 16, 2011.

To assist prospective applicants in preparing an application and to respond to questions, the Department will host a Webinar for prospective applicants on November 16, 2011. Detailed information about this Webinar will be posted on the Department's Web site at *http://www2.ed.gov/programs/racetothetop/phase3-resources.html.* Announcements of any other technical assistance opportunities for prospective applicants will also be available at this Web site.

Deadline for Transmittal of Part I Applications: November 22, 2011, 4:30 p.m., Washington, DC time.

Deadline for Transmittal of Part II Applications: December 16, 2011, 4:30 p.m., Washington, DC time.

The Department will not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and Central Contractor Registry:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the Central Contractor Registry (CCR), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active CCR registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one business day.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The CCR registration process may take five or more business days to complete. If you are currently registered with the CCR, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

7. *Other Submission Requirements:* Applications for grants under this program must be submitted by mail or hand delivery. We strongly recommend the use of overnight mail.

*a. Application Submission Format and Deadline*

Applications for grants under this program must be submitted in electronic format on a CD or DVD, with CD-ROM or DVD-ROM preferred. In addition, applicants must submit a signed paper original of Part I of the application and one copy of that signed original. Autopenned or faxed signature pages, photocopies, and .PDFs (Adobe Portable Document Format) are not acceptable originals. Part I of the application includes the Application Assurances and Certifications.

We strongly recommend the applicant to submit a CD or DVD of its application that includes the following files:

(1) A single file that contains the body of the application, including required budget tables, that has been converted into a .PDF format so that the .PDF is searchable. Note that a .PDF created from a scanned document will not be searchable.

(2) A single file in a .PDF format that contains all of the required signature pages. The signature pages may be scanned and turned into a PDF.

(3) Copies of the completed electronic budget spreadsheets with the required budget tables, which should be in a separate file from the body of the application. The spreadsheets will be used by the Departments for budget reviews.

Each of these items must be clearly labeled with the State's name and any other relevant identifying information. States must not password-protect these files.

We must receive all grant applications by 4:30 p.m., Washington, DC time, on the application deadline date. We will not accept an application for this program after 4:30 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that applicants arrange for mailing or hand delivery of their application in advance of the application deadline date.

*b. Submission of Applications by Mail*

If you submit your application (*i.e.,* the CD or DVD, the signed paper original of Part I of the application, and the copy of that original) by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: CFDA Number 84.395A, LBJ Basement Level 1, 400 Maryland Avenue SW., Washington, DC 20202–4260.

*c. Submission of Applications by Hand Delivery*

If you submit your application (*i.e.,* the CD or DVD, the signed paper original of Part I the application, and the copy of that original) by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: CFDA Number 84.395A, 550 12th Street SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

**Note for Mail or Hand Delivery of Paper Applications:** If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the program under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

## V. Application Review Information

1. *Selection Criteria:* The Race to the Top program selection criteria, published in the **Federal Register** on November 18, 2009 (74 FR 59688) apply to the Race to the Top Phase 3 application process.

2. *Review and Selection Process:* The Department will make awards through a two-part application process. States that meet the eligibility requirements must submit Part I of the application. Part I must meet the requirements in Part A of the Application Requirements section and provide the required assurances in the Application Assurances section.

The Department will notify eligible applicants that met the application requirements and provided the required application assurances, and it will provide an estimate of the Race to the Top Phase 3 funds available to each based on the number of qualified applicants.

Qualified applicants then must submit Part II of the application for review and approval by the Secretary. Part II must meet the requirements in Part B of the Application Requirements section. It must also include a detailed plan and budget describing the activities selected from the State's Race to the Top Phase 2 application that will be implemented with Race to the Top Phase 3 funding in accordance with the budget requirements in the Race to the Top Phase 3 notice of final requirements published elsewhere in this issue of the **Federal Register** and repeated in the

*Budget Requirements* section in this notice.

We remind potential applicants that in reviewing applications in any discretionary grant program, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Special Conditions:* Under 34 CFR 74.14 and 80.12, the Secretary may impose special conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 34 CFR parts 74 or 80, as applicable; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

## VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* The Race to the Top reporting requirements, published in the **Federal Register** on November 18, 2009 (74 FR 59688) apply to the Race to the Top Phase 3 application process.

4. *Performance Measures:* The Race to the Top Phase 1 and Phase 2 performance measures, published in the **Federal Register** on November 18, 2009, (74 FR 59688), apply to the Race to the Top Phase 3 program. In addition, as indicated in the Race to the Top Phase 3 application requirements, applicants must develop and propose for the Department's approval, performance measures for sub-criteria that do not have performance measures in the Race to the Top Phase 2 application.

## VII. Agency Contact

**FOR FURTHER INFORMATION CONTACT:** Meredith Farace, Implementation and Support Unit, U.S. Department of Education, 400 Maryland Avenue SW., room 7E208, Washington, DC 20202–0200. Telephone: (202) 453–6690 or by email: *phase3comments@ed.gov.*

If you use a TDD, call the FRS, toll free, at 1–(800) 877–8339.

## VIII. Other Information

*Accessible Format:* Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

*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.

Dated: November 9, 2011.

**Arne Duncan,**

*Secretary of Education.*

[FR Doc. 2011–29582 Filed 11–15–11; 8:45 am]

BILLING CODE 4000–01–P

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# DEPARTMENT OF EDUCATION

## National Assessment Governing Board; Meeting

**AGENCY:** U.S. Department of Education, National Assessment Governing Board.

**ACTION:** Notice of Open and Closed Meeting Sessions.

**SUMMARY:** This notice sets forth the schedule and proposed agenda of the upcoming meeting of the National Assessment Governing Board (Board) and also describes the specific functions of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This notice is issued to provide members of the general public with an opportunity to attend and/or provide comments. Individuals who will need special accommodations in order to attend the meeting (*e.g.:* interpreting services, assistive listening devices, materials in alternative format) should notify Munira Mwalimu at (202) 357–6938 or at *Munira.Mwalimu@ed.gov* no later than November 21, 2011. We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The meeting site is accessible to individuals with disabilities.

**DATES:** December 1–3, 2011.

*Times:*

*December 1:* Schedule for Ad Hoc, Assessment Development, and Executive Committee.

### Meetings

*Ad Hoc Committee:* Open Session: 8:30 a.m.–11:15 a.m.

*Assessment Development Committee:* Closed Session: 11:30 a.m.–2:30 p.m.; Open Session: 2:30 p.m.–4 p.m.

*Executive Committee:* Open Session: 4:30 p.m.–5:30 p.m.; Closed Session: 5:30 p.m.–6 p.m.

### December 2: Schedule for Full Board and Committee Meetings

*Full Board:* Open Session: 8:15 a.m.–10 a.m.; Closed Session: 12:30 p.m.–2 p.m.; Open Session: 2:15 p.m.–4:45 p.m.

### Committee Meetings

*Assessment Development Committee (ADC):* Open Session: 10:15 a.m.–11:30 a.m.; Closed Session: 11:30 a.m.–12:30 p.m.

*Committee on Standards, Design and Methodology (COSDAM):* Open Session: 10:15 a.m.–12 p.m.; Closed Session: 12 p.m.–12:30 p.m.

*Reporting and Dissemination Committee (R&D):* Open Session: 10:15 a.m.–12:30 p.m.

### December 3: Schedule for Nominations Committee and Board Meeting

*Nominations Committee:* Closed Session: 7:15 a.m.–8:15 a.m.

*Full Board:* Open Session: 8:30 a.m.–12 p.m.

*Location:* St. Regis Hotel, 923 16th and K Streets NW., Washington, DC 20002.

**FOR FURTHER INFORMATION CONTACT:** Munira Mwalimu, Operations Officer, National Assessment Governing Board, 800 North Capitol Street NW., Suite 825, Washington, DC 20002–4233, Telephone: (202) 357–6938.

**SUPPLEMENTARY INFORMATION:** The National Assessment Governing Board (Board) is established under section 412 of the National Education Statistics Act of 1994, as amended.

The Board is established to formulate policy guidelines for the National Assessment of Educational Progress (NAEP). The Board's responsibilities include the following: Selecting subject areas to be assessed, developing assessment frameworks and specifications, developing appropriate student achievement levels for each grade and subject tested, developing standards and procedures for interstate and national comparisons, developing guidelines for reporting and disseminating results, and releasing initial NAEP results to the public.

On December 1, 2011, a series of committee meetings will occur. From 8:30 a.m. to 11:15 a.m., the Ad Hoc Committee on NAEP Parent Engagement will meet in open session. From 11:30 a.m. to 2:30 p.m. the Assessment Development Committee will meet in closed session to review the secure test task outlines for the 2014 NAEP Technology and Engineering Literacy (TEL) assessment scheduled for 2014 for grade 8. During the closed session, ADC members will be provided specific test materials for review which are not yet releasable to the general public. Premature disclosure of these secure test items and materials would compromise the integrity and substantially impede implementation of the NAEP assessments, and is therefore protected by exemption 9(B) of section 552b(c) of Title 5 of the United States Code. This same committee will meet in an open session from 2:30 p.m. to 4 p.m.

On December 1, 2011 from 4:30 p.m. to 5:30 p.m., the Executive Committee will meet in open session and thereafter in closed session from 5:30 p.m. to 6 p.m. During the closed session, the Executive Committee will receive a briefing from the National Center for Education Statistics (NCES) on options for NAEP contracts covering assessment years beyond 2012 and address budget implications for the NAEP assessment schedule. The discussion of contract options and costs will address the congressionally mandated goals and Board policies on NAEP assessments. This portion of the meeting will be conducted in closed session because public discussion of this information would disclose independent government cost estimates and contracting options, adversely impacting the confidentiality of the contracting process. Public disclosure of information discussed would reduce future contract competition and significantly impede implementation of the NAEP contracts, and is therefore protected by exemption 9(B) of section 552b(c) of Title 5 of the United States Code.

On December 2, 2011 the full Board will meet in open session from 8:15 a.m. to 10 a.m. The Board will review and approve the meeting agenda and meeting minutes from the August 2011 Board meeting, followed by the Chairman's remarks. The Oath of Office will then be administered to newly appointed Board members by the U.S. Secretary of Education. This session will be followed by a Panel Discussion on using NAEP to make a difference.

After the panel discussion concludes, the Executive Director of the Governing Board will provide a report to the Board, followed by updates from the Commissioner of the National Center for Education Statistics (NCES) and the Director of the Institute of Education Sciences (IES). Following these sessions, the Board will recess for Committee meetings from 10:15 a.m. to 12:30 p.m.

The Governing Board's standing committee, the Reporting and Dissemination Committee will meet on in open session on December 2 from 10:15 a.m. to 12:30 p.m.

The Committee on Standards, Design and Methodology will meet in open session from 10:15 a.m. to 12 p.m. and in closed session from 12 p.m. to 12:30 p.m. During the closed session, COSDAM members will receive a briefing on secure data collected from the NAEP writing achievement levels-setting field trial and pilot study. The Board will be provided with specific assessment data and achievement levels results that have not been approved for release by the NCES Commissioner and therefore cannot be disclosed to the public at this time. Premature disclosure of these secure test results would significantly impede implementation of the NAEP assessments and reporting, and is therefore protected by exemption 9(B) of section 552b(c) of Title 5 U.S.C.

The Assessment Development Committee (ADC) will meet in open session from 10:15 a.m. to 11:30 a.m. and thereafter in closed session from 11:30 a.m. to 12:30 p.m. During the closed session, the ADC will receive a briefing on embargoed data from cognitive lab studies of 4th grade students in preparation for the 2012 computer-based Writing Pilot assessment. The Board will be provided with specific test materials for review that cannot be discussed/disclosed in an open meeting. Premature disclosure of these secure test items and materials would significantly compromise the integrity and significantly impede implementation of the NAEP assessments, and is therefore protected by exemption 9(B) of section 552b(c) of Title 5 United States Code.

On December 2, 2011 from 12:30 p.m. to 2 p.m. the full Board will meet in closed session to receive a briefing from NCES on the 2011 Reading and Mathematics Report Cards for the Trial Urban District Assessment (TUDA). The Board will be provided with embargoed data and results that cannot be discussed in an open meeting prior to their official release by the National Center for Education Statistics on a date to be determined. Premature disclosure of these results would significantly impede implementation of the NAEP assessment program, and is therefore protected by exemption 9(B) of section 552b(c) of Title 5 United States Code.

From 2:15 p.m. to 3:15 p.m., the Board will receive a briefing on education policy perspectives from Senate and House staff from Capitol Hill. Following this session, from 3:15 p.m. to 4 p.m., the Board will receive an update from the Governing Board/Council of Chief State School Officers (CCSSO) Task Force. From 4:15 p.m. to 4:45 p.m. Board members will receive the annual ethics briefing from the U.S. Department of Education's Office of General Council staff. The December 2, 2011 session of the Board meeting is scheduled to conclude at 4:45 p.m.

On December 3, 2011, the Nominations Committee will meet in closed session from 7:15 a.m. to 8:15 a.m. to review nominations for Board terms beginning on October 1, 2012. These discussions pertain solely to internal personnel rules and practices of an agency and will disclose information of a personal nature where disclosure would constitute an unwarranted invasion of personal privacy. As such, the discussions are protected by exemptions 2 and 6 of section 552b(c) of Title 5 of the United States Code.

On December 3, the full Board will meet in open session from 8:30 a.m. to 12 p.m. From 8:30 a.m. to 10 a.m., the Board will receive a briefing on the Program for International Student Assessment (PISA) and at 10:15 a.m. the Board will receive a briefing from the standing committees' discussions on

*Making a Difference.* The Board will receive Committee reports and take action on Committee recommendations from 11:15 a.m. to 12 p.m. upon which the December 3, 2011 meeting will conclude.

Detailed minutes of the meeting, including summaries of the activities of the closed sessions and related matters that are informative to the public and consistent with the policy of section 5 U.S.C. 552b(c) will be available to the public within 14 days of the meeting. Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite #825, 800 North Capitol Street NW., Washington, DC, from 9 a.m. to 5 p.m. Eastern Time, Monday through Friday.

*Electronic Access to This Document:* You may 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) on the Internet at the following site: *http://www.ed.gov/news/fedregister/index.html.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free at 1–(866) 512–1800; or in the Washington, DC, area at (202) 512–0000.

**Note:** 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 on GPO Access at: *www.gpoaccess.gov/nara/index.html.*

Dated: November 10, 2011.

**Cornelia S. Orr,**

*Executive Director, National Assessment Governing Board, U. S. Department of Education.*

[FR Doc. 2011–29567 Filed 11–15–11; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

**[Docket ID ED–2011–OS–0008]**

**RIN 1894–AA01**

## Race to the Top Fund Phase 3

**AGENCY:** Department of Education.

**ACTION:** Notice of final requirements.

**SUMMARY:** The Secretary of Education (Secretary) announces requirements for Phase 3 of the Race to the Top program. In this phase the Department intends to make awards to States that were finalists but did not receive funding under the Race to the Top Fund Phase 2 competition held in fiscal year (FY) 2010. These States are Arizona, California, Colorado, Illinois, Kentucky, Louisiana, New Jersey, Pennsylvania, and South Carolina. We take this action to establish the information and assurances that applicants must provide in order to receive Race to the Top Fund Phase 3 awards.

**DATES:** *Effective Date:* These requirements are effective November 16, 2011.

**FOR FURTHER INFORMATION CONTACT:** Meredith Farace, Implementation and Support Unit, 400 Maryland Avenue SW., Washington, DC 20202–6200. Telephone: (202) 453–6690 or by email: *phase3comments@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–(800) 877–8339.

**SUPPLEMENTARY INFORMATION:**

*Purpose of Program:* The Race to the Top program, the largest competitive education grant program in U.S. history, is designed to provide incentives to States to implement system-changing reforms that result in improved student achievement, narrowed achievement gaps, and increased high school graduation and college enrollment rates.

*Program Authority:* American Recovery and Reinvestment Act of 2009 (ARRA), Division A, Section 14006, Public Law 111–5, as amended by section 310 of Division D, Title III of Public Law 111–117, the Consolidated Appropriations Act, 2010, and section 1832(a)(2) of Public Law 112–10, the Department of Defense and Full-Year Continuing Appropriations Act, 2011 (FY 2011 Appropriations Act). (**Note:** In the ARRA, the Race to the Top program is referred to as ''State Incentive Grants.'')

We published a notice of proposed requirements for this program in the **Federal Register** on September 12, 2011 (76 FR 56183) and a notice correcting the notice of proposed requirements in the **Federal Register** on September 23, 2011 (76 FR 59124). For purposes of this notice, the notice of proposed requirements and correction notice collectively are referred to as the ''NPR''. The NPR contained background information and our reasons for proposing the particular requirements.

There are two significant differences between the requirements proposed in the NPR and these final requirements. In response to a comment, we have added an application requirement for performance measures for activities proposed for funding under Race to the Top Phase 3 for which there were no such measures included in a State's Race to the Top Phase 2 application. We also have removed a requirement from the *Proposed Budget Requirements* that would have required States to include in Part II of their applications a description of their processes for allocating at least 50 percent of their Race to the Top Phase 3 funds to participating LEAs. These changes are described in greater detail below in the *Analysis of Comments and Changes* section.

*Public Comment:* In response to our invitation in the NPR, 10 parties submitted comments on the proposed requirements. In the following section, we have summarized and provided responses to the comments received. We group major issues addressed in these comments according to subject. Generally, we do not address technical and other minor changes.

*Analysis of Comments and Changes:* An analysis of the comments and any changes in the requirements since publication of the NPR follows.

### Eligible States

*Comment:* One commenter recommended opening the Race to the Top Phase 3 application process to all States. The commenter claimed that many States that were not finalists under the Race to the Top Phase 2 competition have made progress in the four ARRA assurance areas since the Phase 2 competition and would be in a stronger position to compete under a Phase 3 award process open to all applicants.

*Discussion:* The notice of proposed requirements included a discussion of the reasons for the Department's decision to use Race to the Top Phase 3 funds to make awards only to States that were finalists, but did not receive funding, under the 2010 Race to the Top Phase 2 competition. First, the Secretary stated that the number of competitive, high-quality applications submitted during the Phase 2 competition greatly exceeded the number that could be supported with available ARRA funds and indicated his hope that additional funding would be made available to fund those applications. Second, the FY 2011 Appropriations Act specifically authorizes the Secretary to make awards ''on the basis of previously submitted applications,'' thus specifically allowing the Department to use FY 2011 Race to the Top Phase 3 funds for awards to unfunded finalists from the Phase 2 competition. And third, consistent with the Secretary's emphasis on making rewards and incentives an integral part of Federal education policy and programs, the Department views Race to the Top Phase 3 as a unique opportunity

to reward the efforts of all nine unfunded finalists from the Phase 2 competition while at the same time enabling them to make meaningful progress on key elements of their comprehensive statewide reform plans.

*Changes:* None.

**Assurances**

*Comment:* One commenter recommended limiting the number of assurances required in each Race to the Top Phase 3 application to only those that are relevant to the specific activities selected for funding in each application. The commenter also suggested modifying the assurances and other requirements of Race to the Top Phase 3 to incorporate the recently announced principles of Elementary and Secondary Education Act (ESEA) flexibility.

*Discussion:* A key goal of Race to the Top Phase 3 is to provide an incentive for the unfunded finalists from the Race to the Top Phase 2 competition to maintain their momentum for comprehensive reform and continue working to implement key elements of their Race to the Top Phase 2 plans even in the absence of full funding for those plans. The assurances included in section IV of these final requirements are intended to reinforce this goal by requiring eligible applicants to demonstrate a uniform, visible, ongoing commitment to the comprehensive set of conditions and reforms included in their Race to the Top Phase 2 plans. Limiting the assurances to those related to the specific activities proposed for funding under Race to the Top Phase 3 would undermine the comprehensive approach to education reform embodied in Race to the Top.

The principles of the Department's ESEA flexibility are intended to support individual State efforts to develop and implement college- and career-ready standards and aligned assessments; differentiated recognition, accountability, and support systems; and teacher and principal evaluation systems. The Department recognizes that while supporting similar strategies to improve academic achievement for all students, the requirements of the Race to the Top program and ESEA flexibility may not be possible in all instances. As discussed elsewhere in this notice, the Department is making Race to the Top Phase 3 awards on the basis of previously submitted Phase 2 applications and the activities proposed by eligible States in those applications in response to the requirements and priorities that applied to the Race to the Top Phase 2 application. Accordingly, we decline to alter those assurances in order to incorporate ESEA flexibility, even though States receiving Race to the Top Phase 3 awards are also free to submit ESEA flexibility requests.

*Changes:* None.

*Comment:* One commenter expressed concern about the Education Jobs Fund maintenance-of-effort (MOE) requirement in assurance (a). This commenter asked for clarification as to whether funds provided by the State Fiscal Stabilization Fund and the Education Jobs Fund may be counted as ''State support'' for the purposes of meeting assurance (a) and whether a State would be required to meet the MOE requirement only for FY 2011. The commenter also recommended removing assurance (a) from the final requirements because it could prevent some eligible States from applying for Race to the Top Phase 3 funds. Another commenter recommended strengthening the fiscal requirements of Race to the Top Phase 3 through the addition of a supplement-not-supplant requirement.

*Discussion:* The Department included the Education Jobs Fund MOE requirement in the assurances for Race to the Top Phase 3 as a measure of a State's commitment to maintaining the fiscal support for education needed to create the conditions for education reform consistent with successful implementation of Race to the Top reform plans. The Department believes that a Race to the Top Phase 3 award is unlikely to contribute to meaningful change and improvement in a State that is reducing its overall financial support for schools and postsecondary institutions. In determining whether a State has met the Education Jobs Fund MOE requirement for the purpose of satisfying assurance (a), the data used must include only State support for education. Federal funds, including those received from the State Fiscal Stabilization Fund and the Education Jobs Fund, are not considered State support for education. However, State appropriations to local governments to support elementary and secondary education may be included as State support. The Department believes that the MOE requirement in this final notice is adequate to ensure continued State support for education and declines to limit State flexibility or add a supplement-not-supplant requirement.

*Changes:* None.

*Comment:* One commenter raised the possibility that a State legislature could create statutory barriers to the development of teacher and principal evaluation systems between the time a State submits Part I of its Race to the Top Phase 3 application and the time the State submits Part II of its application, potentially resulting in the State not meeting assurance (c) regarding legal, statutory, or regulatory barriers at the State level to linking data on student achievement or student growth to teachers and principals for the purpose of teacher and principal evaluation. To account for this possibility, the commenter recommended that the language ''[a]t the time the State submits its application'' in assurance (c) be interpreted as applying only to the date on which a State submits Part I of the application.

*Discussion:* The Department interprets the language ''[a]t the time the State submits its application'' in assurance (c) to cover submission of both Parts I and II of the application for Race to the Top Phase 3 funds. Moreover, the Department notes that changes in State law, regulation, or policy after the receipt of a Race to the Top Phase 3 award that prevent full and effective implementation of Phase 3 activities would need to be reviewed and considered on a case-by-case basis by the Department, and could result in changes in or the possible partial or complete termination of a Phase 3 award.

*Changes:* None.

*Comment:* One commenter requested clarification as to whether assurance (d), regarding a State's commitment to improving the quality of its assessments, is intended to commit a State to adopting and implementing a particular set of assessments before it has the opportunity to review the completed assessments.

*Discussion:* Assurance (d) does not commit a State to adopt or implement a particular set of assessments in advance of the completion of those assessments. It merely reiterates and reinforces the commitment that the State made in its Race to the Top Phase 2 application to improve the quality of the State's assessments, as demonstrated by the State's participation in one or more consortia of States working to develop and implement common, high-quality assessments aligned with a common set of K–12 standards.

*Changes:* None.

*Comment:* One commenter requested clarification of assurance (e) regarding the maintenance of the conditions for reform described in the State's Race to the Top Phase 2 application. More specifically, the commenter asked whether the assurance was primarily focused on the statutory and regulatory framework for core reforms or whether it was focused on specific activities that would support that statutory and regulatory framework, but that a State may not be able to afford in the absence

of the funds sought as part of its Race to the Top Phase 2 application.

*Discussion:* Assurance (e) is primarily focused on the maintenance of the statutory and regulatory framework for the core reforms included in a State's Race to the Top Phase 2 application, not on the specific activities in the application.

*Changes:* None.

*Comment:* One commenter expressed concern that assurance (f), regarding a State's commitment to comprehensive reforms and innovation, could be interpreted as support for the full implementation of plans and strategies included in the State's Race to the Top Phase 2 application.

*Discussion:* The Department recognizes that States are not able to fully implement their Race to the Top Phase 2 plans absent the full amount of funding sought in their Phase 2 applications. Assurance (f) is simply meant to reinforce a State's commitment to its Race to the Top Phase 2 plan as the framework for State and local education reform efforts going forward, even in the absence of funding levels that would support full implementation of that plan.

*Changes:* None.

**Selection of Activities for Funding**

*Comment:* One commenter asked whether a State must select, for funding under Race to the Top Phase 3, activities exactly as they were described in its Phase 2 application, or whether those activities could be modified, changed, or combined to ensure that Race to the Top Phase 3 funds have the greatest impact on advancing State reform plans.

*Discussion:* To meet assurance (g), States must select activities that are consistent with the commitment to comprehensive reform and innovation that the State demonstrated in its Race to the Top Phase 2 application, including activities that are most likely to improve science, technology, engineering, and mathematics (STEM) education. The Department intends for this assurance to require an eligible State to select activities from its Phase 2 application for funding under Race to the Top Phase 3, while permitting the State to adjust the scope, budget, timelines, and performance measures of those selected activities. A State is not permitted, however, to use Race to the Top Phase 3 funds for activities that were not included in its Phase 2 application.

*Changes:* None.

**Science, Technology, Engineering, and Mathematics (STEM) Education**

*Comment:* One commenter proposed allowing States to include, as part of their Race to the Top Phase 3 STEM plans, activities related to one or more of the four core education reform areas that were not specifically included in their Phase 2 applications.

*Discussion:* As noted in response to a more general comment regarding the selection of activities for funding under Race to the Top Phase 3, assurance (g) requires States to limit their selection of activities, ''including activities that are most likely to improve STEM education,'' to the activities from their Race to the Top Phase 2 applications. However, States have flexibility to select activities to support the STEM focus in Race to the Top Phase 3 that might not have been described as STEM-related in their Phase 2 applications. In addition, States may modify the scope, budget, and timelines of activities selected from their Phase 2 applications for funding under Race to the Top Phase 3.

*Changes:* None.

*Comment:* One commenter asked whether a State could elect to focus the STEM activities in its Race to the Top Phase 3 plan on just one of the four core ARRA education reform areas or whether a STEM focus is required in all four reform areas.

*Discussion:* As we stated in the NPR, an eligible applicant could demonstrate an emphasis on promoting STEM education by selecting activities ''within one or more of the four core education reform areas.''

*Changes:* None.

*Comment:* Two commenters requested a definition of the term ''meaningful share'' as it is used in section V. Budget Requirements to describe the amount of a State's Race to the Top Phase 3 award that must be allocated to advance STEM education.

*Discussion:* The proposed budget requirements, which are retained in these final requirements, were intended to give States flexibility in demonstrating how their detailed plans and budgets would make a meaningful contribution to advancing STEM education. In general, a ''meaningful share'' in the STEM context means funding for STEM-related activities at a level that would be likely to result in a measurable improvement in one or more STEM outcomes related to each activity. For example, a $2 million investment in expanding the number of teachers qualified to teach Advanced Placement (AP) Calculus would be considered meaningful if the State could demonstrate that this level of funding would lead to a significant increase in the number of students in high-poverty schools taking AP Calculus over a 3-year period.

*Changes:* None.

*Comment:* One commenter recommended the addition of new language to the competitive preference priority for STEM education that was included in the Race to the Top Phase 2 competition.

*Discussion:* The Department is making Race to the Top Phase 3 awards on the basis of previously submitted Phase 2 applications and the activities proposed by eligible States in those applications in response to the requirements and priorities that applied to the Race to the Top Phase 2 application. Modifying those existing priorities and requirements would not be consistent with this process, and the Department declines to make the change recommended by the commenter.

*Changes:* None.

**Participating Local Educational Agencies (LEAs)**

*Comment:* One commenter asked whether a State could revise or replace previously negotiated memoranda of understanding (MOUs) with participating LEAs.

*Discussion:* In general, a State will not need to revise or replace the MOUs with participating LEAs included in its Race to the Top Phase 2 application. However, the Department expects that States will work with LEAs during the application process and at the beginning of the grant period to update and finalize local scopes of work.

*Changes:* None.

*Comment:* Two commenters asked whether a State receiving Race to the Top Phase 3 funds must allocate the LEA share of those funds to the LEAs that signed MOUs and were listed as participating LEAs in the State's Phase 2 application. Two commenters requested clarification as to whether participating LEAs listed on a State's Phase 2 application may ''opt out'' of participation in Race to the Top Phase 3 as well as whether previously non-participating LEAs may sign up to participate in Race to the Top Phase 3.

*Discussion:* The Department expects that a State receiving Race to the Top Phase 3 funds will allocate the LEA share of those funds to the participating LEAs listed in its Phase 2 application. However, the final identity and number of participating LEAs for Race to the Top Phase 3 will depend on the activities selected for funding and the final scopes of work developed for participating LEAs. In part, this is because participating LEAs may

withdraw from a State's Race to the Top reform plan, and States may sign up previously non-participating LEAs as participating LEAs for Race to the Top Phase 3.

*Changes:* None.

*Comment:* Several commenters requested that we add flexibility to the final requirements so that States would be permitted to select the LEAs that will participate in Race to the Top Phase 3 activities and receive at least 50 percent of their State's Race to the Top Phase 3 award. Commenters sought, for example, to modify the list of participating LEAs submitted as part of States' Phase 2 applications and to limit the number of participating LEAs in order to maximize the impact of available funding. Two commenters requested flexibility to delay selection of participating LEAs until the beginning of the grant period (instead of submitting a list of participating LEAs with the application, as was required in the Race to the Top Phase 1 and Phase 2 competitions).

*Discussion:* The Department recognizes that the limited scope of and funding available under Race to the Top Phase 3 may create challenges in ensuring the full and effective participation of the LEAs included on a State's Phase 2 list. However, the Department believes that the most appropriate way to meet this challenge will be for States to work carefully and thoughtfully with LEAs during the application process and at the beginning of the grant period to update the local scopes of work. States do not have the discretion to select participating LEAs or limit LEA participation by using certain demographic or geographic characteristics, setting new requirements for such participation, or employing a competitive process to determine which LEAs may participate. All LEAs in a State, including public charter schools identified as LEAs under State law, must have the opportunity to participate in the State's Race to the Top Phase 3 application if they commit to implementing ''all or significant portions'' of the State's plan. As described earlier in this preamble, the Department generally expects a State receiving Race to the Top Phase 3 funds to allocate the LEA share of those funds to the participating LEAs listed in its Phase 2 application, with adjustments resulting from decisions by some LEAs to drop out of Race to the Top Phase 3 and others to sign up for the first time.

*Changes:* None.

*Comment:* One commenter recommended requiring States to document the process by which they sign up participating LEAs, including the request for such participation and any responses indicating the decisions of LEAs regarding participation.

*Discussion:* The Department believes that the process used by States to determine participating LEAs for the Race to the Top Phase 2 competition was adequate for ensuring that every LEA was provided a fair opportunity to sign up for Race to the Top. The Department declines to create new, potentially burdensome administrative requirements for this process as part of Race to the Top Phase 3.

*Changes:* None.

*Comment:* One commenter asked whether participating LEAs would be permitted to pool their Race to the Top Phase 3 allocations, such as through an educational service agency, in order to carry out the activities required by the State's Race to the Top Phase 3 plan.

*Discussion:* Participating LEAs have flexibility, consistent with the requirements of their State's plan, in how they spend their share of Race to the Top Phase 3 funds and will be permitted to pool resources with other participating LEAs to more effectively carry out the State's plan.

*Changes:* None.

**Race to the Top Phase 3 Allocations**

*Comment:* One commenter expressed concern that the proposed amounts available to each of the nine eligible States under Race to the Top Phase 3 would be too small to have a meaningful impact in those States, particularly if a portion of the funds must be dedicated to STEM activities. The commenter recommended that the Department consider alternative funding strategies, such as funding fewer States, requiring States to provide matching funds in order to receive a Race to the Top Phase 3 award, or allowing States to select the reform areas most in need of funding.

*Discussion:* As discussed in the NPR and in the *Regulatory Alternatives Considered* section of this notice, the Department already has considered alternative methods of awarding Race to the Top Phase 3 funds, and believes that the approach described in the NPR and retained in these final requirements will result in the optimal use of available funding, fulfilling the twin goals of rewarding unfunded finalists from the 2010 Race to the Top Phase 2 competition and enabling them to make meaningful progress on key elements of their comprehensive statewide reform plans. The Department also notes that while these final requirements do require States to ensure that the activities selected for funding under Race to the Top Phase 3 make a meaningful contribution to advancing STEM education, States will have considerable flexibility to select the mix of activities that best meets their needs. Finally, the Department believes that requiring matching funds for Race to the Top Phase 3 awards would be inconsistent with the decision, authorized by Congress, to make such awards on the basis of previously submitted applications, which did not include a matching requirement.

*Changes:* None.

*Comment:* One commenter requested that we modify the final requirements to allow States the flexibility to use, in view of reduced award levels, the LEA share of funds on behalf of participating LEAs without actually awarding funds to participating LEAs. One benefit of this approach, according to the commenter, would be to reduce reporting and other accountability burdens on participating LEAs.

*Discussion:* Retaining the LEA share of Race to the Top Phase 3 funds under State control, even if used for the benefit of participating LEAs, is not permitted under section 14006(c) of the ARRA, which requires States to subgrant at least 50 percent of their Race to the Top awards directly to LEAs based on their relative shares of funds made available under part A of Title I of the ESEA. Note, however, that LEAs must use their funding in a manner that is consistent with the State's plan and the MOU or other binding agreement between the LEA and the State. A State also may establish more detailed rules on uses of funds, provided they are consistent with the ARRA, and may require that participating LEAs use their funds to pay for certain activities that are required elements of the State's plan.

*Changes:* None.

*Comment:* One commenter recommended that the Department clarify options for funding charter schools that are not LEAs, as well as the flexibility of States to use their share of any Race to the Top award to include such schools in Race to the Top activities or for other purposes, such as to provide extra support to urban or rural areas or to promote specific reform strategies, such as STEM education.

*Discussion:* The Department has previously clarified in guidance provided during the Race to the Top Phase 1 and Phase 2 competitions that participating LEAs must include charter and non-charter schools in an equitable manner (see *http://www2.ed.gov/programs/racetothetop/faq-grantee.pdf*). That guidance also specifies that States have considerable flexibility in using Race to the Top funds to implement their approved reform plans. The State share of any Race to the Top award is

available for State-level activities, for allocation to LEAs or schools, including charter schools, under a formula or process of the State's own choosing, or for other purposes consistent with the State's plan. The Department believes this previously issued guidance sufficiently addresses the issues raised by the commenter.

*Changes:* None.

*Comment:* One commenter stated that the use of poverty data on children ages 5 to 17 to allocate Race to the Top funds to States should not be interpreted as limiting the use of those funds to serve children only in that age range.

*Discussion:* Guidance issued for the Race to the Top Phase 1 and Phase 2 competitions makes it clear that Race to the Top funds may be used for a wide range of activities and purposes consistent with a State's Race to the Top plan, and that these funds are not limited to particular age ranges or groups of children (see *http://www2.ed.gov/programs/racetothetop/faq.pdf*). The Department also notes that although LEAs receive subgrants from the State based on their relative shares of funding received through Title I, Part A of the ESEA, these subgrants are not subject to the restrictions on uses of funds that apply to Title I funds.

**Applications**

*Comment:* One commenter recommended that the Department require Race to the Top Phase 3 applicants to update their Phase 2 applications in order to demonstrate, and permit an assessment of, progress in improving the conditions of education in each State.

*Discussion:* The Department notes that significant progress in implementing the Race to the Top Phase 2 plans of eligible applicants was predicated at least in part on the receipt of an award under the Phase 2 competition. Since none of the eligible applicants under Race to the Top Phase 3, by definition, was funded under the Phase 2 competition, the Department does not believe it would be fair to require those applicants to demonstrate progress in implementing their plans by updating their Phase 2 applications as a condition of receiving Race to the Top Phase 3 funds. The Department believes that the assurances required in section VI of these final requirements will provide a sufficient demonstration of the ongoing commitment to comprehensive reform and innovation to qualify an eligible State for a Race to the Top Phase 3 award. The Department also notes that the FY 2011 Appropriations Act specifically authorizes the Secretary to make awards ''on the basis of previously submitted applications'' rather than new or updated applications.

*Changes:* None.

**Performance Measures**

*Comment:* One commenter asked how the Department would measure the progress of a Race to the Top Phase 3 grantee in the implementation of activities for which the overall Race to the Top program does not include a performance measure.

*Discussion:* The Department agrees that the more limited scope of Race to the Top Phase 3 means that funded activities may not be covered by existing Race to the Top performance measures. In response to this comment, and to ensure meaningful evaluation of grantee performance under Race to the Top Phase 3, the Department has added an application requirement to these final requirements specifying that an eligible applicant must include in Part II of its application for Race to the Top Phase 3 funds performance measures by sub-criteria for any activities selected for funding under Race to the Top Phase 3 for which such measures were not included in the State's Phase 2 application.

*Changes:* The Department has added a new application requirement in section III.B of these final requirements stating that a State must include in Part II of its application performance measures, by sub-criteria, for any activities selected for funding under Race to the Top Phase 3 for which such measures were not included in the State's Phase 2 application.

**Evaluation**

*Comment:* One commenter requested clarification of the amount of funding that a State could use for evaluation under Race to the Top Phase 3, both for internal evaluation purposes and for meeting assurance (i) regarding any evaluation of the program conducted and supported by the Department.

*Discussion:* A State receiving Race to the Top Phase 3 funding has discretion, consistent with the overall flexibility afforded to States in the use of State-level Race to the Top funds for any purpose related to the State's reform plan, to reserve funding for evaluation of the activities in their Phase 2 applications that are funded with Race to the Top Phase 3 awards. Note, however, that any evaluation conducted and supported by the Department will be paid for by the Department and the State would not be required to use any Race to the Top Phase 3 funds for such evaluations.

*Changes:* None.

**Race to the Top Amendment Process**

*Comment:* One commenter recommended that the Department formalize and streamline the amendment process for State plans under the Race to the Top program. The commenter noted that with Race to the Top Phase 3 expected to raise the total number of Race to the Top grantees to 21, a more formal process for submitting, reviewing, and approving amendment requests would reduce paperwork burdens, lower costs, and reduce regulatory uncertainty.

*Discussion:* The Department declines to make any changes to the Race to the Top amendment process in these final requirements at this time because it does not believe such changes are necessary. That said, the Department continuously reviews all aspects of the administration of the Race to the Top program, as well as other Department education programs, to reduce burdens and costs and improve program effectiveness. If, as a part of this ongoing review process, the Department identifies changes that would reduce burdens and costs and improve the effectiveness of this program, the Department will certainly explore making those changes.

*Changes:* None.

**General Comments**

*Comment:* One commenter recommended a wide range of changes to the requirements for the Race to the Top program, not only for Race to the Top Phase 3, but also for retroactive application to Phase 1 and Phase 2 grantees. Recommendations included the use of multiple sources of evidence to determine student academic growth, the use of multiple indicators of professional practice in teacher and principal evaluations, protecting the privacy of school personnel when publicizing performance ratings, requiring well-prepared and experienced teachers in struggling schools, greater flexibility in selecting interventions for struggling schools, supporting the adoption of college- and career-ready standards and assessments without participation in consortia, ensuring equity and adequacy in education funding, and the protection of collective bargaining rights.

*Discussion:* As noted elsewhere in this preamble, the FY 2011 Appropriations Act specifically authorizes the Secretary to make Race to the Top Phase 3 awards on the basis of previously submitted applications, and this is the approach provided for in these final requirements. The Department declines to retroactively

change program requirements where grantees previously received competitive awards on the basis of compliance with those requirements. Moreover, such action would undermine the progress under way in the current 12 Race to the Top States because it would potentially require significant modifications to existing, approved Race to the Top reform plans. In addition, such an action could prevent nine additional States that previously submitted competitive, high-quality applications from implementing those plans with Race to the Top Phase 3 funds.

*Changes:* None.

*Comment:* One commenter suggested two modifications to the proposed requirements for Race to the Top Phase 3 to support improved achievement and assessment results. First, the commenter recommended revising the requirements so that they encourage a stronger emphasis on creating what the commenter described as equal conditions for education, through such actions as strengthening libraries in high-poverty school districts. Second, the commenter called for redesigning academic assessments to better capture deeper knowledge and higher-order thinking skills.

*Discussion:* The Department believes that the current Race to the Top program already supports the reforms recommended by the commenter. All Race to the Top applicants, including the nine unfunded Phase 2 finalists eligible for Race to the Top Phase 3, must demonstrate a strong commitment to and progress toward adopting and implementing college- and career-ready academic standards as well as to creating, adopting, and implementing new, comprehensive assessments aligned with those standards. These new standards and assessments, which by definition are linked closely to the knowledge and skills required to move successfully into higher education or a career, represent a concrete step in the direction of the more meaningful assessment system suggested by the commenter. In addition, while the reforms encouraged by the Race to the Top program are intended to leverage system-wide change and innovation, they also include a special emphasis on efforts to turn around struggling schools, many of them in high-poverty communities, through comprehensive interventions that may include activities to improve school climate and provide social-emotional and community-oriented services and supports for students.

*Changes:* None.

*Comment:* None.

*Discussion:* In addition to making technical and other minor edits to improve the clarity and readability of these final requirements, the Department made changes in two additional areas where the language in the NPR might have created confusion or was deemed unnecessary. First, the language in the *Application Assurances* section regarding standards and assessments did not consistently describe those standards and assessments as being linked to college- and career-readiness. The Department has clarified this link in these final requirements, specifically in assurances (d), (e), and (f). Second, the proposed *Budget Requirements* included a requirement for a description of the State's process for allocating 50 percent of its Race to the Top Phase 3 award to participating LEAs. The Department has determined that this proposed requirement is unnecessary because the underlying statutory requirement in section 140006(c) of the ARRA clearly specifies the process for allocation of Race to the Top funds to participating LEAs. Consequently, the Department has removed the requirement, described in the NPR under *Proposed Budget Requirements,* that the plan and budget required by Part II of a State's application include a description of the State's process for allocating at least 50 percent of Race to the Top Phase 3 funds to participating LEAs.

*Changes:* The Department has modified language in these final requirements to clarify that the references to common standards and assessments in assurances (d), (e), and (f) must be linked to college- and career-readiness. In addition, the Department has removed a requirement from the *Proposed Budget Requirements* that would have required States to include in Part II of their applications a description of their processes for allocating at least 50 percent of their Race to the Top Phase 3 funds to participating LEAs.

**Final Requirements**

The Secretary announces the following requirements for Race to the Top Phase 3 awards. Except where otherwise indicated in these final requirements, the applicable final requirements and definitions of key terms from the notice of final priorities, requirements, definitions, and selection criteria, published in the **Federal Register** on November 18, 2009 (74 FR 59688), apply to the Race to the Top Phase 3 application process.

I. *Award Process:* The Department will make awards through a two-part application process. States that meet the eligibility requirements must submit Part I of the application. Part I must meet the requirements in part A of the *Application Requirements* section and provide the required assurances listed in the *Application Assurances* section.

The Department will notify eligible applicants that met the application requirements and provided the required application assurances and will provide an estimate of the Race to the Top Phase 3 funds available to each based on the number of qualified applicants.

Qualified applicants then must submit Part II of the application for review and approval by the Secretary. Part II must meet the requirements in Part B of the Application Requirements section. It must also include a detailed plan and budget describing the activities selected from the State's Race to the Top Phase 2 application that will be implemented with Race to the Top Phase 3 funding in accordance with the *Budget Requirements* in these final requirements.

II. *Eligibility Requirements:* States that were finalists, but did not receive grant awards, in the 2010 Race to the Top Phase 2 competition are eligible to receive Race to the Top Phase 3 awards. Therefore, only the States of Arizona, California, Colorado, Illinois, Kentucky, Louisiana, New Jersey, Pennsylvania, and South Carolina are eligible to apply for Race to the Top Phase 3 awards.

III. *Application Requirements:* To receive Race to the Top Phase 3 funding, an eligible applicant must meet two application requirements:

A. In Part I of the application, a State must submit the signatures of the Governor, the State's chief school officer, and the president of the State board of education, or their authorized representatives.

B. In Part II of the application, a State must include performance measures, by sub-criteria, for any activities selected for funding under Race to the Top Phase 3 for which such measures were not included in the State's Phase 2 application.

IV. *Application Assurances:* The Governor (or the Governor's authorized representative) must provide the following assurances in the State's Race to the Top Phase 3 application:

(a) The State is in compliance with the Education Jobs Fund maintenance-of-effort requirements in section 101(10)(A) of Public Law 111–226.

(b) The State is in compliance with the State Fiscal Stabilization Fund Phase 2 requirements with respect to Indicator (b)(1) regarding the State's statewide longitudinal data system. (*See* notice of final requirements, definitions, and approval criteria for the State Fiscal

Stabilization Fund Program published in the **Federal Register** on November 12, 2009 (74 FR 58436), and the interim final requirement for the State Fiscal Stabilization Fund Program published in the **Federal Register** on September 23, 2011 (76 FR 59036)).

(c) At the time the State submits its application, there are no legal, statutory, or regulatory barriers at the State level to linking data on student achievement or student growth to teachers and principals for the purpose of teacher and principal evaluation.

(d) The State will maintain its commitment to improving the quality of its assessments, evidenced by the State's participation in a consortium of States that—

(i) Is working toward jointly developing and implementing common, high-quality assessments aligned with a common set of K–12 standards that prepare students for college and careers; and

(ii) Includes a significant number of States.

(e) The State will maintain, at a minimum, the conditions for reform described in its Race to the Top Phase 2 application, including—

(i) The State's adoption and implementation of a common set of K–12 standards that prepare students for college and careers, as specified in section (B)(1)(ii) of the State's Race to the Top Phase 2 application;

(ii) The State's statutory and regulatory framework related to improving teacher and school leader effectiveness and ensuring an equitable distribution of effective teachers and leaders, as described in section D of the State's Race to the Top Phase 2 application;

(iii) The State's statutory and regulatory framework for implementing effective school and LEA turnaround measures, as described in section E of the State's Race to the Top Phase 2 application; and

(iv) The State's statutory and regulatory framework for supporting the creation and expansion of high-performing charter schools and other innovative schools, as described in section (F)(2) of its Race to the Top Phase 2 application.

(f) The State will maintain its commitment to comprehensive reforms and innovation designed to increase student achievement and to continued progress in the four reform areas specified in the ARRA, including the adoption and implementation of college- and career-ready standards and high-quality assessments, improving the collection and use of data, increasing teacher effectiveness and equity in the distribution of effective teachers, and turning around the State's lowest achieving schools.

(g) The State will select activities for funding that are consistent with the commitment to comprehensive reform and innovation that the State demonstrated in its Race to the Top Phase 2 application, including activities that are most likely to improve STEM education.

(h) The State will comply with all of the accountability, transparency, and reporting requirements that apply to the Race to the Top program (*See* the notice of final priorities, requirements, definitions, and selection criteria for the Race to the Top Fund published in the **Federal Register** on November 18, 2009 (74 FR 59688)), with the exception of reporting requirements applicable solely to funds provided under the ARRA. (**Note:** The ARRA section 1512 reporting requirements do not apply to the funds we will award under the Race to the Top Phase 3 award process).

(i) A State will comply with the requirements of any evaluation of the program, or of specific activities pursued as part of the program, conducted and supported by the Department.

V. *Budget Requirements:* An eligible applicant must apply for a proportional share of the approximately $200 million available for Race to the Top Phase 3 awards based primarily on its share of the population of children ages 5 through 17 across the nine States. The estimated amounts for which each eligible State could apply are shown in the following table. The amounts provided in this table are based on the assumption that all eligible States will apply for a share of available funding; the amounts will increase if one or more eligible States do not apply or do not meet the application requirements.

| State | Amount |
|---|---|
| Colorado | $12,250,000 |
| Louisiana | 12,250,000 |
| South Carolina | 12,250,000 |
| Kentucky | 12,250,000 |
| Arizona | 17,500,000 |
| Illinois | 28,000,000 |
| Pennsylvania | 28,000,000 |
| New Jersey | 28,000,000 |
| California | 49,000,000 |

Once the Department notifies an applicant of the final amount of funds it is eligible to receive, the applicant must submit a Part II application that includes a detailed plan and budget. The plan and budget must describe the activities the applicant has selected from its Race to the Top Phase 2 application that it proposes to implement with Race to the Top Phase 3 funding, including how the State will allocate a meaningful share of its Phase 3 award to advance STEM education in the State.

The plan and budget must also provide—

(a) An explanation of why the applicant has selected these activities; and

(b) An explanation of why the applicant believes these activities will have the greatest impact on advancing its overall statewide reform plan.

These final requirements do not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

**Note:** This notice does *not* solicit applications. In any year in which we choose to use one or more of these requirements we invite applications through a notice in the **Federal Register.**

**Executive Orders 12866 and 13563**

Under Executive Order 12866, the Secretary must determine whether a regulatory action is ''significant'' and therefore subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may (1) have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or Tribal governments or communities in a material way (also referred to as an ''economically significant'' rule); (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impacts of entitlement grants, user fees, or local programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive order.

It has been determined that this regulatory action will have an annual effect on the economy of more than $100 million because the amount of government transfers through the Race to the Top Phase 3 award process exceeds that amount. Therefore, this action is economically significant and subject to OMB review under section 3(f)(1) of Executive Order 12866. Notwithstanding this determination, we have assessed the potential costs and benefits—both quantitative and

qualitative—of this regulatory action and have determined that the benefits justify the costs.

The Department has also reviewed these final requirements pursuant to Executive Order 13563, published on January 21, 2011 (76 FR 3821). Executive Order 13563 is supplemental to and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, agencies are required by Executive Order 13563 to: (1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor their regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.

We emphasize as well that Executive Order 13563 requires agencies ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' In its February 2, 2011, memorandum (M–11–10) on Executive Order 13563, improving regulation and regulatory review, the Office of Information and Regulatory Affairs has emphasized that such techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing these final requirements only upon a reasoned determination that their benefits justify their costs and we selected, in choosing among alternative regulatory approaches, those approaches that maximize net benefits. Based on the analysis below, the Department believes that these final requirements are consistent with the principles in Executive Order 13563.

In this section we discuss the need for regulatory action, the costs and benefits, as well as regulatory alternatives we considered.

**Need for Federal Regulatory Action**

These requirements are needed to implement the Race to the Top Phase 3 award process in the manner that the Secretary believes will best enable the program to achieve its objectives of creating the conditions for effective reform and meaningful innovation in education while helping States that were finalists, but did not receive funding under the Race to the Top Phase 2 competition, to implement selected elements of their comprehensive reform proposals submitted as part of their Race to the Top Phase 2 applications.

**Potential Costs and Benefits**

Under Executive Order 12866, we have assessed the potential costs and benefits of this regulatory action and have determined that these final requirements will not impose significant additional costs to State applicants or the Federal Government. Most of the requirements involve re-affirming the commitments and plans already completed as part of the 2010 Race to the Top Phase 2 competition or other Federal education programs. As an example of a requirement that will result in minimal additional burden and cost, we are requiring that States applying for Race to the Top Phase 3 funding provide an assurance that they are meeting the MOE requirements of the Education Jobs Fund program. Similarly, other final requirements, in particular those related to maintaining conditions for reform required under the Race to the Top Phase 2 competition, require continuation of existing commitments and investments rather than the imposition of additional burdens and costs. For example, States will be required to continue implementation of common K–12 academic content standards. The Department believes States will incur minimal costs in developing plans and budgets for implementing selected activities from their Race to the Top Phase 2 proposals, because in most cases such planning will entail revisions to existing plans and budgets already developed as part of the Race to the Top Phase 2 application process, and not the development and implementation of entirely new plans and budgets. In all such cases, the Department believes that the benefits resulting from these requirements will exceed their costs.

**Regulatory Alternatives Considered**

An alternative to promulgation of the types of requirements announced in this notice would be for the Secretary to use FY 2011 Race to the Top funds to make awards to the one or two highest scoring unfunded applicants from the 2010 Race to the Top Phase 2 competition. However, the Department believes that the scores of the unfunded finalists from the Race to the Top Phase 2 competition are too closely grouped to support awarding all FY 2011 Race to the Top funds to the one or two States with the highest scores. Furthermore, the Department believes that the approximately $200 million available from the FY 2011 Appropriations Act for the Race to the Top program would not support full implementation of the comprehensive reform plans submitted by any of the unfunded finalists from the 2010 Race to the Top Phase 2 competition. The Department also believes that making available meaningful amounts of FY 2011 Race to the Top funding to all of the unfunded finalists from the 2010 Race to the Top Phase 2 competition offers the greatest promise for sustaining the nationwide reform momentum created by the Race to the Top Phase 1 and Phase 2 competitions.

Finally, the Department believes that simply funding the one or two highest scoring applicants that did not win an award in the 2010 Race to the Top Phase 2 competition would result in a missed opportunity to reward the efforts of all nine unfunded finalists from that competition and to enable them to make meaningful progress on key elements of their comprehensive statewide reform plans.

**Accounting Statement**

As required by OMB Circular A–4 (available at *http://www.whitehouse.gov/sites/default/files/omb/assets/omb/circulars/a004/a-4.pdf*), in the following table, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of this regulatory action. This table provides our best estimate of the Federal payments to be made to States under this program as a result of this regulatory action. Expenditures are classified as transfers to States.

ACCOUNTING STATEMENT CLASSIFICATION OF ESTIMATED EXPENDITURES

| Category | Transfers |
|---|---|
| Annualized Monetized Transfers | $200,000,000. |
| From Whom To Whom? | Federal Government to States. |

The Race to the Top Phase 3 award process will provide approximately $200 million in competitive grants to eligible States.

**Paperwork Reduction Act of 1995**

As we mentioned in the NPR, these final requirements contain information collection requirements. However, because the eligible applicants for Race to the Top Phase 3 awards are fewer than 10, these collections are not subject to approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3502(3)(A)(i)).

**Waiver of Delayed Effective Date and Congressional Review Act**

The Administrative Procedure Act requires that a substantive rule be published at least 30 days before its effective date, except as otherwise provided for good cause (5 U.S.C. 553(d)(3)). The Secretary has determined that a delayed effective date for these final requirements is unnecessary and contrary to the public interest, and that good cause exists to waive the requirement for a delayed effective date.

These final requirements are needed to award the Race to the Top funds provided by the FY 2011 Appropriations Act to qualified applicants by December 31, 2011, or the funds will lapse. Even on an extremely expedited timeline, it is impracticable for the Department to adhere to a 30-day delayed effective date for the notice of final requirements and make grant awards to qualified applicants by the December 31, 2011 deadline. When the 30-day delayed effective date is added to the time the Department will need to receive applications (approximately 20 days), review the applications (approximately 20 days), and finally approve applications (approximately 21 days), the Department will not be able to award funds authorized under the FY 2011 Appropriations Act to applicants by December 31, 2011.

These requirements have been determined to be major for purposes of the Congressional Review Act (CRA) (5 U.S.C. 801, *et seq.*). However, for the reasons outlined in the preceding paragraph, the Department has determined that, pursuant to section 808(2) of the CRA, the delay in the effective date generally required for congressional review is contrary to the public interest and waived for good cause.

**Regulatory Flexibility Act Certification**

The Secretary certifies that this regulatory action will not have a significant economic impact on a substantial number of small entities. The small entities that this regulatory action will affect are small LEAs receiving funds under this program.

This regulatory action will not have a significant economic impact on small LEAs because they will be able to meet the costs of compliance with this regulatory action using the funds provided under this program.

**Effect on Other Levels of Government**

We have also determined that this regulatory action would not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

**Assessment of Educational Impact**

In the NPR, in accordance with section 411 of the General Education Provisions Act, 20 U.S.C. 1221e–4, we requested comments on whether the proposed requirements would require transmission of information that any other agency or authority of the United States gathers or makes available.

Based on the response to the NPR and on our review, we have determined that these final requirements do not require transmission of information that any other agency or authority of the United States gathers or makes available.

**Intergovernmental Review**

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

*Accessible Format:* Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

*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** 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 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.

Dated: November 9, 2011.

**Arne Duncan,**

*Secretary of Education.*

[FR Doc. 2011–29581 Filed 11–15–11; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF ENERGY

### Energy Efficiency and Renewable Energy

### Proposed Agency Information Collection

**AGENCY:** Energy Efficiency and Renewable Energy, U.S. Department of Energy.

**ACTION:** Notice and Request for Comments.

**SUMMARY:** The Department of Energy (DOE) is submitting to the Office of Management and Budget (OMB) for clearance a proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995. The proposed collection will support a National Evaluation of DOE's State Energy Program (SEP) for the year 2008 (pre-American Recovery and Reinvestment Act of 2009 (ARRA) funding) and the years 2009–2011 (ARRA funding).

A 60-day notice and request for comments was published in the **Federal**

**Register** on July 7, 2011 (76 FR 39860). One set of comments was received in response that notice. Those comments noted the responding organization's concern with environmental issues, its past support for a long-term national energy strategy, and its belief that increased energy efficiency and use of alternative energy sources are important components of such a strategy. Because the information gained from the proposed information collection will help refine future State Energy Program energy efficiency and renewable energy initiatives, the commenting organization supports the Department of Energy's information collection request.

This subsequent 30-day notice allows public comment on the final version of this information collection request. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information shall have practical utility; (b) the accuracy of the Department's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Please note that in the final version of the information collection request, the estimated burden has remained essentially the same.

**DATES:** Comments regarding this proposed information collection must be received on or before December 16, 2011. If you anticipate difficulty in submitting comments within that period, contact the person listed in **ADDRESSES** as soon as possible.

**ADDRESSES:** Written comments may be sent to Martin Schweitzer, Environmental Sciences Division, Oak Ridge National Laboratory, One Bethel Valley Road, P.O. Box 2008, MS–6036, Oak Ridge, TN 37831–6036; *schweitzerm@ornl.gov.*

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to: Martin Schweitzer, Environmental Sciences Division, Oak Ridge National Laboratory, One Bethel Valley Road, P.O. Box 2008, MS–6036, Oak Ridge, TN 37831–6036; *schweitzerm@ornl.gov.*

The detailed technical evaluation plan for this information collection can be found at [*http://weatherization.ornl.gov/evaluation_sep.shtml*]. The surveys and data collection forms that compose this information collection request can also be found at this same Web site.

**SUPPLEMENTARY INFORMATION:** This information collection request contains:

*(1) OMB No.:* New.

*(2) Information Collection Request Title:* National Evaluation of the United States Department of Energy's State Energy Program.

*(3) Type of Request:* New.

*(4) Purpose:* The Department of Energy (DOE) is conducting an evaluation of the State Energy Program (SEP), a national program providing grants and technical support to the States, the District of Columbia, and the U.S. territories to implement energy efficiency and renewable energy activities that meet their unique energy needs, while also addressing DOE's national goals, such as energy security. The SEP was created in 1996 by Congress, when the State Energy Conservation Program and the Institutional Conservation Programs were consolidated. In February 2009, the American Recovery and Reinvestment Act (ARRA) provided a substantial increase in the funding available to support SEP activities. The additional $3.1 billion of ARRA funds began to be disbursed in late 2009 and are required to be expended by mid-2012. Due to the large differences in volume, scope, and relative priority of policy goals between the pre-ARRA and ARRA-funded activities, this evaluation will assess the outcomes of SEP programmatic activities for one program year (2008) prior to distribution of the ARRA funding as well as for the ARRA-funded program years of 2009–2011.

The principal objective of the evaluation is to estimate four key program outcomes:

- Energy, cost, and demand savings;
- Increases in renewable energy capacity and generation;
- Carbon emissions reductions; and
- Direct and indirect job creation

The evaluation will require information to be collected from SEP State program managers, SEP program implementation staff in selected States, participants in selected SEP programs, and equipment vendors familiar with participants' purchases of qualifying equipment.

## Scale of the Information Collection

The evaluation effort will focus on programmatic activities implemented in 2008 (prior to the ARRA funding) and in Program Years 2009–2011 (with ARRA funding). Programmatic activities will be organized into ''Broad Program Area Categories'' (BPACs) for purposes of conducting the research. For each evaluation period, DOE has determined that those BPACs accounting for approximately 80 percent of the total SEP activity will be evaluated.

A sampling frame consisting of all relevant programmatic activities for Program Year 2008 and Program Years 2009–2011 will be compiled, assigning each programmatic activity to a single BPAC. A probability sample of 82 individual programmatic activities will be selected, using BPACs as strata, to represent the most heavily-funded activities in the portfolio of SEP's energy efficiency and renewable energy efforts. The total level of effort for the evaluation will be allocated to BPACs within each study period in proportion to their level of spending.

To use resources efficiently, the programmatic activities within the various BPACs will be studied at different levels of rigor, reflecting their relative size and expected contribution towards overall energy savings. Rigor level corresponds to both the statistical analysis and the quality of data necessary to support the analysis. High Rigor evaluation approaches will yield the most reliable impact estimates, using methods recognized by the California Evaluation Protocols, DOE's Impact Evaluation Framework for Technology Deployment Programs, and the International Performance Measurement and Verification Protocol (IPMVP). The high-rigor evaluation methods will be applied to BPACs that (a) Account for a large proportion of funds spent on State-level initiatives; (b) are believed to achieve substantial energy savings; (c) are considered important by the States; and (d) are expected to play a major role in future SEP efforts. Medium-high rigor methods will require verification of savings and outcomes with individual participants, but will use less intensive data collection methods than those prescribed for high-rigor. For example, data may be collected by telephone contact with participants, rather than a site visit. Sample sizes will also be smaller in the medium-high rigor evaluations. Medium-low rigor evaluation approaches will not include any data collection from individual program participants to estimate savings or outcomes. These evaluations will use data that can be obtained from program records and secondary sources, as well as engineering-based methods to produce energy savings and outcome estimates.

A range of qualitative, quantitative (survey), on-site inspection and verification, and secondary data will be used to support the evaluation. Different types of data will be required for each

of the four types of previously-identified outcomes.

For estimating *energy, cost, and demand savings,* the high and medium-high rigor evaluations require data such as pre- and post-participation energy use and demand, surveys of measure implementation or participation, and verification of installation of energy efficient equipment and operating conditions and schedule by interview and/or on-site inspection. The calculation of energy impacts will follow the IPMVP methods and will include estimation of gross and net savings, annualizing and normalizing results to post-participation levels to calculate impacts. Medium-high rigor evaluations will utilize telephone interview data, combined with engineering data and secondary data, such as published reports and program statistics to calculate energy impacts.

The high and medium-high rigor evaluation of increases in *renewable energy capacity and generation* will require collection of meter data (where available from participants), on-site inspection and review of the system design and equipment used, interviews with project owners and operators, and review of project files. Medium-low rigor evaluations will utilize secondary data, such as published reports and statistics.

The high and medium-high rigor evaluations of *carbon emissions reductions* will require an assessment of annualized carbon dioxide reductions achieved as a result of SEP-funded activities. This assessment will require calculation of reductions in consumption of fossil fuel and replacement of fossil fuel generation with renewable energy generation. The data required for these assessments will include the types of data identified above for energy savings and for increases in renewable generation.

The high and medium-high rigor evaluations of *direct and indirect job impacts* will use a 51-region (State) Regional Economic Models, Inc. (REMI) Policy Insight simulation model. Data required for the job creation analysis will include the types of data identified above for energy, cost, and demand savings to calculate the dollar savings to households and businesses resulting from energy and electric demand plus surveys of additional expenditures on new energy-efficient equipment and systems. State economic data on patterns of spending and business sales among key sectors affecting the flow of dollars into, out of, and within the state will also be required.

The evaluation will utilize three distinct data collection methods. First, the evaluation will employ a total of six computer-assisted telephone interviewing (CATI) survey instruments. With an average of approximately 669 respondents per telephone survey, 4,016 telephone survey respondents will be targeted for participation in the evaluation. Second, the study will utilize 28 individual in-depth interview guides targeting an average of approximately 31 respondents each, with a total target population of 881 interviewees. Third, a total of 152 on-site data collections will be conducted as part of the evaluation. Together, these three methods will involve 4,897 respondents and entail a total burden of 5,094 hours. (This calculation is based on assumptions that telephone surveys require 45 minutes on average, in-depth interviews 90 minutes, and on-site data collections 300 minutes.)

The above-described data collection methods will be supplemented by additional records research and database review activities applicable to all three methods across all participant categories. These general recordkeeping activities will require an estimated 1,072 hours. Combining the burden hours associated with telephone surveys, in-depth interviews, and on-site data collections (5,094 hours) with the burden hours associated with general records review (1,072 hours) produces a total estimated burden of 6,166 hours.

The evaluation protocols will provide BPAC-level estimates for each of the outcome measures. The results of the evaluations for all the BPACs studied will be expanded to produce cumulative estimates. Outcome measures will be calculated for the 2008 (pre-ARRA) and the 2009–2011 (ARRA funding) evaluation periods.

A number of steps are being taken to avoid duplicating the efforts of any concurrent evaluations of SEP activities sponsored by individual states. These include: (1) Coordinating with the National Association of State Energy Officials (NASEO) to share information on the programmatic activities being examined by specific states; (2) coordinating with regional DOE project officers to identify any State evaluation efforts with which they are associated; (3) meeting with selected State program managers to keep informed of ongoing evaluation efforts and the research approaches being employed; and (4) coordinating with evaluation contractors to learn of State evaluation efforts with which they are involved. These efforts will keep the national SEP evaluation informed of what States are doing so that the programmatic activities sampled for this study do not overlap with any independent State evaluations. In addition to these efforts to avoid duplication, DOE has provided a set of evaluation guidelines to the States to help inform their evaluation efforts and ensure that the results are reliable enough to allow them to be used to support the national SEP evaluation without the need to study the same activities again.

The sample selection of BPACs and specific programmatic activities within each BPAC was completed in June 2011. Data collection and calculation of outcomes is scheduled to be completed by July 2012.

The detailed study design and work plan for the SEP evaluation has been available for public review since May, 2011 at *http://weatherization.ornl.gov/evaluation_sep.shtml.*

*(5) Annual Estimated Number of Respondents:* 4,897.

*(6) Annual Estimated Number of Total Responses:* 5,049.

*(7) Annual Estimated Total Number of Burden Hours:* 6,166.

**Statutory Authority:** Title III of the Energy Policy and Conservation Act of 1975, (42 U.S.C. 6321 *et seq.*) as amended, authorizes DOE to administer the State Energy Program (SEP).

Issued in Washington, DC, on November 3, 2011.

**Henry C. Kelly,**

*Acting Assistant Secretary, Energy Efficiency and Renewable Energy.*

[FR Doc. 2011–29603 Filed 11–15–11; 8:45 am]

**BILLING CODE 6450–01–P**

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## DEPARTMENT OF ENERGY

### Office of Energy Efficiency and Renewable Energy

**[Case No. CW–020]**

### Decision and Order Granting a Waiver to Samsung From the Department of Energy Residential Clothes Washer Test Procedure

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

**ACTION:** Decision and Order.

**SUMMARY:** The U.S. Department of Energy (DOE) gives notice of the decision and order (Case No. CW–020) that grants to Samsung Electronics America, Inc. (Samsung) a waiver from the DOE clothes washer test procedure for determining the energy consumption of clothes washers for the basic models set forth in its petition for waiver. Under today's decision and order, Samsung shall be required to test and rate these clothes washers using an alternate test

procedure that takes the large capacities into account when measuring energy consumption.

**DATES:** This Decision and Order is effective November 16, 2011.

**FOR FURTHER INFORMATION CONTACT:** Dr. Michael G. Raymond, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–9611, Email: *Michael.Raymond@ee.doe.gov.*

Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–71, 1000 Independence Avenue SW., Washington, DC 20585–0103. Telephone: (202) 586–7796, Email: *Elizabeth.Kohl@hq.doe.gov.*

**SUPPLEMENTARY INFORMATION:** In accordance with Title 10 of the Code of Federal Regulations (10 CFR 430.27(l)), DOE gives notice of the issuance of its decision and order as set forth below. The decision and order grants Samsung a waiver from the applicable clothes washer test procedure in 10 CFR part 430, subpart B, appendix J1 for certain basic models of clothes washers with capacities greater than 3.8 cubic feet, provided that Samsung tests and rates such products using the alternate test procedure described in this notice. Today's decision prohibits Samsung from making representations concerning the energy efficiency of these products unless the product has been tested consistent with the provisions and restrictions in the alternate test procedure set forth in the decision and order below, and the representations fairly disclose the test results. Distributors, retailers, and private labelers are held to the same standard when making representations regarding the energy efficiency of these products. 42 U.S.C. 6293(c).

Issued in Washington, DC, on November 8, 2011.

**Kathleen B. Hogan,**

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

## Decision and Order

*In the Matter of:* Samsung Electronics America, Inc. (Case No. CW–020).

### *I. Background and Authority*

Title III, Part B of the Energy Policy and Conservation Act of 1975 (EPCA), Public Law 94–163 (42 U.S.C. 6291–6309, as codified) established the Energy Conservation Program for Consumer Products Other Than Automobiles, a program covering most major household appliances, which includes the residential clothes washers that are the focus of this notice.[1] Part B includes definitions, test procedures, labeling provisions, energy conservation standards, and the authority to require information and reports from manufacturers. Further, Part B authorizes the Secretary of Energy to prescribe test procedures that are reasonably designed to produce results which measure energy efficiency, energy use, or estimated operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) The test procedure for automatic and semi-automatic clothes washers is set forth in 10 CFR part 430, subpart B, appendix J1.

DOE's regulations for covered products contain provisions allowing a person to seek a waiver from the test procedure requirements for a particular basic model for covered consumer products when (1) the petitioner's basic model for which the petition for waiver was submitted contains one or more design characteristics that prevent testing according to the prescribed test procedure, or (2) when prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 430.27(a)(1). Petitioners must include in their petition any alternate test procedures known to the petitioner to evaluate the basic model in a manner representative of its energy consumption characteristics. 10 CFR 430.27(b)(1)(iii).

The Assistant Secretary for Energy Efficiency and Renewable Energy (the Assistant Secretary) may grant a waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 430.27(l). Waivers remain in effect pursuant to the provisions of 10 CFR 430.27(m).

Any interested person who has submitted a petition for waiver may also file an application for interim waiver of the applicable test procedure requirements. 10 CFR 430.27(a)(2). The Assistant Secretary will grant an interim waiver request if it is determined that the applicant will experience economic hardship if the interim waiver is denied, if it appears likely that the petition for waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the petition for waiver. 10 CFR 430.27(g).

On December 23, 2010, DOE issued enforcement guidance for large-capacity clothes washers. This guidance can be found on DOE's Web site at *http://energy.gov/sites/prod/files/gcprod/documents/LargeCapacityRCW_guidance_122210.pdf.*

### *II. Samsung's Petition for Waiver: Assertions and Determinations*

On June 20, 2011, Samsung submitted the instant petition for waiver and application for interim waiver (petition) from the test procedure applicable to automatic and semi-automatic clothes washers set forth in 10 CFR part 430, subpart B, appendix J1. Samsung requested a waiver to test specified basic models of its residential clothes washers with basket volumes greater than 3.8 cubic feet on the basis of the test procedures contained in 10 CFR part 430, Subpart B, Appendix J1, with a revised Table 5.1 which extends the range of container volumes beyond 3.8 cubic feet. Samsung's instant petition and DOE's grant of interim waiver were published in the **Federal Register** on August 8, 2011. 76 FR 48149. DOE received no comments on the Samsung petition.

Samsung's petition seeks a waiver from the DOE test procedure because the mass of the test load used in the procedure, which is based on the basket volume of the test unit, is currently not defined for basket sizes greater than 3.8 cubic feet. The basic models specified in Samsung's February 2011 petition have capacities larger than 3.8 cubic feet. In addition, if the current maximum test load mass is used to test these products, the tested energy use would be less than the actual energy usage and could evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data.

Table 5.1 of Appendix J1 defines the test load sizes used in the test procedure as linear functions of the basket volume. Samsung requests that DOE grant a waiver for testing and rating based on a revised Table 5.1, the same table as set forth in the waiver granted to Samsung on March 10, 2011 (76 FR 13169). The table is identical to the Table 5.1 found in DOE's clothes washer test procedure Notice of Proposed Rulemaking (NOPR). 75 FR 57556 (Sept. 21, 1010).

As DOE has stated in the past, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis. Previously, DOE granted a test procedure waiver to Whirlpool for three of Whirlpool's clothes washer models with container capacities greater than 3.8 cubic feet. 75 FR 69653 (Nov. 15, 2010). This notice contained an alternate test procedure, which

[1] For editorial reasons, upon codification in the U.S. Code, Part B was re-designated Part A.

extended the linear relationship between maximum test load size and clothes washer container volume in Table 5.1 to include a maximum test load size of 15.4 pounds (lbs) for clothes washer container volumes of 3.8 to 3.9 cubic feet. This test procedure was set forth in DOE's September 2010 NOPR. On December 10, 2010, DOE granted a similar waiver to General Electric Company (GE), which used the same alternate test procedure. 75 FR 76968. DOE has also granted waivers to Electrolux (76 FR 11440 (Mar. 2, 2011)), LG (76 FR 11233 (Mar. 1, 2011)) and Samsung (76 FR 13169 (Mar. 10, 2011); 76 FR 50207 (Aug. 12, 2011)).

DOE notes that its recently issued supplemental proposed rule (*http://www.eere.energy.gov/buildings/appliance_standards/residential/pdfs/rcw_tp_snopr.pdf*) to amend the test procedures for clothes washers makes slight adjustments to Table 5.1 to correct for rounding errors. The alternate test procedure set forth in this decision and order adopts this updated table. (76 FR 49238, Aug. 9, 2011).

*III. Consultations With Other Agencies*

DOE consulted with the Federal Trade Commission (FTC) staff concerning the Samsung petition for waiver. The FTC staff did not have any objections to granting a waiver to Samsung.

*IV. Conclusion*

After careful consideration of all the material that was submitted by Samsung, the waivers granted to Whirlpool, GE, LG and Electrolux, as well as previously to Samsung, the clothes washer test procedure rulemaking, and consultation with the FTC staff, it is ordered that:

(1) The petition for waiver submitted by the Samsung Electronics America, Inc. (Case No. CW–020) is hereby granted as set forth in the paragraphs below.

(2) Samsung shall be required to test and rate the following Samsung models according to the alternate test procedure set forth in paragraph (3) below.

WF501* * *

(3) Samsung shall be required to test the products listed in paragraph (2) above according to the test procedures for clothes washers prescribed by DOE at 10 CFR part 430, appendix J1, except that the expanded Table 5.1 below shall be substituted for Table 5.1 of appendix J1.

TABLE 5.1—TEST LOAD SIZES

| Container volume | | Minimum load | | Maximum load | | Average load | |
|---|---|---|---|---|---|---|---|
| cu. ft. | liter | lb | kg | lb | kg | lb | kg |
| ≥ < | ≥ < | | | | | | |
| 0–0.8 | 0–22.7 | 3.00 | 1.36 | 3.00 | 1.36 | 3.00 | 1.36 |
| 0.80–0.90 | 22.7–25.5 | 3.00 | 1.36 | 3.50 | 1.59 | 3.25 | 1.47 |
| 0.90–1.00 | 25.5–28.3 | 3.00 | 1.36 | 3.90 | 1.77 | 3.45 | 1.56 |
| 1.00–1.10 | 28.3–31.1 | 3.00 | 1.36 | 4.30 | 1.95 | 3.65 | 1.66 |
| 1.10–1.20 | 31.1–34.0 | 3.00 | 1.36 | 4.70 | 2.13 | 3.85 | 1.75 |
| 1.20–1.30 | 34.0–36.8 | 3.00 | 1.36 | 5.10 | 2.31 | 4.05 | 1.84 |
| 1.30–1.40 | 36.8–39.6 | 3.00 | 1.36 | 5.50 | 2.49 | 4.25 | 1.93 |
| 1.40–1.50 | 39.6–42.5 | 3.00 | 1.36 | 5.90 | 2.68 | 4.45 | 2.02 |
| 1.50–1.60 | 42.5–45.3 | 3.00 | 1.36 | 6.40 | 2.90 | 4.70 | 2.13 |
| 1.60–1.70 | 45.3–48.1 | 3.00 | 1.36 | 6.80 | 3.08 | 4.90 | 2.22 |
| 1.70–1.80 | 48.1–51.0 | 3.00 | 1.36 | 7.20 | 3.27 | 5.10 | 2.31 |
| 1.80–1.90 | 51.0–53.8 | 3.00 | 1.36 | 7.60 | 3.45 | 5.30 | 2.40 |
| 1.90–2.00 | 53.8–56.6 | 3.00 | 1.36 | 8.00 | 3.63 | 5.50 | 2.49 |
| 2.00–2.10 | 56.6–59.5 | 3.00 | 1.36 | 8.40 | 3.81 | 5.70 | 2.59 |
| 2.10–2.20 | 59.5–62.3 | 3.00 | 1.36 | 8.80 | 3.99 | 5.90 | 2.68 |
| 2.20–2.30 | 62.3–65.1 | 3.00 | 1.36 | 9.20 | 4.17 | 6.10 | 2.77 |
| 2.30–2.40 | 65.1–68.0 | 3.00 | 1.36 | 9.60 | 4.35 | 6.30 | 2.86 |
| 2.40–2.50 | 68.0–70.8 | 3.00 | 1.36 | 10.00 | 4.54 | 6.50 | 2.95 |
| 2.50–2.60 | 70.8–73.6 | 3.00 | 1.36 | 10.50 | 4.76 | 6.75 | 3.06 |
| 2.60–2.70 | 73.6–76.5 | 3.00 | 1.36 | 10.90 | 4.94 | 6.95 | 3.15 |
| 2.70–2.80 | 76.5–79.3 | 3.00 | 1.36 | 11.30 | 5.13 | 7.15 | 3.24 |
| 2.80–2.90 | 79.3–82.1 | 3.00 | 1.36 | 11.70 | 5.31 | 7.35 | 3.33 |
| 2.90–3.00 | 82.1–85.0 | 3.00 | 1.36 | 12.10 | 5.49 | 7.55 | 3.42 |
| 3.00–3.10 | 85.0–87.8 | 3.00 | 1.36 | 12.50 | 5.67 | 7.75 | 3.52 |
| 3.10–3.20 | 87.8–90.6 | 3.00 | 1.36 | 12.90 | 5.85 | 7.95 | 3.61 |
| 3.20–3.30 | 90.6–93.4 | 3.00 | 1.36 | 13.30 | 6.03 | 8.15 | 3.70 |
| 3.30–3.40 | 93.4–96.3 | 3.00 | 1.36 | 13.70 | 6.21 | 8.35 | 3.79 |
| 3.40–3.50 | 96.3–99.1 | 3.00 | 1.36 | 14.10 | 6.40 | 8.55 | 3.88 |
| 3.50–3.60 | 99.1–101.9 | 3.00 | 1.36 | 14.60 | 6.62 | 8.80 | 3.99 |
| 3.60–3.70 | 101.9–104.8 | 3.00 | 1.36 | 15.00 | 6.80 | 9.00 | 4.08 |
| 3.70–3.80 | 104.8–107.6 | 3.00 | 1.36 | 15.40 | 6.99 | 9.20 | 4.17 |
| 3.80–3.90 | 107.6–110.4 | 3.00 | 1.36 | 15.80 | 7.16 | 9.40 | 4.26 |
| 3.90–4.00 | 110.4–113.3 | 3.00 | 1.36 | 16.20 | 7.34 | 9.60 | 4.35 |
| 4.00–4.10 | 113.3–116.1 | 3.00 | 1.36 | 16.60 | 7.53 | 9.80 | 4.45 |
| 4.10–4.20 | 116.1–118.9 | 3.00 | 1.36 | 17.00 | 7.72 | 10.00 | 4.54 |
| 4.20–4.30 | 118.9–121.8 | 3.00 | 1.36 | 17.40 | 7.90 | 10.20 | 4.63 |
| 4.30–4.40 | 121.8–124.6 | 3.00 | 1.36 | 17.80 | 8.09 | 10.40 | 4.72 |
| 4.40–4.50 | 124.6–127.4 | 3.00 | 1.36 | 18.20 | 8.27 | 10.60 | 4.82 |
| 4.50–4.60 | 127.4–130.3 | 3.00 | 1.36 | 18.70 | 8.46 | 10.85 | 4.91 |
| 4.60–4.70 | 130.3–133.1 | 3.00 | 1.36 | 19.10 | 8.65 | 11.05 | 5.00 |
| 4.70–4.80 | 133.1–135.9 | 3.00 | 1.36 | 19.50 | 8.83 | 11.25 | 5.10 |
| 4.80–4.90 | 135.9–138.8 | 3.00 | 1.36 | 19.90 | 9.02 | 11.45 | 5.19 |
| 4.90–5.00 | 138.8–141.6 | 3.00 | 1.36 | 20.30 | 9.20 | 11.65 | 5.28 |
| 5.00–5.10 | 141.6–144.4 | 3.00 | 1.36 | 20.70 | 9.39 | 11.85 | 5.38 |

TABLE 5.1—TEST LOAD SIZES—Continued

| Container volume | | Minimum load | | Maximum load | | Average load | |
|---|---|---|---|---|---|---|---|
| cu. ft. | liter | lb | kg | lb | kg | lb | kg |
| ≥ < | ≥ < | | | | | | |
| 5.10–5.20 | 144.4–147.2 | 3.00 | 1.36 | 21.10 | 9.58 | 12.05 | 5.47 |
| 5.20–5.30 | 147.2–150.1 | 3.00 | 1.36 | 21.50 | 9.76 | 12.25 | 5.56 |
| 5.30–5.40 | 150.1–152.9 | 3.00 | 1.36 | 21.90 | 9.95 | 12.45 | 5.65 |
| 5.40–5.50 | 152.9–155.7 | 3.00 | 1.36 | 22.30 | 10.13 | 12.65 | 5.75 |
| 5.50–5.60 | 155.7–158.6 | 3.00 | 1.36 | 22.80 | 10.32 | 12.90 | 5.84 |
| 5.60–5.70 | 158.6–161.4 | 3.00 | 1.36 | 23.20 | 10.51 | 13.10 | 5.93 |
| 5.70–5.80 | 161.4–164.2 | 3.00 | 1.36 | 23.60 | 10.69 | 13.30 | 6.03 |
| 5.80–5.90 | 164.2–167.1 | 3.00 | 1.36 | 24.00 | 10.88 | 13.50 | 6.12 |
| 5.90–6.00 | 167.1–169.9 | 3.00 | 1.36 | 24.40 | 11.06 | 13.70 | 6.21 |

Notes: (1) All test load weights are bone dry weights.
(2) Allowable tolerance on the test load weights are ± 0.10 lbs (0.05 kg).

(4) Representations. Samsung may make representations about the energy use of its clothes washer products for compliance, marketing, or other purposes only to the extent that such products have been tested in accordance with the provisions outlined above and such representations fairly disclose the results of such testing.

(5) This waiver shall remain in effect consistent with the provisions of 10 CFR 430.27(m).

(6) This waiver is issued on the condition that the statements, representations, and documentary materials provided by the petitioner are valid. DOE may revoke or modify this waiver at any time if it determines the factual basis underlying the petition for waiver is incorrect, or the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics.

(7) This waiver applies only to those basic models set out in Samsung's June 20, 2011 petition for waiver. Grant of this waiver does not release a petitioner from the certification requirements set forth at 10 CFR part 429.

Issued in Washington, DC, on November 8, 2011.

Kathleen B. Hogan,
*Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.*

[FR Doc. 2011–29596 Filed 11–15–11; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Office of Energy Efficiency and Renewable Energy

**[Case No. CW–022]**

### Notice of Petition for Waiver of LG Electronics U.S.A., Inc. From the Department of Energy Clothes Washer Test Procedure, and Grant of Interim Waiver

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

**ACTION:** Notice of petition for waiver, notice of grant of interim waiver, and request for comments.

**SUMMARY:** This notice announces receipt of and publishes the LG Electronics U.S.A., Inc. (LG) petition for waiver and application for interim waiver (hereafter, ''petition'') from specified portions of the U.S. Department of Energy (DOE) test procedure for determining the energy consumption of clothes washers. Today's notice also grants an interim waiver of the clothes washer test procedure. Through this notice, DOE also solicits comments with respect to the LG petition.

**DATES:** DOE will accept comments, data, and information with respect to the LG petition until December 16, 2011.

**ADDRESSES:** You may submit comments, identified by case number CW–022, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: AS_Waiver_Requests@ee.doe.gov.* Include ''Case No. CW–022'' in the subject line of the message.
- *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J/1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–2945. Please submit one signed original paper copy.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza SW., Suite 600, Washington, DC 20024. Please submit one signed original paper copy.

*Docket:* For access to the docket to review the background documents relevant to this matter, you may visit the U.S. Department of Energy, 950 L'Enfant Plaza SW., Washington, DC 20024; (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Available documents include the following items: (1) This notice; (2) public comments received; (3) the petition for waiver and application for interim waiver; and (4) prior DOE waivers and rulemakings regarding similar clothes washer products. Please call Ms. Brenda Edwards at the above telephone number for additional information.

**FOR FURTHER INFORMATION CONTACT:** Dr. Michael G. Raymond, U.S. Department of Energy, Building Technologies Program, Mail Stop EE–2J, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–9611. Email: *Michael.Raymond@ee.doe.gov.*

Ms. Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–71, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585–0103. Telephone: (202) 586–7796. Email: *Elizabeth.Kohl@hq.doe.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Background and Authority

Title III, Part B of the Energy Policy and Conservation Act of 1975 (EPCA), Public Law 94–163 (42 U.S.C. 6291–6309, as codified), established the Energy Conservation Program for

Consumer Products Other Than Automobiles, a program covering most major household appliances, which includes the clothes washers that are the focus of this notice.[1] Part B includes definitions, test procedures, labeling provisions, energy conservation standards, and the authority to require information and reports from manufacturers. Further, Part B authorizes the Secretary of Energy to prescribe test procedures that are reasonably designed to produce results which measure energy efficiency, energy use, or estimated operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)). Part C of Title III provides for a similar energy efficiency program titled ''Certain Industrial Equipment,'' which includes commercial clothes washers and other types of commercial equipment.[2] (42 U.S.C. 6311–6317) The test procedure for automatic and semi-automatic clothes washers (both residential and commercial) is contained in 10 CFR part 430, subpart B, appendix J1. (See 42 U.S.C. 6314(a)(8), requiring that the test procedure for commercial clothes washers be the same as the test procedure established for residential clothes washers).

The regulations set forth in 10 CFR 430.27 and 431.401 contain provisions that enable a person to seek a waiver from the test procedure requirements for covered products. The Assistant Secretary for Energy Efficiency and Renewable Energy (the Assistant Secretary) will grant a waiver if it is determined that the basic model for which the petition for waiver was submitted contains one or more design characteristics that prevents testing of the basic model according to the prescribed test procedures, or if the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 430.27(l), 431.401(f)(4). Petitioners must include in their petition any alternate test procedures known to the petitioner to evaluate the basic model in a manner representative of its energy consumption. 10 CFR 430.27(b)(1)(iii), 430.401(b)(1)(iii). The Assistant Secretary may grant the waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 430.27(l), 431.401(f)(4). Waivers remain in effect pursuant to the provisions of 10 CFR 430.27(m) or 430.401(g), as appropriate.

The waiver process also allows the Assistant Secretary to grant an interim waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 10 CFR 430.27(g), 430.401(e)(3). An interim waiver remains in effect for 180 days or until DOE issues its determination on the petition for waiver, whichever is sooner. DOE may extend an interim waiver for an additional 180 days. 10 CFR 430.27(h), 430.401(e)(4).

On December 23, 2010, DOE issued enforcement guidance on the application of waivers for large-capacity clothes washers and announced steps to improve the waiver process and refrain from certain enforcement actions. This guidance can be found on DOE's Web site at *http://energy.gov/sites/prod/files/gcprod/documents/LargeCapacityRCW_guidance_122210.pdf.*

## II. Application for Interim Waiver and Petition for Waiver

On October 31, 2011, LG submitted a petition for waiver from the DOE test procedure applicable to automatic and semi-automatic clothes washers set forth in 10 CFR part 430, subpart B, appendix J1. LG requested the waiver for specified basic models with capacities greater than 3.8 cubic feet because the mass of the test load used in the procedure, which is based on the basket volume of the test unit, is currently not defined for basket sizes greater than 3.8 cubic feet. Table 5.1 of Appendix J1 defines the test load sizes used in the test procedure as linear functions of the basket volume. LG requests that DOE grant a waiver for testing and rating based on a revised Table 5.1. The table is identical to the Table 5.1 found in DOE's clothes washer test procedure Notice of Proposed Rulemaking (NOPR). 75 FR 57556 (September 21, 2010). DOE notes that the Table 5.1 proposed in the September 2010 NOPR was amended to correct rounding errors in the supplemental proposed rule issued on July 26, 2011 *http://www.eere.energy.gov/buildings/appliance_standards/residential/pdfs/rcw_tp_snopr.pdf.* (76 FR 49238, Aug. 9, 2011).

An interim waiver may be granted if it is determined that the applicant will experience economic hardship if the application for interim waiver is denied, if it appears likely that the petition for waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination of the petition for waiver. (10 CFR 430.27(g), 430.401(e)(3)).

DOE has determined that LG's application for interim waiver does not provide sufficient market, equipment price, shipments, and other manufacturer impact information to permit DOE to evaluate the economic hardship LG might experience absent a favorable determination on its application for interim waiver. DOE has determined, however, that it is likely LG's petition will be granted, and that it is desirable for public policy reasons to grant LG relief pending a determination on the petition. Previously, DOE granted test procedure waivers to Whirlpool (75 FR 69653 (Nov. 15, 2010)), General Electric Company (GE) (75 FR 76968 (Dec. 10, 2010)), Samsung (76 FR 13169 (Mar. 10, 2011), (76 FR 50207 (Aug. 12, 2011)), and Electrolux (76 FR 11440 (Mar. 2, 2011)) for products with capacities larger than currently specified in the test procedure. DOE has also granted previous waivers to LG for similar products. (76 FR 11233, Mar. 1, 2011; 76 FR 21879, Apr. 19, 2011). In these waivers, DOE established an alternate test procedure extending the linear relationship between the maximum test load size and clothes washer container volume up to 6.0 cubic feet. As noted above, this revised table would be established by adoption of DOE's September 2010 test procedure NOPR, as amended in the supplemental proposal issued on July 26, 2011.

The current DOE test procedure specifies test load sizes only for machines with capacities up to 3.8 cubic feet. For the reasons set forth in DOE's September 2010 NOPR, DOE believes that extending the linear relationship between test load size and container capacity to larger capacities is valid. In addition, testing a basic model with a capacity larger than 3.8 cubic feet using the current procedure could evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Based on these considerations, and the waivers granted to LG and other manufacturers for similar models, it appears likely that the petition for waiver will be granted. DOE also believes that the energy efficiency of similar products should be tested and rated in the same manner. As a result, DOE grants an interim waiver to LG for the basic models of clothes washers with container volumes greater than 3.8 cubic feet specified in its petition for waiver, pursuant to 10 CFR 430.27(g) and 10 CFR 430.401(e)(3). DOE also provides for the use of an alternative test procedure extending the

[1] For editorial reasons, upon codification in the U.S. Code, Part B was re-designated Part A.

[2] For editorial reasons, upon codification in the U.S. Code, Part C was re-designated Part A–1.

linear relationship between test load size and container capacity, described below. Therefore, *it is ordered that:*

The application for interim waiver filed by LG is hereby granted for the specified LG clothes washer basic models, subject to the specifications and conditions below. LG shall be required to test and rate the specified clothes washer products according to the alternate test procedure as set forth in section IV, ''Alternate Test Procedure.''

The interim waiver applies to the following basic residential model groups:

| Model | Brand |
|---|---|
| WM9000H ** | LG |
| WM8500H ** | LG |
| WM3470H *** | LG |

And the following commercial model groups:

| Model | Brand |
|---|---|
| CW2079C *** | LG |
| GCW1069 ** | LG |

DOE makes decisions on waivers and interim waivers for only those models specifically set out in the petition, not future models that may be manufactured by the petitioner. LG may submit a subsequent petition for waiver and request for grant of interim waiver, as appropriate, for additional models of clothes washers for which it seeks a waiver from the DOE test procedure. In addition, DOE notes that grant of an interim waiver or waiver does not release a petitioner from the certification requirements set forth at 10 CFR part 429.

## III. Alternate Test Procedure

EPCA requires that manufacturers use DOE test procedures to make representations about the energy consumption and energy consumption costs of products covered by the statute. (42 U.S.C. 6293(c)) Consistent representations are important for manufacturers to use in making representations about the energy efficiency of their products and to demonstrate compliance with applicable DOE energy conservation standards. Pursuant to its regulations applicable to waivers and interim waivers from applicable test procedures at 10 CFR 430.27 and 430.401, DOE will consider setting an alternate test procedure for LG in a subsequent Decision and Order.

The alternate procedure approved today is intended to allow LG to make valid representations regarding its clothes washers with basket capacities larger than provided for in the current test procedure. This alternate test procedure is based on the expanded Table 5.1 of Appendix J1 that appears in DOE's clothes washer test procedure NOPR (75 FR 57556, Sept. 21, 2010), altered slightly to correct rounding errors as specified in DOE's supplemental proposal issued on July 26, 2011.

During the period of the interim waiver granted in this notice, LG shall test its clothes washer basic models according to the provisions of 10 CFR part 430 subpart B, appendix J1, except that the expanded Table 5.1 below shall be substituted for Table 5.1 of appendix J1.

TABLE 5.1—TEST LOAD SIZES

| Container volume | | Minimum load | | Maximum load | | Average load | |
|---|---|---|---|---|---|---|---|
| cu. ft. | liter | lb | kg | lb | kg | lb | kg |
| ≥ < | ≥ < | | | | | | |
| 0–0.8 | 0–22.7 | 3.00 | 1.36 | 3.00 | 1.36 | 3.00 | 1.36 |
| 0.80–0.90 | 22.7–25.5 | 3.00 | 1.36 | 3.50 | 1.59 | 3.25 | 1.47 |
| 0.90–1.00 | 25.5–28.3 | 3.00 | 1.36 | 3.90 | 1.77 | 3.45 | 1.56 |
| 1.00–1.10 | 28.3–31.1 | 3.00 | 1.36 | 4.30 | 1.95 | 3.65 | 1.66 |
| 1.10–1.20 | 31.1–34.0 | 3.00 | 1.36 | 4.70 | 2.13 | 3.85 | 1.75 |
| 1.20–1.30 | 34.0–36.8 | 3.00 | 1.36 | 5.10 | 2.31 | 4.05 | 1.84 |
| 1.30–1.40 | 36.8–39.6 | 3.00 | 1.36 | 5.50 | 2.49 | 4.25 | 1.93 |
| 1.40–1.50 | 39.6–42.5 | 3.00 | 1.36 | 5.90 | 2.68 | 4.45 | 2.02 |
| 1.50–1.60 | 42.5–45.3 | 3.00 | 1.36 | 6.40 | 2.90 | 4.70 | 2.13 |
| 1.60–1.70 | 45.3–48.1 | 3.00 | 1.36 | 6.80 | 3.08 | 4.90 | 2.22 |
| 1.70–1.80 | 48.1–51.0 | 3.00 | 1.36 | 7.20 | 3.27 | 5.10 | 2.31 |
| 1.80–1.90 | 51.0–53.8 | 3.00 | 1.36 | 7.60 | 3.45 | 5.30 | 2.40 |
| 1.90–2.00 | 53.8–56.6 | 3.00 | 1.36 | 8.00 | 3.63 | 5.50 | 2.49 |
| 2.00–2.10 | 56.6–59.5 | 3.00 | 1.36 | 8.40 | 3.81 | 5.70 | 2.59 |
| 2.10–2.20 | 59.5–62.3 | 3.00 | 1.36 | 8.80 | 3.99 | 5.90 | 2.68 |
| 2.20–2.30 | 62.3–65.1 | 3.00 | 1.36 | 9.20 | 4.17 | 6.10 | 2.77 |
| 2.30–2.40 | 65.1–68.0 | 3.00 | 1.36 | 9.60 | 4.35 | 6.30 | 2.86 |
| 2.40–2.50 | 68.0–70.8 | 3.00 | 1.36 | 10.00 | 4.54 | 6.50 | 2.95 |
| 2.50–2.60 | 70.8–73.6 | 3.00 | 1.36 | 10.50 | 4.76 | 6.75 | 3.06 |
| 2.60–2.70 | 73.6–76.5 | 3.00 | 1.36 | 10.90 | 4.94 | 6.95 | 3.15 |
| 2.70–2.80 | 76.5–79.3 | 3.00 | 1.36 | 11.30 | 5.13 | 7.15 | 3.24 |
| 2.80–2.90 | 79.3–82.1 | 3.00 | 1.36 | 11.70 | 5.31 | 7.35 | 3.33 |
| 2.90–3.00 | 82.1–85.0 | 3.00 | 1.36 | 12.10 | 5.49 | 7.55 | 3.42 |
| 3.00–3.10 | 85.0–87.8 | 3.00 | 1.36 | 12.50 | 5.67 | 7.75 | 3.52 |
| 3.10–3.20 | 87.8–90.6 | 3.00 | 1.36 | 12.90 | 5.85 | 7.95 | 3.61 |
| 3.20–3.30 | 90.6–93.4 | 3.00 | 1.36 | 13.30 | 6.03 | 8.15 | 3.70 |
| 3.30–3.40 | 93.4–96.3 | 3.00 | 1.36 | 13.70 | 6.21 | 8.35 | 3.79 |
| 3.40–3.50 | 96.3–99.1 | 3.00 | 1.36 | 14.10 | 6.40 | 8.55 | 3.88 |
| 3.50–3.60 | 99.1–101.9 | 3.00 | 1.36 | 14.60 | 6.62 | 8.80 | 3.99 |
| 3.60–3.70 | 101.9–104.8 | 3.00 | 1.36 | 15.00 | 6.80 | 9.00 | 4.08 |
| 3.70–3.80 | 104.8–107.6 | 3.00 | 1.36 | 15.40 | 6.99 | 9.20 | 4.17 |
| 3.80–3.90 | 107.6–110.4 | 3.00 | 1.36 | 15.80 | 7.16 | 9.40 | 4.26 |
| 3.90–4.00 | 110.4–113.3 | 3.00 | 1.36 | 16.20 | 7.34 | 9.60 | 4.35 |
| 4.00–4.10 | 113.3–116.1 | 3.00 | 1.36 | 16.60 | 7.53 | 9.80 | 4.45 |
| 4.10–4.20 | 116.1–118.9 | 3.00 | 1.36 | 17.00 | 7.72 | 10.00 | 4.54 |

TABLE 5.1—TEST LOAD SIZES—Continued

| Container volume | | Minimum load | | Maximum load | | Average load | |
|---|---|---|---|---|---|---|---|
| cu. ft. | liter | lb | kg | lb | kg | lb | kg |
| ≥ < | ≥ < | | | | | | |
| 4.20–4.30 | 118.9–121.8 | 3.00 | 1.36 | 17.40 | 7.90 | 10.20 | 4.63 |
| 4.30–4.40 | 121.8–124.6 | 3.00 | 1.36 | 17.80 | 8.09 | 10.40 | 4.72 |
| 4.40–4.50 | 124.6–127.4 | 3.00 | 1.36 | 18.20 | 8.27 | 10.60 | 4.82 |
| 4.50–4.60 | 127.4–130.3 | 3.00 | 1.36 | 18.70 | 8.46 | 10.85 | 4.91 |
| 4.60–4.70 | 130.3–133.1 | 3.00 | 1.36 | 19.10 | 8.65 | 11.05 | 5.00 |
| 4.70–4.80 | 133.1–135.9 | 3.00 | 1.36 | 19.50 | 8.83 | 11.25 | 5.10 |
| 4.80–4.90 | 135.9–138.8 | 3.00 | 1.36 | 19.90 | 9.02 | 11.45 | 5.19 |
| 4.90–5.00 | 138.8–141.6 | 3.00 | 1.36 | 20.30 | 9.20 | 11.65 | 5.28 |
| 5.00–5.10 | 141.6–144.4 | 3.00 | 1.36 | 20.70 | 9.39 | 11.85 | 5.38 |
| 5.10–5.20 | 144.4–147.2 | 3.00 | 1.36 | 21.10 | 9.58 | 12.05 | 5.47 |
| 5.20–5.30 | 147.2–150.1 | 3.00 | 1.36 | 21.50 | 9.76 | 12.25 | 5.56 |
| 5.30–5.40 | 150.1–152.9 | 3.00 | 1.36 | 21.90 | 9.95 | 12.45 | 5.65 |
| 5.40–5.50 | 152.9–155.7 | 3.00 | 1.36 | 22.30 | 10.13 | 12.65 | 5.75 |
| 5.50–5.60 | 155.7–158.6 | 3.00 | 1.36 | 22.80 | 10.32 | 12.90 | 5.84 |
| 5.60–5.70 | 158.6–161.4 | 3.00 | 1.36 | 23.20 | 10.51 | 13.10 | 5.93 |
| 5.70–5.80 | 161.4–164.2 | 3.00 | 1.36 | 23.60 | 10.69 | 13.30 | 6.03 |
| 5.80–5.90 | 164.2–167.1 | 3.00 | 1.36 | 24.00 | 10.88 | 13.50 | 6.12 |
| 5.90–6.00 | 167.1–169.9 | 3.00 | 1.36 | 24.40 | 11.06 | 13.70 | 6.21 |

Notes: (1) All test load weights are bone dry weights. (2) Allowable tolerance on the test load weights are ±0.10 lbs (0.05 kg).

## IV. Summary and Request for Comments

Through today's notice, DOE announces receipt of LG's petition for waiver from certain parts of the test procedure that apply to clothes washers and grants an interim waiver to LG. DOE is publishing LG's petition for waiver in its entirety pursuant to 10 CFR 430.27(b)(1)(iv), 430.401(b)(1)(iv). The petition contains no confidential information. The petition includes a suggested alternate test procedure to measure the energy consumption of clothes washers with capacities larger than the 3.8 cubic feet specified in the current DOE test procedure.

DOE solicits comments from interested parties on all aspects of the petition. Pursuant to 10 CFR 430.27(b)(1)(iv), 430.401(c)(1), any person submitting written comments to DOE must also send a copy of such comments to the petitioner. The contact information for the petitioner is John I. Taylor, Vice President, Government Relations and Communications, LG Electronics USA, Inc., 1776 K Street NW., Washington, DC 20006.

All submissions received must include the agency name and case number for this proceeding. Submit electronic comments in Microsoft Word, Portable Document Format (PDF), or text (American Standard Code for Information Interchange (ASCII)) file format and avoid the use of special characters or any form of encryption. Wherever possible, include the electronic signature of the author. DOE does not accept telefacsimiles (faxes).

Issued in Washington, DC, on November 8, 2011.

**Kathleen B. Hogan,**

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

October 31, 2011

The Honorable Henry Kelly
Acting Assistant Secretary, Energy Efficiency and Renewable Energy
United States Department of Energy
Mail Station EE–10, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585.

Re: Petition for Waiver and Application for Interim Waiver, *Test Procedure for Clothes Washers*

Dear Assistant Secretary Kelly: LG Electronics, Inc. (LG) respectfully submits this Petition for Waiver and Application for Interim Waiver, pursuant to 10 CFR §§ 430.27, 431.401, as related to DOE's test procedure for clothes washers. DOE has already granted LG waivers relating to testing of certain models. 76 Fed. Reg. 64330 (Oct. 18, 2011); id. 21879 (April 19, 2011); id. 11228 (March 1, 2011); id. 11233 (March 1, 2011); 75 Fed. Reg. 71680 (Nov. 24, 2010). The current Petition and Application would expand the number of models subject to the grant of a waiver. *LG requests expedited treatment of the Petition and Application.*

LG is a manufacturer of clothes washers and other products sold worldwide, including in the United States. LG's U.S. operations are LG Electronics USA, Inc., with headquarters at 1000 Sylvan Avenue, Englewood Cliffs, NJ 07632 (tel. (201) 816–2000). Its worldwide headquarters are located at LG Twin Towers 20, Yoido-dong, Youngdungpo-gu Seoul, Korea 150–721; (tel. 011–82–2–3777–1114); URL: *http.www.LGE.com.* LG's principal brands include LG® and OEM brands, including GE® and Kenmore®.

The test procedure under the Energy Policy and Conservation Act (EPCA), 42 U.S.C. § 6291 et seq., provides for clothes washers to be tested with specified allowable test load sizes. See 10 CFR Pt. 430, Subpt. B, App. Jl, Table 5.1. The largest average load under Table 5.1 is 9.20 lbs. LG believes that it is appropriate for DOE to grant a waiver that would allow for testing and rating of specified models (see Appendix 1 hereto) with larger test loads where the model has a container volume that is greater than the largest volume shown on Table 5.1.

DOE has already granted waivers and/or interim waivers to a number of manufacturers, including LG, Whirlpool, General Electric, Samsung, and Electrolux for testing with larger test loads for specified models with container volumes in excess of 3.8 cubic feet. See, e.g., 76 Fed. Reg. 64330 (Oct. 18, 2011) (LG); id. 48149 (Aug. 8, 2011) (Samsung); id. 21879 (April 19, 2011 (LG); id. 21881 (April 19, 2011) (Samsung); id. 13169 (March 10, 2011) (Samsung); id. 11440 (March 2, 2011) (Electrolux); id. 11228 (March 1, 2011) (LG); id. 11233 (March 1, 2011) (LG); 75 Fed. Reg. 81258 (Dec. 27, 2010) (Electrolux); id. 76968 (Dec. 10, 2010) (GE); id. 71680 (Nov. 24, 2010) (LG); id. 57915 (Sept. 23, 2010) (GE); id. 57937 (Sept. 23, 2010) (Samsung); id. 69653

(Nov. 15, 2010) (Whirlpool); id. 76962 (Dec. 10, 2010) (Electrolux); id. 76968 (Dec. 10, 2010) (GE); id. 81258 (Dec. 27, 2010) (Electrolux); 71 Fed. Reg. 48913 (Aug. 22, 2006) (Whirlpool). The Association of Home Appliance Manufacturers (AHAM) has submitted comments to DOE suggesting that the DOE test procedure be amended to provide for testing with loads in excess of those shown in Table 5.1 when testing is done on clothes washers with volumes in excess of 3.8 cubic feet. See AHAM Comments on the Framework Document for Residential Clothes Washers; EERE–2008–BT–STD–0019; RIN 1904–AB90, at Appendix B—AHAM Proposed Changes to J1 Table 5.1 (Oct. 2, 2009). In addition, DOE has issued a Notice of Proposed Rulemaking proposing to amend the DOE test procedure to adopt the AHAM proposed Table 5.1. 75 Fed. Reg. 57556 (Sept. 21, 2010). And it has issued a Supplemental Notice of Proposed Rulemaking to the same effect. 76 Fed. Reg. 49238 (Aug. 9, 2011). Further, DOE has issued a guidance document indicating the appropriateness of waivers for testing with larger test loads for clothes washers with volumes in excess of 3.8 cubic feet. DOE, IGC Enforcement Guidance on the Application of Waivers and on the Waiver Process (Dec. 23, 2010), at *http://www.gc.energy.gov/documents/LargeCapacityRCW_guidance 22210.pdf.*

LG requests that DOE grant a waiver for testing and rating based on the revised Table 5.1 in Appendix 2 hereto. This is the Table 5.1 as already set forth in the waivers granted to LG for certain models. See 76 Fed. Reg. 64330 (Oct. 18, 2011); id. 21879 (April 19, 2011); id. 11228 (March 1, 2011); id. 11233 (March 1, 2011); 75 Fed. Reg. 71680 (Nov. 24, 2010). The revised Table 5.1 should be applied to LG's testing and rating of other models as specified in Appendix 1 hereto.[1]

The waiver should continue until DOE adopts an applicable amended test procedure.

LG also requests an interim waiver for its testing and rating of the foregoing models. The petition for waiver is likely to be granted, as evidenced not only by its merits, but also because DOE has granted waivers and/or interim waivers to LG, Whirlpool, GE, Samsung, and Electrolux and has proposed a corresponding amendment to its test procedure. Hence, grant of an interim waiver for LG is appropriate.

We would be pleased to discuss this request with DOE and provide further information as needed.

LG requests expedited treatment of the Petition and Application. In that regard, DOE has stated in its December 23, 2010 Enforcement Guidance (supra) that it ''commits to act promptly on waiver requests.'' LG repeated this in its March 7, 2011 notice concerning its certification, compliance and enforcement rule. 76 Fed. Reg. 12422, 12442 (''The Department renews its commitment to act swiftly on waiver requests'').[3] LG appreciates this commitment by DOE.

We hereby certify that all manufacturers of domestically marketed units of the same product type have been notified by letter of this petition and application, copies of which letters are set forth in Appendix 3 hereto.

Sincerely,

John I. Taylor,
*Vice President Government Relations and Communications LG Electronics USA, Inc.*
*1776 K Street, NW., Washington, DC 20006, Phone: (202) 719–3490, Fax: (847) 941–8177. Email: john.taylor@lge.com.*

Of counsel:

John A. Hodges,
*Wiley Rein LLP, 776 K Street NW., Washington, DC 20006, Phone: (202) 719–7000, Fax: (202) 719–7049, Email: jhodges@wileyrein.com.*

**Appendix 1**

The waiver and interim waiver requested herein should apply to testing and rating of the following model series of LG-manufactured clothes washers. Please note that the actual model numbers will vary to account for such factors as year of manufacture, product color, or other features. Nonetheless, they will always have volumes in excess of 3.8 cubic feet.

(In the chart below, ''*'' represents a letter.)

| Model | Brand |
|---|---|
| WM9000H** | LG |
| WM8500H** | LG |
| WM3470H*** | LG |

The waiver and interim waiver requested herein should also apply to testing and rating of the following series of LG-manufactured ''commercial'' clothes washers, to the extent that DOE deems that such a waiver is needed for such products:

(In the chart below, ''*'' represents a letter.)

| Model | Brand |
|---|---|
| CW2079C*** | LG |
| GCW1069** | LG |

**Appendix 2**

TABLE 5.1—TEST LOAD SIZES

| Container volume | | Minimum load | | Maximum load | | Average load | |
|---|---|---|---|---|---|---|---|
| cu. ft. ≥ < | liter ≥ < | lb | kg | lb | kg | lb | kg |
| 0–0.8 | 0–22.7 | 3.00 | 1.36 | 3.00 | 1.36 | 3.00 | 1.36 |
| 0.80–0.90 | 22.7–25.5 | 3.00 | 1.36 | 3.50 | 1.59 | 3.25 | 1.47 |
| 0.90–1.00 | 25.5–28.3 | 3.00 | 1.36 | 3.90 | 1.77 | 3.45 | 1.56 |
| 1.00–1.10 | 28.3–31.1 | 3.00 | 1.36 | 4.30 | 1.95 | 3.65 | 1.66 |
| 1.10–1.20 | 31.1–34.0 | 3.00 | 1.36 | 4.70 | 2.13 | 3.85 | 1.75 |
| 1.20–1.30 | 34.0–36.8 | 3.00 | 1.36 | 5.10 | 2.31 | 4.05 | 1.84 |
| 1.30–1.40 | 36.8–39.6 | 3.00 | 1.36 | 5.50 | 2.49 | 4.25 | 1.93 |
| 1.40–1.50 | 39.6–42.5 | 3.00 | 1.36 | 5.90 | 2.68 | 4.45 | 2.02 |
| 1.50–1.60 | 42.5–45.3 | 3.00 | 1.36 | 6.40 | 2.90 | 4.70 | 2.13 |
| 1.60–1.70 | 45.3–48.1 | 3.00 | 1.36 | 6.80 | 3.08 | 4.90 | 2.22 |
| 1.70–1.80 | 48.1–51.0 | 3.00 | 1.36 | 7.20 | 3.27 | 5.10 | 2.31 |
| 1.80–1.90 | 51.0–53.8 | 3.00 | 1.36 | 7.60 | 3.45 | 5.30 | 2.40 |
| 1.90–2.00 | 53.8–56.6 | 3.00 | 1.36 | 8.00 | 3.63 | 5.50 | 2.49 |
| 2.00–2.10 | 56.6–59.5 | 3.00 | 1.36 | 8.40 | 3.81 | 5.70 | 2.59 |

[1] All LG models are measured in accordance with DOE's final guidance for measuring clothes container capacity under the test procedure in 10 C.F.R. Part 430, Subpart B, Appendix J1.

[3] DOE goes on to state that ''DOE, as a matter of policy, will refrain from enforcement actions related to a waiver request that is pending with the Department'' Id.

TABLE 5.1—TEST LOAD SIZES—Continued

| Container volume | | Minimum load | | Maximum load | | Average load | |
|---|---|---|---|---|---|---|---|
| cu. ft. ≥ < | liter ≥ < | lb | kg | lb | kg | lb | kg |
| 2.10–2.20 | 59.5–62.3 | 3.00 | 1.36 | 8.80 | 3.99 | 5.90 | 2.68 |
| 2.20–2.30 | 62.3–65.1 | 3.00 | 1.36 | 9.20 | 4.17 | 6.10 | 2.77 |
| 2.30–2.40 | 65.1–68.0 | 3.00 | 1.36 | 9.60 | 4.35 | 6.30 | 2.86 |
| 2.40–2.50 | 68.0–70.8 | 3.00 | 1.36 | 10.00 | 4.54 | 6.50 | 2.95 |
| 2.50–2.60 | 70.8–73.6 | 3.00 | 1.36 | 10.50 | 4.76 | 6.75 | 3.06 |
| 2.60–2.70 | 73.6–76.5 | 3.00 | 1.36 | 10.90 | 4.94 | 6.95 | 3.15 |
| 2.70–2.80 | 76.5–79.3 | 3.00 | 1.36 | 11.30 | 5.13 | 7.15 | 3.24 |
| 2.80–2.90 | 79.3–82.1 | 3.00 | 1.36 | 11.70 | 5.31 | 7.35 | 3.33 |
| 2.90–3.00 | 82.1–85.0 | 3.00 | 1.36 | 12.10 | 5.49 | 7.55 | 3.42 |
| 3.00–3.10 | 85.0–87.8 | 3.00 | 1.36 | 12.50 | 5.67 | 7.75 | 3.52 |
| 3.10–3.20 | 87.8–90.6 | 3.00 | 1.36 | 12.90 | 5.85 | 7.95 | 3.61 |
| 3.20–3.30 | 90.6–93.4 | 3.00 | 1.36 | 13.30 | 6.03 | 8.15 | 3.70 |
| 3.30–3.40 | 93.4–96.3 | 3.00 | 1.36 | 13.70 | 6.21 | 8.35 | 3.79 |
| 3.40–3.50 | 96.3–99.1 | 3.00 | 1.36 | 14.10 | 6.40 | 8.55 | 3.88 |
| 3.50–3.60 | 99.1–101.9 | 3.00 | 1.36 | 14.60 | 6.62 | 8.80 | 3.99 |
| 3.60–3.70 | 101.9–104.8 | 3.00 | 1.36 | 15.00 | 6.80 | 9.00 | 4.08 |
| 3.70–3.80 | 104.8–107.6 | 3.00 | 1.36 | 15.40 | 6.99 | 9.20 | 4.17 |
| 3.80–3.90 | 107.6–110.4 | 3.00 | 1.36 | 15.80 | 7.16 | 9.40 | 4.26 |
| 3.90–4.00 | 110.4–113.3 | 3.00 | 1.36 | 16.20 | 7.34 | 9.60 | 4.35 |
| 4.00–4.10 | 113.3–116.1 | 3.00 | 1.36 | 16.60 | 7.53 | 9.80 | 4.45 |
| 4.10–4.20 | 116.1–118.9 | 3.00 | 1.36 | 17.00 | 7.72 | 10.00 | 4.54 |
| 4.20–4.30 | 118.9–121.8 | 3.00 | 1.36 | 17.40 | 7.90 | 10.20 | 4.63 |
| 4.30–4.40 | 121.8–124.6 | 3.00 | 1.36 | 17.80 | 8.09 | 10.40 | 4.72 |
| 4.40–4.50 | 124.6–127.4 | 3.00 | 1.36 | 18.20 | 8.27 | 10.60 | 4.82 |
| 4.50–4.60 | 127.4–130.3 | 3.00 | 1.36 | 18.70 | 8.46 | 10.80 | 4.91 |
| 4.60–4.70 | 130.3–133.1 | 3.00 | 1.36 | 19.10 | 8.65 | 11.00 | 5.00 |
| 4.70–4.80 | 133.1–135.9 | 3.00 | 1.36 | 19.50 | 8.83 | 11.20 | 5.10 |
| 4.80–4.90 | 135.9–138.8 | 3.00 | 1.36 | 19.90 | 9.02 | 11.40 | 5.19 |
| 4.90–5.00 | 138.8–141.6 | 3.00 | 1.36 | 20.30 | 9.20 | 11.60 | 5.28 |
| 5.00–5.10 | 141.6–144.4 | 3.00 | 1.36 | 20.70 | 9.39 | 11.90 | 5.38 |
| 5.10–5.20 | 144.4–147.2 | 3.00 | 1.36 | 21.10 | 9.58 | 12.10 | 5.47 |
| 5.20–5.30 | 147.2–150.1 | 3.00 | 1.36 | 21.50 | 9.76 | 12.30 | 5.56 |
| 5.30–5.40 | 150.1–152.9 | 3.00 | 1.36 | 21.90 | 9.95 | 12.50 | 5.65 |
| 5.40–5.50 | 152.9–155.7 | 3.00 | 1.36 | 22.30 | 10.13 | 12.70 | 5.75 |
| 5.50–5.60 | 155.7–158.6 | 3.00 | 1.36 | 22.80 | 10.32 | 12.90 | 5.84 |
| 5.60–5.70 | 158.6–161.4 | 3.00 | 1.36 | 23.20 | 10.51 | 13.10 | 5.93 |
| 5.70–5.80 | 161.4–164.2 | 3.00 | 1.36 | 23.60 | 10.69 | 13.30 | 6.03 |
| 5.80–5.90 | 164.2–167.1 | 3.00 | 1.36 | 24.00 | 10.88 | 13.50 | 6.12 |
| 5.90–6.00 | 167.1–169.9 | 3.00 | 1.36 | 24.40 | 11.06 | 13.70 | 6.21 |

Notes:
(1) All test load weights are bone dry weights.
(2) Allowable tolerance on the test load weights are ± 0.10 lbs (0.05 kg).

[FR Doc. 2011–29598 Filed 11–15–11; 8:45 am]
**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 14224–000]**

### Natural Currents Energy Services, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions to Intervene, and Competing Applications

On July 14, 2011, Natural Currents Energy Services, LLC filed an application, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Margate Tidal Energy Project, which would be located on the Beach Thoroughfare in Atlantic County, New Jersey. The proposed project would not use a dam or impoundment. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of: (1) Installation of 10 to 30 NC Sea Dragon or Red Hawk tidal turbines at a rated capacity of 100 kilowatts, (2) an estimated 200–1,500 meters in length of additional transmission infrastructure, and (3) appurtenant facilities. The project is estimated to have an annual minimum generation of 3,504,000 kilowatt-hours with the installation of 10 units.

*Applicant Contact:* Mr. Roger Bason, Natural Currents Energy Services, LLC, 24 Roxanne Boulevard, Highland, New York 12561, (845) 691–4009.

*FERC Contact:* Woohee Choi (202) 502–6336.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the

eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–(866) 208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14224–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: November 9, 2011.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2011–29550 Filed 11–15–11; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 1490–052]**

### Brazos River Authority; Notice of Application Accepted for Filing, Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Surrender of License.

b. *Project No.:* 1490–052.

c. *Date Filed:* July 20, 2011, and supplemented October 28, 2011.

d. *Applicant:* Brazos River Authority.

e. *Name of Project:* Morris Sheppard Hydroelectric Project.

f. *Location:* On the Brazos River, in Palo Pinto, Young and Stephens Counties, Texas.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. John A. Whittaker, IV, Winston & Strawn LLP, 1700 K Street NW., Washington, DC 20006, (202) 282–5766, *jwhittaker@winston.com.*

i. *FERC Contact:* Mr. Jeremy Jessup, (202) 502–6779, *Jeremy.Jessup@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests, is 30 days from the issuance date of this notice.* All documents may be filed electronically via the Internet. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp.* If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and seven copies should be mailed to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments.

Please include the project number (P–1490–052) on any comments, motions, or protests filed.

k. *Description of Request:* The applicant proposes to surrender the license and decommission the generating facilities for the Morris Sheppard Project (P–1490). The applicant states that the project is not economically feasible due to the repairs that would be necessary to restore generation and continued expenses associated with administering lands along the shoreline of the reservoir. The applicant proposes to retain the existing dam and project reservoir, and install a control outlet structure for continued use in water management and supply operations.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filing must (1) Bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene, or protests should relate to project works which are the subject of the license surrender. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: November 9, 2011.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2011–29548 Filed 11–15–11; 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:* EC12–24–000.
*Applicants:* Emera Incorporated, California Pacific Electric Company, LLC, Algonquin Power & Utilities Corp., Liberty Energy Utilities Co.
*Description:* Application of California Pacific Electric Company, LLC, *et al.*
*Filed Date:* 11/07/2011.
*Accession Number:* 20111107–5107.
*Comment Date:* 5 p.m. ET on 11/28/2011.

*Docket Numbers:* EC12–25–000.
*Applicants:* Avenal Park LLC, Sand Drag LLC, Sun City Project LLC, Eurus Combine Hills II LLC.
*Description:* Application for Authorization Pursuant to Section 203 of the Federal Power Act and Request for Expedited Consideration and Waivers.
*Filed Date:* 11/07/2011.
*Accession Number:* 20111107–5201.
*Comment Date:* 5 p.m. ET on 11/28/2011.

*Docket Numbers:* EC12–26–000.
*Applicants:* Boralex Industries Inc., ReEnergy Biomass V LLC.
*Description:* Application for Authorization of Proposed Transaction by Boralex Industries Inc., *et al.*
*Filed Date:* 11/07/2011.
*Accession Number:* 20111107–5204.
*Comment Date:* 5 p.m. ET on 11/28/2011.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER03–534–013.
*Applicants:* Ingenco Wholesale Power, LLC.
*Description:* Notice of Change in Status of Ingenco Wholesale Power, LLC.
*Filed Date:* 11/07/2011.
*Accession Number:* 20111107–5212.
*Comment Date:* 5 p.m. ET on 11/28/2011.

*Docket Numbers:* ER10–1556–004.
*Applicants:* Longview Power.
*Description:* Notice of Change in Status of Longview Power, LLC.
*Filed Date:* 11/07/2011.
*Accession Number:* 20111107–5106.
*Comment Date:* 5 p.m. ET on 11/28/2011.

*Docket Numbers:* ER10–2068–007; ER10–2077–006.
*Applicants:* Delaware City Refining Company LLC, PBF Power Marketing LLC.
*Description:* Delaware City Refining Company LLC Notice of Change in Status.
*Filed Date:* 11/07/2011.
*Accession Number:* 20111107–5196.
*Comment Date:* 5 p.m. ET on 11/28/2011.

*Docket Numbers:* ER10–2923–004.
*Applicants:* Sunbury Generation LP.
*Description:* Notice of Change in Status of Sunbury Generation LP.
*Filed Date:* 11/07/2011.
*Accession Number:* 20111107–5199.
*Comment Date:* 5 p.m. ET on 11/28/2011.

*Docket Numbers:* ER11–4121–001.
*Applicants:* Midwest Independent Transmission System Operator, Inc.
*Description:* Allete-Bison LGIA_Deficiency Response to be effective 7/27/2011.
*Filed Date:* 11/07/2011.
*Accession Number:* 20111107–5063.
*Comment Date:* 5 p.m. ET on 11/28/2011.

*Docket Numbers:* ER11–4423–001.
*Applicants:* Lockport Energy Associates, L.P.
*Description:* Supplement to Triennial Updated Market Power Analysis Lockport Energy Associates, L.P.
*Filed Date:* 11/03/2011.
*Accession Number:* 20111103–5027.
*Comment Date:* 5 p.m. ET on 11/24/2011.

*Docket Numbers:* ER12–358–000.
*Applicants:* PJM Interconnection, LLC.
*Description:* Queue Position W2–040; Original Service Agreement No. 3097 to be effective 10/6/2011.
*Filed Date:* 11/07/2011.
*Accession Number:* 20111107–5117.
*Comment Date:* 5 p.m. ET on 11/28/2011.

*Docket Numbers:* ER12–359–000.
*Applicants:* PJM Interconnection, LLC.
*Description:* Queue Position O23; Original Service Agreement Nos. 2769 & 2770 to be effective 9/17/2010.
*Filed Date:* 11/07/2011.
*Accession Number:* 20111107–5148.
*Comment Date:* 5 p.m. ET on 11/28/2011.

*Docket Numbers:* ER12–360–000.
*Applicants:* New York Independent System Operator, Inc.
*Description:* NYISO Proposed Tariff Revisions Regarding New Capacity Zones to be effective 1/9/2012.
*Filed Date:* 11/07/2011.
*Accession Number:* 20111107–5158.
*Comment Date:* 5 p.m. ET on 11/28/2011.

Take notice that the Commission received the following electric reliability filings:

*Docket Numbers:* RR10–11–004.
*Applicants:* North American Electric Reliability Corp.
*Description:* Compliance Filing of the North American Electric Reliability Corporation in Response to the October 7, 2011 Order.
*Filed Date:* 11/07/2011.
*Accession Number:* 20111107–5195.
*Comment Date:* 5 p.m. ET on 11/28/2011.

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: November 8, 2011.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2011–29539 Filed 11–15–11; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Commissioner and Staff Attendance at National Association of Regulatory Utility Commissioners 123rd Annual Meeting

The Federal Energy Regulatory Commission (FERC or Commission) hereby gives notice that members of the Commission and/or Commission staff may attend the following meeting:

FERC/National Association of Regulatory Utility Commissioners Collaborative, on Smart Response and Emerging Issues, November 13, 2011 (8 a.m.–11:15 a.m.), Renaissance St. Louis Grand Hotel, 800 Washington Avenue, St. Louis, MO 63101.

Further information may be found at *http://annual.narucmeetings.org/program.cfm.*

The discussions at this meeting, which is open to the public, may address matters at issue in the following Commission proceedings:

Docket No. RM10–23, Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities
Docket No. RM11–26, Promoting Transmission Investment Through Pricing Reform
Docket No. ER10–1791, Midwest Independent Transmission System Operator, Inc.

Dated: November 9, 2011.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2011–29545 Filed 11–15–11; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 1354–081]**

### Pacific Gas & Electric Company; Notice of Availability of Supplemental Environmental Assessment

In accordance with the National Environmental Policy Act of 1969, as amended, and the Federal Energy Regulatory Commission's (Commission) regulations (18 CFR part 380), Commission staff prepared a Supplemental Environmental Assessment (SEA), to supplement the Final EA that was issued on February 19, 2010 regarding Pacific Gas & Electric Company's (PG&E) proposal to perform Commission-required seismic remediation work at Crane Valley Dam, part of the Crane Valley Hydroelectric Project. The Crane Valley Project occupies approximately 738 acres of federal lands within the Sierra National Forest, and is located approximately 40 miles northeast of the city of Fresno in Madera County, California. PG&E is currently performing the seismic remediation work and supporting activities analyzed in the February 19, 2010 Final EA.

PG&E is proposing two new contingency actions that are necessary to ensure that the seismic work at Crane Valley Dam can be completed in a timely manner. First, PG&E proposes to increase the amount of imported rock fill hauled from off-site quarries to ensure an adequate supply of quality rock for completion of the work. Second, PG&E proposes to install, and operate on an as-needed basis, a primary bypass diversion to pass water around the dam to assist in reservoir level control during work on the upstream face of the dam, as well as a minimum flow bypass diversion to ensure continuation of required minimum flow releases.

The SEA examines the environmental effects of PG&E's proposed contingency actions and resource protection and mitigation plans that PG&E would follow in accordance with consultation with federal and state resource agencies, and also recommends further measures to minimize any environmental effects. In the SEA, staff concludes that the proposed contingency actions, compliance with the resource protection and mitigation plans, and the recommended measures, would not constitute a major federal action significantly affecting the quality of the human environment.

A copy of the SEA is available for review at the Commission's Public Reference Room, or it may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number (P–1354) in the docket number field to access the document. For assistance, call (202) 502–8222, or (202) 502–8659 (for TTY).

For further information on this notice, please contact B. Peter Yarrington at (202) 502–6129.

Dated: November 9, 2011.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2011–29541 Filed 11–15–11; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. EL11–53–000]**

### Shetek Wind Inc., Jeffers South, LLC and Allco Renewable Energy Limited, Midwest Independent Transmission System Operator, Inc.; Notice of Filing of Response to Data Request

Take notice that on November 7, 2011, in response to a request for additional information relevant to the complaint filed in the above-captioned proceeding, Midwest Independent Transmission System Operator, Inc. (MISO) submitted responses to questions from Commission staff.

MISO states that copies of the response were served on all parties in the Commission's eService list for the proceeding, on all Tariff Customers under the Tariff, MISO Members, member representatives of Transmission Owners and Non-Transmission Owners, MISO Advisory Committee participants, and all state commissions within the region.

Any person desiring to intervene or to comment on this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Comments and protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make commenters or protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

*Comment Date:* 5 p.m. Eastern Time on November 28, 2011.

Dated: November 9, 2011.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2011–29542 Filed 11–15–11; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER12–348–000]**

### Mercuria Energy America, Inc.; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Mercuria Energy America, Inc.'s application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal

Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is November 28, 2011.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: November 9, 2011.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2011–29540 Filed 11–15–11; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 2246–058]**

### Yuba County Water Agency; Notice of Dispute Resolution Process Schedule; Panel Meeting, and Technical Conference

On October 20, 2011, the National Oceanic and Atmospheric Administration's, National Marine Fisheries Service (NMFS), filed a Notice to initiate a formal study dispute resolution process, pursuant to 18 CFR 5.14, in the relicensing proceeding for the Yuba County Water Agency's (YCWA) Yuba River Hydroelectric Project No. 2246. NMFS disputes the treatment of several of its study requests, filed on March 7, 2011, in the Commission's study plan determination, issued on September 30, 2011. NMFS specifically identifies study requests one through six and study request eight as the disputed components of its, March 7, 2011 filing. In its study requests one through six NMFS requested studies of the effects of project and related activities on: (1) Fish passage for anadromous fish; (2) hydrology for anadromous fish; (3) water temperatures for anadromous fish migration, holding, spawning, and rearing needs; (4) coarse substrate for anadromous fish: sediment supply, transport, and storage; (5) large wood and riparian habitat for anadromous fish; and (6) loss of marine-derived nutrients in the Yuba River, respectively. In study request eight, NMFS requested a study of, ''anadromous fish ecosystem effects analysis: synthesis of direct, indirect, and cumulative effects of the project and related facilities on anadromous fish.''

In its October 20, 2011 filing, NMFS designated David K. White as its dispute resolution panel member. On October 25, 2011, Commission staff designated Stephen P. Bowler to serve in the Commission staff role of dispute resolution panel chair. From an established list of potential third party panelists, Mr. Bowler and Mr. White selected Mr. Richard E. Craven and requested that he serve on the panel. Mr. Craven agreed to serve and the panel convened on November 7, 2011. Mr. Craven's statement certifying that he has no conflict of interest, which also summarizes his qualifications, is attached. None of the three panelists have been involved previously in the Yuba River Hydroelectric Project relicensing proceeding.

The panel will hold an all-day technical conference on the disputed studies on November 30, 2011. The conference will be held in Sacramento, CA. Further details will be supplied in a future notice. The purpose of the technical conference is for the disputing agency, the applicant, and the Commission to provide the panel with additional information necessary to evaluate the disputed studies. All local, state, and federal agencies, Indian tribes, and other interested parties are invited to attend the meeting as observers. The panel may also request information or clarification on written submissions as necessary to understand the matters in dispute. The panel will limit all input that it receives to the specific studies or information in dispute and will focus on the applicability of such studies or information to the study criteria stipulated in 18 CFR 5.9(b). If the number of participants wishing to speak creates time constraints, the panel may, at its discretion, limit the speaking time for each participant.

The process plan for dispute resolution is as follows:

| Responsible party | Pre-filing milestone | Date | FERC regulation |
|---|---|---|---|
| NMFS | Disputes filed | 10/20/2011 | 5.14(a). |
| Dispute Panel | Third Dispute Panel Member Selected | 11/4/2011 | 5.14(d)(3). |
| Dispute Panel | Dispute Resolution Panel Convened | 11/7/2011 | 5.14(d). |
| YCWA | Applicant Comments on Study Disputes Due | 11/14/2011 | 5.14(i). |
| FERC | Notice of Dispute Resolution Panel Technical Conference | 11/9/2011 (with details on or before 11/16/2011). | Guidance. |
| Dispute Panel | Dispute Resolution Panel Technical Conference | 11/30/2011 | 5.14(j). |
| Dispute Panel | Dispute Resolution Panel Findings Issued | 12/9/2011 | 5.14(k). |
| FERC | Director's Study Dispute Determination | 12/29/2011 | 5.14(l). |

For more information, please contact Stephen Bowler, the dispute panel chair, at *stephen.bowler@ferc.gov* or (202) 502–6861.

Dated: November 9, 2011.

**Kimberly D. Bose,**

*Secretary.*

BILLING CODE 6717–01–P

Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Richard E. Craven
Craven Environmental Consulting
19710 Schaefer Drive
Oregon City, OR 97045

November 7, 2011

**Reference: Dispute Resolution for the Yuba River Hydroelectric Project (P-2246-058)**

Dear Secretary Bose:

I, Richard E. Craven, certify that to the best of my knowledge, I have had no prior involvement in the Yuba River Hydroelectric Project (P-2246-058) proceedings, and I have no other financial or other conflict of interest that would prevent me from impartially serving as an independent, third-party member of a study dispute resolution panel established pursuant to 18 CFR §5.14(d) in response to the notice of study dispute filed by the National Marine Fisheries Service on October 20, 2011. My qualifications for serving as a third-party dispute resolution panel member for the subject dispute follow.

I have worked on water resource development projects as an environmental consultant in Oregon and other states for over 30 years. My project experience includes preparation of numerous environmental documents, including environmental assessments (EAs), environmental impact statements (EISs), biological assessments (BAs), and FERC applications. All projects have involved extensive consultation and negotiation involving state and federal agencies and in multiple cases I have played a central role in resolving complex disputes.

My technical expertise includes instream flow incremental methodology (IFIM), habitat evaluation procedure (HEP), fish passage evaluation and conceptual design, fish screening, water quality assessment, temperature modeling, and sediment and erosion control. I have bachelors and masters degrees in zoology from Oklahoma State University, with a masters-level focus on fisheries and aquatic ecology. I also have completed post-masters coursework, formal training in IFIM and HEP (from the U.S. Fish and Wildlife Service), and extensive mediation training. I have been appointed to

and served on Oregon Fish Passage Task Force and the Oregon Fish Screen Task Force.

With my broad background in aquatic sciences, specific experience in fish passage and related topics, and history of contributing to constructive solutions to complex issues associated with water development projects, I am well-qualified to serve as a third-party dispute resolution panel member for this dispute. I look forward to doing so.

Sincerely,

Richard E. Craven

[FR Doc. 2011–29549 Filed 11–15–11; 8:45 am]

BILLING CODE 6717–01–C

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Reliability Technical Conference Agenda

| | |
|---|---|
| Reliability Technical Conference | Docket No. AD12–1–000 |
| North American Electric Reliability Corporation | Docket No. RC11–6–000 |
| Public Service Commission of South Carolina and the South Carolina Office of Regulatory Staff | Docket No. EL11–62–000 |

Not consolidated.

As announced in the Notice of Technical Conference issued on October 7, 2011, the Commission will hold a technical conference on Tuesday, November 29, 2011, from 1 p.m. to 5 p.m. and Wednesday, November 30, 2011, from 9 a.m. to 4 p.m. to explore the progress made on the priorities for addressing risks to reliability that were identified in earlier Commission technical conferences. The conference also will discuss emerging issues, including processes used by planning authorities and other entities to identify reliability concerns that may arise in the course of compliance with Environmental Protection Agency regulations, and the tools and processes (including tariffs and market rules) available to address any identified reliability concerns. The agenda for this conference is attached. Commission members will participate in this conference.

The Commission will be accepting written comments regarding the matters discussed at this technical conference. Any person or entity wishing to submit written comments regarding the matters discussed at the conference should submit such comments in Docket No. AD12–1–000, on or before December 9, 2011.

Information on this event will be posted on the Calendar of Events on the Commission's Web site, *http://www.ferc.gov,* prior to the event. The conference will be transcribed. Transcripts will be available immediately for a fee from Ace Reporting Company ((202) 347–3700 or 1–(800) 336–6646). A free webcast of this event is also available through *http://www.ferc.gov.* Anyone with Internet access who desires to listen to this event can do so by navigating to *www.ferc.gov*'s Calendar of Events and locating this event in the Calendar. The event will contain a link to the webcast. The Capitol Connection provides technical support for webcasts and offers the option of listening to the meeting via phone-bridge for a fee. If you have any questions, visit *http://www.CapitolConnection.org* or call (703) 993–3100.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an email to *accessibility@ferc.gov* or call toll free 1–(866) 208–3372 (voice) or (202) 208–1659 (TTY), or send a FAX to (202) 208–2106 with the required accommodations.

For more information about this conference, please contact:

Sarah McKinley, Office of External Affairs, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–8368, *sarah.mckinley@ferc.gov.*

Dated: November 9, 2011.

**Kimberly D. Bose,**

*Secretary.*

### Reliability Technical Conference

### Commissioner-Led Reliability Technical Conference

November 29, 2011
1 p.m.–5 p.m.
November 30, 2011
9 a.m.–4 p.m.
Agenda
November 29, 2011
1 p.m. Commissioners' Opening Remarks
1:20 p.m. Introductions
Commissioner Cheryl LaFleur, Chair
1:25 p.m. Panel I: Identifying Priorities for NERC Activities

*Presentations:* NERC will be invited to provide an update on its priorities as identified in the February 8, 2011 Reliability Technical Conference. Panelists will be invited to express their general views on how NERC's prioritization tool has been working. Has NERC addressed concerns raised at the February 8, 2011 Reliability Technical Conference. Panelists will be asked to address some or all of the following:

a. What are the most critical reliability issues and/or standards development initiatives that needed to be addressed in 2011 and 2012? What is the status of the priorities identified by NERC at the

February technical conference? Has NERC's prioritization tool been useful?

b. One of the priorities was improving the compliance and enforcement process. How is that being addressed?

c. What are the biggest challenges to addressing these priorities and/or completing these initiatives in an effective and timely manner? What next steps are appropriate to timely and effectively address the priorities discussed?

d. How do NERC and reliability standards development teams incorporate in new or re-ordered priorities regarding reliability standards into their work plans? How are emerging issues considered and are any becoming high priorities?

*Panelists*

- Gerry W. Cauley, President and Chief Executive Officer, North American Electric Reliability Corporation (NERC)
- Kevin Burke, Chairman, President and CEO, Consolidated Edison Inc., on behalf of Consolidated Edison and the Edison Electric Institute (EEI)
- Mike Smith, President and Chief Executive Officer, Georgia Transmission Corporation, on behalf of Georgia Transmission Corp. and the National Rural Electric Association (NRECA)
- John A. Anderson, President, Electricity Consumers Resource Council (ELCON)
- Allen Mosher, Senior Director of Policy Analysis and Reliability, American Public Power Association (APPA); NERC Standards Committee Chairman
- Deborah Le Vine, Director, System Operations, California Independent System Operator Corporation (CAISO)
- William J. Gallagher, NERC Member Representatives Committee Chairman; Retired CEO, Vermont Public Power Supply Authority
- Peter Fraser, Acting Managing Director of Regulatory Policy, Ontario Energy Board

3:30 p.m. Panel II: Incorporating Lessons Learned into a More Reliable Grid

*Presentations:* Panelists will address how lessons learned are incorporated into NERC priorities. Panelists will be asked to address some or all of the following:

a. How do lessons learned from events analysis get disseminated to industry?

b. How do NERC's non-standards processes such as the Industry Alerts, Recommendations, Event Analysis, Essential Actions, Lessons Learned and Compliance Application Notices interact with the reliability standards? To what extent do these processes aid in identifying important reliability matters that are not addressed under the existing Reliability Standards?

c. Is the alerts process getting the message out on issues of immediate importance?

d. How do you gauge whether industry is appropriately implementing NERC alerts or lessons learned from an event analysis?

e. Is there a feedback loop into the Reliability Standards development process to determine if there is a gap in the standards? If so, how has that been working? If not, should there be?

*Panelists*

- Gerry W. Cauley, President and Chief Executive Officer, North American Electric Reliability Corporation
- Thomas J. Galloway, President and Chief Executive Officer, North American Transmission Forum
- Tom Burgess, Executive Director, Integrated System Planning and Development, FirstEnergy, on behalf of FirstEnergy and EEI
- Scott Helyer, Vice President, Transmission at Tenaska, on behalf of Electric Power Supply Association (EPSA)
- State Commission(s) to be Announced
- Mary Kipp, Senior Vice President, General Counsel and Chief Compliance Officer, El Paso Electric

*Commissioner Closing Comments*

November 30, 2011

9 a.m. Commissioners' Opening Remarks

9:20 a.m. Introductions
Commissioner Cheryl LaFleur, Chair

9: 30 a.m. Remarks: Janet McCabe, Principal Deputy Assistant Administrator for Air and Radiation, U.S. Environmental Protection Agency

9:40 a.m. Panel III: Presentations and Discussion on the Current State of Processes for Identifying Unit-Specific Local or Regional Reliability Issues in Response to Final EPA Regulations

*Presentations:* Panelists will be asked to describe their local and regional processes for identifying unit-specific reliability issues in response to final EPA environmental requirements. Panelists should address the following broad questions in their presentations:

a. How should reliability aspects of EPA's proposed and final regulations be addressed? What local or regional processes are used to plan for emerging issues such as the EPA regulations? How are you incorporating the EPA regulations into this process?

b. What have you proposed to the EPA regarding an exemption process? Do you support the exemption process changes identified by the RTOs or other entities in comments to the EPA? Do you have any alternative proposals?

c. What market structures and tariff rules are used to address local and regional reliability issues that may arise from generation retirements potentially triggered by EPA regulations? Are any changes to market and tariff rules needed?

d. Do you have the right tools to identify any problems that may arise? Are there other process changes that could help address reliability-related requests for exemptions from the EPA regulations?

*Panelists*

- Mark Lauby, Vice President and Director of Reliability Assessment and Performance Analysis, North American Electric Reliability Corporation
- Michael Kormos, Senior Vice President of Operations, PJM Interconnection, L.L.C.
- Carl Monroe, Executive Vice President and Chief Operating Officer, Southwest Power Pool (SPP)
- Thomas F. Farrell II, Chairman, President & CEO—Dominion, on behalf of EEI
- Kathleen Barron, Vice President, Federal Regulatory Affairs and Policy, Exelon Corporation
- Anthony Topazi, Chief Operating Officer, Southern Company
- State Commission(s) to be Announced

12 p.m. Lunch

12:45 p.m. Continuation of Panel III

*Discussion with Commissioners:* Open dialogue and questions and answers between Panel 1 and Commissioners.

2:15 p.m. Break

2:30 p.m. Panel IV: Discussion on multi-jurisdictional processes.

*Presentations:* Panelists will be asked to describe how they coordinate processes such as the state integrated resource planning with their reliability planning and the safety valve proposal. Panelists should address the following broad questions in their presentations:

a. What, if any role should the Commission or DOE play in studying replacement generation or other reliability solutions due to retirements? What role does the retail regulator, such as a state public utility commission or municipal authority play in forming your bulk power system reliability plans?

b. Do you support the exemption process changes identified by the RTOs or other entities in comments to the EPA? What role can the Commission play in evaluating individual requests

under a safety-valve approach? Do you have any alternative proposals?

*Panelists*

- Patricia A. Hoffman, Assistant Secretary for Electricity & Infrastructure Reliability, U.S. Department of Energy
- Gerry W. Cauley, President and Chief Executive Officer, North American Electric Reliability Corporation (NERC)
- Nick Akins, CEO of American Electric Power (AEP), on behalf of AEP and EEI
- Clair J. Moeller, Vice President Transmission Asset Management, Midwest Independent Transmission System Operator, Inc. (MISO)
- State Commission(s) to be Announced
- Eric Baker, President and Chief Executive Officer, Wolverine Electric Power Cooperative
- Debra Raggio, Vice President, Government and Regulatory Affairs, Assistant General Counsel, GenOn Energy, Inc.

*Commissioner Closing Comments*

[FR Doc. 2011–29546 Filed 11–15–11; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Sunshine Act Meeting Notice

November 10, 2011.

The following notice of meeting is published pursuant to section 3(a) of the government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552b:

**AGENCY:** *Agency Holding Meeting:* Federal Energy Regulatory Commission.

**DATES:** *Date and Time:* November 17, 2011, 10 a.m.

**PLACE:** Room 2C, 888 First Street NE., Washington, DC 20426.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** Agenda.*

**Note:** Items listed on the agenda may be deleted without further notice.

**CONTACT PERSON FOR MORE INFORMATION:** Kimberly D. Bose, Secretary, Telephone (202) 502–8400. For a recorded message listing items struck from or added to the meeting, call (202) 502–8627.

This is a list of matters to be considered by the Commission. It does not include a listing of all documents relevant to the items on the agenda. All public documents, however, may be viewed on line at the Commission's Web site at *http://www.ferc.gov* using the eLibrary link, or may be examined in the Commission's Public Reference Room.

**975th Meeting**

REGULAR MEETING

[November 17, 2011, 10 a.m.]

| Item No. | Docket No. | Company |
|---|---|---|
| | **Administrative** | |
| A–1 | AD02–1–000 | Agency Business Matters. |
| A–2 | AD02–7–000 | Customer Matters, Reliability, Security and Market Operations. |
| A–3 | AD07–13–004 | 2011 Report on Enforcement. |
| | **Electric** | |
| E–1 | ER11–4574–000 | PJM Interconnection, L.L.C. and Trans-Allegheny Interstate Line Company. |
| E–2 | RR11–1–002 | Nebraska Public Power District and Southwest Power Pool Regional Entity. |
| E–3 | ER11–3616–000, ER11–3616–001 | California Independent System Operator Corporation. |
| E–4 | RD11–3–000 | North American Electric Reliability Corporation. |
| E–5 | RD11–10–000 | North American Electric Reliability Corporation. |
| E–6 | RC11–1–001 | Cedar Creek Wind Energy, LLC. |
| | RC11–2–001 | Milford Wind Corridor Phase I, LLC. |
| E–7 | EL11–33–001 | Northeast Transmission Development, LLC. |
| E–8 | EL11–58–000 | Duke Energy Ohio, Inc. |
| E–9 | ER05–1065–011, OA07–32–008 | Entergy Services, Inc. |
| E–10 | ER09–1273–002, ER09–1273–004 | Westar Energy, Inc. |
| E–11 | ER11–2875–001, ER11–2875–002 | PJM Interconnection, L.L.C. |
| | EL11–20–001 | PJM Power Providers Group v. PJM Interconnection, L.L.C. |
| E–12 | ER10–1706–001, ER10–1706–002 | California Independent System Operator Corporation. |
| E–13 | RR11–5–000 | North American Electric Reliability Corporation. |
| E–14 | ER11–4215–000 | Nevada Power Company. |
| | **Gas** | |
| G–1 | RM11–15–000 | Bidding by Affiliates in Open Seasons for Pipeline Capacity. |
| G–2 | RP12–121–000 | Bear Creek Storage Company L.L.C. |
| G–3 | RP12–122–000 | MIGC LLC. |
| G–4 | RP12–123–000 | ANR Storage Company. |
| | **Hydro** | |
| H–1 | RM11–6–000 | Annual Charges for Use of Government Lands. |
| H–2 | P–2576–151 | FirstLight Hydro Generating Company. |
| H–3 | P–2601–015 | Duke Energy Carolinas, LLC. |
| H–4 | P–11858–004 | The Nevada Hydro Company, Inc. |

REGULAR MEETING—Continued

[November 17, 2011, 10 a.m.]

| Item No. | Docket No. | Company |
|---|---|---|
| | **Certificates** | |
| C–1 | OMITTED | |
| C–2 | CP11–493–000 | Dominion Transmission, Inc. |
| C–3 | CP11–67–000, CP11–67–001 | Texas Eastern Transmission, LP. |
| C–4 | CP11–36–001 | Tennessee Gas Pipeline Company. |

A free webcast of this event is available through *http://www.ferc.gov.* Anyone with Internet access who desires to view this event can do so by navigating to *http://www.ferc.gov*'s Calendar of Events and locating this event in the Calendar. The event will contain a link to its webcast. The Capitol Connection provides technical support for the free webcasts. It also offers access to this event via television in the DC area and via phone bridge for a fee. If you have any questions, visit *http://www.CapitolConnection.org* or contact Danelle Springer or David Reininger at (703) 993–3100.

Immediately following the conclusion of the Commission Meeting, a press briefing will be held in the Commission Meeting Room. Members of the public may view this briefing in the designated overflow room. This statement is intended to notify the public that the press briefings that follow Commission meetings may now be viewed remotely at Commission headquarters, but will not be telecast through the Capitol Connection service.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2011–29684 Filed 11–14–11; 11:15 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. IN03–9–000]**

### Idaho Power Company, IDACORP Energy, L.P., IDACORP, Inc.; Notice of Petition

Take notice that on September 9, 2011, Idaho Power Company, IDACORP Energy, L.P., and IDACORP, Inc., (collectively, the IDACORP Entities) pursuant to Rule 207(a)(5) of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (FERC), 18 CFR 385.207, and Appendix B, Appendix C, and Appendix E to the Stipulation and Consent Agreement (Settlement Agreement) between IDACORP Entities and the FERC Office of Enforcement, dated April 25, 2003,[1] filed a petition to terminate Appendix B, Appendix C, and Appendix E to the Settlement Agreement.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

*Comment Date:* 5 p.m. Eastern Time on November 30, 2011.

[1] Approved in *Idaho Power Company,* 103 FERC ¶ 61, 182 (2003).

Dated: November 9, 2011.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2011–29543 Filed 11–15–11; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP12–12–000]**

### ANR Pipeline Company; Notice of Request Under Blanket Authorization

Take notice that on November 1, 2011, ANR Pipeline Company (ANR), 717 Texas Street, Houston, Texas 77002, filed in Docket No. CP12–12–000, a prior notice request pursuant to sections 157.205 and 157.214 of the Federal Energy Regulatory Commission's regulations under the Natural Gas Act for authorization to increase the maximum inventory level of natural gas stored and working storage capacity at its Cold Springs 1 (CS1) storage field located in Kalkaska County, Michigan. Specifically, ANR proposes to increase the maximum inventory level of natural gas stored from 19.2 Bcf to 19.83 Bcf and working storage capacity from 14.7 Bcf to 15.33 Bcf at its CS1 storage field. ANR states the increased capacity will be offered to customers on a firm and/or interruptible basis, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this Application should be directed to M. Catharine Davis, Vice President U.S. Pipelines Law, ANR Pipeline Company, 717 Texas Street, Suite 2400, Houston, Texas, 77002, or call (832) 320–5509, or

fax (832) 320–6509, or by email *Catharine_davis@transcanada.com*.

Any person may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention. Any person filing to intervene or the Commission's staff may, pursuant to section 157.205 of the Commission's Regulations under the NGA (18 CFR 157.205) file a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenter's will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with he Commission's environmental review process. Environmental commenter's will not be required to serve copies of filed documents on all other parties. However, the non-party commentary, will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

Dated: November 9, 2011.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2011–29547 Filed 11–15–11; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Western Area Power Administration

### Pick-Sloan Missouri Basin Program—Eastern Division—2021 Power Marketing Initiative

**AGENCY:** Western Area Power Administration, DOE.

**ACTION:** Notice of Final 2021 Power Marketing Initiative.

**SUMMARY:** Western Area Power Administration (Western), Upper Great Plains Region, a Federal power marketing agency of the Department of Energy (DOE), announces the 2021 Power Marketing Initiative (2021 PMI). The 2021 PMI provides the basis for marketing the long-term firm hydroelectric resources of the Pick-Sloan Missouri Basin Program—Eastern Division (P–SMBP—ED) beyond December 31, 2020, when Western's Firm Electric Service (FES) contracts associated with the current Marketing Plan expire. The 2021 PMI extends the current Marketing Plan, with amendments to key marketing plan principles. Western's proposed 2021 PMI was published in the **Federal Register** on March 4, 2011. Responses to public comments are included in this notice. This **Federal Register** is published to announce Western's decisions for the 2021 PMI.

**DATES:** The 2021 PMI will become effective December 16, 2011.

**ADDRESSES:** Information regarding the 2021 PMI, including comments, letters, and other supporting documents made or retained by Western for the purpose of developing this Final 2021 PMI, are available for public inspection and copying at the Upper Great Plains Region, Western Area Power Administration, 2900 4th Avenue North, Billings, MT 59101–1266.

**FOR FURTHER INFORMATION CONTACT:** John A. Pankratz, Public Utilities Specialist, Upper Great Plains Region, Western Area Power Administration, 2900 4th Avenue North, Billings, MT 59101–1266, telephone (406) 255–2932, email *pankratz@wapa.gov*.

**SUPPLEMENTARY INFORMATION:**

### Current Marketing Plan Background

The 1985 P–SMBP—ED Marketing Plan (1985 Plan) was published in the **Federal Register** (45 FR 71860, October 30, 1980) and provided the marketing plan principles used to market P–SMBP—ED firm hydropower resources. The FES contracts associated with the 1985 Plan were initially set to expire December 31, 2000. Subpart C of the Energy Planning and Management Program (EPAMP) final rule, also published in the **Federal Register** (60 FR 54151, October 20, 1995), extended and amended the 1985 Plan. EPAMP extended the FES contracts associated with the 1985 Plan through December 31, 2020, and established the Post-2000, Post-2005, and Post-2010 Power Marketing Initiatives. The current Marketing Plan is inclusive of the 1985 Plan as extended and amended by EPAMP and the Post-2000, Post-2005, and Post-2010 Power Marketing Initiatives.

### 2021 PMI

Western initiated 2021 PMI discussions with P–SMBP—ED firm power customers in November 2010 by hosting meetings throughout the Upper Great Plains Region. In addition, Western hosted Native American-focused meetings throughout the Upper Great Plains Region to initiate government-to-government consultation with tribal firm power customers. The meetings provided customers the opportunity to review current Marketing Plan principles and provide informal input to Western for consideration in the 2021 PMI proposal. Key Marketing Plan principles discussed with firm power customers included: Contract Term, Resource Pools, Marketable Resource, Marketing Area, Load Factor Limit and Withdrawal Provisions, and Marketing Future Resources.

Western requested informal input from firm power customers for consideration in the 2021 PMI proposal. Customer input for the 2021 PMI supported Western extending the current Marketing Plan with amendments to the Contract Term and Resource Pools principles.

Western published its proposed 2021 PMI in the **Federal Register** (76 FR 12104, March 4, 2011) and initiated a 60-day public comment period. Public information and comment forums on the proposed 2021 PMI were held on April 13, 14, and 20, 2011. Western received 5 oral comments during the public comment forums and 51 comment letters during the public comment period, which closed on May 4, 2011. Western received a comment on May 4, 2011, requesting additional time to supplement comments on the proposed 2021 PMI. Western published a notice in the **Federal Register** (76 FR 47180, August 4, 2011) that re-opened the written comment period for the proposed 2021 PMI through September 6, 2011. Western received 5 new comment letters during the re-opened comment period. In total, Western received 5 oral comments and 56 comment letters from March 4, 2011,

through September 6, 2011. Responses to public comments are included in this notice. After consideration of public comments, Western has decided to finalize the proposed 2021 PMI as published in the **Federal Register** (76 FR 12104, March 4, 2011).

**Response to Comments Regarding the Proposed 2021 PMI**

The public comments below regarding the proposed 2021 PMI are paraphrased for brevity when not affecting the meaning of the statement(s).

*2021 PMI General Comment*

*Comment:* The majority of comments Western received strongly supported the proposed 2021 PMI principles.

*Response:* Western appreciates the support received for the 2021 PMI proposal published in the **Federal Register** (76 FR 12104, March 4, 2011).

*Amended Marketing Plan Principles and Comments:*

Proposed Contract Term: A 30-year contract term would be used for FES contracts. The FES contract term would begin January 1, 2021, and expire December 31, 2050.

*Comment:* Western received many comments supporting the proposed 30-year contract term. Commenters stated that a 30-year contract term would provide more resource certainty for customers than the current 20-year contract term and help Western and customers plan for short-term and long-term needs, rate structure, and financial stability. Western also received many comments requesting Western to consider a 40-year contract term to provide greater resource certainty to customers and further support customers' long-term power supply. Commenters also stated that Western has built-in flexibility and tools in place to address future conditions or changes and a 40-year contract term seems reasonable. Western also received comments that a 40-year contract term would provide assurance that customers contributing funds to Pick-Sloan investments would receive the benefits of those contributions and commitments.

*Response:* Western proposed a 30-year contract term and, based on comments, also considered a 40-year contract term for the 2021 PMI. Many customers supported the proposed 30-year contract term because it provides customers greater resource certainty and cost control when compared to the current 20-year contract term. Western will use a 30-year contract term for all P–SMBP—ED FES contracts for several reasons. Western believes a 30-year contract term strikes a balance between customers' need for stability in resource planning and cost control and Western's need for flexibility.

Western also recognizes and appreciates the unique customer funding relationship in support of the Federal power program.

Proposed Resource Pools: The 2021 PMI would provide for resource pools of up to 1 percent of the marketable resource under contract at the time for eligible new preference entities at the beginning of the contract term (January 1, 2021) and again every 10 years (January 1, 2031, and January 1, 2041).

*Comment:* Western received many comments supporting the proposed resource pools. Commenters stated that limiting the resource pools to up to 1 percent every 10 years helps provide for better utilization of resources with existing preference customers. Commenters also supported the structure and timing of the resource pools. Western received a comment stating that providing a resource pool every 10 years, as compared to EPAMP's three resource pools that were each 5 years apart, is a better use of Western's time and resources. Another comment received by Western stated that limiting resource pools to new entities might be too restrictive.

*Response:* Western appreciates the support for the proposed resource pools of up to 1 percent every 10 years, beginning January 1, 2021. The resource pools allow Western to market allocations of firm power to eligible new preference entities in such a manner as to promote the most widespread use, in accordance with Federal Reclamation Law.

*Comment:* Western received a comment stating that all Indian Tribes should be exempt from allocation reductions due to resource pools, as any reduction in allocations would impede badly-needed economic development on reservations.

*Response:* Western acknowledges this customer's concern over the impacts that a firm power allocation reduction would have on tribal firm power customers. All firm power customers are impacted by firm power reductions. Western will continue to provide consistent treatment to all firm power customers, including tribal firm power customers, and establish 2021 PMI resource pools by pro rata withdrawals on 2 years' notice, from then existing firm power customers, in accordance with EPAMP, 10 CFR 905.32(d).

*Extended Marketing Plan Principles and Comments:*

Proposed Marketable Resource: Based on adverse condition modeling to determine future marketable resource capability and median annual energy forecasting to determine future annual energy, the proposed 2021 PMI supports extending the existing contract rates of delivery commitments, with associated energy, to existing long-term firm power customers reduced by up to 1 percent for each new resource pool in 2021, 2031, and 2041.

*Comment:* Western received many comments specifically supporting the proposed marketable resource principle as it would extend similar contract rates of delivery to current customers.

*Response:* Western appreciates the support received for extending existing contract rates of delivery commitments, with associated energy, to existing long-term firm power customers reduced by up to 1 percent for each new resource pool in 2021, 2031, and 2041.

*Comment:* Western received a comment suggesting that newer or updated data should be used for marketable resource modeling.

*Response:* Western used the latest available data to model the 2021 PMI marketable resource.

*Comment:* Western received a comment expressing concern about the current drought debt repayment and its impact on Western's rates. The commenter stated it is critical that the 2021 PMI better address the risk involved in drought conditions and the resulting replacement purchased power generated debt.

*Response:* Drought debt repayment and rates are a function of Western's rate setting policies and are outside the scope of this 2021 PMI process.

Western considered risk in terms of the 2021 PMI marketable capability through adverse condition modeling. Basing marketable capability on an adverse condition mitigates risk due to the variable and unpredictable nature of hydropower resources.

*Comment:* Western received a comment stating that Western must recognize the Pick-Sloan's severe and disproportionate impact in the taking of Indian land along the Missouri River and comply with the Executive Order (EO) on Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, (59 FR 7629, February 16, 1994, correct citation EO 12898), by increasing Western's allocations to the Tribes along the Missouri River.

*Response:* Western's 2021 PMI action does not cause any population group to suffer a disproportionate share of adverse human health or environmental impacts. Western's 2021 PMI is the decision-making process of how to market long-term firm hydroelectric resources beyond 2020. The 2021 PMI

action proposed and adopted by Western maintains allocations of the finite hydropower resources at existing allocation levels (reduced by up to 1 percent for each new resource pool in 2021, 2031, and 2041) for all firm power customers, including tribal firm power customers along the Missouri River.

Western follows DOE's strategy for EO 12898, available upon request (see **FOR FURTHER INFORMATION CONTACT** section), when developing policies and programs that substantially affect human health or the environment, so that no population group will suffer a disproportionate share of adverse environmental impacts.

*Comment:* Western received a comment stating that P–SMBP—ED customers have contributed funds directly to Western and other Federal power program agencies for component replacement of hydropower generation units and related equipment. As such, Western should adjust hydropower resources, due to generation increases from refurbished Federal hydropower generation units, under the terms and conditions of the 2021 PMI.

*Response:* If additional resources become available to Western, as stated in the proposed 2021 PMI, Western will use those resources in accordance with the EPAMP, 10 CFR 905.32(e).

Proposed Marketing Area: The marketing area of the P–SMBP—ED is Montana (east of the Continental Divide), all of North Dakota and South Dakota, Nebraska east of the 101° meridian, Iowa west of the 94½° meridian, and Minnesota west of a line on the 94½° meridian from the southern boundary of the state to the 46° parallel and then northwesterly to the northern boundary of the state at the 96½° meridian.

*Comment:* Western received many comments supporting the proposed marketing area.

*Response:* Western appreciates the support for continuing the current P–SMBP—ED marketing area.

Proposed Load Factor Limit and Withdrawal Provisions:

Load Factor Limit: Western would market firm power at its customers' monthly system load factor for as long as possible. Western would reserve the right to limit monthly load factors to 70 percent if necessary during the 2021 PMI contract term. A 3-year notice would be given prior to requiring such limitation.

Project Use Withdrawal Provision: Western would reserve the right to reduce a customer's summer season contract rate of delivery by up to 5 percent for new project use requirements, by giving a minimum of 5 years' written notice in advance of such action.

Hydrology and River Operations Withdrawal Provision: Western, at its discretion and sole determination, would reserve the right to adjust the contract rate of delivery on 5 years' written notice in response to changes in hydrology and river operations. Any such adjustments would only take place after a public process by Western.

*Comment:* Western received comments supporting the project use withdrawal provision.

*Response:* Western appreciates the support for continuing the project use withdrawal provision established in the 1985 Marketing Plan (45 FRN 71860, October 30, 1980).

*Comment:* Western received many comments supporting the proposed hydrology and river operations withdrawal provision.

*Response:* Western appreciates the support for continuing the hydrology and river operations withdrawal provision as established in the EPAMP (60 FRN 54151, October 20, 1995).

Proposed Marketing Future Resources: Additional power resources may become available for various reasons. Any additional available resources would be used in accordance with EPAMP as specified in 10 CFR 905.32(e).

*Comment:* Western received many comments regarding marketing future resources. Commenters suggested Western consider offering additional available resources to existing customers who contributed to resource pools before making the offer to new customers or use the additional resources to support existing contract rates of deliveries to existing preference customers. Western also received comments supporting the proposed marketing future resources principle as currently stated in EPAMP. Western received a comment stating that if any additional power resources become available, those resources should be used to offset any possible reduction to the customers' contract rates of delivery due to resource pools or other withdrawal provisions.

*Response:* EPAMP provides Western flexibility in dealing with additional resources if they become available. If additional resources become available, Western will review the available marketable resources and Western's commitments at that time. Based on the outcome of the review, Western will use additional resources in accordance with EPAMP, 10 CFR 905.32(e).

*Additional 2021 PMI Comments*

*Comment:* Western received a comment seeking verification that Western's 2021 PMI is not proposing material changes to the firm peaking power service.

*Response:* Western did not propose any changes to the firm peaking power in the 2021 PMI.

*Comment:* Western received a comment from an existing preference customer requesting an increase to their allocation to at least 100 kilowatts (kW), which is the minimum amount of power allocated to new preference customers.

*Response:* Western's P–SMBP—ED allocations have been based on the marketing criteria in effect when each allocation was granted. This preference customer started receiving Federal power and energy in 1969, prior to the establishment of the 100-kW minimum allocation criterion. Increasing the current contract rates of delivery (CROD) for one customer would require Western to reallocate its existing marketable resource among all existing P–SMBP—ED firm power customers. Western's proposed 2021 PMI did not include reallocation among existing customers, but rather proposed extending all customers' existing CROD with reductions, if needed, for new resource pools. With the exception of this customer's comment, all comments received on the proposed 2021 PMI marketable resource principle supported Western's proposal; therefore, Western does not support increasing this customer's allocation.

*Comment:* Western received a comment from a Native American Tribe requesting further government-to-government consultation on the 2021 PMI, information on other Western programs, and additional time to provide supplemental comments on the proposed 2021 PMI.

*Response:* Western met with this Native American Tribe on June 29, 2011, to continue ongoing government-to-government consultation on the 2021 PMI and provide information on other Western programs. Western also re-opened the comment period for the proposed 2021 PMI as published in the **Federal Register** (76 FR 47180, August 4, 2011). Re-opening the comment period provided additional time for ongoing government-to-government consultation and additional time for all entities to submit new and/or supplemental comments. Comments were accepted on this **Federal Register** notice until September 6, 2011.

*Comment:* Western received a comment requesting that Western explore alternatives to the tribal bill

crediting program to enhance the economic benefit of the tribal power allocation.

*Response:* Alternative methods of delivery to provide the benefits of a Federal hydropower allocation to tribal firm power customers are outside the scope of the 2021 PMI process.

*Comment:* Western received a comment stating that Western needs to respect tribal sovereignty in the 2021 PMI. Western also received a request for Western's consultation policy for Tribal Nations.

*Response:* Western recognizes the special and unique relationship between the United States and the tribal governments. Western supports the DOE's American Indian Policy, available upon request (see **FOR FURTHER INFORMATION CONTACT** section), which stresses the need for a government-to-government, trust-based relationship.

*Comment:* Western received comments encouraging Western to conclude this 2021 PMI process and move forward to contracting in a timely and deliberate manner.

*Response:* Western agrees with this comment. Western intends to begin development of firm electric service contracts with customers after completion of this process.

**Final 2021 PMI**

Western will extend the current Marketing Plan with amendments to the Contract Term and Resource Pools principles. The Marketing Plan principles that are amended as well as the Marketing Plan principles that are extended are as follows:

*Amended Marketing Plan Principles:*

1. Contract Term: A 30-year contract term will be used for FES contracts. The FES contract term will begin January 1, 2021, and expire December 31, 2050.

2. Resource Pools: The 2021 PMI will provide for resource pools of up to 1 percent of the marketable resource under contract at the time for eligible new preference entities at the beginning of the contract term (January 1, 2021) and again every 10 years (January 1, 2031, and January 1, 2041).

*Extended Marketing Plan Principles:*

Extension of the current Marketing Plan includes all provisions and principles not specifically addressed in the preceding section (Amended Marketing Plan Principles). The following key principles of the current Marketing Plan were discussed with firm power customers during the informal customer input phase and the formal information forums of this process and are included below for reference purposes.

1. Marketable Resource: Based on adverse condition modeling to determine future marketable resource capability and median annual energy forecasting to determine future annual energy, the 2021 PMI supports extending the existing contract rates of delivery commitments, with associated energy, to existing long-term firm power customers reduced by up to 1 percent for each new resource pool in 2021, 2031, and 2041.

2. Marketing Area: The marketing area of the P–SMBP—ED is Montana (east of the Continental Divide), all of North Dakota and South Dakota, Nebraska east of the 101° meridian, Iowa west of the 94½° meridian, and Minnesota west of a line on the 94½° meridian from the southern boundary of the state to the 46° parallel and then northwesterly to the northern boundary of the state at the 96½° meridian.

3. Load Factor Limit and Withdrawal Provisions:

a. Load Factor Limit: Western will market firm power at its customers' monthly system load factor for as long as possible. Western will reserve the right to limit monthly load factors to 70 percent if necessary during the 2021 PMI contract term. A 3-year notice will be given prior to requiring such limitation.

b. Project Use Withdrawal Provision: Western will reserve the right to reduce a customer's summer season contract rate of delivery by up to 5 percent for new project use requirements, by giving a minimum of 5 years' written notice in advance of such action.

c. Hydrology and River Operations Withdrawal Provision: Western, at its discretion and sole determination, shall reserve the right to adjust the contract rate of delivery on 5 years' written notice in response to changes in hydrology and river operations. Any such adjustments would only take place after a public process by Western.

4. Marketing Future Resources: Additional power resources may become available for various reasons. Any additional available resources will be used in accordance with EPAMP as specified in 10 CFR 905.32(e).

**2021 PMI Procedures Requirements**

*Environmental Compliance*

In compliance with the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321–4347 (2007)); the Council on Environmental Quality Regulations for implementing NEPA (40 CFR parts 1500–1508); and DOE NEPA Implementing Procedures and Guidelines (10 CFR part 1021), Western has determined that this action is categorically excluded from further NEPA review.

*Determination Under Executive Order 12866*

Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Dated: November 8, 2011.

**Timothy J. Meeks,**

*Administrator.*

[FR Doc. 2011–29601 Filed 11–15–11; 8:45 am]

**BILLING CODE 6450–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPPT–2003–0004; FRL–9327–5]**

## Access to Confidential Business Information by the U.S. Consumer Product Safety Commission

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

**ACTION:** Notice.

**SUMMARY:** EPA has authorized the U.S. Consumer Product Safety Commission (CPSC) to access information which has been submitted to EPA under all sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be Confidential Business Information (CBI).

**DATES:** Access to the confidential data submitted to EPA under all sections of TSCA continues as a result of an on-going Memorandum of Understanding (MOU) between CPSC and the EPA dated September 23, 1986, which granted CPSC immediate access to all sections of the TSCA CBI.

**FOR FURTHER INFORMATION CONTACT:** *For technical information contact:* Pamela Moseley, Information Management Division (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–8956; fax number: (202) 564–8955; email address: *moseley.pamela@epa.gov.*

*For general information contact:* The TSCA–Hotline, ABVI–Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this notice apply to me?*

This action is directed to the public in general. This action may, however, be

of interest to all who manufacture, process, or distribute industrial chemicals. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How can I get copies of this document and other related information?*

EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPPT–2003–0004. All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* 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 electronically at *http://www.regulations.gov,* or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

**II. What action is the agency taking?**

Under a MOU dated September 23, 1986, the CPSC agreed to EPA procedures governing access to CBI submitted to EPA under TSCA.

In accordance with 40 CFR 2.306(h), EPA has determined that CPSC requires access to CBI submitted to EPA under all sections of TSCA to perform successfully their responsibilities under the Consumer Product Safety Act and TSCA. CPSC's personnel are given access to information submitted to EPA under all sections of TSCA. Some of the information is claimed or determined to be CBI.

Under terms of the MOU, CPSC is not required to renew its access to TSCA CBI. EPA publishes this notice to the public from time to time to reiterate and confirm that access to TSCA CBI has been granted to another federal agency. In a previous notice published in the **Federal Register** on September 21, 2007 (72 FR 54036) (FRL–8149–3), EPA confirmed that CPSC continues to have access to CBI under all sections of TSCA. EPA is issuing notice once again to confirm that CPSC maintains access under the existing MOU.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA that EPA provides the CPSC access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this MOU will take place at EPA Headquarters and CPSC's 4330 East West Highway, Bethesda, Maryland, site in accordance with EPA's *TSCA CBI Protection Manual.*

CPSC is required to adhere to all provisions of EPA's TSCA CBI Protection Manual.

CPSC personnel are required to sign nondisclosure agreements and are briefed on appropriate security procedures before they are permitted access to TSCA CBI.

**List of Subjects**

Environmental protection, Confidential business information.

Dated: November 9, 2011.

**Matthew Leopard,**

*Director, Information Management Division, Office of Pollution Prevention and Toxics.*

[FR Doc. 2011–29593 Filed 11–15–11; 8:45 am]

**BILLING CODE 6560–50–P**

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## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–9492–4; EPA–HQ–OEI–2011–0366]**

## Amendment of Inspector General's Operation and Reporting (IGOR) System Investigative Files (EPA–40)

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

**ACTION:** Notice.

**SUMMARY:** Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Office of Inspector General (OIG) is giving notice that it proposes to amend an existing system of records by changing the name of the system from the Inspector General's Operation and Reporting (IGOR) System Investigative Files (EPA–40) to the Inspector General Enterprise Management System (IGEMS) Investigative Module.

**DATES:** *Effective Date:* Persons wishing to comment on this system of records notice must do so by December 27, 2011.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–HQ–2011–0366, by one of the following methods:

- *http://www.regulations.gov:* Follow the online instructions for submitting comments.
- *Email: oei.docket@epa.gov.*
- *Fax:* (202) 566–1752.
- *Mail:* OEI Docket, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.
- *Hand Delivery:* OEI Docket, EPA/DC, EPA West Building, Room 3334, 1301 Constitution Ave. NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA–HQ–2011–0366. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information for which disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov.* 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 for which 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 OEI Docket, EPA/DC, EPA West Building, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

**FOR FURTHER INFORMATION CONTACT:** Chris Han, (202) 566–2939.

**SUPPLEMENTARY INFORMATION:**

## I. General Information

The Inspector General's Operation and Reporting (IGOR) System Investigative Files (EPA–40) will be changed to the Inspector General Enterprise Management System (IGEMS) Investigative Module. This system serves as the repository of information collected in the course of conducting investigations relating to programs and operations of the EPA. The privacy of individuals is protected through user authentication and system roles, permissions and privileges. The system is operated and maintained by the Office of Inspector General, Office of Mission Systems.

Dated: May 23, 2011.

**Malcolm D. Jackson,**

*Assistant Administrator and Chief Information Officer.*

### EPA–40

**SYSTEM NAME:**

Inspector General Enterprise Management System (IGEMS) Investigative Module.

**SYSTEM LOCATION:**

Office of Inspector General, Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Investigative file information including the names, locations and other personal identifiers of individuals involved or participating in the OIG investigative process.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Investigative files and materials collected during the investigative process, including but not limited to names of subjects of OIG investigations; cities, states, and EPA regions in which the subjects are located; names of complaints and witnesses interviewed during the investigations; documents and other records collected from public, business, government and other sources; forensic and other analyses; memoranda of investigative activities and contacts; electronic data; electronic images; and investigative tools.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM (INCLUDES ANY REVISIONS OR AMENDMENTS):**

Inspector General Act of 1978, 5 U.S.C. app. 3.

**PURPOSE(S):**

To serve as the repository of information collected in the course of conducting investigations relating to programs and operations of the EPA.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

General routine uses A, B, C, D E, F, G, H, I, J, K and L apply to this system. Records may also be disclosed:

1. To a Federal agency responsible for considering suspension or debarment action where such record would be relevant to such action.
2. To the Department of Justice to obtain its advice on Freedom of Information Act matters.
3. In response to a lawful subpoena issued by a Federal agency.
4. To the Department of the Treasury and the Department of Justice when EPA is seeking an ex parte court order to obtain taxpayer information from the Internal Revenue Service.
5. To a Federal, State, local, foreign, or international agency, or other public authority, for use in a computer matching program, as that term is defined in 5 U.S.C. 552a(a)(8).
6. To a public or professional licensing organization if the record indicates, either by itself or in combination with other information, a violation or potential violation of professional standards, or reflects on the moral, educational, or professional qualifications of an individual who is licensed or who is seeking to become licensed.
7. To any person when disclosure of the record is needed to enable the recipient of the record to take action to recover money or property of the EPA, when such recovery will accrue to the benefit of the United States, or when disclosure of the record is needed to enable the recipient of the record to take appropriate disciplinary action to maintain the integrity of EPA programs or operations.
8. To officers and employees of other Federal agencies for the purpose of conducting quality assessments of the OIG.
9. To the news media and public when a public interest justifies the disclosure of information on public events such as indictments or similar activities.
10. To Members of Congress and the public in the OIG's Semiannual Report to Congress when the Inspector General determines that the matter reported is significant.
11. To the public when the matter under audit or investigation has become public knowledge, or when the Inspector General determines that such disclosure is necessary to preserve confidence in the integrity of the OIG audit or investigative process or is necessary to demonstrate the accountability of EPA officers, employees, or individuals covered by this system, unless it is determined that disclosure of the specific information in the context of a particular case could reasonably be expected to constitute an unwarranted invasion of personal privacy.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

- *Storage:* In a computer database and in hard copy.
- *Retrievability:* By names and other identifiers of subjects, complainants and witnesses interviewed during investigations; others involved in the investigative process; and investigative case file numbers.
- *Safeguards:* Computer records are maintained in a secure, password protected computer system. Paper records are maintained in lockable file cabinets. All records are maintained in secure, access-controlled areas or buildings.
- *Retention and Disposal:* Records stored in this system are subject to EPA Schedule 698.
- *System Manager(s) and Address:* Assistant Inspector General for Management, Office of Inspector General, Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460.

**NOTIFICATION PROCEDURES:**

Requests to determine whether this system of records contains a record pertaining to you must be sent to the Agency's Freedom of Information Office. The address is: U.S. Environmental Protection Agency; 1200 Pennsylvania Ave NW., Room 6416 West; Washington, DC 20460; (202) 566–1667; Email: (*hq.foia@epa.gov*); Attn: Privacy Act Officer.

**RECORD ACCESS PROCEDURE:**

To the extent permitted under the Privacy Act of 1974, 5 U.S.C. 552a(j), (k)(2) & (k)(5), this system has been exempted from the provisions of the Privacy Act of 1974 that permit access and correction. However, EPA may in its discretion, fully grant individual requests for access and correction if it determines that the exercise of these rights will not interfere with an interest that the exemption is intended to protect. The exemption from access is limited in some instances by law to information that would reveal the identity of a confidential source. Requesters will be required to provide adequate identification, such as a driver's license, employee identification card or other identifying document. Additional identification procedures may be required in some instances.

**CONTESTING RECORDS PROCEDURE:**

Requests for correction or amendment must identify the record to be changed and the corrective action sought. EPA's Privacy Act regulations are set out in 40 CFR Part 16.

**RECORD SOURCE CATEGORIES:**

Subjects of an investigation; present and former associations of the subjects (*e.g.,* colleagues, business associates, acquaintances, or relatives); federal, state, local, international, and foreign investigative or law enforcement agencies; other government agencies; confidential sources; complainants; witnesses; concerned citizens; and public source materials.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

Under 5 U.S.C. 552a(j)(2), this system is exempt from the following provisions of the Privacy Act of 1974, as amended: 5 U.S.C. 552a(c)(3) and (4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(5), and (e)(8); (f); and (g). Under 5 U.S.C. 552a(k)(2) and (k)(5), this system is exempt from the following provisions of the Privacy Act of 1974 as amended, subject to the limitations set forth in this subsection; 5 U.S.C. 552a(c)(3); (d); (e)(1), (e)(4)(G), (e)(4)(H), and (f)(2) through (5).

[FR Doc. 2011–29655 Filed 11–15–11; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2011–0507; FRL–9327–1]**

## Formetanate HCl; Amendment to the Use Deletion Cancellation Order

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

**ACTION:** Notice.

**SUMMARY:** This notice announces EPA's amendment to the order for the deletion of uses, voluntarily requested by the registrant and accepted by the Agency, of products containing formetanate HCl, pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. This amendment follows a September 14, 2011 **Federal Register** Use Deletion Order which approved the voluntary request by Gowan Company to delete certain uses from Formetanate HCl product registrations. These are not the last products containing this pesticide registered for use in the United States. The September 14, 2011 cancellation order allowed the formetanate HCl registrants to sell and distribute existing stocks of products under the previously approved labeling until November 30, 2011. The sole technical registrant for Formetanate HCl, Gowan Company has requested to extend their sale and distribution deadline by 60 days. The Agency will extend the deadline for the registrant to sell and distribute existing stocks until January 31, 2012. This amendment does not affect the deadline of December 31, 2013 for persons other than the registrant to sell, distribute, or use existing stocks of products (including those of (24c) Special Local Needs registrations) whose labels include the deleted uses.

**DATES:** The amendment is effective November 16, 2011.

**FOR FURTHER INFORMATION CONTACT:** James Parker, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 306–0469; fax number: (703) 308–7070; email address: *parker.james@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this action apply to me?*

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How can I get copies of this document and other related information?*

EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2011–0507. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

### II. What action is the agency taking?

This notice announces the amendment of the final use deletion order of Formetanate HCl products registered under section 3 of FIFRA. These registrations are listed in sequence by registration number in Table 1 of this unit.

TABLE 1—FORMETANATE HCL PRODUCTS AFFECTED

| EPA registration No. | Product name |
|---|---|
| 10163–264 | Formetanate Hydrochloride Technical. |
| 10163–265 | Carzol SP Miticide/Insecticide in Water Soluble Packaging. |
| WA010033 | Carzol SP Insecticide in Water Soluble Packaging. |

Table 2 of this unit includes the name and address of record for the registrant of the products in Table 1 of this unit. This number corresponds to the first part of the EPA registration numbers of the products listed above.

TABLE 2—REGISTRANT OF AMENDED PRODUCTS

| EPA company No. | Company name and address |
|---|---|
| 10163 | Gowan Company, P.O. Box 5569, Yuma, AZ 85366–5569. |

On September 14, 2011, EPA published a Use Deletion Order (76 FR 56753) (FRL–8888–2). The order prohibited, among other things, Formetanate HCl registrants to sell and distribute existing stocks of products under the previously approved labeling after November 30, 2011. In a letter dated September 22, 2011, the Formetanate HCl registrant, Gowan

Company requested a 60 day extension of the deadline for sales and distribution.

### III. Amended Order

Pursuant to FIFRA section 6(f), EPA hereby amends the September 14, 2011 order to allow the formetanate HCl registrants to sell and distribute existing stocks of products under the previously approved labeling until January 31, 2012. Thereafter, registrants will be prohibited from selling or distributing the products identified in Table 1 of Unit II., whose labels include the deleted uses, except for export consistent with FIFRA section 17 or for proper disposal. Persons other than the registrant may sell, distribute, or use existing stocks of products (including those of (24c) Special Local Needs registrations) whose labels include the deleted uses until December 31, 2013, provided that such sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied the deleted uses.

### IV. What is the agency's authority for taking this action?

Section 6(a)(1) of FIFRA provides that the Administrator may permit the continued sale and use of existing stocks of a pesticide whose registration is cancelled under this section, or section 3 or 4, to such extent, under such conditions, and for such uses as the Administrator determines that such sale or use is not inconsistent with the purposes of this Act.

### List of Subjects

Environmental protection, Pesticides and pests.

Dated: November 2, 2011.

**Peter Caulkins,**

*Acting Director, Pesticide Re-evaluation Division, Office of Pesticide Programs.*

[FR Doc. 2011–29597 Filed 11–15–11; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2010–0887; FRL–8883–8]**

## Dicloran; Cancellation Order for Amendment To Terminate Use on Potatoes

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

**ACTION:** Notice.

**SUMMARY:** This notice announces EPA's order for the amendment to terminate use on potatoes, voluntarily requested by the registrant and accepted by the Agency, of products containing dicloran (DCNA), pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. This cancellation order follows a December 1, 2010 **Federal Register** Notice of Receipt of Request from the registrant listed in Table 2 of Unit II. to voluntarily amend to terminate DCNA use on potatoes for these product registrations. These are not the last products containing this pesticide registered for use in the United States. In the December 1, 2010 notice, EPA indicated that it would issue an order implementing the amendment to terminate use, unless the Agency received substantive comments within the 180-day comment period that would merit its further review of these requests, or unless the registrant withdrew their request. The Agency did not receive any comments on the notice. Further, the registrant did not withdraw their request. Accordingly, EPA hereby issues in this notice a cancellation order granting the requested amendment to terminate DCNA use on potatoes. Any distribution, sale, or use of the products subject to this cancellation order is permitted only in accordance with the terms of this order, including any existing stocks provisions.

**DATES:** The amendment is effective November 16, 2011.

**FOR FURTHER INFORMATION CONTACT:** James Parker, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; *telephone number:* (703) 306–0469; *fax number:* (703) 308–7070; *email address: parker.james@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this action apply to me?*

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How can I get copies of this document and other related information?*

EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2010–0887. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

### II. What action is the agency taking?

This notice announces the amendment to delete from the registration of DCNA use on potato, as requested by registrant, under section 3 of FIFRA. These registrations are listed in sequence by registration number in Table 1 of this unit.

TABLE 1—DCNA PRODUCT REGISTRATION AMENDMENT TO DELETE USE

| EPA Registration No. | Product name | Uses deleted |
|---|---|---|
| 10163–189 | Botran 75–W Fungicide | Potatoes. |
| 10163–195 | Botran Technical | Potatoes. |
| 10163–226 | Botran 5F Fungicide | Potatoes. |

Table 2 of this unit includes the names and addresses of record for all registrants of the products in Table 1 of this unit, in sequence by EPA company number. This number corresponds to the first part of the EPA registration numbers of the products listed in Table 1 of this unit.

TABLE 2—REGISTRANT OF AMENDED PRODUCTS

| EPA Company No. | Company name and address |
|---|---|
| 10163 | Gowan Company, P.O. Box 5569, Yuma, AZ 85366–5569. |

**III. Summary of Public Comments Received and Agency Response to Comments**

During the public comment period provided, EPA received no comments in response to the December 1, 2010 **Federal Register** notice (75 FR 230) (FRL–8854–3) announcing the Agency's receipt of the request to voluntary amend to delete DCNA use on potatoes for products listed in Table 1 of Unit II.

**IV. Cancellation Order**

Pursuant to FIFRA section 6(f), EPA hereby approves the requested amendment to terminate use of DCNA on potatoes for registrations identified in Table 1 of Unit II. Accordingly, the Agency hereby orders that the product registrations identified in Table 1 of Unit II. are amended to terminate use on potatoes. The effective date of the cancellations that are subject of this notice is November 16, 2011. Any distribution, sale, or use of existing stocks of the products identified in Table 1 of Unit II. in a manner inconsistent with any of the provisions for disposition of existing stocks set forth in Unit VI. will be a violation of FIFRA.

**V. What is the agency's authority for taking this action?**

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the EPA Administrator may approve such a request. The notice of receipt for this action was published for comment on December 1, 2010. The comment period closed on May 31, 2011.

**VI. Provisions for Disposition of Existing Stocks**

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the action. The existing stocks provision for the products subject to this order is as follows.

The registrant may continue to sell and distribute existing stocks of products listed in Table 1 whose labels include the deleted use until November 16, 2012, which is 1 year after publication of this cancellation order in the **Federal Register**. Thereafter, the registrant is prohibited from selling or distributing products listed in Table 1 of Unit II. whose labels include the deleted use, except for export in accordance with FIFRA section 17 or for proper disposal.

Persons other than the registrant may sell, distribute, or use existing stocks of products whose labels include the deleted use until supplies are exhausted, provided that such sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied, the deleted use.

**List of Subjects**

Environmental protection, Pesticides and pests.

Dated: October 6, 2011.

**Peter Caulkins,**

*Acting Director, Pesticide Re-evaluation Division, Office of Pesticide Programs.*

[FR Doc. 2011–29612 Filed 11–15–11; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2011–0898; FRL–9326–7]**

## FIFRA Scientific Advisory Panel; Notice of Public Meeting

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

**ACTION:** Notice.

**SUMMARY:** There will be a 3-day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel (FIFRA SAP) to consider and review Common Effects Assessment Methodology developed in the Office of Pesticide Programs and Office of Water.

**DATES:** The meeting will be held on January 31, 2012 to February 2, 2012, from 9 a.m. to approximately 5:30 p.m.

*Comments.* The Agency encourages that written comments be submitted by January 17, 2012 and requests for oral comments be submitted by January 24, 2012. However, written comments and requests to make oral comments may be submitted until the date of the meeting, but anyone submitting written comments after January 17, 2012 should contact the Designated Federal Official (DFO) listed under **FOR FURTHER INFORMATION CONTACT**. For additional instructions, see Unit I.C. of the **SUPPLEMENTARY INFORMATION**.

*Nominations.* Nominations of candidates to serve as ad hoc members of FIFRA SAP for this meeting should be provided on or before November 30, 2011.

*Webcast.* This meeting may be webcast. Please refer to the FIFRA SAP's Web site, *http://www.epa.gov/scipoly/SAP* for information on how to access the webcast. Please note that the webcast is a supplementary public process provided only for convenience. If difficulties arise resulting in webcasting outages, the meeting will continue as planned.

*Special accommodations.* For information on access or services for individuals with disabilities, and to request accommodation of a disability, please contact the DFO listed under **FOR FURTHER INFORMATION CONTACT** at least 10 days prior to the meeting to give EPA as much time as possible to process your request.

**ADDRESSES:** The meeting will be held at the Environmental Protection Agency, Conference Center, Lobby Level, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA 22202.

*Comments.* Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2011–0898, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

*Instructions:* Direct your comments to docket ID number EPA–HQ–OPP–2011–

0898. If your comments contain any information that you consider to be CBI or otherwise protected, please contact the DFO listed under **FOR FURTHER INFORMATION CONTACT** to obtain special instructions before submitting your comments. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line 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 regulations.gov or email. The 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 regulations.gov, your email address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* 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, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

*Nominations, requests to present oral comments, and requests for special accommodations.* Submit nominations to serve as ad hoc members of FIFRA SAP, requests for special seating accommodations, or requests to present oral comments to the DFO listed under **FOR FURTHER INFORMATION CONTACT**.

**FOR FURTHER INFORMATION CONTACT:** Sharlene R. Matten, Office of Science Coordination and Policy (7201M), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–0130; fax number: (202) 564–8382; email address: *matten.sharlene@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does this action apply to me?*

This action is directed to the public in general. This action may, however, be of interest to persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA), FIFRA, and the Food Quality Protection Act of 1996 (FQPA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the DFO listed under **FOR FURTHER INFORMATION CONTACT**.

### *B. What should I consider as I prepare my comments for EPA?*

When submitting comments, remember to:

1. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).
2. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
4. Describe any assumptions and provide any technical information and/or data that you used.
5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
6. Provide specific examples to illustrate your concerns and suggest alternatives.
7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
8. Make sure to submit your comments by the comment period deadline identified.

### *C. How may I participate in this meeting?*

You may participate in this meeting by following the instructions in this unit. To ensure proper receipt by EPA, it is imperative that you identify docket ID number EPA–HQ–OPP–2011–0898 in the subject line on the first page of your request.

1. *Written comments.* The Agency encourages that written comments be submitted, using the instructions in **ADDRESSES**, no later than January 17, 2012, to provide FIFRA SAP the time necessary to consider and review the written comments. Written comments are accepted until the date of the meeting, but anyone submitting written comments after January 17, 2012 should contact the DFO listed under **FOR FURTHER INFORMATION CONTACT**. Anyone submitting written comments at the meeting should bring 30 copies for distribution to FIFRA SAP.

2. *Oral comments.* The Agency encourages that each individual or group wishing to make brief oral comments to FIFRA SAP submit their request to the DFO listed under **FOR FURTHER INFORMATION CONTACT** no later than January 24, 2012, in order to be included on the meeting agenda. Requests to present oral comments will be accepted until the date of the meeting and, to the extent that time permits, the Chair of FIFRA SAP may permit the presentation of oral comments at the meeting by interested persons who have not previously requested time. The request should identify the name of the individual making the presentation, the organization (if any) the individual will represent, and any requirements for audiovisual equipment (*e.g.,* overhead projector, 35 mm projector, chalkboard). Oral comments before FIFRA SAP are limited to approximately 5 minutes unless prior arrangements have been made. In addition, each speaker should bring 30 copies of his or her comments and presentation slides for distribution to the FIFRA SAP at the meeting.

3. *Seating at the meeting.* Seating at the meeting will be open and on a first-come basis.

4. *Request for nominations to serve as ad hoc members of FIFRA SAP for this meeting.* As part of a broader process for developing a pool of candidates for each meeting, FIFRA SAP staff routinely solicits the stakeholder community for nominations of prospective candidates for service as ad hoc members of FIFRA SAP. Any interested person or organization may nominate qualified individuals to be considered as prospective candidates for a specific meeting. Individuals nominated for this

meeting should have expertise in one or more of the following areas: Aquatic toxicity estimation tools, aquatic plant toxicity, aquatic animal toxicity, statistics, species sensitivity distributions, and application of toxicity data to development of aquatic life criteria. Nominees should be scientists who have sufficient professional qualifications, including training and experience, to be capable of providing expert comments on the scientific issues for this meeting. Nominees should be identified by name, occupation, position, address, and telephone number. Nominations should be provided to the DFO listed under **FOR FURTHER INFORMATION CONTACT** on or before November 30, 2011. The Agency will consider all nominations of prospective candidates for this meeting that are received on or before this date. However, final selection of ad hoc members for this meeting is a discretionary function of the Agency.

The selection of scientists to serve on FIFRA SAP is based on the function of the panel and the expertise needed to address the Agency's charge to the panel. No interested scientists shall be ineligible to serve by reason of their membership on any other advisory committee to a Federal department or agency or their employment by a Federal department or agency except the EPA. Other factors considered during the selection process include availability of the potential panel member to fully participate in the panel's reviews, absence of any conflicts of interest or appearance of lack of impartiality, independence with respect to the matters under review, and lack of bias. Although financial conflicts of interest, the appearance of lack of impartiality, lack of independence, and bias may result in disqualification, the absence of such concerns does not assure that a candidate will be selected to serve on FIFRA SAP. Numerous qualified candidates are identified for each panel. Therefore, selection decisions involve carefully weighing a number of factors including the candidates' areas of expertise and professional qualifications and achieving an overall balance of different scientific perspectives on the panel. In order to have the collective breadth of experience needed to address the Agency's charge for this meeting, the Agency anticipates selecting approximately 10 to12 ad hoc scientists.

FIFRA SAP members are subject to the provisions of 5 CFR part 2634, Executive Branch Financial Disclosure, as supplemented by the EPA in 5 CFR part 6401. In anticipation of this requirement, prospective candidates for service on the FIFRA SAP will be asked to submit confidential financial information which shall fully disclose, among other financial interests, the candidate's employment, stocks and bonds, and where applicable, sources of research support. The EPA will evaluate the candidate's financial disclosure form to assess whether there are financial conflicts of interest, appearance of a lack of impartiality or any prior involvement with the development of the documents under consideration (including previous scientific peer review) before the candidate is considered further for service on FIFRA SAP. Those who are selected from the pool of prospective candidates will be asked to attend the public meetings and to participate in the discussion of key issues and assumptions at these meetings. In addition, they will be asked to review and to help finalize the meeting minutes. The list of FIFRA SAP members participating at this meeting will be posted on the FIFRA SAP Web site at *http://epa.gov/scipoly/sap* or may be obtained from the OPP Regulatory Public Docket at *http://www.regulations.gov.*

## II. Background

### *A. Purpose of FIFRA SAP*

FIFRA SAP serves as the primary scientific peer review mechanism of EPA's Office of Chemical Safety and Pollution Prevention (OCSPP) and is structured to provide scientific advice, information and recommendations to the EPA Administrator on pesticides and pesticide-related issues as to the impact of regulatory actions on health and the environment. FIFRA SAP is a Federal advisory committee established in 1975 under FIFRA that operates in accordance with requirements of the Federal Advisory Committee Act. FIFRA SAP is composed of a permanent panel consisting of seven members who are appointed by the EPA Administrator from nominees provided by the National Institutes of Health and the National Science Foundation. FIFRA, as amended by FQPA, established a Science Review Board consisting of at least 60 scientists who are available to the SAP on an ad hoc basis to assist in reviews conducted by the SAP. As a peer review mechanism, FIFRA SAP provides comments, evaluations and recommendations to improve the effectiveness and quality of analyses made by Agency scientists. Members of FIFRA SAP are scientists who have sufficient professional qualifications, including training and experience, to provide expert advice and recommendation to the Agency.

### *B. Public Meeting*

Both the U.S. Environmental Protection Agency (USEPA), Office of Pesticide Programs (OPP) and the Office of Water (OW) assess the effects of pesticides on aquatic ecosystems using approaches that afford a high degree of protection for aquatic life. EPA's stakeholders have identified differences in the approaches that the OW and the OPP use to evaluate possible effects from pesticides on fish, other aquatic organisms, and aquatic plants. While there are differences in the effects characterization approaches used by EPA under the Clean Water Act (CWA) and FIFRA, both were developed with high quality data using rigorously peer-reviewed assessment methodologies. In characterizing pesticide effects, both programs consider acute effects as well as chronic and sub-lethal effects on growth, survival, and reproduction in their risk assessments.

EPA is now exploring how to build on the substantial high quality science already developed by both programs to develop additional toxicity estimation tools and approaches to support a consistent and common set of effects characterization methods using best available information. EPA's goal in this effort is to develop tools, methods, and approaches that:

- Continue to be based upon sound science and utilize available data,
- Are legally defensible under our statutory mandates,
- Are based upon methodologies that are as consistent and practical as possible,
- Are implementable at the Federal and State levels,
- Are developed as quickly and efficiently as possible, and
- Reflect stakeholder input and comments.

In order to characterize potential adverse effects of chemicals in the aquatic environment, EPA uses available toxicity data from studies involving individual test species, which serve as surrogates for untested species. These data are collected for individual organisms exposed to chemicals (*e.g.,* pesticides) and are then frequently extended to represent effects to populations of the same species, populations of similar genera/taxa, or to aquatic ecosystems. The focus of the current efforts is to examine how limited test results can best be used to characterize adverse effects on aquatic animals and plants. To that end, EPA is exploring two general types of methods that may be used to extrapolate from

toxicity test results to taxa-specific and community-based measures of effects relevant to the regulatory needs of OPP and OW, as well as the ability of predictive tools to augment in data limited situations. These methods include sensitivity distributions and assessment factors (AFs) both of which may be used to account for uncertainty, particularly in situations where toxicity data are limited. A portion of this work will address the derivation of an ''Aquatic Life Screening Value'' (ALSV) that is related to the fifth percentile in a sensitivity distribution. ALSVs may be used to screen concentrations of pesticides and effluents in ambient waters and may be used by States and Tribes in the development of water quality standards. Other portions of this work will address other percentiles in sensitivity distributions that can be used to evaluate concentrations of pesticides in ambient water in other ways.

EPA is requesting the SAP provide advice on several proposed tools and methods to characterize the toxicity and effects of chemical stressors on aquatic animals and plants.

1. Use of Predictive Toxicology Tools in Characterizing Effects of Chemical Stressors to Aquatic Animals;
2. Use of Assessment Factors (AF) in Characterizing Acute Effects of Chemical Stressors on Aquatic Animals;
3. Use of Species Sensitivity Distributions (SSD) in Characterizing Acute Effects of Chemical Stressors on Aquatic Animals;
4. Evaluation of Chronic Toxicity Data and the Estimation of Acute to Chronic Ratios (ACR) in Characterizing Chronic Effects of Stressors on Aquatic Animals;
5. Methods for Characterizing Effects of Chemical Stressors to Aquatic Plants; and
6. Approaches for Characterizing Effects of Chemicals with Limited Data.

*C. FIFRA SAP Documents and Meeting Minutes*

EPA's background paper, related supporting materials, charge/questions to FIFRA SAP, FIFRA SAP composition (*i.e.,* members and ad hoc members for this meeting), and the meeting agenda will be available in early January 2012. In addition, the Agency may provide additional background documents as the materials become available. You may obtain electronic copies of these documents, and certain other related documents that might be available electronically, at *http://www.regulations.gov* and the FIFRA SAP homepage at *http://www.epa.gov/scipoly/sap.*

FIFRA SAP will prepare meeting minutes summarizing its recommendations to the Agency approximately 90 days after the meeting. The meeting minutes will be posted on the FIFRA SAP Web site or may be obtained from the OPP Regulatory Public Docket at *http://www.regulations.gov.*

**List of Subjects**

Environmental protection, Pesticides and pests.

Dated: November 3, 2011.

**Frank Sanders,**

*Director, Office of Science Coordination and Policy.*

[FR Doc. 2011–29602 Filed 11–15–11; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–9492–7]**

## Proposed Settlement Agreement

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

**ACTION:** Notice of Proposed Settlement Agreement; Request for Public Comment.

**SUMMARY:** In accordance with section 113(g) of the Clean Air Act, as amended (''Act''), 42 U.S.C. 7413(g), notice is hereby given of a proposed settlement agreement to address a lawsuit filed by the American Forest & Paper Association, Inc. (''Petitioner'') in the United States Court of Appeals for the District of Columbia: *American Forest and Paper Association, Inc.* v. *EPA,* No. 10–1284 (DC Cir.) for review of EPA's final rule entitled ''Mandatory Reporting of Greenhouse Gases from Magnesium Production, Underground Coal Mines, Industrial Wastewater Treatment, and Industrial Waste Landfills'', published at 75 FR 39,736 (July 12, 2010). Under the terms of the proposed settlement agreement, Petitioner would dismiss its claims if EPA signs a letter interpreting the rule in substantially similar format as proposed as it applies to Petitioner.

**DATES:** Written comments on the proposed settlement agreement must be received by *December 16, 2011.*

**ADDRESSES:** Submit your comments, identified by Docket ID number EPA–HQ–OGC–2011–0904, online at *www.regulations.gov* (EPA's preferred method); by email to *oei.docket@epa.gov;* by mail to EPA Docket Center, Environmental Protection Agency, *Mailcode:* 2822T, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD–ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

**FOR FURTHER INFORMATION CONTACT:** Ragan Tate, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; *telephone:* (202) 564–7382; *fax number:* (202) 564–5603; *email address: tate.ragan@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Additional Information About the Proposed Settlement Agreement

On September 22, 2009, EPA finalized the first comprehensive Reporting program for greenhouse gases (''GHGs'') under the Clean Air Act (''CAA'' or ''the Act''). 75 FR 56,260 (October 30, 2009) (''2009 Final GHG Reporting Rule''). The 2009 Final GHG Reporting Rule requires reporting of greenhouse gas emissions from large sources and suppliers in the United States, and is intended to collect accurate and timely emissions data to inform future policy decisions. Under the rule, suppliers of fossil fuels or industrial greenhouse gases, manufacturers of vehicles and engines, and facilities that emit 25,000 metric tons or more per year of GHG emissions are required to submit annual reports to EPA. The rule became effective December 29, 2009. In proposing the 2009 Final GHG Reporting Rule, EPA proposed but did not finalize Subpart II ''Industrial Wastewater Treatment'' of the 2009 Rule. On June 28, 2010 EPA finalized an amendment to the 2009 Final GHG Reporting Rule, ''Mandatory Reporting of Greenhouse Gases from Magnesium Production, Underground Coal Mines, Industrial Wastewater Treatment, and Industrial Waste Landfills'', published at 75 FR 39,736 (July 12, 2010) (''Subpart II Rule).

The American Forest & Paper Association filed a petition for review in the DC Circuit challenging the Subpart II Rule (10–1284). The petition for review in the DC Circuit raises issues with the final requirements of the Subpart II Rule. Upon EPA's motion, on October 20, 2010, the court issued an order holding the case in abeyance pending the parties' settlement discussions.

Under the proposed settlement agreement being noticed today, the petition for review would be dismissed in its entirety if EPA signs a letter

interpreting the rule in substantially similar format as proposed as it applies to Petitioner. Pursuant to the proposed settlement agreement, EPA would be issuing its letter interpreting the rule as it applies to petitioner with respect to monitoring and measurements at three locations at the effluent treatment basin at International Paper Company's Prattville Mill in Prattville, Alabama.

For a period of thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the proposed settlement agreement from persons who were not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed settlement agreement if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines, based on any comment submitted, that consent to this settlement agreement should be withdrawn, the terms of the agreement will be affirmed.

**II. Additional Information About Commenting on the Proposed Settlement Agreement**

*A. How can I get a copy of the settlement agreement?*

The official public docket for this action (identified by Docket ID No. EPA–HQ–OGC–2011–0904) contains a copy of the proposed settlement agreement. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through *http://www.regulations.gov.* You may use the *http://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select ''search''.

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at *http://www.regulations.gov* without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

*B. How and to whom do I submit comments?*

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an email address or other contact information in the body of your comment and with any disk or CD–ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the *http://www.regulations.gov* Web site to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an ''anonymous access'' system, which means EPA will not know your identity, email address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (email) system is not an ''anonymous access'' system. If you send an email comment directly to the Docket without going through *http://www.regulations.gov,* your email address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: November 8, 2011.

**Kevin McLean,**

*Acting Associate General Counsel.*

[FR Doc. 2011–29648 Filed 11–15–11; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–9492–6]**

## Proposed Settlement Agreements, Clean Air Act Citizen Suit

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

**ACTION:** Notice of Proposed Settlement Agreements; Request for Public Comment.

**SUMMARY:** In accordance with section 113(g) of the Clean Air Act, as amended (''CAA''), 42 U.S.C. 7413(g), notice is hereby given of two proposed settlement agreements to resolve two cases filed by the WildEarth Guardians (''Guardians'') involving EPA actions under the CAA Title V operating permit program. On November 17, 2010, Guardians filed a petition with the Environmental Appeals Board (''EAB'') challenging a Title V Renewal Permit issued by EPA Region 8 on October 18, 2010 to BP America Production Company (''BP'') for its Florida River Compression Station Facility (*In re BP America Production Co., Florida River Compression Facility,* Appeal No. CAA 10–04). On April 25, 2011, Guardians also filed a petition in the United States Court of Appeals for the Tenth Circuit (*WildEarth Guardians* v. *EPA,* No. 11–9527) challenging the Administrator's February 2, 2011 order denying an administrative petition to object to a July 14, 2010 response of the Colorado Department of Public Health and Environment, Air Pollution Control Division regarding the issuance of a renewed title V permit for Anadarko Petroleum Corporation's Frederick Compressor Station. Under the proposed settlement agreements, EPA would agree to undertake a pilot program for the purpose of studying, improving, and streamlining source determinations in the oil and gas industry in new or renewal Title V permits for which Region 8 is the initial Part 71 permitting authority.

**DATES:** Written comments on the proposed settlement agreements must be received by December 16, 2011.

**ADDRESSES:** Submit your comments, identified by Docket ID number EPA–HQ–OGC–2011–0915 online at *http://www.regulations.gov* (EPA's preferred method); by email to *oei.docket@epa.gov;* by mail to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD–ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

**FOR FURTHER INFORMATION CONTACT:** Sara L. Laumann, Office of Regional Counsel, EPA Region 8, 1595 Wynkoop Street, Denver, CO 80202–2466; *telephone:* (303) 312–6443; *fax number:* (303) 312–6859; *email address: laumann.sara@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Additional Information About the Proposed Settlement Agreements

These proposed settlement agreements would resolve two cases filed by Guardians. First, Guardians filed a case in the EAB challenging a Title V Renewal Permit issued by EPA Region 8 on October 18, 2010 to BP's Florida River Compression Station Facility (*In re BP America Production Co., Florida River Compression Facility,* Appeal No. CAA 10–04). BP intervened as a party in the EAB action. Second, Guardians filed a petition in the United States Court of Appeals for the Tenth Circuit challenging the Administrator's February 2, 2011 order denying an administrative petition to object to a July 14, 2010 response of the Colorado Department of Public Health and Environment regarding the issuance of a renewed title V permit for Anadarko Petroleum Corporation's Frederick Compressor Station. The State of Colorado and Kerr-McGee Gathering LLC intervened as parties in the 10th Circuit action. Under the proposed settlement agreements, EPA would agree to undertake a pilot program for the purpose of studying, improving, and streamlining source determinations in the oil and gas industry in new or renewal Title V permits for which Region 8 is the initial Part 71 permitting authority. The pilot program would begin upon the effective date of the settlement agreement in the EAB case and would continue for a duration equal to the earlier of two years or six Title V new or renewal permit applications for which Region 8 is the initial Part 71 permitting authority. Additional information regarding the Region 8 pilot program can be found in an attachment to the proposed settlement agreement for the EAB action, which is available in the docket for this action. Under the proposed settlement agreements, within 15 days of a fully executed settlement agreement in the EAB action, Guardians will file a motion with the EAB to dismiss with prejudice its pending petition for review in Appeal No. CAA 10–04 and the parties in the Tenth Circuit case will file an appropriate pleading for the dismissal of Guardians' petition for review with prejudice. All parties will bear their own costs and attorneys' fees.

For a period of thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the proposed settlement agreements from persons who were not named as parties or intervenors to the respective actions at issue. EPA or the Department of Justice may withdraw or withhold consent to the proposed settlements agreements if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines that consent to these settlements agreements should be withdrawn, the terms of the settlements agreements will be affirmed.

## II. Additional Information About Commenting on the Proposed Settlement Agreements

### *A. How can I get a copy of the proposed settlement agreements?*

The official public docket for this action (identified by Docket ID No. EPA–HQ–OGC–2011–0915) contains a copy of the proposed settlement agreements. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through *http://www.regulations.gov.* You may use the *http://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number.

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at *http://www.regulations.gov* without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

### *B. How and to whom do I submit comments?*

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an email address or other contact information in the body of your comment and with any disk or CD-ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification,

EPA may not be able to consider your comment.

Use of the *http://www.regulations.gov* Web site to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an ''anonymous access'' system, which means EPA will not know your identity, email address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (email) system is not an ''anonymous access'' system. If you send an email comment directly to the Docket without going through *http://www.regulations.gov,* your email address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: November 4, 2011.

**Kevin McLean,**

*Acting Associate General Counsel.*

[FR Doc. 2011–29644 Filed 11–15–11; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–9492–5; Docket ID No. EPA–HQ–ORD–2011–0671]**

### Draft Toxicological Review of n-Butanol: In Support of Summary Information on the Integrated Risk Information System (IRIS)

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

**ACTION:** Notice of public comment period; extension.

**SUMMARY:** EPA announced a 60-day public comment period on August 31, 2011 (76 FR 54227) for the external review draft human health assessment titled, ''Toxicological Review of n-Butanol: In Support of Summary Information on the Integrated Risk Information System (IRIS)'' (EPA/635/R–11/081A). On September 15, 2011, the public comment period was extended by one week because of a one-week delay in the release of the Toxicological Review to the public (76 FR 57033). In this Notice, EPA is extending the public comment period an additional 30 days to December 7, 2011, at the request of the American Chemistry Council's Oxo Process Panel. The draft assessment was prepared by the National Center for Environmental Assessment (NCEA) within the EPA Office of Research and Development (ORD). EPA is releasing this draft assessment for the purposes of public comment and peer review. This draft assessment is not final as described in EPA's information quality guidelines, and it does not represent and should not be construed to represent Agency policy or views. After public review and comment, an EPA contractor will convene an expert panel for independent external peer review of this draft assessment. The public comment period and external peer review meeting are separate processes that provide opportunities for all interested parties to comment on the assessment. The external peer review meeting will be scheduled at a later date and announced in the **Federal Register**. Public comments submitted during the public comment period will be provided to the external peer reviewers before the panel meeting and considered by EPA. Public comments received after the public comment period closes will not be submitted to the external peer reviewers and will only be considered by EPA if time permits.

**DATES:** The public comment period will be extended to end December 7, 2011. Comments should be in writing and must be received by EPA by December 7, 2011.

**ADDRESSES:** The draft ''Toxicological Review of n-Butanol: In Support of Summary Information on the Integrated Risk Information System (IRIS)'' is available primarily via the Internet on the NCEA home page under the Recent Additions and Publications menus at *http://www.epa.gov/ncea.* A limited number of paper copies are available from the Information Management Team (*Address:* Information Management Team, National Center for Environmental Assessment (Mail Code: 8601P), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; *telephone:* (703) 347–8561; *facsimile:* (703) 347–8691). If you request a paper copy, please provide your name, mailing address, and the draft assessment title.

Comments may be submitted electronically via *http://www.regulations.gov*, by email, by mail, by facsimile, or by hand delivery/courier. Please follow the detailed instructions provided in the **SUPPLEMENTARY INFORMATION** section of the August 31, 2011, Notice (76 FR 54227).

**SUPPLEMENTARY INFORMATION:** For information on the docket, *www.regulations.gov*, or the public comment period, please contact the Office of Environmental Information (OEI) Docket (*Mail Code:* 28221T), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; *telephone:* (202) 566–1752; *facsimile:* (202) 566–9744; or *email: ORD.Docket@epa.gov.*

For information on the draft assessment, please contact Dr. Ambuja Bale, National Center for Environmental Assessment (8601P), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; *telephone:* (703) 347–8643; *facsimile:* (703) 347–8689; or *email: FRN_Questions@epa.gov.*

Dated: November 9, 2011.

**Darrell A. Winner,**

*Acting Director, National Center for Environmental Assessment.*

[FR Doc. 2011–29650 Filed 11–15–11; 8:45 am]

BILLING CODE 6560–50–P

## EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

### Coordination of Functions; Memorandum of Understanding

**AGENCY:** Equal Employment Opportunity Commission.

**ACTION:** Notice.

**SUMMARY:** The Equal Employment Opportunity Commission (EEOC) and the U.S. Department of Labor (DOL), Office of Federal Contract Compliance Programs (OFCCP) have updated their Memorandum of Understanding (MOU), last published at 64 FR.17,664 (April 12, 1999). These updates include: using contemporary office names and titles; designating a ''Coordination Advocate'' at both agencies; reorganizing and/or condensing language for clarity; streamlining the Compliance Coordination Committees; and clarifying the complaint/charge referral procedures.

**FOR FURTHER INFORMATION CONTACT:** Claudia Gordon, Special Assistant to the Director, Office of Federal Contract Compliance Programs, Department of Labor, (202) 693–1073; Tanisha R. Wilburn, Senior Attorney Advisor, Office of Legal Counsel, Equal Employment Opportunity Commission, (202) 663–4909 (voice), (202) 663–7026 (TTY).

**SUPPLEMENTARY INFORMATION:** The purpose of this Memorandum of Understanding (MOU) is to further the agencies' joint objectives in ensuring equal employment opportunities for applicants and employees under Title VII of the Civil Rights Act of 1964 (Title VII) and Executive Order 11246 (E.O. 11246), to promote greater efficiency and coordination, and to eliminate conflict and duplication of effort. The agencies first entered into this MOU on

May 20, 1970, and revised it in 1974, 1981, and most recently in 1999.

In this update, the agencies edited the MOU's Introduction and added paragraphs 1 and 10 to support coordination generally and specifically to create a Coordination Advocate at each agency. They edited paragraph 6 to clarify the tasks of the Compliance Coordination Committees at Headquarters and Field offices. They also explained that disability complaints/charges are not coordinated under this MOU, but rather pursuant to the 1992 joint regulation at 29 CFR part 1641 and 41 CFR part 60–742 (''joint disability regulation'').

To improve the clarity of the MOU's provisions describing the referral process for complaints/charges under Title VII and E.O.11246, the agencies revised paragraph 7 and added new paragraph 8. Thus, language formerly in paragraph 7(d) of the 1999 MOU was moved to the beginning of paragraph 7(a), to state that OFCCP is the EEOC's agent to accept the Title VII component of an E.O. 11246 complaint. Consistent with equivalent provisions in the agencies' 1992 joint disability regulation, OFCCP expressly agreed to refer complaints to the EEOC when OFCCP determines that it lacks jurisdiction, and EEOC made a similar referral pledge in new paragraph 8. *See* 29 CFR 1641.5(d) and § 1641.6(c). In both instances, the date of filing with the first agency is deemed the date of filing with the second.

Finally, the agencies updated the description of DOL's structure and the titles of officials at both agencies. They also made minor editorial changes.

The text of the revised MOU follows below. The major changes to the MOU are in paragraphs 1(a), 6(a), 7(a), 8 and 10. The revised MOU is also available on the EEOC's Home Page at *http://www.eeoc.gov* and OFCCP's Home Page at *http://www.dol.gov/ofccp.*

Dated: November 9, 2011.

**Jacqueline A. Berrien,**

*Chair, Equal Employment Opportunity Commission.*

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## Memorandum of Understanding Between U.S. Department of Labor and Equal Employment Opportunity Commission

The U.S. Department of Labor, Office of Federal Contract Compliance Programs (OFCCP) and the Equal Employment Opportunity Commission (EEOC) first entered into this Memorandum of Understanding (MOU) in 1970 to further the objectives of Congress under *Title VII of the Civil Rights Act of 1964, as amended (Title VII),* in coordination with *Executive Order 11246, 30 FR 12319, as amended (E.O. 11246),* and *Executive Order 12067, 43 FR 28967 (E.O. 12067)* (the EEOC's government-wide coordination authority). This MOU broadly promotes interagency coordination in the enforcement of equal employment opportunity (EEO) laws and also serves to maximize effort, promote efficiency, and eliminate conflict, competition, duplication, and inconsistency among the operations, functions and jurisdictions of the parties to the MOU. It includes specific coordination procedures for complaints/charges of employment discrimination filed with OFCCP under E.O. 11246 and/or Title VII, which deal with discrimination on the basis of race, color, religion, sex, or national origin. Further, the MOU includes provisions for sharing information as appropriate and to the extent allowable under law.

This MOU sets forth the complaint/charge referral procedures and information sharing provisions between the agencies as they relate to the enforcement of Title VII and E.O. 11246. However, the agencies' Compliance Coordination Committees (¶ 6) are not limited to these two requirements, and may consult on any other topic that will enhance the agencies' mutual enforcement interests under any of the laws within their respective jurisdiction. This MOU does not extensively discuss interagency coordination efforts involving disability and other bases, apart from the broad mandate for the agencies' Compliance Coordination Committees (¶ 6). In 1992, the EEOC and OFCCP issued joint procedural regulations providing for information sharing, confidentiality, and complaint/charge referral under *Title I of the Americans with Disabilities Act* and *Section 503 of the Rehabilitation Act.* See *29 CFR part 1641* (EEOC), and *41 CFR part 60–742* (OFCCP).

The parties to this MOU agree as follows:

1. Sharing Information

(a) EEOC and OFCCP shall share any information relating to the employment policies and/or practices of employers holding government contracts or subcontracts that supports the enforcement mandates of each agency as well as their joint enforcement efforts. Such information shall include, but is not limited to, affirmative action programs, annual employment reports, complaints, charges, investigative files, and compliance evaluation reports and files.

(b) OFCCP shall make available to the appropriate requesting official of the EEOC or his or her designee for inspection and copying and/or loan, any documents in its possession pertaining to the effective enforcement or administration of any laws or requirements enforced by the EEOC including: (i) *Title VII*; (ii) *the Equal Pay Act of 1963 (EPA)*; (iii) *the Age Discrimination in Employment Act of 1967 (ADEA)*; (iv) *the Genetic Information Nondiscrimination Act of 2008 (GINA)*; (v) *the Americans with Disabilities Act (ADA)* (in accordance with *29 CFR part 1641*); and (vi) E.O. 12067. All documents will be made available within ten days of such request, or as soon as practical thereafter. Disclosure of such material by EEOC shall be in accordance with paragraphs 4 and 5 of this Agreement. All transfers of information under this and other paragraphs of this MOU shall only be made where not otherwise prohibited by law and in accordance with paragraph 5 of this Agreement.

(c) The EEOC shall make available to the appropriate requesting official of the OFCCP or his or her designee for inspection and copying and/or loan any documents pertaining to the enforcement and administration of (i) E.O. 11246; (ii) the affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, *38 U.S.C. § 4212*; (iii) Section 503 of the Rehabilitation Act of 1973 (in accordance with *41 CFR part 60–742*); and (iv) E.O. 12067. All documents in its possession (or to which it has access through a work-sharing agreement as described in paragraph 4(b) of this Agreement) will be made available within ten days of such request, or as soon as practical thereafter. Disclosure of such material by OFCCP shall be in accordance with paragraphs 4 and 5 of this Agreement.

2. ''Appropriate Requesting Officials'' shall, for the purpose of this Agreement, include the following officials and staff:

(a) For the EEOC—

(1) The Chair
(2) A Commissioner
(3) The General Counsel
(4) The Deputy General Counsel
(5) The Associate General Counsel
(6) The Legal Counsel
(7) The Director of the Office of Research, Information and Planning
(8) Any Regional Attorney
(9) Any EEOC District, Field, Area or Local Office Director
(10) Director, Office of Field Programs

(b) For the DOL/OFCCP—

(1) The Secretary or Deputy Secretary of Labor

(2) The Solicitor or Deputy Solicitor of Labor
(3) The Director or Deputy Director, OFCCP
(4) Any Associate Solicitor
(5) Any OFCCP Regional, District or Area Office Director
(6) Any Regional Solicitor of Labor
(7) Any OFCCP Division Director

3. Requests directed to a headquarters office of one agency from a field office of the other shall first be forwarded through the headquarters of the requesting agency. Responses to all requests for information shall be made to the official making such request, or his/her designee.

4. Disclosure of Information

(a) All requests by third parties to this Agreement, including charging parties, respondents, and their attorneys, for disclosure of information shall be coordinated with the agency that initially compiled or collected the information. The decision of that agency regarding disclosure shall be honored.

(b) Subparagraph 4(a), above, is not applicable to requests for data in EEOC files made by any state or local agency designated as a 706 agency with whom EEOC has a current charge resolution contract and a work-sharing agreement containing provisions required by Sections 706 and 709 of Title VII. Provided, however, that any such agency shall not disclose to third parties, including charging parties, respondents, and their attorneys, any of the information initially collected or compiled by OFCCP without express written approval by the Director, OFCCP.

5. Confidentiality

(a) When EEOC provides information to OFCCP, the confidentiality requirements of sections 706(b) and 709(e) of Title VII, apply to that information. When OFCCP receives the same information from a source independent of EEOC, the preceding sentence does not preclude disclosure of the information received from the independent source. However, OFCCP will also observe any confidentiality requirements imposed on such information by the Trade Secrets Act or the Privacy Act.

(b) When OFCCP obtains information from its receipt, investigation, and processing of the Title VII component of a dual filed charge, or when OFCCP creates documents that exclusively concern the Title VII component of a dual filed charge, OFCCP will observe any confidentiality requirements imposed on such information by the Trade Secrets Act, the Privacy Act, and sections 706(b) and 709(e) of the Civil Rights Act of 1964.

(c) Questions concerning confidentiality under Title VII, the EPA, the ADA or GINA shall be directed to EEOC's Office of Legal Counsel.

(d) Questions concerning confidentiality under E.O. 11246, 38 U.S.C. § 4212 (Section 402 of VEVRAA), or Section 503 of the Rehabilitation Act shall be directed to OFCCP, Director, Division of Program Operations.

6. EEOC and OFCCP shall establish procedures for notification and consultation at various stages of their respective compliance activities in order to develop potential joint enforcement initiatives, increase efficiency, ensure coordination and minimize duplication. Such procedures shall include:

(a) Establishment of ongoing Compliance Coordination Committees (CCC)—

1. Field Committees: OFCCP's and EEOC's District Directors and Regional Attorneys will meet, not less than biannually, to review enforcement priorities, systemic investigations of mutual interest, compliance review schedules, potential Commissioner Charges, and potential litigation. The Field Committees will work to increase efficiency, and eliminate competition and duplication, and may engage in consultation regarding any topic that enhances the agencies' mutual enforcement interests. In addition to sharing information about investigations of discrimination based on race, color, religion, sex, and national origin, the Field Committees may also share information related to the enforcement of the EPA, the ADEA, GINA, and the ADA and Section 503 of the Rehabilitation Act (in accordance with 29 CFR part 1641 (EEOC) and 41 CFR part 60–742 (OFCCP)).

2. Headquarters Committee: Representatives from OFCCP's and EEOC's Headquarters shall meet not less than biannually to discuss topics of mutual interest to both agencies, including, but not limited to:

(i) Procedures for routine access to and exchanges of electronic databases, including, but not limited to, lists of proposed and completed compliance evaluations; systemic and individual investigation files; and conciliation agreements and settlements;

(ii) Consistent analytical approaches to identifying and remedying employment discrimination under Title VII;

(iii) Joint and cross-training programs and materials;

(iv) Joint policy statements; and

(v) Procedures for coordinated collection, sharing and analysis of data.

(b) Contact by each agency at the commencement of and during a field investigation or compliance evaluation where appropriate to obtain information in the possession of the agency on the employer being investigated.

(c) Notification of OFCCP when EEOC has made a finding of cause, determined that attempts to conciliate have been unsuccessful, decided not to file a lawsuit, and learned or believes that the respondent is a federal contractor subject to E.O. 11246.

(d) Consultation with the appropriate field office of OFCCP when an EEOC field office is contemplating recommending a Commissioner Charge or litigation, and coordination of its activities.

(e) Consultation with the appropriate field office of EEOC when an OFCCP Regional Office is contemplating recommending the issuance of an administrative complaint and coordination of its activities.

7. Receipt, Investigation, Processing, and Resolution of Complaints Filed with OFCCP

(a) Dual-Filed Complaints/Charges—Pursuant to this MOU, OFCCP shall act as EEOC's agent for the purposes of receiving the Title VII component of all complaints/charges. All complaints/charges of employment discrimination filed with OFCCP alleging a Title VII basis (race, color, religion, sex, national origin, or retaliation) shall be received as complaints/charges simultaneously dual-filed under Title VII. In determining the timeliness of such complaint/charge, the date the matter is received by OFCCP, acting as EEOC's agent, shall be deemed the date it is received by EEOC. When OFCCP receives such a complaint/charge and determines that the employer is not a federal contractor subject to E.O. 11246, it shall transfer the charge to EEOC within 10 days of that determination and notify the parties. Such notification shall explain that OFCCP, as EEOC's agent, has received the Title VII charge and that the date OFCCP received it will be deemed the date it was received by EEOC.

(b) Systemic or Class Allegations—OFCCP will retain, investigate, process, and resolve allegations of discrimination of a systemic or class nature on a Title VII basis in dual filed complaints/charges. OFCCP will promptly notify EEOC of OFCCP's receipt of such allegations, by forwarding a copy of the complaint/charge (and third party certificate, if any). OFCCP shall make available to EEOC, upon request, information obtained in processing such allegations,

pursuant to paragraphs 1 and 6(b) herein. However, in appropriate cases, the EEOC may request that it be referred such allegations to avoid duplication of effort and to ensure effective law enforcement.

(c) Individual Allegations—OFCCP will refer to EEOC allegations of discrimination of an individual nature on a Title VII basis in dual filed complaints/charges. However, in appropriate cases, OFCCP may request that it retain such allegations so as to avoid duplication and to ensure effective law enforcement.

(d) Investigating, Processing and Resolving Dual-Filed Complaints/Charges—OFCCP will act as EEOC's agent for the purposes of investigating, processing and resolving the Title VII component of dual filed complaints/charges that it retains under this paragraph. OFCCP shall investigate, process and resolve such complaints/charges as set forth in this subparagraph, and in a manner consistent with Title VII principles on liability and relief.

(1) Notice of Receipt of Complaint/Charge—Within ten days of receipt, OFCCP shall notify the contractor/respondent that it has received a complaint/charge of employment discrimination under E.O. 11246 and Title VII. This notification shall include a copy of the complaint/charge, if taken on OFCCP's complaint form, or otherwise state the name of the charging party, respondent, date, place and circumstances of the alleged unlawful employment practice(s).

(2) Fair Employment Practice Agency (FEPA) Deferral Period—Pursuant to work-sharing agreements between EEOC and state and local agencies designated as fair employment practice agencies, the deferral period for dual filed Title VII complaints/charges that OFCCP receives will be waived.

(3) Not Reasonable Cause Findings—If the OFCCP investigation of a dual filed complaint/charge results in a not reasonable cause finding under Title VII, OFCCP will issue a Title VII dismissal and notice of right-to-sue, close the Title VII component of the complaint/charge and promptly notify EEOC's Director, Office of Field Programs, of the closure.

(4) Reasonable Cause Findings—If the OFCCP investigation of a dual filed complaint/charge results in a reasonable cause finding under Title VII, OFCCP will issue a reasonable cause finding under Title VII. OFCCP will attempt conciliation to obtain relief, consistent with EEOC's standards for remedies, for all aggrieved persons covered by the Title VII finding.

(i) Successful Conciliation—Conciliation agreements will state that the complainant/charging party agrees to waive the right to pursue the subject issues further under Title VII. OFCCP will close the Title VII component of the complaint/charge, and promptly notify EEOC.

(ii) Unsuccessful Conciliation—If conciliation is not successful, OFCCP will consider the E.O. 11246 component of the complaint/charge for further processing under its usual procedures. At the conclusion of OFCCP processing, it shall transmit the Title VII charge component to EEOC for any action EEOC deems appropriate. If EEOC declines to pursue further action, it will close the Title VII charge and issue a notice of right-to-sue.

(5) Issuance of Notice of Right-to-Sue Upon Request—Consistent with 29 C.F.R. § 1601.28, once 180 days have passed from the date the complaint/charge was filed, OFCCP shall promptly issue upon request a notice of right-to-sue on the Title VII component of a complaint/charge that it has retained. Issuance of a notice of right-to-sue shall terminate OFCCP processing of the Title VII component of the complaint/charge unless it is determined at that time, or at a later time, that it would effectuate the purposes of Title VII to further process the Title VII component of the complaint/charge.

(6) Subsequent Attempts to File a Charge with EEOC Covering the Same Facts and Issues—If an individual who has already filed an OFCCP complaint/charge that is dual-filed under Title VII subsequently files a Title VII charge with EEOC covering the same facts and issues, EEOC will forward the charge to OFCCP for consolidated processing.

8. Complaints Misfiled with EEOC—When EEOC receives a complaint not within its purview, but over which it believes OFCCP has jurisdiction, it will refer the complaint to OFCCP. In determining the timeliness of such complaint, the date the matter is received by EEOC shall be deemed the date it is received by OFCCP.

9. EEOC and OFCCP shall conduct periodic reviews of the implementation of this agreement, on an ongoing basis.

10. Coordination Advocate—OFCCP and EEOC seek to ensure consistent compliance and enforcement standards and procedures, and to make the most efficient use of their available resources through coordination. Therefore, within sixty (60) days of the effective date of this MOU, the headquarters offices of each agency shall appoint a Coordination Advocate who will be available to assist, as necessary, in obtaining a full understanding of, and compliance with, the procedures set forth in this MOU.

11. Effect of Agreement

This agreement is an internal Government agreement and is not intended to confer any rights against the United States, its agencies, or its officers upon any private person.

Nothing in this agreement shall be interpreted as limiting, superseding or otherwise affecting either party's normal operations or decisions in carrying out its statutory, Executive Order, or regulatory duties. This agreement does not limit or restrict the parties from participating in similar activities or arrangements with other entities.

This agreement does not itself authorize the expenditure or reimbursement of any funds. Nothing in this agreement obligates the parties to expend appropriations or enter into any contract or other obligations.

12. Effective Date. This MOU will take effect once signed by both parties.

13. Signatures

Dated: 11/7/2011.

/s/

Patricia A. Shiu,
*Director, Office of Federal Contract Compliance Programs.*

Dated: 11/7/2011.

/s/

Jacqueline A. Berrien,
*Chair, Equal Employment Opportunity Commission.*

[FR Doc. 2011–29568 Filed 11–15–11; 8:45 am]

**BILLING CODE 6570–01–P**

## FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

### Notice of Renewal of FASAB Charter

**AGENCY:** Federal Accounting Standards Advisory Board.

**ACTION:** Notice.

*Board Action:* Pursuant to 31 U.S.C. 3511(d), the Federal Advisory Committee Act (Pub. L. 92–463), as amended, and the FASAB Rules of Procedure, as amended in October 2010, notice is hereby given that under the authority and in furtherance of the objectives of 31 U.S.C. 3511(d), the Secretary of the Treasury, the Director of OMB, and the Comptroller General (the Sponsors) have established and agreed to continue an advisory committee to consider and recommend accounting standards and principles for the federal government.

*For Further Information, or to Obtain a Copy of the Charter, Contact:* Ms. Wendy M. Payne, Executive Director,

441 G St. NW., Mail Stop 6K17V, Washington, DC 20548, or call (202) 512–7350.

**Authority:** Federal Advisory Committee Act, Pub. L. 92–463.

Dated: November 10, 2011.

**Charles Jackson,**

*Federal Register Liaison Officer.*

[FR Doc. 2011–29636 Filed 11–15–11; 8:45 am]

BILLING CODE 1610–02–P

## FEDERAL COMMUNICATIONS COMMISSION

### Federal Advisory Committee Act; Technological Advisory Council

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of public meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the Federal Communications Commission's (FCC) Technological Advisory Council will hold a meeting on Tuesday, December 20, 2011 in the Commission Meeting Room, from 1 p.m. to 4 p.m. at the Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.

**DATES:** December 20, 2011.

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

**FOR FURTHER INFORMATION CONTACT:** Walter Johnston, Chief, Electromagnetic Compatibility Division, (202) 418–0807; *Walter.Johnston@FCC.gov.*

**SUPPLEMENTARY INFORMATION:** Technical Advisory Council members have been prioritizing and further developing technology issues discussed at the initial meeting on November 4, 2010. This meeting will report on recommendations in progress and discuss potential agendas for the coming year. The FCC will attempt to accommodate as many people as possible. However, admittance will be limited to seating availability. Meetings are also broadcast live with open captioning over the internet from the FCC Live Web page at *http://www.fcc.gov/live/*. The public may submit written comments before the meeting to: Walter Johnston, the FCC's Designated Federal Officer for Technological Advisory Council by email: *Walter.Johnston@fcc.gov* or U.S. Postal Service Mail (Walter Johnston, Federal Communications Commission, Room 2–A665, 445 12th Street SW., Washington, D C 20554). Open captioning will be provided for this event. Other reasonable accommodations for people with disabilities are available upon request. Requests for such accommodations should be submitted via email to *fcc504@fcc.gov* or by calling the Office of Engineering and Technology at (202) 418–2470 (voice), (202) 418–1944 (fax). Such requests should include a detailed description of the accommodation needed. In addition, please include your contact information. Please allow at least five days advance notice; last minute requests will be accepted, but may be impossible to fill.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 2011–29508 Filed 11–15–11; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL DEPOSIT INSURANCE CORPORATION

### FDIC Advisory Committee on Economic Inclusion (ComE–IN); Notice of Meeting

**AGENCY:** Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Notice of Open Meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, notice is hereby given of a meeting of the FDIC Advisory Committee on Economic Inclusion, which will be held in Washington, DC. The Advisory Committee will provide advice and recommendations on initiatives to expand access to banking services by underserved populations.

**DATES:** Thursday, December 1, 2011, from 8:45 a.m. to 3:45 p.m.

**ADDRESSES:** The meeting will be held in the FDIC Board Room on the sixth floor of the FDIC Building located at 550 17th Street NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Committee Management Officer of the FDIC, at (202) 898–7043.

**SUPPLEMENTARY INFORMATION:**

*Agenda:* The agenda will be focused on evolving trends in financial services for the underserved, including the role of mobile financial services technology in economic inclusion and the consumer protection issues posed by prepaid cards. The agenda may be subject to change. Any changes to the agenda will be announced at the beginning of the meeting.

*Type of Meeting:* The meeting will be open to the public, limited only by the space available on a first-come, first-served basis. For security reasons, members of the public will be subject to security screening procedures and must present a valid photo identification to enter the building. The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call (703) 562–6067 (Voice or TTY) at least two days before the meeting to make necessary arrangements. Written statements may be filed with the committee before or after the meeting. This ComE–IN meeting will be Webcast live via the Internet at: *http://www.vodium.com/goto/fdic/advisorycommittee.asp*. This service is free and available to anyone with the following systems requirements: *http://www.vodium.com/home/sysreq.html*. Adobe Flash Player is required to view these presentations. The latest version of Adobe Flash Player can be downloaded at *http://www.adobe.com/shockwave/download/download.cgi?P1_Prod_Version=ShockwaveFlash*. Installation questions or troubleshooting help can be found at the same link.

For optimal viewing, a high speed internet connection is recommended. The ComE–IN meeting videos are made available on-demand approximately two weeks after the event.

Dated: November 10, 2011.

**Robert E. Feldman,**

*Executive Secretary, Federal Deposit Insurance Corporation.*

[FR Doc. 2011–29530 Filed 11–15–11; 8:45 am]

BILLING CODE 6714–01–P

## FEDERAL ELECTION COMMISSION

### Sunshine Act Notice

**AGENCY:** Federal Election Commission.

**FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT:** 76 FR 70132 (November 10, 2011)

**DATE AND TIME:** *Tuesday, November 15, 2011, at 10 a.m.*

**PLACE:** 999 E Street NW., Washington, DC (Ninth Floor).

**STATUS:** Meeting Will Be Closed to the Public.

**CHANGES IN THE MEETING:** The Commission is also expected to discuss:

Investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records.

Information the premature disclosure of which would be likely to have a considerable adverse effect on the

implementation of a proposed Commission action.

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**PERSON TO CONTACT FOR INFORMATION:** Judith Ingram, Press Officer, Telephone: (202) 694–1220.

**Shawn Woodhead Werth,**

*Secretary and Clerk of the Commission.*

[FR Doc. 2011–29781 Filed 11–14–11; 4:15 pm]

**BILLING CODE 6715–01–P**

## FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

**[Docket No. AS11–30]**

### Appraisal Subcommittee; Notice of Special Meeting

**AGENCY:** Appraisal Subcommittee of the Federal Financial Institutions Examination Council

**ACTION:** Notice of Special Meeting.

*Description:* In accordance with Section 1104(b) of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended, and in accordance with ASC Rules of Operation, Section 307(b), notice is hereby given that the Appraisal Subcommittee (ASC) will meet in open session for a special meeting:

*Location:* ASC—1401 H Street NW., Suite 760, Washington, DC 20005, and via conference call.

*Date:* November 17, 2011.

*Time:* 10 a.m.

*Status:* Open.

**Matters to be Considered**

*Discussion Agenda:*

Appraisal Complaint National Hotline.

**How To Attend and Observe an ASC Meeting**

Email your name, organization and contact information to *meetings@asc.gov.* You may also send a written request via U.S. Mail, fax or commercial carrier to the Executive Director of the ASC, 1401 H Street NW., Ste 760, Washington, DC 20005. The fax number is (202) 289–4101. Your request must be received no later than 4:30 p.m., ET, on the Wednesday prior to the meeting. Attendees must have a valid government-issued photo ID and must agree to submit to reasonable security measures. The meeting space is intended to accommodate public attendees. However, if the space will not accommodate all requests, the ASC may refuse attendance on that reasonable basis. The use of any video or audio tape recording device, photographing device, or any other electronic or mechanical device designed for similar purposes is prohibited at ASC meetings.

Dated: November 10, 2011.

**James R. Park,**

*Executive Director.*

[FR Doc. 2011–29584 Filed 11–15–11; 8:45 am]

**BILLING CODE 6700–01–P**

## FEDERAL MARITIME COMMISSION

### Ocean Transportation Intermediary License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for a license as a Non-Vessel-Operating Common Carrier (NVO) and/or Ocean Freight Forwarder (OFF)—Ocean Transportation Intermediary (OTI) pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. Chapter 409 and 46 CFR part 515). Notice is also hereby given of the filing of applications to amend an existing OTI license or the Qualifying Individual (QI) for a license.

Interested persons may contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573, by telephone at (202) 523–5843 or by email at *OTI@fmc.gov.*

AAB Global Logistics, LLC (NVO & OFF), 201 E. Dundee Road, #2, Palatine, IL 60074. Officers: Alexander Gibson, Managing Partner (Qualifying Individual), Robert E. Cleary, Manager. Application Type: Name Change.

Abco International Freight (USA) Inc. dba Abco Logistics (NVO), 9420 Telstar Avenue, #203, El Monte, CA 91731. Officers: Shermin Kong, Treasurer (Qualifying Individual), Donald J. Lucky, President. Application Type: QI Change.

Argosy Shipping (USA), LLC (OFF), 4747 Bellaire Blvd., Suite 275, Bellaire, TX 77401. Officer: Charles R. Griswold, President/Manager (Qualifying Individual). Application Type: Business Structure Change.

DW Logistics Solutions, Inc. (NVO & OFF) 133–33 Brookville Blvd., #101 Rosedale, NY 11422 Officer: Hong Guo, President/Director/Secretary/Treasurer (Qualifying Individual) Application Type: New NVO & OFF License.

Epona Logistics, LLC (OFF), 40276 Iron Liege Ct., Leesburg, VA 20176. Officer: Jean-Philippe P. Graff, Member (Qualifying Individual). Application Type: New OFF License.

Kim Line Inc. (NVO & OFF), 316 Westgate Drive, Edison, NJ 08820. Officers: Heena Latif, President/Director (Qualifying Individual), Nath Yerramilly, Secretary/Treasurer. Application Type: New NVO & OFF License.

Phison International, Inc. (NVO), 1550 E. Higgins Road, #115, Elk Grove Village, IL 60007. Officers: Soo T. Hur, President/Treasurer (Qualifying Individual), Hye N. Kim, Secretary. Application Type: New NVO Service.

Raymond Rodriguez dba RAR Logistics Company (NVO & OFF), 1653 253rd Street, Harbor City, CA 90710. Officer: Raymond Rodriguez, Sole Proprietor (Qualifying Individual). Application Type: New NVO & OFF License.

Transco International Logistics LLC (OFF), 138–04 175th Street, Jamaica, NY 11434. Officer: Demba S. Ba, Owner/Member Manager (Qualifying Individual). Application Type: Name Change.

Versant Supply Chain, Inc. (NVO & OFF), 4105 S. Mendenhall, Memphis, TN 38115. Officers: Kim Verna, Executive Vice President of Air & Ocean (Qualifying Individual), Jeff Bullard, CEO. Application Type: Name Change.

Dated: November 10, 2011.

**Karen V. Gregory,**

*Secretary.*

[FR Doc. 2011–29657 Filed 11–15–11; 8:45 am]

**BILLING CODE 6730–01–P**

## FEDERAL MARITIME COMMISSION

### Ocean Transportation Intermediary License Reissuance

Notice is hereby given that the following Ocean Transportation Intermediary license has been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. Chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

| License No. | Name/address | Date reissued |
|---|---|---|
| 020832F | Orca Int'l Freight Forwarders Inc., 6993 NW 50th Street, Miami, FL 33166 | September 14, 2011. |

**Sandra L. Kusumoto,**

*Director, Bureau of Certification and Licensing.*

[FR Doc. 2011–29659 Filed 11–15–11; 8:45 am]

**BILLING CODE 6730–01–P**

## FEDERAL MARITIME COMMISSION

### Ocean Transportation Intermediary License; Rescission of Order of Revocation

Notice is hereby given that the Order revoking the following license is being rescinded by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. Chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

*License Number:* 021325N.

*Name:* Yaseen Trading and Investment, Inc. dba Yaseen Shipping.

*Address:* 2547 South Main Street, Santa Ana, CA 92707.

*Order Published:* FR: 10/31/11 (Volume 76, No. 210, Pg. 67190).

**Sandra L. Kusumoto,**

*Director, Bureau of Certification and Licensing.*

[FR Doc. 2011–29658 Filed 11–15–11; 8:45 am]

**BILLING CODE 6730–01–P**

## FEDERAL MARITIME COMMISSION

### Ocean Transportation Intermediary License Revocation

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. Chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515, effective on the corresponding date shown below:

*License Number:* 004220N.

*Name:* Best Container Express, Inc.

*Address:* 17238 S. Main Street, Gardena, CA 90248.

*Date Revoked:* October 19, 2011.

*Reason:* Failed to maintain a valid bond.

*License Number:* 4346F.

*Name:* Reefco Logistics, Inc. dba Reefco Transport dba Foodcareplus.

*Address:* 314–021 W. Millbrook Road, Raleigh, NC 27609.

*Date Revoked:* October 24, 2011.

*Reason:* Voluntarily surrendered license.

*License Number:* 009681NF.

*Name:* Transcontinental Maritime Ltd.

*Address:* 2500 W. Higgins Road, Suite 140–150, Hoffman Estates, IL 60169.

*Date Revoked:* October 20, 2011.

*Reason:* Voluntarily surrendered license.

*License Number:* 012918N.

*Name:* Freight Options Unlimited.

*Address:* 14247 East Don Julian Road, City of Industry, CA 91746.

*Date Revoked:* October 21, 2011.

*Reason:* Failed to maintain a valid bond.

*License Number:* 019085F.

*Name:* Hanjin Logistics, Inc.

*Address:* 80 East Route 4, Suite 490, Paramus, NJ 07652.

*Date Revoked:* October 16, 2011.

*Reason:* Failed to maintain a valid bond.

*License Number:* 019779N.

*Name:* Francisca Envios Inc.

*Address:* 1749 NW 21 Terrace, Miami, FL 33142.

*Date Revoked:* October 19, 2011.

*Reason:* Failed to maintain a valid bond.

*License Number:* 019835N.

*Name:* AM Worldwide, Inc.

*Address:* 2928 B Greens Road, Suite 450, Houston, TX 77032.

*Date Revoked:* October 16, 2011.

*Reason:* Failed to maintain a valid bond.

*License Number:* 020675N.

*Name:* Service Galopando Corp.

Address: 3190 South State Road 7, Bay 5, Miramar, FL 33023.

*Date Revoked:* October 21, 2011.

*Reason:* Failed to maintain a valid bond.

*License Number:* 020786N.

*Name:* Corafisa Lines Inc.

*Address:* 2710 Tanya Terrace, Jacksonville, FL 32223.

*Date Revoked:* October 15, 2011.

*Reason:* Failed to maintain a valid bond.

*License Number:* 021774NF.

*Name:* Champion Cargo Corporation dba Easyglide Corporation dba Wealthline Freight Forwarders.

*Address:* 3529 NW 82nd Avenue, Doral, FL 33122.

*Date Revoked:* October 21, 2011.

*Reason:* Failed to maintain valid bonds.

*License Number:* 022742F.

*Name:* Continental Logistic, LLC dba Sur Logistics.

*Address:* 1322 E. Pacific Coast Highway, Suite B, Wilmington, CA 90744.

*Date Revoked:* October 20, 2011.

*Reason:* Failed to maintain a valid bond.

**Sandra L. Kusumoto,**

*Director, Bureau of Certification and Licensing.*

[FR Doc. 2011–29660 Filed 11–15–11; 8:45 am]

**BILLING CODE 6730–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

**[Document Identifier: OS–0990–new; 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 collection 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) 690–5683. Send written comments and recommendations for the proposed information collections within 30 days of this notice directly to the OS OMB Desk Officer; faxed to OMB at (202) 395–5806.

*Proposed Project:* The Hospital Preparedness Program— Generic HPP and Future Collection Activities—New—OMB No. 0990—OS—Assistant Secretary for Preparedness and Response (ASPR).

*Abstract:* The Program Evaluation Section (PES), part of the Department of Health and Human Services (HHS), Assistant Secretary for Preparedness and Response (ASPR), Office of

Preparedness and Emergency Operations (OPEO), Division of Preparedness Planning (DPP), in conjunction with the Hospital Preparedness Program (HPP) in the Division of National Healthcare Preparedness Programs, is seeking clearance by the Office of Management of Budget (OMB) for a Generic Data Collection Form to serve as the cornerstone of its effort to assess awardee performance under the HPP Cooperative Agreement (CA) Program. Performance data are gathered from awardees as part of their Mid-Year and End-of-Year Progress Reports and other similar information collections (ICs) which have the same general purpose (Healthcare Coalitions, Capabilities and Budget Information), account for awardee spending and performance on all activities conducted in pursuit of achieving the HPP Grant goals.

Additionally, to reduce administrative burden on awardees, there is a need to develop reporting forms and templates that allow awardees and ASPR to more easily capture the data and other information already provided in the grant application at other times during the yearly grant cycle, and onsite visits by project and field officers (*e.g.* pre-populating some elements of the mid-year and end- of-year reporting). Such reporting will systematically capture relevant information in a format that allows for easy access and use within a number of related grant business processes, including Grants management, Program and project management, and performance metrics and evaluation. A standardized program-specific application addendum will facilitate such data retrieval and decrease overall government administration costs.

This data collection effort is crucial to HPP's decision-making process regarding the continued existence, design and funding levels of this program. Results from these data analyses enable HPP to monitor healthcare emergency preparedness and progress towards national preparedness goals.

*Estimated Annualized Burden Table*

ESTIMATED ANNUAL BURDEN HOURS FOR THE GENERIC HPP AND FUTURE COLLECTION ACTIVITIES

| Data collection activity | Number of respondents | Number of responses | Response time (hours) | Total annual burden hours (for all awardees) |
|---|---|---|---|---|
| Generic and Future Program Data Information Collection(s) | 62 | 1 | 58 | 3,596 |
| Total | | | | 3,596 |

**Keith A. Tucker,**

*Paperwork Reduction Act Reports Clearance Officer, Office of the Secretary.*

[FR Doc. 2011–29585 Filed 11–15–11; 8:45 am]

**BILLING CODE 4150–05–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

**[Document Identifier OS–0990–0331; 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 collection 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) 690–5683. Send written comments and recommendations for the proposed information collections within 30 days of this notice directly to the OS OMB Desk Officer; faxed to OMB at (202) 395–5806.

*Proposed Project:* Evaluation of the Marriage and Family Strengthening Grants for Incarcerated and Reentering Fathers and their Partners—OMB No. 0990–0331 Revision— Assistant Secretary for Planning and Evaluation (ASPE).

*Abstract:* The Office of the Assistant Secretary for Planning and Evaluation (ASPE) is conducting an evaluation of a demonstration program called Marriage and Family Strengthening Grants for Incarcerated and Re-entering Fathers and their Partners (MFS–IP). This demonstration program, funded in 2006 by the Office of Family Assistance within the Administration for Children and Families (ACF), supports marriage strengthening and responsible fatherhood activities among incarcerated and recently released fathers, their partners, and children. The MFS–IP evaluation will assess the effects of these activities by comparing relationship quality and stability, positive family interactions, family financial well-being, recidivism, and community connectedness between intervention and control groups. Information from the evaluation will assist federal, state, and community policymakers and patrons in deciding whether to replicate or redesign identified marriage and family strengthening program models.

Primary data for the evaluation will come from three waves of in-person data collection collected from incarcerated and released fathers and their partners. Data will be collected through a baseline survey and follow-up surveys at approximately 9 and 18 months post-baseline in five sites. A fourth wave of data collection at approximately 34 months, will be collected in two of the five sites. Data collection for the entire evaluation is expected to last 6 years, from the time the first participant is enrolled until the last 34-month follow-up survey is administered. This three year renewal request covers data collection to complete the 9 month and 18 month follow-up surveys and for all of the 34 month follow-up surveys.

ESTIMATED ANNUALIZED BURDEN TABLE

| Forms | Type of respondent | Number of respondents | Number of responses per respondent | Average burden (in hours) per response | Annual burden |
|---|---|---|---|---|---|
| MFS–IP Follow-up Survey—Fathers (9 & 18 month) | Individuals | 321 | 1 | 1.5 | 481.5 |
| MFS–IP Follow-up Survey—Partners (9 & 18 month) | individuals | 489 | 1 | 1.5 | 733.5 |
| MFS–IP Follow-up Survey—Fathers (34 month) | Individuals | 463 | 1 | 1.5 | 694.5 |
| MFS–IP Follow-up Survey—Partners (34 month) | Individuals | 463 | 1 | 1.5 | 694.5 |
| Totals | | | | | 2604 |

**Keith A. Tucker,**

*Paperwork Reduction Act Reports Clearance Officer, Office of the Secretary.*

[FR Doc. 2011–29563 Filed 11–15–11; 8:45 am]

**BILLING CODE 4150–05–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

**[Document Identifier OS–0990–0263]**

### Agency Information Collection Request; 60-Day Public Comment Request

**AGENCY:** Office of the Secretary.

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:* Protection of Human Subjects: Assurance Identification/IRB Certification/ Declaration of Exemption Form—Extension—OMB No. 0990–0263—Office for Human Research Protections.

*Abstract:* The Federal Policy for the Protection of Human Subjects, known as the Common Rule, requires that before engaging in non-exempt human subjects research that is conducted or supported by a Common Rule department or agency, each institution must: (1) Hold an applicable assurance of compliance [Section 103(a)]; and (2) certify to the awarding department or agency that the application or proposal for research has been reviewed and approved by an IRB designated in the assurance [Sections 103(b) and (f)]. The Office for Human Research Protections is requesting a three-year extension of the Protection of Human Subjects: Assurance Identification/IRB Certification/ Declaration of Exemption Form. That form is designed to promote uniformity among departments and agencies, and to help ensure common means of ascertaining institutional review board certifications and other reporting requirements relating to the protection of human subjects in research. Respondents are institutions engaged in research involving human subjects where the research is supported by HHS. Institutional use of the form is also relied upon by other federal departments and agencies that have codified or follow the Federal Policy for the Protection of Human Subjects (Common Rule). There are an estimated total of 25,000 human research studies supported each year, an average of 2 certifications per institutions and an estimated one-half hour per certification, for a total burden of 12,000 hours. Data is collected as needed.

ESTIMATED ANNUALIZED BURDEN IN HOURS

| Form name | Number of respondents | Number of responses per respondent | Hours per response | Response burden hours |
|---|---|---|---|---|
| Protection of Human Subjects: Assurance Identification/IRB Certification/ Declaration of Exemption | 12,000 | 2 | 0.5 | 12,000 |

**Keith A. Tucker,**

*Paperwork Reduction Act Reports Clearance Officer, Office of the Secretary.*

[FR Doc. 2011–29562 Filed 11–15–11; 8:45 am]

**BILLING CODE 4150–36–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Proposed National Toxicology Program (NTP) Review Process for the Report on Carcinogens: Request for Public Comment and Listening Session: Amended Notice

**AGENCY:** Division of the National Toxicology Program (DNTP), National Institute of Environmental Health Sciences (NIEHS); National Institutes of Health (NIH).

**ACTION:** Extension of time for the public listing session and increase in the number of oral presenters.

**SUMMARY:** The NTP announces that the public listening session on the proposed review process for the Report on

Carcinogens on November 29, 2011, has been extended from 1–5 p.m. (EST) to 1–7 p.m. (EST). Registration to present oral remarks is increased from the first 15 to the first 23 registrants who wish to speak, with one time slot per organization. However, the total number of connections available for all registrants (including speakers plus observers) remains at 50. Presenters will speak in the order that they are registered. The agenda, including the list of speakers, will be posted on the NTP Web site (*http://ntp.niehs.nih.gov/go/rocprocess*) prior to the November 29, 2011, listening session. Information regarding the listening session was published on October 31, 2011, in the **Federal Register** (76 FR 67200) and is available on the NTP Web site (*http://ntp.niehs.nih.gov/go/rocprocess*). The guidelines and deadlines published in the **Federal Register** notice still apply except as noted above. Any updates or additional information will be posted on the NTP Web site.

**DATES:** The public listening session will be held November 29, 2011, 1–7 p.m. (EST). The deadline for submission of written comments is November 30, 2011, and the deadline to register for the public listening session is November 21, 2011. Registrants will receive information to access the listening session on or before November 22, 2011, and speakers should send oral statements and/or slides by close of business on November 21, 2011.

**ADDRESSES:** Written public comments and materials from speakers for the listening session should be sent to Dr. Ruth Lunn, Director, Office of the Report on Carcinogens, DNTP, NIEHS, P.O. Box 12233, MD K2–14, Research Triangle Park, NC 27709; *telephone:* (919) 316–4637 or email *lunn@niehs.nih.gov.* Courier address: NIEHS, Room 2006, 530 Davis Drive, Morrisville, NC 27560. Registration for the listening session is via the NTP Web site (*http://ntp.niehs.nih.gov/go/rocprocess*). TTY users should contact the Federal TTY Relay Service at (800) 877–8330. Requests must be made at least 5 business days in advance of the listening session.

**FOR FURTHER INFORMATION CONTACT:** Questions or comments should be directed to Dr. Lunn (see **ADDRESSES**).

Dated: November 8, 2011.

**John R. Bucher,**

*Associate Director, National Toxicology Program.*

[FR Doc. 2011–29615 Filed 11–15–11; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare and Medicaid Services

**[Document Identifier: CMS–10408]**

### Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

**AGENCY:** Center for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's 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.

We are, however, requesting an emergency review of the information collection referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. We are requesting an emergency review because the collection of this information is needed before the expiration of the normal time limits under OMB's regulations at 5 CFR Part 1320.13. This is necessary to ensure compliance with an initiative of the Administration. We cannot reasonably comply with the normal clearance procedures in that public harm is reasonably likely to result if normal clearance procedures are followed as stated in 5 CFR 1320.13(a)(2)(i). CMS' use of the information collection request discussed in this notice is essential in order to comply with the requirements, under the Patient Protection and Affordable Care Act (42 U.S.C. 18002) and implementing regulations at 45 CFR part 149, that the Secretary of HHS develop a mechanism to monitor the appropriate use of funds under the Early Retiree Reinsurance Program.

1. *Type of Information Collection Request:* New collection; *Title of Information Collection:* Early Retiree Reinsurance Program Survey of Plan Sponsors; *Use:* Under the Patient Protection and Affordable Care Act (42 U.S.C. 18002) and implementing regulations at 45 CFR part 149, employment-based plans that offer health coverage to early retirees and their spouses, surviving spouses, and dependents are eligible to receive tax-free reimbursement for a portion of the costs of health benefits provided to such individuals. The statute limits how the reimbursement funds can be used, and requires the Secretary of HHS to develop a mechanism to monitor the appropriate use of such funds. The survey that is the subject of this PRA package, is part of that mechanism. As part of the Secretary's monitoring efforts, the Secretary intends to direct plan sponsors that have received ERRP funds to respond to this survey in order to obtain information about the ERRP program, including how and when plan sponsors have used, or intend to use, ERRP funds. *Form Number:* CMS–10408 (OMB 0938–New); *Frequency:* Yearly; *Affected Public:* Private Sector: Business or other for-profit and not-for-profit institutions; *Number of Respondents:* 2,076; *Total Annual Responses:* 2,076; *Total Annual Hours:* 22,836. (For policy questions regarding this collection contact David Mlawsky at (410) 786–6851. For all other issues call (410) 786–1326.)

CMS is requesting OMB review and approval of this collection by *November 18, 2011,* with a 180-day approval period. Written comments and recommendations will be considered from the public if received by the individuals designated below by November 16, 2011.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web site address at *http://www.cms.gov/PaperworkReductionActof1995/PRAL/list.asp* or Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

Interested persons are invited to send comments regarding the burden or any other aspect of these collections of information requirements. However, as noted above, comments on these information collection and recordkeeping requirements must be

received via one of the following methods by November 16, 2011.

1. *Electronically.* You may submit your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

3. *By Email to OMB.* OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Email: *OIRA_submission@omb.eop.gov.*

Dated: November 10, 2011.

**Martique Jones,**

*Director, Regulations Development Group, Division B, Office of Strategic Operations and Regulatory Affairs.*

[FR Doc. 2011–29629 Filed 11–10–11; 4:15 pm]

**BILLING CODE 4120–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2011–N–0555]**

### Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Extralabel Drug Use in Animals

**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 16, 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 0910–0325. 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.

#### Extralabel Drug Use in Animals—21 CFR 530—(OMB Control Number 0910–0325)—Extension

The Animal Medicinal Drug Use Clarification Act of 1994 allows a veterinarian to prescribe the extralabel use of approved new animal drugs. Also, it permits FDA, if it finds that there is a reasonable probability that the extralabel use of an animal drug may present a risk to the public health, to establish a safe level for a residue from the extralabel use of the drug, and to require the development of an analytical method for the detection of residues above that established safe level. Although to date, we have not established a safe level for a residue from the extralabel use of any new animal drug, and therefore, have not required the development of analytical methodology, we believe that there may be instances when analytical methodology will be required. We are therefore estimating the reporting burden based on two methods being required annually. The requirement to establish an analytical method may be fulfilled by any interested person. We believe that the sponsor of the drug will be willing to develop the method in most cases. Alternatively, FDA, the sponsor, and perhaps a third party may cooperatively arrange for method development. The respondents may be sponsors of new animal drugs, State, or Federal and/or State Agencies, academia, or individuals.

In the **Federal Register** of August 16, 2011 (76 FR 50736), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

| 21 CFR section | No. of respondents | No. of responses per respondent | Total annual responses | Average burden per response | Total hours |
|---|---|---|---|---|---|
| 530.22(b) | 2 | 1 | 2 | 4,160 | 8,320 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: November 8, 2011.

**Leslie Kux,**

*Acting Assistant Commissioner for Policy.*

[FR Doc. 2011–29477 Filed 11–15–11; 8:45 am]

**BILLING CODE 4160–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2011–N–0781]**

### Agency Information Collection Activities; Proposed Collection; Comment Request; Record Retention Requirements for the Soy Protein and Risk of Coronary Heart Disease Health Claim

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the record retention requirements for the soy protein and coronary heart disease health claim.

**DATES:** Submit either electronic or written comments on the collection of information by January 17, 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:** Denver Presley, Jr., Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, (301) 796–3793.

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

**Record Retention Requirements for the Soy Protein and Risk of Coronary Heart Disease Health Claim—21 CFR 101.82(c)(2)(ii)(B) (OMB Control Number 0910–0428)—Extension**

Section 403(r)(3)(A) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343(r)(3)(A)) provides for the use of food label statements characterizing a relationship of any nutrient of the type required to be in the label or labeling of the food to a disease or a health-related condition only where that statement meets the requirements of the regulations promulgated by the Secretary of Health and Human Services to authorize the use of such a health claim. Section 101.82 (21 CFR 101.82) of FDA's regulations authorizes a health claim for food labels about soy protein and the risk of coronary heart disease (CHD). To bear the soy protein and CHD health claim, foods must contain at least 6.25 grams of soy protein per reference amount customarily consumed. Analytical methods for measuring total protein can be used to quantify the amount of soy protein in foods that contain soy as the sole source of protein. However, at the present time there is no validated analytical methodology available to quantify the amount of soy protein in foods that contain other sources of protein. For these latter foods, FDA must rely on information known only to the manufacturer to assess compliance with the requirement that the food contain the qualifying amount of soy protein. Thus, FDA requires manufacturers to have and keep records to substantiate the amount of soy protein in a food that bears the health claim and contains sources of protein other than soy, and to make such records available to appropriate regulatory officials upon written request. The information collected includes nutrient databases or analyses, recipes or formulations, purchase orders for ingredients, or any other information that reasonably substantiates the ratio of soy protein to total protein.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

| 21 CFR section | No. of record-keepers | No. of records per record-keeper | Total annual records | Average burden per recordkeeping | Total hours |
|---|---|---|---|---|---|
| 101.82(c)(2)(ii)(B) | 25 | 1 | 25 | 1 | 25 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Based upon the Agency's experience with the use of health claims, FDA estimates that only about 25 firms would be likely to market products bearing a soy protein/coronary heart disease health claim and that only, perhaps, one of each firm's products might contain non-soy sources of protein along with soy protein. The records required to be retained by § 101.82(c)(2)(ii)(B) are the records, *e.g.,* the formulation or recipe, that a

manufacturer has and maintains as a normal course of its doing business. Thus, the burden to the food manufacturer is limited to assembling and retaining the records, which FDA estimates will take 1 hour annually.

Dated: November 8, 2011.

**Leslie Kux,**

*Acting Assistant Commissioner for Policy.*

[FR Doc. 2011–29478 Filed 11–15–11; 8:45 am]

**BILLING CODE 4160–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2011–N–0425]**

### Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Infant Formula Recall Regulations

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Infant Formula Recall Regulations'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

**FOR FURTHER INFORMATION CONTACT:** Denver Presley, Jr., Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, (301) 796–3793.

**SUPPLEMENTARY INFORMATION:** On August 30, 2011, the Agency submitted a proposed collection of information entitled ''Infant Formula Recall Regulations'' to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0188. The approval expires on October 31, 2014. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain.*

Dated: November 8, 2011.

**Leslie Kux,**

*Acting Assistant Commissioner for Policy.*

[FR Doc. 2011–29479 Filed 11–15–11; 8:45 am]

**BILLING CODE 4160–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2011–N–0402]**

### Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; State Petitions for Exemption for Preemption

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''State Petitions for Exemption for Preemption'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

**FOR FURTHER INFORMATION CONTACT:** Denver Presley, Jr., Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, (301) 796–3793.

**SUPPLEMENTARY INFORMATION:** On August 29, 2011, the Agency submitted a proposed collection of information entitled ''State Petitions for Exemption for Preemption'' to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0277. The approval expires on October 31, 2014. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain.*

Dated: November 8, 2011.

**Leslie Kux,**

*Acting Assistant Commissioner for Policy.*

[FR Doc. 2011–29511 Filed 11–15–11; 8:45 am]

**BILLING CODE 4160–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2011–N–0793]**

### Agency Information Collection Activities; Proposed Collection; Comment Request; Medical Device Recall Authority

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection requirements for medical device recall authority.

**DATES:** Submit either electronic or written comments on the collection of information by January 17, 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, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance

of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

**Medical Device Recall Authority—21 CFR Part 810 (OMB Control Number 0910–0432)—Extension**

This collection of information implements section 518(e) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 360h(e)) and part 810 (21 CFR part 810), medical device recall authority provisions. Section 518(e) of the FD&C Act provides FDA with the authority to issue an order requiring an appropriate person, including manufacturers, importers, distributors, and retailers of a device, if FDA finds that there is reasonable probability that the device intended for human use would cause serious adverse health consequences or death, to: (1) Immediately cease distribution of such device, (2) immediately notify health professionals and device-user facilities of the order, and (3) instruct such professionals and facilities to cease use of such device.

Further, the provisions under section 518(e) of the FD&C Act set out the following three-step procedure for issuance of a mandatory device recall order:

1. If there is a reasonable probability that a device intended for human use would cause serious, adverse health consequences or death, FDA may issue a cease distribution and notification order requiring the appropriate person to immediately:

- Cease distribution of the device,
- Notify health professionals and device user facilities of the order, and
- Instruct those professionals and facilities to cease use of the device;

2. FDA will provide the person named in the cease distribution and notification order with the opportunity for an informal hearing on whether the order should be modified, vacated, or amended to require a mandatory recall of the device; and

3. After providing the opportunity for an informal hearing, FDA may issue a mandatory recall order if the Agency determines that such an order is necessary.

The information collected under the recall authority provisions will be used by FDA to do the following: (1) Ensure that all devices entering the market are safe and effective, (2) accurately and immediately detect serious problems with medical devices, and (3) remove dangerous and defective devices from the market.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

| 21 CFR Section | Number of respondents | No. of responses per respondent | Total annual responses | Average burden per response | Total hours |
|---|---|---|---|---|---|
| 810.10(d) | 2 | 1 | 2 | 8 | 16 |
| 810.11(a) | 1 | 1 | 1 | 8 | 8 |
| 810.12(a) and (b) | 1 | 1 | 1 | 8 | 8 |
| 810.14 | 2 | 1 | 2 | 16 | 32 |
| 810.15(a), (b), and (c) | 2 | 1 | 2 | 12 | 24 |
| 810.15(d) | 2 | 1 | 2 | 4 | 8 |
| 810.15(e) | 10 | 1 | 10 | 1 | 10 |
| 810.16(a) and (b) | 2 | 12 | 24 | 40 | 960 |
| 810.17(a) | 2 | 1 | 2 | 8 | 16 |
| Total | | | | | 1,082 |

[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 | No. of record-keepers | No. of records per recordkeeper | Total annual records | Average burden per record-keeping | Total hours |
|---|---|---|---|---|---|
| 810.15(b) | 2 | 1 | 1 | 8 | 8 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

**Explanation for Burden Estimates**

The burden estimates for tables 1 and 2 of this document are based on FDA's experience with voluntary recalls under part 810 of the regulations. FDA expects no more than two mandatory recalls per year, as most recalls are done voluntarily. Since the last time this collection of information was submitted to OMB for renewal/approval, there has been one mandatory recall.

Dated: November 9, 2011.

**Leslie Kux,**

*Acting Assistant Commissioner for Policy.*

[FR Doc. 2011–29512 Filed 11–15–11; 8:45 am]

BILLING CODE 4160–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2011–N–0377]**

### Scott S. Reuben: Debarment Order

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is issuing an

order under the Federal Food, Drug, and Cosmetic Act permanently debarring Scott S. Reuben, M.D. from providing services in any capacity to a person that has an approved or pending drug product application. FDA bases this order on a finding that Dr. Reuben was convicted of a felony under Federal law for conduct relating to the regulation of a drug product under the Federal Food, Drug, and Cosmetic Act. Dr. Reuben was given notice of the proposed permanent debarment and an opportunity to request a hearing within the timeframe prescribed by regulation. Dr. Reuben failed to respond. Dr. Reuben's failure to respond constitutes a waiver of his right to a hearing concerning this action.

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

**ADDRESSES:** Submit applications for special termination of debarment to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Kenny Shade, Division of Compliance Policy (HFC–230), Office of Enforcement, Office of Regulatory Affairs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, (301) 796–4640.

**SUPPLEMENTARY INFORMATION:**

## I. Background

Section 306(a)(2)(B) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 335a(a)(2)(B)) requires debarment of an individual if FDA finds that the individual has been convicted of a felony under Federal law for conduct relating to the regulation of any drug product under the Federal Food, Drug, and Cosmetic Act.

On June 24, 2010, the U.S. District Court for the District of Massachusetts entered judgment against Dr. Reuben for health care fraud in violation of 18 U.S.C. 1347.

The FDA's finding that debarment is appropriate is based on the felony conviction referenced herein for conduct relating to the regulation of a drug product. The factual basis for this conviction is as follows: Dr. Reuben was a physician licensed by the State of Massachusetts working as an anesthesiologist providing anesthesia services to patients in connection with surgeries, and also treating patients post-surgery in the District of Massachusetts. Dr. Reuben served as the chief of acute pain at a hospital in Western Massachusetts and maintained an office at the hospital for the purpose of conducting research. Dr. Reuben's interest, from a research perspective, was in post-operative multimodal analgesia therapy. Dr. Reuben made proposals for research funding to pharmaceutical companies that manufactured drugs that he used or proposed to use in multimodal analgesia therapy. Dr. Reuben represented to the companies that, as the principal investigator, he would be performing clinical studies with actual patients to whom he would administer the drug that was the subject of the research grant.

Dr. Reuben entered into contracts to perform research studies funded by the companies from at least as early as 1999. Dr. Reuben purported to perform the research called for by the contracts, and published articles in various medical journals based on the purported results of the research, when in fact those studies had not been performed, and therefore the research results reported in the medical journals were false.

As a result of his convictions, on August 22, 2011, FDA sent Dr. Reuben a notice by certified mail proposing to permanently debar him from providing services in any capacity to a person that has an approved or pending drug product application. The proposal was based on a finding, under section 306(a)(2)(B) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 335a(a)(2)(B)), that Dr. Reuben was convicted of a felony under Federal law for conduct relating to the regulation of a drug product under the Federal Food, Drug, and Cosmetic Act. This conclusion was based on the fact that FDA regulates clinical trials related to drug products such as those described previously as part of the Agency's regulation of drug products. The proposal also offered Dr. Reuben an opportunity to request a hearing, providing him 30 days from the date of receipt of the letter in which to file the request, and advised him that failure to request a hearing constituted a waiver of the opportunity for a hearing and of any contentions concerning this action. The proposal was received on August 26, 2011. Dr. Reuben failed to respond within the timeframe prescribed by regulation and has, therefore, waived his opportunity for a hearing and has waived any contentions concerning his debarment (21 CFR part 12).

## II. Findings and Order

Therefore, the Director, Office of Enforcement, Office of Regulatory Affairs, under section 306(a)(2)(B) of the (21 U.S.C. 335a(a)(2)(B)) of the Federal Food, Drug, and Cosmetic Act, under authority delegated to the Director (Staff Manual Guide 1410.35), finds that Scott S. Reuben has been convicted of a felony under Federal law for conduct relating to the regulation of a drug product under the Federal Food, Drug, and Cosmetic Act.

As a result of the foregoing finding, Dr. Reuben is permanently debarred from providing services in any capacity to a person with an approved or pending drug product application under sections 505, 512, or 802 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355, 360b, or 382), or under section 351 of the Public Health Service (42 U.S.C. 262), effective (see **DATES**) (see section 306(c)(1)(B), (c)(2)(A)(ii), and 201(dd) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 335a(c)(1)(B), (c)(2)(A)(ii), and 321(dd))). Any person with an approved or pending drug product application who knowingly employs or retains as a consultant or contractor, or otherwise uses the services of Dr. Reuben, in any capacity during Dr. Reuben's debarment, will be subject to civil money penalties (section 307(a)(6) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 335b(a)(6))). If Dr. Reuben provides services in any capacity to a person with an approved or pending drug product application during his period of debarment he will be subject to civil money penalties (section 307(a)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 335b(a)(7)). In addition, FDA will not accept or review any abbreviated new drug applications submitted by or with the assistance of Dr. Reuben during his period of debarment (section 306(c)(1)(A) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 335a(c)(1)(A))).

Any application by Dr. Reuben for special termination of debarment under section 306(d)(4) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 335a(d)(4)) should be identified with Docket No. FDA–2011–N–0377 and sent to the Division of Dockets Management (see **ADDRESSES**). All such submissions are to be filed in four copies. The public availability of information in these submissions is governed by 21 CFR 10.20(j).

Publicly available submissions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 7, 2011.

**Armando Zamora,**

*Acting Director, Office of Enforcement, Office of Regulatory Affairs.*

[FR Doc. 2011–29538 Filed 11–15–11; 8:45 am]

BILLING CODE 4160–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2011–P–0416]**

### Determination That TRAVATAN (Travoprost Ophthalmic Solution), 0.004%, Was Not Withdrawn From Sale for Reasons of Safety or Effectiveness

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) has determined that TRAVATAN (travoprost ophthalmic solution), 0.004%, was not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDAs) for travoprost ophthalmic solution, 0.004%, if all other legal and regulatory requirements are met.

**FOR FURTHER INFORMATION CONTACT:** Olivia J.E. Morris, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6260, Silver Spring, MD 20993–0002, (301) 796–3601.

**SUPPLEMENTARY INFORMATION:** In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products under an ANDA procedure. ANDA applicants must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the ''listed drug,'' which is a version of the drug that was previously approved. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA). The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is known generally as the ''Orange Book.'' Under FDA regulations, drugs are removed from the list if the Agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

A person may petition the Agency to determine, or the Agency may determine on its own initiative, whether a listed drug was withdrawn from sale for reasons of safety or effectiveness. This determination may be made at any time after the drug has been withdrawn from sale, but must be made prior to approving an ANDA that refers to the listed drug (§ 314.161 (21 CFR 314.161)). FDA may not approve an ANDA that does not refer to a listed drug.

TRAVATAN (travoprost ophthalmic solution), 0.004%, is the subject of NDA 21–257, held by Alcon Pharmaceuticals, Ltd., and initially approved on March 16, 2001. TRAVATAN is indicated for the reduction of elevated intraocular pressure in patients with open angle glaucoma or ocular hypertension.

TRAVATAN (travoprost ophthalmic solution), 0.004%, is currently listed in the ''Discontinued Drug Product List'' section of the Orange Book.

Lachman Consultant Services, Inc. submitted a citizen petition dated May 25, 2011 (Docket No. FDA–2011–P–0416), under 21 CFR 10.30, requesting that the Agency determine whether TRAVATAN (travoprost ophthalmic solution), 0.004%, was voluntarily withdrawn or withheld from sale for reasons of safety or effectiveness.

After considering the citizen petition and reviewing Agency records, and based on the information we have at this time, FDA has determined under § 314.161 that TRAVATAN (travoprost ophthalmic solution), 0.004%, was not withdrawn for reasons of safety or effectiveness. The petitioner has identified no data or other information suggesting that TRAVATAN (travoprost ophthalmic solution), 0.004%, was withdrawn for reasons of safety or effectiveness. We have carefully reviewed our files for records concerning the withdrawal of TRAVATAN (travoprost ophthalmic solution), 0.004%, from sale. We have also independently evaluated relevant literature and data for possible postmarketing adverse events. We have found no information that would indicate that this product was withdrawn from sale for reasons of safety or effectiveness.

Accordingly, the Agency will continue to list TRAVATAN (travoprost ophthalmic solution), 0.004%, in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDAs that refer to TRAVATAN (travoprost ophthalmic solution), 0.004%, may be approved by the Agency as long as they meet all other legal and regulatory requirements for the approval of ANDAs. If FDA determines that labeling for this drug product should be revised to meet current standards, the Agency will advise ANDA applicants to submit such labeling.

Dated: November 9, 2011.

**Leslie Kux,**

*Acting Assistant Commissioner for Policy.*

[FR Doc. 2011–29484 Filed 11–15–11; 8:45 am]

**BILLING CODE 4160–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2011–D–0720]**

### International Conference on Harmonisation; E2B(R3) Electronic Transmission of Individual Case Safety Reports; Draft Guidance on Implementation; Data Elements and Message Specification; Appendix on Backwards and Forwards Compatibility; Availability; Correction

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice; correction.

**SUMMARY:** The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of Thursday, October 20, 2011 (76 FR 65199). The document announced the availability of a draft guidance entitled ''E2B(R3) Electronic Transmission of Individual Case Safety Reports (ICSRs): Implementation Guide—Data Elements and Message Specification'' (the draft E2B(R3) implementation guidance) and an appendix to the draft guidance entitled ''ICSRs: Appendix to the Implementation Guide—Backwards and Forwards Compatibility'' (the draft BFC appendix). The document was published with an incorrect date in the **DATES** section. This document corrects that error.

**FOR FURTHER INFORMATION CONTACT:** Olivia Pritzlaff, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6308, Silver Spring, MD 20993–0002, (301) 796–3601.

**SUPPLEMENTARY INFORMATION:** In FR Doc. 2011–27147, appearing on page 65199

in the **Federal Register** of Thursday, October 20, 2011, the following correction is made:

1. On page 65199, in the first column, in the **DATES** section, the date ''January 18, 2011'' is corrected to read ''January 18, 2012.''

Dated: November 9, 2011.

**Leslie Kux,**

*Acting Assistant Commissioner for Policy.*

[FR Doc. 2011–29485 Filed 11–15–11; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2011–N–0002]**

### Neurological Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

*Name of Committee:* Neurological Devices Panel of the Medical Devices Advisory Committee.

*General Function of the Committee:* To provide advice and recommendations to the Agency on FDA's regulatory issues.

*Date and Time:* The meeting will be held on February 10, 2012, from 8 a.m. to 6 p.m.

*Location:* Hilton Washington, DC North/Gaithersburg, salons A, B, C, and D, 620 Perry Pkwy., Gaithersburg, MD 20877. The hotel telephone number is (301) 977–8900.

*Contact Person:* Avena Russell, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1535, Silver Spring, MD 20993–0002, *Avena.Russell@fda.hhs.gov,* (301) 796–3805, or FDA Advisory Committee Information Line, 1–(800) 741–8138, (301) 443–0572 in the Washington, DC area), and follow the prompts to the desired center or product area. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

*Agenda:* On February 10, 2012, the committee will discuss and make recommendations regarding the possible reclassification of cranial electrotherapy stimulator (CES) devices. On August 8, 2011 (76 FR 48062), FDA issued a proposed rule which, if made final, would make CES devices Class III requiring premarket approval. In response to the proposed rule, FDA received petitions under section 515(b)(2)(B) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360e(b)(2)(B)) requesting a change in classification. The reclassification petitions are available for public review and comment at *http://www.regulations.gov* under docket number FDA–2011–N–0504. The committee discussion will include the existing data to support CES safety and effectiveness and whether the data are sufficient to develop special controls to support regulation of these devices under Class II.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee link.

*Procedure:* Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before February 6, 2012. Oral presentations from the public will be scheduled between approximately 10 a.m. and 11 a.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before January 27, 2012. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by January 30, 2012.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact James Clark at *James.Clark@fda.hhs.gov* or (301) 796–5293, at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: November 9, 2011.

**Leslie Kux,**

*Acting Assistant Commissioner for Policy.*

[FR Doc. 2011–29528 Filed 11–15–11; 8:45 am]

**BILLING CODE 4160–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2011–N–0599]**

### Center for Biologics Evaluation and Research Report of Scientific and Medical Literature and Information on Non-Standardized Allergenic Extracts in the Diagnosis and Treatment of Allergic Disease; Extension of Comment Period

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice; extension of comment period.

**SUMMARY:** The Food and Drug Administration (FDA) is extending to April 25, 2012, the comment period for the notice on its report of scientific and medical literature and information concerning the use of non-standardized allergenic extracts in the diagnosis and treatment of allergic disease that appeared in the **Federal Register** of September 26, 2011 (76 FR 59407). In the notice, FDA requested comments from public and private stakeholders on

the report it provided in a data file entitled ''Center for Biologics Evaluation and Research Report of Scientific and Medical Literature and Information on Non-Standardized Allergenic Extracts in the Diagnosis and Treatment of Allergic Disease.'' The Agency is taking this action in response to input it received from the Allergenic Products Advisory Committee (APAC) at a meeting held on October 25, 2011, to allow interested persons additional time to submit comments.

**DATES:** Submit either electronic or written comments on the report by April 25, 2012.

**ADDRESSES:** Submit written requests for single copies of the report to the Office of Communication, Outreach and Development (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The data file may also be obtained by mail by calling CBER at 1–(800) 835–4709 or (301) 827–1800. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the data file document.

Submit electronic comments on the report to *http://www.regulations.gov*. Submit written comments on the report to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Paul E. Levine, Jr., Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, (301) 827–6210.

**SUPPLEMENTARY INFORMATION:**

## I. Background

In the **Federal Register** of September 26, 2011 (76 FR 59407), FDA published a notice with a 60-day comment period to request comments on its report of scientific and medical literature and information concerning the use of non-standardized allergenic extracts in the diagnosis and treatment of allergic disease. Comments on the report will allow FDA to fully evaluate the information contained in the report.

The Agency received comments in the APAC meeting held on October 25, 2011, that FDA should consider extending the comment period for the notice for several months. Members of the APAC expressed concern that the current 60-day comment period does not allow sufficient time to develop a meaningful or thoughtful response to the notice on FDA's report of scientific and medical literature and information concerning the use of non-standardized allergenic extracts in the diagnosis and treatment of allergic disease. Materials related to the report were discussed at this meeting and are available at: *http://www.fda.gov/AdvisoryCommittees/CommitteesMeetingMaterials/BloodVaccinesandOtherBiologics/AllergenicProductsAdvisoryCommittee/ucm247212.htm*. When it is completed, a transcript of the meeting will also be available at this Web page.

FDA has considered the comments from the APAC meeting and is extending the comment period for the notice until April 25, 2012. The Agency believes that an extension until April 25, 2012, allows adequate time for interested persons to submit comments without significantly delaying the evaluation of these important issues.

FDA welcomes comments regarding its report of scientific and medical literature and information concerning the use of non-standardized allergenic extracts in the diagnosis and treatment of allergic disease. In particular, FDA is interested in additional data regarding the use of these extracts that had been previously published in the medical or scientific literature. Unpublished data should include the following information, if available: Date(s) of collection; extract(s) studied and method of preparation; dose and route of administration; patient demography; and additional clinical information (including confirmatory testing, such as challenges or serum specific IgE determinations).

## II. Request for 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: November 9, 2011.

**Leslie Kux,**

*Acting Assistant Commissioner for Policy.*

[FR Doc. 2011–29483 Filed 11–15–11; 8:45 am]

**BILLING CODE 4160–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Environmental Health Sciences; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Interagency Breast Cancer and Environmental Research Coordinating Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

*Name of the Committee:* Interagency Breast Cancer and Environmental Research Coordinating Committee (IBCERC).

*Date:* December 14, 2011.

*Time:* 11 a.m. to 2 p.m.

*Agenda:* The purpose of the meeting is to review the consensus study (*http://www.iom.edu/Activities/Environment/BreastCancerEnvironment.aspx*) focused on breast cancer and the environment that is scheduled to be released by Institute of Medicine (IOM) December 7, 2011. In advance of the meeting, the detailed meeting agenda will be available on the web at *http://www.niehs.nih.gov/about/orgstructure/boards/ibcercc/*.

*Place:* NIEHS/National Institutes of Health, Building 4401, East Campus, 79 T.W. Alexander Drive, Research Triangle Park, NC 27709, (This meeting will be conducted remotely. To attend the meeting, please RSVP via email to *ibcercc@niehs.nih.gov* at least 10 days in advance and instructions for joining the meeting will be provided.).

*Contact Person:* Gwen Collman, Ph.D., Director, Division of Extramural Research and Training, Nat. Inst. of Environmental Health Sciences, National Institutes of Health, 615 Davis Dr., KEY615/3112, Research Triangle Park, NC 27709, (919) 541–4980, *collman@niehs.nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: November 8, 2011.

**Jennifer S. Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2011–29610 Filed 11–15–11; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Alcohol Abuse and Alcoholism; 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 on Alcohol Abuse and Alcoholism Special Emphasis Panel; NIAAA Member Conflict Applications.

*Date:* November 30, 2011.

*Time:* 1 p.m. to 4:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* NIAAA, NIH, 5635 Fishers Lane, Rockville, MD 20852 (Telephone Conference Call).

*Contact Person:* Ranga Srinivas, Ph.D., Chief, Extramural Project Review Branch EPRB, NIAAA, National Institutes of Health, 5365 Fishers Lane, Room 2085, Rockville, MD 20852, (301) 451–2067, *srinivar@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research and Research Support Awards., National Institutes of Health, HHS)

Dated: November 8, 2011.

**Jennifer S. Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2011–29609 Filed 11–15–11; 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; Member Conflict: Reproduction Metabolism.

*Date:* December 8–9, 2011.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Reed A Graves, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6166, MSC 7892, Bethesda, MD 20892, (301) 402–6297, *gravesr@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: November 9, 2011.

**Jennifer S. Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2011–29608 Filed 11–15–11; 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 Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflict: Behavioral and Social Approaches to Preventing HIV/AIDS.

*Date:* November 29, 2011.

*Time:* 12 p.m. to 2 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Mark P. Rubert, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, (301) 435–1775, *rubertm@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflict: Drug Addiction and Ion Channel Function.

*Date:* December 5, 2011.

*Time:* 12:30 p.m. to 2:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Deborah L. Lewis, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4183, MSC 7850, Bethesda, MD 20892, (301) 408–9129, *lewisdeb@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Neural Cell Injury and Death.

*Date:* December 7, 2011.

*Time:* 1 p.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Toby Behar, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4136, MSC 7850, Bethesda, MD 20892, (301) 435–4433, *behart@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflict: Vascular and Hematology.

*Date:* December 7, 2011.

*Time:* 2 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications,

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Larry Pinkus, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4132, MSC 7802, Bethesda, MD 20892, (301) 435–1214, *pinkusl@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: November 9, 2011.

**Jennifer S. Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2011–29606 Filed 11–15–11; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Sixth Annual Philip S. Chen, Jr. Distinguished Lecture on Innovation and Technology Transfer

**AGENCY:** National Institutes of Health, Public Health Service, HHS.

**ACTION:** Notice.

**SUMMARY:** The Office of the Director, NIH, invites you to the sixth annual Philip S. Chen, Jr., Ph.D. Distinguished Lecture on Innovation and Technology Transfer.

**DATES:** Friday, December 9, 2011, at 9:30 a.m.

**ADDRESSES:** NIH campus, 9000 Rockville Pike, Bethesda, MD, NIH Clinical Center (Building 10), Masur Auditorium.

**SUPPLEMENTARY INFORMATION:** Dr. Ira Pastan will present ''Treatment of Cancer with Recombinant Immunotoxins: From Technology Transfer to the Patient.'' Dr. Pastan is an NIH Distinguished Investigator and Chief, Laboratory of Molecular Biology, National Cancer Institute Center for Cancer Research.

This annual series honors Dr. Philip S. Chen, Jr. for his almost 50 years of service to the National Institutes of Health. Dr. Chen established NIH's Office of Technology Transfer in 1986 to implement the Federal Technology Transfer Act. The inventions in the Office of Technology Transfer's intellectual property portfolio are crucial in advancing the NIH mission—making important discoveries that improve health and save lives.

The event will be available as an NIH videocast for desktop viewing at *http://videocast.nih.gov/*. The link will be live at the time the presentation is scheduled to begin.

**FOR FURTHER INFORMATION CONTACT:** Individuals with disabilities who need Sign Language Interpreters and/or reasonable accommodation to participate in this event should contact Joe Kleinman at (301) 496–0472 and/or the Federal Relay (1–(800) 877–8339). Requests should be made at least 5 days in advance of the event.

Dated: November 7, 2011.

**Steven M. Ferguson,**

*Deputy Director, Licensing & Entrepreneurship, Office of Technology Transfer, National Institutes of Health.*

[FR Doc. 2011–29613 Filed 11–15–11; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Docket ID FEMA–2011–0028]**

### Assistance to Firefighters Grant Program

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

**ACTION:** Notice of guidance.

**SUMMARY:** This Notice provides guidelines that describe the application process for grants and the criteria for awarding grants in the fiscal year (FY) 2011 Assistance to Firefighters Grant (AFG) Program year. It explains the differences, if any, between these guidelines and those recommended by representatives of the Nation's fire service leadership during the annual Criteria Development meeting, which was held October 6–7, 2010. The application period for the FY 2011 AFG Program year was open from August 15, 2011, to September 23, 2011, and was announced on *http://www.grants.gov*. Approximately 16,491 applications for AFG funding were submitted electronically, using the application submission form and process available at *https://portal.fema.gov*. Before the application period, the *FY 2011 AFG Guidance and Application Kit* was published on the AFG Web site (*http://www.fema.gov/firegrants*). Additional information to assist applicants also was provided on the AFG Web site, including an applicant tutorial, a *Get Ready Guide, and a Narrative Assistance Guide.* The AFG Program makes grants directly to fire departments and nonaffiliated emergency medical services (EMS) organizations for the purpose of enhancing the abilities of first responders to protect the health and safety of the public as well as that of first-responder personnel facing fire and fire-related hazards. In addition, the authorizing statute requires that a minimum of 5 percent of appropriated funds be expended for fire prevention and safety grants, which are also made directly to local fire departments and to local, regional, State, or national entities recognized for their expertise in the fields of fire prevention and firefighter safety research and development.

**Authority:** 15 U.S.C. 2229, 2229a.

**DATES:** Grant applications for the Assistance to Firefighters Grants were accepted electronically at *https://portal.fema.gov,* August 15, 2011 to September 23, 2011.

**ADDRESSES:** Assistance to Firefighters Grants Branch, Stop 3620, DHS/FEMA, 800 K Street NW., Washington, DC 20472–3620.

**FOR FURTHER INFORMATION CONTACT:** Catherine Patterson, Chief, Assistance to Firefighters Grants Branch, 1–(866) 274–0960.

**SUPPLEMENTARY INFORMATION:** The purpose of the AFG Program is to provide grants directly to fire departments and nonaffiliated EMS organizations to enhance their ability to protect the health and safety of the public, as well as that of first-responder personnel, with respect to fire and fire-related hazards. The governing statute requires that each year DHS publish in the **Federal Register** the guidelines that describe the application process and the criteria for grant awards.

Approximately 16,491 applications for AFG funding were submitted electronically, using the application submission form and process available at *https://portal.fema.gov*. Specific information about the submission of grant applications can be found in the *FY 2011 Assistance to Firefighters Grant (AFG) Guidance and Application Kit,* which is available for download at *http://www.fema.gov/firegrants* and at *http://www.regulations.gov* under docket ID FEMA–2011–0028.

Paper applications were accepted but discouraged due to the inherent delays with processing them and because they lack the applicant ''help'' features that are built into the electronic application. Applicants were able to obtain a copy of the of the official paper application form by calling 1-(866) 274–0960. Paper applications were sent via regular mail only; no application forms were sent via overnight delivery, fax, or email. Applicants were allowed to submit only the FY 2011 AFG application form that was mailed to them by the AFG. No other version of the application was accepted. Applicants were instructed not to use any paper application that they did not receive directly from the AFG and were instructed not to use a previous year's application. Paper applications had to be postmarked no

later than September 23, 2011, and mailed to the following address:

Cabezon Group, ATTN: AFG Grant Program, 11821 Parklawn Drive, Suite 230, Rockville, MD 20852.

The AFG informed applicants that it would not be responsible for applications sent to any other address and that late, incomplete, or faxed applications would NOT be accepted.

**Appropriations**

Congress appropriated $404,190,000 for the FY 2011 AFG. From this amount, $380,747,000 will be made available for AFG awards. Funds appropriated for the FY 2011 AFG (pursuant to Public law 112–10) are available for obligation and award until September 30, 2012. FEMA received approximately 16,491 applications for assistance and anticipates that it will award approximately 4,000 grants with the grant funding available.

Congress directed DHS to administer the appropriations:

- Up to 5.8 percent of funds may be used for program administration.
- Up to 2 percent of funds may be used for awards to nonaffiliated EMS organizations.
- No more than 25 percent of funds may be used for vehicle awards. Of that amount, up to 15 percent may be used for fire-based EMS emergency transport vehicles (with a cap of $120,000 per unit).
- No less than 3.5 percent of funds must be awarded for equipment and training grants for both fire-based EMS and nonaffiliated EMS.
- No less than 5 percent of funds must be made available to make grants supporting eligible fire prevention activities (Fire Prevention and Safety (FP&S) Grants) and research and development activities that improve firefighter safety. However, due to the importance of mitigation activities, the FY 2011 FP&S will be allocated $35 million for grants. The FP&S Grants are not part of this AFG solicitation. The FP&S Grant application period is expected to commence in the fall of 2011.

**Background of the Assistance to Firefighters Grant Program**

DHS awards the grants on a competitive basis to the applicants that best address the AFG Program's priorities and provide the most compelling justification. Applications that best address the Program's priorities will be reviewed by a panel composed of fire service personnel.

*Award Criteria*

The panel will review the application and evaluate it using the following criteria:

- Proposed project and the project budget.
- Financial need for the project.
- Benefits that would result from the project.
- Extent to which the grant would enhance daily operations.
- How the grant will positively impact the regional ability to protect life and property.

The AFG Program for FY 2011 generally mirrors the AFG Program of previous years. DHS again will have a separate application period devoted solely to FP&S, which will is projected to occur in the fall of 2011. All applications for grants will be prepared and submitted through the AFG e-Grants system (*https://portal.fema.gov*).

*Statutory Limits to Funding*

Congress has enacted statutory limits to the amount of funding that a grantee may receive from the AFG Program in any single fiscal year (15 U.S.C. 2229(b)(10)). These limits are based on the population served. Awards will be limited based on the size of the population protected by the applicant, as indicated below.

- An applicant that serves a jurisdiction with 500,000 people or less may not receive grant funding in excess of $1 million for any fiscal year.
- A grantee that serves a jurisdiction with more than 500,000 but not more than 1 million people may not receive grants in excess of $1,750,000 in any fiscal year.
- A grantee that serves a jurisdiction with more than 1 million people may not receive grants in excess of $2,750,000 in any fiscal year.

DHS may waive these established limits to any grantee serving a jurisdiction of 1 million people or less if the agency determines that an extraordinary need for assistance warrants the waiver. No grantee, under any circumstance, may receive ''more than the lesser of $2,750,000 or one-half of 1 percent of the funds appropriated under this section for a single fiscal year.'' (15 U.S.C. 2229(b)(10)(B)).

*Cost Sharing*

Grantees must share in the costs of the projects funded under this grant program (15 U.S.C. 2229(b)(6)). Fire departments and nonaffiliated EMS organizations that serve populations of less than 20,000 must match the Federal grant funds with an amount of non-Federal funds equal to 5 percent of the total project cost. Those fire departments and nonaffiliated EMS organizations serving areas with a population between 20,000 and 50,000, inclusive, must match the Federal grant funds with an amount of non-Federal funds equal to 10 percent of the total project cost, and those that serve populations of more than 50,000 must match the Federal grant funds with an amount of non-Federal funds equal to 20 percent of the total project costs. Regional project cost share will be based on the total population and demographics of the entire region. All non-Federal funds must be in cash, *i.e.,* in-kind contributions are not acceptable as matching funds. No waivers of this requirement will be granted except for applicants located in Insular Areas as provided for in 48 U.S.C. 1469a.

*Statutory Requirements for Funding Distribution*

The authorizing statute imposes additional requirements on ensuring a distribution of grant funds among career, volunteer, and combination (volunteer and career personnel) fire departments, and among urban, suburban, and rural communities. More specifically with respect to department types, DHS must ensure that all-volunteer or combination fire departments receive a portion of the total grant funding that is not less than the proportion of the United States population that those departments protect (15 U.S.C. 2229(b)(11)). There is no corresponding minimum for career departments. Therefore, subject to the other statutory limitations on the ability of DHS to award funds, DHS will ensure that, for the 2011 program year, no less than 33.5 percent of the funding available for grants will be awarded to combination departments, and no less than 19.5 percent will be awarded to all-volunteer departments. These figures were obtained from the National Fire Protection Association report entitled *U.S. Fire Department Profile Through 2009,* issued October 2010. If, and only if, other statutory limitations inhibit the ability of DHS to ensure this distribution of funding, DHS will ensure that the aggregate combined total percentage of funding provided to both combination and volunteer departments is no less than 53 percent.

DHS generally makes funding decisions using rank order resulting from the panel evaluation. However, DHS may deviate from rank order and make funding decisions based on the type of department (career, combination, or volunteer) and/or the size and character of the community the

applicant serves (urban, suburban, or rural) to the extent it is required to satisfy statutory provisions.

*Central Contractor Registration (CCR)*

Since October 1, 2003, it has been federally mandated that any organization wishing to do business with the Federal government under a FAR-based contract must be registered in CCR before being awarded a contract. This includes applicants and grantees for the Assistance to Firefighters Grant Program. To submit a new registration. go to: *http://www.bpn.gov/ccr/grantees.aspx*.

*Fire Prevention and Safety Grant Program*

In addition to the grants available to fire departments in FY 2011 through the competitive grant program, DHS must set aside no less than 5 percent ($20,250,000) of AFG Program funds for the FP&S Grant Program. However, due to the importance of mitigation activities, DHS will allocate $35 million for the FY 2011 FP&S Grant Program. The FP&S funds will be available to make grants to, or enter into contracts or cooperative agreements with, national, State, local, or community organizations or agencies, including fire departments.

In accordance with the statutory requirement to fund fire prevention activities, the FP&S Program offers grants to support activities in two categories: (1) Activities designed to reach high-risk target groups and mitigate incidences of death and injuries caused by fire and fire-related hazards (''Fire Prevention and Safety Activity''); and (2) research and development activities aimed at improving firefighter safety (''Firefighter Safety Research and Development Activity''). DHS will issue an announcement regarding pertinent details of the FY 2011 FP&S Grant portion of the AFG Program prior to the start of the application period, which is tentatively scheduled for fall of 2011.

**Application Process**

Prior to the start of the FY 2011 AFG application period, DHS conducted applicant workshops across the country to inform potential applicants about the AFG Program. In addition, DHS provided applicants with an online web-based tutorial (available at the AFG Web site: www.fema.gov/firegrants) and other online information to help them prepare quality grant applications. The AFG also staffed a Help Desk throughout the application period. The AFG Help Desk staff members provided assistance to applicants with navigation through the automated application as well as assistance with any questions they had. Applicants could reach the AFG Help Desk through a toll-free telephone number (1–(866) 274–0960) or electronic mail (firegrants@dhs.gov).

Applicants were advised to access the application electronically at *https://portal.fema.gov*. New applicants had to register and establish a username and password for secure access to their application. Applicants that applied to any previous AFG funding opportunities had to use their previously established usernames and passwords. In completing the application, applicants provided relevant information on their organization's characteristics, call volume, and existing capabilities. Applicants were asked to answer questions about their grant request that reflected the AFG funding priorities, which are described below. In addition, each applicant had to complete four separate narratives for each Request Details activity. These narratives addressed statutory competitive factors: project description and budget, cost benefit, effect on the organization, and additional information. The electronic application process permitted the applicant to enter and save the application. The system did not permit the submission of incomplete applications. Except for the narrative textboxes, the application used a ''point-and-click'' selection process, or required the entry of information (*e.g.,* name and address, call volume numbers, *etc.*).

Applicants were encouraged to read the *AFG Guidance and Application Kit* for more details.

**Application Review Process**

DHS first will evaluate all applications received through an automated preliminary screening process to determine which applications best address the AFG Program's announced funding priorities. The automated preliminary screening will evaluate and score the applicants' answers to the activity-specific questions. Applications containing multiple activities will be given prorated scores based on the amount of funding requested for each activity. The applications that best meet the AFG Program priorities as determined by the preliminary screening will be deemed to be in the ''competitive range.'' Once the competitive range is established, DHS will review the list of applicants that were not included in the competitive range to determine if any are responsible for protecting DHS-specified critical infrastructure or key resources. All applications will be evaluated against the award criteria described in this document.

All applications deemed to be in the competitive range will be subjected to a second level of review by a technical evaluation panel (TEP) made up of individuals from the fire service, including, but not limited to, firefighters, fire marshals, and fire training instructors. The panelists, or peer reviewers, will assess each application's merits with respect to the clarity and detail used to describe the project and its budget, the project's purported benefits relative to its cost (cost benefit), the extent to which the project would enhance daily operations, and additional information provided by the applicant. Using the evaluation criteria described below, the panelists will evaluate and score independently each application referred for peer review and then discuss the merits and shortcomings of each application in an effort to reconcile any major discrepancies. However, a consensus among reviewers on the scores is not required.

Applications will receive two reviews that comprise their total application score. The first review will evaluate the application to see if its requests meet the funding priorities. This will count for 50 percent of the application's total score and will determine whether or not the application goes to a peer review panel for further evaluation. The second review is the peer review panel score, which is 50 percent of the application's total score. Applications then will be ranked according to the total application scores, and DHS will consider the highest-scoring applications for awards.

Applications that involve interoperable communications projects will undergo a separate review by the responsible State Administrative Agency to assure that the communications project is consistent with the Statewide Communications Interoperability Plan (SCIP). If the State determines that the project is inconsistent with the SCIP, the project will not be funded.

After the completion of the TEP reviews, DHS will select a sufficient number of awardees from this application period to obligate all of the available grant funding. DHS will announce the awards over several months and will notify unsuccessful applicants as soon as feasible. DHS will not make the awards in any specified order, *i.e.,* awards will not be made by State, program, *etc.*

*Environmental and Historic Preservation Review*

Applications seeking assistance to modify facilities or to install equipment requiring renovations may undergo additional screening. Modification to facility projects (including renovations associated with equipment installations) will be subject to all applicable Federal requirements for environmental and historic preservation (EHP). No project that involves a modification to facility can proceed—except for project planning—without prior formal written approval from DHS and the completion of any required EHP review. If an award includes a modification to a facility, the applicant will be responsible for contacting the AFG staff to receive instructions on how to proceed. Noncompliance with these provisions may jeopardize an applicant's award and subsequent funding.

**Criteria Development Process**

Each year, DHS convenes a panel of fire service professionals to develop the funding priorities and other implementation criteria for AFG. The Criteria Development Panel is comprised of representatives from nine major fire service organizations, who are charged with making recommendations to FEMA regarding the creation of new, and/or modification of, previously funded priorities as well as developing criteria for awarding grants. The nine major fire service organizations represented on the panel are:

- Congressional Fire Services Institute (CFSI)
- International Association of Arson Investigators (IAAI)
- International Association of Fire Chiefs (IAFC)
- International Association of Fire Fighters (IAFF)
- International Society of Fire Service Instructors (ISFSI)
- National Association of State Fire Marshals (NASFM)
- National Fire Protection Association (NFPA)
- National Volunteer Fire Council (NVFC)
- North American Fire Training Directors (NAFTD)

The FY 2011 criteria development panel meeting occurred October 6–7, 2010. The content of the *FY 2011 AFG Guidance and Application Kit* reflects the implementation of the Criteria Development Panel's recommendations with respect to the priorities, direction, and criteria for awards. All of the funding priorities for the FY 2011 AFG are designed to address the following:

- First responder safety
- Enhancement of national capabilities
- Risk
- Interoperability

*Changes for FY 2011*

- *FY 2011 AFG Guidance.* The *FY 2011 AFG Guidance and Application Kit* is condensed into two sections. Section I contains application and review information, and Section II contains award administration information.
- *Online Tools for Applicants.* A ''Get Ready Guide'' and a ''Quick Reference Guide'' are online reference documents designed to help applicants prepare for completing the AFG application.
- *Application Scoring.* In a change from previous years, applications will receive two reviews that comprise their total application score. The first review will measure the application request to see if it meets the funding priorities. This will count for 50 percent of the total score and will measure whether or not the application goes to panel review. The second review is the panel review score, which is 50 percent of the application's total score. Applications then will be ranked according to the total application scores, and DHS will consider the highest-scoring applications for awards.
- *Regional Projects.* Personal protective equipment is now an eligible expense.
- *Operations and Safety.*

(1) *Boats (20 feet and under).* Eligible for request in the Equipment activity.

(2) *Self-Contained Breathing Apparatus (SCBA).* SCBAs that are manufactured before the NFPA 2002 standard are a high priority for funding.

(3) *Wellness and Fitness Programs.* Firefighter and EMS wellness and fitness programs will be required to offer a fourth component—a behavioral health program—in addition to periodic health screenings, entry physical exams, and immunizations.

(4) *Flashover Simulators.* No longer eligible for funding.

- *Vehicle Acquisition*

(1) In fire-based EMS, ambulances will be the equivalent to a pumper as a high priority item.

(2) Applicants may request more than one vehicle per station.

(3) Applicants that do not have drivers and operators trained to current NFPA 1002 or equivalent standards, and do not plan to have a training program in place by the time the requested vehicle is delivered, will not be eligible to receive a vehicle grant.

(4) Extended warranties and service agreements are eligible expenses.

*Changes to Criteria Development Panel Recommendations*

DHS must explain any differences between the published guidelines and the recommendations made by the criteria development panel and publish this information in the **Federal Register** prior to making any grants under the Program (15 U.S.C. 2229(b)(14)). DHS accepts and is implementing all of the Criteria Development Panel's recommendations, with the exception of the two that we recommended be revised (discussed below).

(1) Panel members recommended adding value at the prescore level for applications that answer a question indicating that they will buy equipment or vehicles made in the U.S. This recommendation requires inserting new questions into the AFG application and asking applicants to indicate whether it is their intention to purchase equipment or vehicles made in the U.S. When the preliminary assessment is performed, applications that contain affirmative answers to those questions will receive a higher score than those that do not.

DHS acknowledges this Panel recommendation but was unable to implement this scoring change with the FY 2011 AFG application. DHS will work with the Criteria Development Panel and internal DHS policies to determine the feasibility of this recommendation in future grant programs.

(2) Panel members recommended that the formal driver training programs required of AFG vehicle awardees (fire and EMS) include the minimum U.S. Department of Transportation (DOT) (649–F) medical examination report or equivalent.

DHS acknowledges this recommendation but was concerned that small, rural fire departments may be disadvantaged by this requirement because they may not have easy access to medical professionals who can provide examinations that meet the required standard to all of the individuals in the driver training program. DHS will work with the Criteria Development Panel to achieve compliance with the USDOT standard but also allow some flexibility for grantees having difficulty meeting that standard.

**Application Review Considerations**

The governing statute requires that each year DHS publish in the **Federal Register** a description of the grant application process and the criteria for grant awards. This information is provided below.

*Fire Department Priorities*

Specific rating criteria for each of the eligible programs and activities are discussed below. The funding priorities described in this Notice have been recommended by a panel of representatives from the Nation's fire service leadership and have been accepted by DHS for the purposes of implementing the AFG. These rating criteria provide an understanding of the Grant Program's priorities and the expected cost-effectiveness of any proposed project(s). The activities listed below are in no particular order of priority. Within each activity, DHS will consider the population served by the applicant, with applicants that serve larger populations afforded a higher consideration than applicants that serve smaller populations. DHS further explained the Program priorities in the Guidance and Application Kit that was published separately.

(1) *Fire Operations and Firefighter Safety Program.*

(i) *Firefighter Training Activities.* The Criteria Development Panel recommended that AFG continue to emphasize the importance of training in the FY 2011 program with respect to fire departments.

*Funding Priorities*

Due to inherent differences among urban, suburban, and rural firefighting needs, AFG has different priorities in the Firefighting Training program area for departments that serve different types of communities. These are described in detail in the FY 2011 AFG Guidance and Application Kit.

The highest priorities for training in all types of communities include NFPA 1001, 1002, 472, 1581, 1021; confined space awareness; wildland firefighting (basic and red card training); rapid intervention or RIT; first responder; firefighter safety and survival; safety officer; driver/operator; fire prevention; fire inspector; fire investigator; and fire educator; NIMS/ICS; firefighting physical ability program; emergency scene rehab; critical incident debriefing; firefighter physical agility training; and training needed to comply with State-mandated and federally mandated programs. Please see the Guidance and Application Kit for additional information on the high, moderate, and low priorities for training in urban, suburban, and rural communities. Additional consideration include factors such as multiple departments will be trained, instructor-led vs. media-led, call volume, number of firefighters trained, and population served. Large departments with a high number of active firefighters will receive additional consideration.

(ii.) *Firefighting Equipment Acquisition.* AFG funds are available for equipment to enhance the safety or effectiveness of firefighting, rescue, and fire-based EMS functions. Equipment requested must meet all mandatory requirements as well as any national and/or state DHS-adopted standards. See NFPA standards at *http://www.NFPA.org*. The equipment requested should improve the health and safety of the public and firefighters.

*Funding Priorities*

Highest priority for funding will be first-time equipment purchases to support an existing mission and/or replace obsolete, broken/inoperable equipment. A moderate priority will be equipment purchases to increase capabilities within the department's existing mission or to meet a new risk. Low priority for funding will be requests for equipment for a new mission to meet an existing risk and/or request additional supplies or reserve equipment. A department takes on a ''new mission'' when it expands its services into areas not previously offered, such as a fire department seeking funds to provide EMS for the first time. A ''new risk'' presents itself when a department must address risks that have materialized in the department's area of responsibility, *e.g.,* the construction of a new nuclear power plant could constitute a ''new mission.''

Additional consideration will be given for the following factors:

- Equipment that has a direct effect on firefighters' health and safety
- Frequency of use and type of jurisdiction served
- Age of equipment being replaced
- Equipment that benefits other jurisdictions
- Equipment that brings the department into compliance with nationally recommended standards (*i.e.,* NFPA) or statutory compliance (*i.e.,* Occupational Safety & Health Administration (OSHA))
- Call volume
- Population served

(iii.) *Firefighter Personal Protective Equipment (PPE) Acquisition.* AFG funds are available to acquire primarily OSHA-required and NFPA-compliant PPE for firefighting personnel. Equipment requested must meet all current mandatory requirements, as well as any national and/or state DHS-adopted standards. Equipment requested should have the goal of increasing firefighter safety. Information on the relevant NFPA standards can be obtained from the organization's Web site at *http://www.NFPA.org.* If requesting training for any items in this section, please list them under Additional Funding for each item to which it applies.

*Funding Priorities*

The highest priorities for funding will be departments requesting new PPE for the first time and departments replacing or updating obsolete PPE to the current standard. The moderate priority for funding will be requests to replace torn, tattered, damaged, or contaminated PPE. PPE requested to address a new risk also will be considered a moderate funding priority. A low priority for funding will be requests to replace worn but usable PPE that is not compliant to the current edition of the NFPA standard and/or to handle a new mission, or to increase current inventory.

*Self-Contained Breathing Apparatus*

Awards will be based on number of seated positions in the department's vehicle fleet and the age of existing SCBAs, limited to one spare cylinder (unless justified otherwise in the Request Details narrative for the PPE activity). New SCBAs must have automatic-on or integrated Personal Alert Safety System (PASS) devices and be CBRNE-compliant to the current edition of the NFPA 1981 standard.

*Funding Priorities*

Highest priority will be to replace SCBAs that are compliant with NFPA 1981, pre-2002 Edition. All requests must be justified in the Request Details narrative for the PPE activity. Somewhat lower priority will be to replace SCBAs that are compliant with the 2007 edition of NFPA 1981. It will be a low priority to replace SCBAs that are compliant with the 2002 edition of NFPA 1981 (the need for which must be justified in the PPE narrative).

(iv.) *Firefighter Wellness and Fitness Activities.* Wellness and Fitness programs are intended to strengthen first responders so that their mental, physical, and emotional capabilities are resilient enough to withstand the demands of emergency services response. To be eligible for FY 2011 funding of this activity, fire departments must offer, or plan to offer, all four of the following basic programs:

- Periodic health screenings.
- Entry physical examinations.
- Immunizations.
- Behavioral health programs.

*Funding Priorities*

The highest priority will be to fund requests from applicants that currently do not have any of the four basic

programs listed above and seek funds to offer all four programs. A moderate priority will be to support requests from applicants that currently offer some of the four basic programs and want to begin to offer the remaining programs. Low priority will be given to requests from applicants that want to obtain physical fitness equipment but do not offer the four basic wellness and fitness programs. Additional consideration will be given to applicants with regard to their call volume, population served, and whether they make member participation in the wellness and fitness programs mandatory.

(v.) *Modifications to Fire Stations.* FY 2011 AFG Grants may be used to modify and retrofit existing fire stations and other structures built prior to 2003. New fire station construction is not allowed. No modification may change the structure footprint or profile. If requesting multiple items in this activity, total funding for all project and activities cannot exceed $100,000 per fire station. Eligible projects under this activity must have a direct effect on the health and safety of firefighters.

FEMA is legally required to consider the potential impacts of all grant-funded projects on environmental resources and historic properties. For AFG and other preparedness grant programs, this is accomplished via FEMA's environmental and historic preservation (EHP) review. Grantees must comply with all applicable EHP laws, regulations, and Executive Orders (EOs) in order to draw down their FY 2011 AFG grant funds. Any project with the potential to impact natural resources or historic properties cannot be initiated until FEMA has completed the required FEMA EHP review.

*Funding Priorities*

Highest priority for funding will be requests to install modifications such as sole-source capture exhaust systems, sprinkler systems, or smoke/fire alarm notification systems in stations that are occupied 24/7 and offer sleeping quarters, including maritime/air operations facilities. Somewhat lower priority will be given to requests from departments for air quality systems and/or emergency generators that are occupied on a daily basis and may or may not offer sleeping quarters. Low priority will be given to requests for the modifications cited above from departments whose facilities are occupied 24/7 but do not offer sleeping quarters as well as requests from training facilities. Additional consideration will be provided for the age of the building, with older facilities receiving greater priority; call volume and the population served also will receive additional consideration.

(2) *Firefighting Vehicles Acquisition Program.*

AFG provides grants for new firefighting vehicles, used fire apparatus originally designed for firefighting, or refurbished apparatus originally designed for firefighting. Funds also may be used to refurbish a vehicle the department currently owns, but only if the vehicle to be refurbished was designed originally for firefighting. New vehicles purchased with AFG funds must be compliant with NFPA 1901 (*Standard for Automotive Apparatus) or NFPA 1906 (Standard for Wildland Fire Apparatus*). Used apparatus must be compliant with NFPA 1901 or 1906 for the year the vehicle was manufactured. Refurbished apparatus must meet the current NFPA 1912 (*Standard for Fire Apparatus Refurbishing*).

Applicants were allowed to apply for more than one vehicle, but requests cannot exceed the financial cap based on population listed in the application. If a department submits multiple applications and more than one of those requests are approved, the department will be held to the same financial cap.

*New in FY 2011:* Due to nationwide statistics indicating the high number of fire-based EMS calls, ambulances have been elevated from being a low funding priority to being a high priority vehicle. In other words, for fire-based EMS, ambulances will be the equivalent to a pumper as a high priority item.

*Funding Priorities*

Inherent differences exist between urban, suburban, and rural firefighting conventions. For this reason, DHS has developed different priorities in the Firefighting Vehicles Program for departments that serve different types of communities. The chart below delineates the priorities for firefighting vehicles for each type of community.

*New for 2011:* Due to nationwide statistics indicating the high number of fire-based EMS calls, ambulances have been moved from a low priority to a high priority.

Firefighting Vehicle Program Priorities

Within each category (high, medium, or low priority), vehicles *are listed in order of their funding priority for the community type listed.*

| Priority | Urban communities | Suburban communities | Rural communities |
|---|---|---|---|
| H | Pumper | Pumper | Pumper. |
| | Ambulance | Ambulance | Ambulance. |
| | Aerial | Aerial | Brush-Attack. |
| | Quint (Aerial < 76′) | Quint (Aerial < 76′) | Tanker-Tender. |
| | Quint (Aerial > 76′) | Quint (Aerial > 76′) | Quint (Aerial < 76′). |
| | Rescue | Tanker-Tender. | |
| M | Command | Rescue | Command. |
| | Hazmat | Command | Hazmat. |
| | Light/Air Unit | Light/Air Unit | Rescue. |
| | Rehab Unit | Brush-Attack | Light/Air Unit. |
| | Foam truck | Rehab Unit. | |
| L | Aircraft Rescue and Fire Fighting Vehicle (ARFFV) | ARFFV | Foam Truck. |
| | | Foam truck | Aerial. |
| | | Highway Safety Unit | Highway Safety Unit. |
| | Brush-Attack | Fire Boat | ARFFV. |
| | Foam Truck. | | Rehab Unit. |
| | Fire Boat. | | Fire Boat. |
| | Tanker-Tender. | | |
| | Highway Safety Unit. | | |

Additional consideration will be given to the following factors:

- Have automatic aid agreements, mutual aid agreements or both.
- Request the replacement of open cab/jump seat configurations.

• Converted vehicles not designed or intended for use in the fire service.
• Age of the vehicle being replaced; older equipment.
• Age of the newest vehicle in the department's fleet that is like the vehicle to be replaced.
• Average age of the fleet; older equipment within the same class.
• Call volume.
• Population served.

(3) *Administrative Costs.*

Panelists will assess the administrative costs requested in any application and determine if the request is reasonable and in the best interest of the Program.

*Nonaffiliated EMS Organization Priorities*

AFG funds may be used to enhance emergency medical services provided by nonaffiliated EMS organizations, but the authorizing statute limits funding for these organizations to no more than 2 percent of the appropriated amount.

The Criteria Development Panel recommended that it is more cost-effective to enhance or expand an existing EMS organization, by providing training or equipment, than it is to create a new service. Therefore, communities attempting to initiate EMS services will receive the lowest competitive rating. Requests for equipment and training to prepare for response to incidents involving CBRNE are available under the applicable Equipment and Training activities.

Specific rating criteria and priorities for each of the grant categories are provided below following the descriptions of this year's eligible programs. The rating criteria, in conjunction with the program description, provide an understanding of the evaluation standards. In each activity, the size of the population served by the applicant will be taken into consideration, with larger populations afforded more consideration than smaller populations. DHS will explain further the priorities in the Guidance and Application Kit. Applicants may apply for as many of the activities within this program as they deem necessary.

(1) *EMS Operations and Safety Program.*

Five different activities may be funded under this program area:
• First responder/Emergency Medical Responder (EMR) training.
• EMS equipment acquisition.
• EMS personal protective equipment.
• EMS wellness and fitness.
• Modifications to EMS facilities.

(i) *First Responder/EMS Training Activities.* AFG provides grants to train EMS personnel. Examples of training activities include, but are not limited to, first responder, Basic Life Support (BLS), Advanced Life Support (ALS), Paramedic, Hazmat Operations, or Rescue Operations.

*Funding Priorities*

Since training is a prerequisite to the effective use of EMS equipment, organizations that request items more focused on training activities will receive a higher competitive rating than organizations that focus on equipment.

A high competitive rating will be given to nonaffiliated EMS organizations that are planning to upgrade services to ALS level of response. Specifically, organizations that are seeking to elevate the response level from EMT–B to EMT–I will receive the highest priority, and organizations that are seeking to elevate the response level from EMT–I to EMT–P will receive a high priority.

Requests for support of Emergency Medical Technician–Paramedic (EMT–P) training will receive high priority. The second priority is to elevate emergency responders' capabilities from first responder to a BLS level of response, *i.e.,* EMT–B. Due to the time and cost, upgrading an organization's response level from EMT–B to EMT–P is a lower priority. Organizations seeking training in rescue or Hazmat operations will receive lower consideration than organizations seeking training for medical services.

The lowest priority is to fund first responder training. Organizations seeking to train a high percentage of the active first responders will receive additional consideration when applying under the EMS Training Activity.

Copies of NFPA standards may be reviewed at *http://www.NFPA.org.*

(ii) *EMS Equipment Acquisition.* AFG funds are available for equipment to enhance the safety or effectiveness of EMS response. Equipment requested must meet all mandatory requirements as well as any national, state, or DHS-adopted standards. Equipment requested should solve interoperability or compatibility problems as may be required by local jurisdictions. Equipment requested, particularly decontamination and Hazmat equipment, is fundable to the current level of an organization's capabilities.

*Funding Priorities*

Highest priority in the EMS Training activity will be given to requests to upgrade service from Basic Life Support (BLS) to Advanced Life Support (ALS), *i.e.,* EMT–I and EMT–P. With regard to compliance with NFPA standards, requests for equipment that brings the department into compliance with national, state or local jurisdictional requirements will receive high priority. Of moderate priority will be requests for equipment that brings a department into voluntary compliance with NFPA/OSHA standards and requests to expand current EMS. Low priority will be given to requests to begin a new service, to replace used or obsolete equipment, and to buy equipment that does not affect statutory compliance or voluntary compliance with a national standard. Also low in priority will be requests for equipment for HAZMAT operations/technicians and for rescue operations/technicians.

Additional consideration will be given to requests that support a regional collaboration and to the applicant's call volume and population served.

(iii) *EMS Personal Protective Equipment.* AFG funds are available to acquire EMS PPE for first responder personnel. Equipment requested must meet all mandatory requirements, as well as any current national and/or state DHS-adopted standards or local EMS protocols.

*Funding Priorities*

High priority for funding will be requests to buy new PPE for the first time and requests to buy PPE for the first time and/or for applicants that need to replace or update obsolete PPE to the current standard. Moderate priority will be given to requests to replace torn, tattered, damaged, or contaminated PPE. Low priority will be given to replacing worn but still usable PPE that is not compliant to the current edition of NFPA standard and/or to handle a new mission or to increase the PPE inventory.

Applicants must indicate grant-purchased equipment will be operated by sufficiently trained staff. Failure to meet this requirement will result in ineligibility for funding. Additional considerations will be given to the percentage firefighters/EMS personnel served by the project, age of equipment, call volume, and population served.

*SCBA Priorities*

Awards will be based on the number of seated positions in department's vehicle fleet and the age of existing SCBAs, limited to one spare cylinder (unless justified in the PPE activity narrative). Highest priority for funding of SCBAs will be to replace SCBA that are compliant with the pre-2002 edition of NFPA 1981. Moderate priority will be given to replacing SCBA that are compliant with the 2002 edition of NFPA 1981. Low priority will be given

to requests to replace SCBA that are compliant with the 2007 edition of NFPA 1981 (requests must be justified in the PPE narrative).

(iv) *EMS Wellness and Fitness Activities.* Wellness programs are intended to strengthen uniformed personnel so the mental, physical, and emotional capabilities are resilient to withstand the demands of emergency services response. To be eligible for funding under this activity in FY 2011, organizations must offer, or plan to offer, all four of the following basic wellness and fitness programs:

- Periodic health screenings
- Entry physical examinations (compliant with current NFPA 1582)
- Immunizations
- Behavioral health programs

*Funding Priorities*

Highest priority will be given to requests from departments that do not offer any of the four basic programs and want to use requested funds to establish all four programs. Moderate priority will be given to requests from departments that offer some of the four basic programs *but request funds to offer the remaining activities. Low priority will be given to requests from* departments that want to purchase physical fitness equipment but do not offer the four basic programs.

Priority consideration will be given to departments that have some of the Priority 1 programs in place, *i.e.,* initial medical exams, job-related immunization program, as required by the department, or law; annual medical/fitness evaluations; behavioral health programs; and requiring that participation in the Wellness and Fitness programs be mandatory for their members. Applicants must apply for funds to implement the Priority 1 activities before applying for funds for any additional program or equipment. In addition, funded medical exams must meet current NFPA 1582, as required by DHS standards. Priority 2 programs include candidate physical ability evaluations, formal fitness and injury prevention programs and equipment, requests from departments having a plan to sustain their wellness and fitness programs, and requests from those that make it mandatory for all members to participate in the wellness and fitness programs.

(v) *Modification to EMS Facilities.* Grants may be used only to modify or retrofit existing EMS facilities that were built before 2003 and do not have specific safety features. The construction of new facilities is not eligible for funding. Grant funds may only be used to retrofit existing structures built prior to 2003 that do not have the requisite safety features. If requesting multiple items in this activity, funding cannot exceed a maximum of $100,000 per station. Remodeling to fulfill other grant initiatives is limited to $10,000. Eligible projects under this activity must have a direct effect on the health and safety of first responders.

FEMA is legally required to consider the potential impacts of all grant-funded projects on environmental resources and historic properties. For AFG and other preparedness grant programs, this is accomplished via FEMA's EHP Review. Grantees must comply with all applicable EHP laws, regulations, and Executive Orders (EOs) in order to draw down their FY 2011 AFG grant funds. Any project with the potential to impact natural resources or historic properties cannot be initiated until FEMA has completed the required FEMA EHP review. Grantees that implement projects prior to receiving EHP approval from FEMA risk de-obligation of funds.

AFG projects that involve the installation of equipment, ground-disturbing activities, and new construction, including communication towers, or modification/renovation of existing buildings or structures must undergo a FEMA EHP review. Activities not specifically excluded from a FEMA EHP review also will require an EHP review per the GPD Programmatic Environmental Assessment (PEA). For more information on the PEA, see Information Bulletin 345 at *http://www.fema.gov/pdf/government/grant/bulletins/info345.pdf.*

*Funding Priorities*

Highest priority in this activity will go to departments requesting direct sole-source capture exhaust systems, sprinkler systems, or smoke/fire alarm notification systems for stations with sleeping quarters, including maritime/air operations facilities, that are occupied 24/7. Moderate priority will be given to departments (with or without sleeping quarters) that request air quality systems and/or emergency generators. Low priority will be given to departments requesting funding of one of the high or moderate priorities listed above but do not have facilities that are occupied 24/7 and do not have sleeping quarters and also to requests from training facilities. Additional consideration will be given to departments (with or without sleeping quarters) that request air quality systems and/or emergency generators; additional consideration also will be given concerning the factors of call volume and population served.

(2) *EMS Vehicles Acquisition Program.*

Due to inherent differences among urban, suburban, and rural firefighting needs, AFG has different priorities in the Vehicles program area for departments that serve different types of communities. Applicants requesting vehicles that do not have driver/operators trained to U.S. Department of Transportation Emergency Vehicle Operators Course (EVOC) National Standard Curriculum, or equivalent, and are not planning to have a training program in place by the time the vehicle is delivered, will not receive an award.

To be eligible for funding, new vehicles purchased with AFG funds must be compliant with current General Services Administration standards, specifically KKK–A–1822E (*Guide for Emergency Medical Services and Systems*).

Funds may be used to acquire new, used, or refurbished EMS vehicles. Funds may also be used to refurbish a vehicle the organization currently owns. Refurbished apparatus must meet currently applicable standards (NFPA, GSA KKK–1822F Specification standards).

*Funding Priorities*

The following chart shows the priorities in the EMS Vehicle Program for FY 2011. The priorities are the same for all types of communities: Urban, suburban, and rural.

EMS VEHICLE PROGRAM PRIORITIES*

| | |
|---|---|
| H | Ambulances or transport units to support EMS functions |
| M | Non-transport |
| L | Other specialty vehicles (EMS command vehicles) |

Applicants may request funding for a training program in the Vehicles section of the application, but it must be listed in the Additional Funding area in the Request Details section. Driver training programs must be in place prior to vehicle delivery.

(3) *Administrative Costs.*

Panelists will assess the administrative costs requested in each application and determine whether the request is reasonable and in the best interest of the Program.

*Regional Project Priorities*

A regional project is one in which multiple organizations serving more than one local jurisdiction benefit directly from the activities implemented with the grant funds. Regional projects are designed to facilitate efficiency and communications on the fire ground among multiple jurisdictions. Any eligible applicant may act as a host applicant and apply for a regional project. Note that a county fire department applying for a countywide communications system would NOT be considered a regional project because it does not benefit multiple jurisdictions.

*Funding Priorities*

The funding priorities for regional requests are the same priorities as indicated previously for fire and EMS but are limited to the following areas:

(1) *Training.*

- Training that benefits multiple jurisdictions and/or all regional partners.
- Training props.
- Training trailers, to include manufactured burn trailers.
- EMS training throughout the region to meet local jurisdictional standards.

(2) *Equipment.*

- Communications equipment to include infrastructure (dispatch centers), handheld portables, pagers, repeaters, *etc.*
- Standardization of EMS equipment to meet local jurisdictional standards.
- Other equipment that would be beneficial the mission of all regional partners.

(3) *Personal Protective Equipment.*

- SCBA (face piece, voice amp, harness/PASS device, one spare cylinder).
- Accountability systems.
- PPE that meets NFPA and OSHA blood-borne pathogen standards.
- Firefighting PPE.

*Not Eligible for Regional Funding:* Wellness and fitness, modification to facilities, and vehicle acquisition are not eligible as regional projects.

*Award Information*

Applications for regional projects will not be included in the host applicant's funding limitations detailed in Part II of the Guidance and Application Kit. However, regional applicants will be subject to their own limitation based on the total population that the regional project will serve. For example, a regional project serving a population of fewer than 500,000 people will be limited to $1 million. A regional project's cost share will be based on the total population of the entire region rather than on the population served by the host applicant.

**W. Craig Fugate,**

*Administrator, Department of Homeland Security, Federal Emergency Management Agency.*

[FR Doc. 2011–29500 Filed 11–15–11; 8:45 am]

**BILLING CODE 9111–64–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Citizenship and Immigration Services

### Agency Information Collection Activities: Form I–566, Extension of a Currently Approved Information Collection; Comment Request

**ACTION:** 30-Day Notice of Information Collection Under Review: Form I–566, Interagency Record of Request, A, G or NATO Dependent Employment Authorization or Change/Adjustment To/From A, G or NATO Status.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on August 18, 2011, at 76 FR 51382, allowing for a 60-day public comment period. USCIS did not receive any comments for this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until December 16, 2011. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), and to the Office of Management and Budget (OMB) USCIS Desk Officer. Comments may be submitted to: USCIS, Chief, Regulatory Products Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2020. Comments may also be submitted to DHS via facsimile to (202) 272–8352 or via email at *USCISFRComment@dhs.gov,* and to the OMB USCIS Desk Officer via facsimile at (202) 395–5806 or via email at *oira_submission@omb.eop.gov.* When submitting comments by email please make sure to add OMB Control Number 1615–0027 in the subject box.

**Note:** The address listed in this notice should only be used to submit comments concerning this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check ''My Case Status'' online at: *https://egov.uscis.gov/cris/Dashboard.do,* or call the USCIS National Customer Service Center at 1–(800) 375–5283.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

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

(2) Evaluate the accuracy of the agencies estimate of the burden of the

proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**Overview of This Information Collection**

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Interagency Record of Request, A, G, or NATO Dependent Employment Authorization or Change/Adjustment To/From A, G, or NATO Status.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–566; U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or Households.* This information collection facilitates processing of applications for benefits filed by dependents of diplomats, international organizations, and NATO personnel by USCIS and the Department of State.

(5) *An estimate of the total number of annual respondents and the amount of time estimated for an average respondent to respond:* 5,800 responses at 15 minutes (0.25 hours) per response.

(6) *An estimate of the total annual public burden (in hours) associated with the collection:* 1,450 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: *http://www.regulations.gov*.

We may also be contacted at: USCIS, Regulatory Products Division, Office of the Executive Secretariat, 20 Massachusetts Avenue NW., Suite 5012, Washington, DC 20529–2020, Telephone number (202) 272–8377.

Dated: November 10, 2011.

**Sunday A. Aigbe,**

*Chief, Regulatory Products Division, Office of the Executive Secretariat, U.S. Citizenship and Immigration Services, Department of Homeland Security.*

[FR Doc. 2011–29576 Filed 11–15–11; 8:45 am]

BILLING CODE 9111–97–P

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

### Agency Information Collection Activities: Crew's Effects Declaration

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** 30-Day notice and request for comments; Extension of an existing collection of information: 1651–0020.

**SUMMARY:** U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Crew's Effects Declaration (CBP Form 1304). This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (76 FR 56213) on September 12, 2011, allowing for a 60-day comment period. One comment was received. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

**DATES:** Written comments should be received on or before December 16, 2011.

**ADDRESSES:** Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 799 9th Street NW., 5th Floor, Washington, DC 20229–1177, at (202) 325–0265.

**SUPPLEMENTARY INFORMATION:** CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual cost burden to respondents or record keepers from the collection of information (a total of capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

*Title:* Crew's Effects Declaration.

*OMB Number:* 1651–0020.

*Form Number:* CBP Form 1304.

*Abstract:* CBP Form 1304, *Crew's Effects Declaration,* was developed through an agreement by the United Nations Intergovernmental Maritime Consultative Organization (IMCO) in conjunction with the United States and various other countries. This form is used as part of the entrance and clearance of vessels pursuant to the provisions of 19 CFR 4.7, 19 U.S.C. 1431 and 19 U.S.C. 1434. CBP Form 1304 is completed by the master of the arriving carrier to record and list the crew's effects that are onboard the vessel. This form is accessible at *http://forms.cbp.gov/pdf/CBP_Form_1304.pdf.*

*Current Actions:* CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to the information collected.

*Type of Review:* Extension (without change).

*Affected Public:* Businesses.

*Estimated Number of Respondents:* 9,000.

*Estimated Number of Responses per Respondent:* 22.9.

*Estimated Number of Annual Responses:* 206,100.

*Estimated Time per Response:* 60 minutes.

*Estimated Total Annual Burden Hours:* 206,100.

Dated: November 10, 2011.

**Tracey Denning,**

*Agency Clearance Officer, U.S. Customs and Border Protection.*

[FR Doc. 2011–29625 Filed 11–15–11; 8:45 am]

**BILLING CODE 9111–14–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5480–N–113]**

### Notice of Submission of Proposed Information Collection to OMB Loan Guarantee Recovery Fund Established Pursuant to the Church Arson Prevention Act of 1996

**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.

Section 4 of the Church Arson Prevention Act of 1996 authorizes the Secretary to guarantee loans made to certain nonprofit organizations whose properties have been damaged by an act or acts of arson or terrorism.

**DATES:** Comments Due Date: December 16, 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 (2506–0159) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: (202) 395–5806. 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:* Loan Guarantee Recovery Fund Established Pursuant to the Church Arson Prevention Act of 1996.

*OMB Approval Number:* 2506–0159.

*Form Numbers:* SF–424, HUD 40076–LGA.

*Description of the Need for the Information and its Proposed Use:* Section 4 of the Church Arson Prevention Act of 1996 authorizes the Secretary to guarantee loans made to certain nonprofit organizations whose properties have been damaged by an act or acts of arson or terrorism.

*Frequency of Submission:* Monthly, On occasion.

| | Number of respondents | Annual responses | × | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|
| Reporting Burden | 71 | 5.957 | | 3.763 | | 1,592 |

*Total Estimated Burden Hours:* 1,592.

*Status:* Reinstatement without change of a currently previously approved collection.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: November 8, 2011.

**Colette Pollard,**

*Departmental Reports Management Officer, Office of the Chief Information Officer.*

[FR Doc. 2011–29521 Filed 11–15–11; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5480–N–112]**

### Notice of Submission of Proposed Information Collection to OMB Neighborhood Stabilization Program Tracking Panel

**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.

The information is being collected by telephone and on-site interviews to assess program design, implementation, inputs and outcomes at the local level.

**DATES:** *Comments Due Date:* December 16, 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 (2528–Pending) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: (202) 395–5806. 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 affected 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:* Neighborhood Stabilization Program Tracking Panel.

*OMB Approval Number:* 2528–Pending.

*Form Numbers:* None.

*Description of the Need for the Information and Its Proposed Use:*

The information is being collected by telephone and on-site interviews to assess program design, implementation, inputs and outcomes at the local level.

*Frequency of Submission:* Once.

| | Number of respondents | Annual responses | × | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|
| Reporting Burden | 40 | 9.125 | | 1.890 | | 690 |

*Total Estimated Burden Hours:* 690.

*Status:* New collection.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: November 7, 2011.

**Colette Pollard,**

*Departmental Reports Management Officer, Office of the Chief Information Officer.*

[FR Doc. 2011–29520 Filed 11–15–11; 8:45 am]

BILLING CODE 4210–67–P

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5415–FA–26]**

## Announcement of Funding Awards; HUD's Fiscal Year (FY) 2010 NOFA for the Fair Housing Initiatives Program Enforcement Testing Technical Assistance

**AGENCY:** Office of the Assistant Secretary for Fair Housing and Equal Opportunity, the Department of Housing and Urban Development, HUD.

**ACTION:** Announcement of funding awards.

**SUMMARY:** In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department for funding under the Notice of Funding Availability (NOFA) for the Fair Housing Initiatives Program (FHIP) Enforcement Testing Technical Assistance for Fiscal Year (FY) 2010. This announcement contains the names and addresses of those award recipients selected for funding based on the rating and ranking of all applications and the amount of the awards.

**FOR FURTHER INFORMATION CONTACT:** Myron Newry, Director, FHIP Division, Office of Programs, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 Seventh Street SW., Room 5230, Washington, DC 20410. Telephone number (202) 402–7095 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

**SUPPLEMENTARY INFORMATION:** Title VIII of the Civil Rights Act of 1968, as amended, 42 U.S.C. 3601–19 (the Fair Housing Act) provides the Secretary of Housing and Urban Development with responsibility to accept and investigate complaints alleging discrimination based on race, color, religion, sex, handicap, familial status or national origin in the sale, rental, or financing of most housing. In addition, the Fair Housing Act directs the Secretary to coordinate with state and local agencies administering fair housing laws and to cooperate with and render technical assistance to public or private entities carrying out programs to prevent and eliminate discriminatory housing practices.

Section 561 of the Housing and Community Development Act of 1987, 42 U.S.C. 3616, established FHIP to strengthen the Department's enforcement of the Fair Housing Act and to further fair housing. This program assists projects and activities designed to enhance compliance with the Fair Housing Act and substantially equivalent state and local fair housing laws. Implementing regulations are found at 24 CFR part 125.

The Department published its Fair Housing Initiatives Program (FHIP) Enforcement Testing Technical Assistance NOFA on April 14, 2011 announcing the availability of approximately $380,000 out of the Department's FY 2010 appropriation, to be utilized for FHIP Enforcement Testing Technical Assistance from Transformation Initiative Funding. This Notice announces the grant award of approximately $272,990.

For the FY 2010 NOFA, the Department reviewed, evaluated and scored the applications received based on the criteria in the FY 2010 NOFA. As a result, HUD has funded the application announced in Appendix A, and in accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is hereby publishing details concerning the recipient of the funding award in Appendix A of this document.

The Catalog of Federal Domestic Assistance Number for currently funded Initiatives under the Fair Housing Initiatives Program is 14.408.

Dated: October 31, 2011.

**Bryan Greene,**

*General Deputy Assistant Secretary, Fair Housing and Equal Opportunity.*

### Appendix A

ENFORCEMENT TESTING TECHNICAL ASSISTANCE

| Applicant name | Contact | Region | Award amount |
|---|---|---|---|
| Metropolitan Milwaukee Fair Housing Council, Inc., 600 East Mason Street, Suite 401, Milwaukee, WI 53202–3876. | Mr. William Tisdale, 414–278–1240 ..... | 5 | $272,990.00 |

[FR Doc. 2011–29517 Filed 11–15–11; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5582–N–01]**

## Clarification of Duplication of Benefits Requirements Under the Stafford Act for Community Development Block Grant (CDBG) Disaster Recovery Grantees

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice.

**SUMMARY:** This Notice clarifies the duplication of benefits requirements under the Stafford Act for all active Community Development Block Grant (CDBG) disaster recovery grants, and all future CDBG disaster recovery grants.

**DATES:** *Effective Date:* November 21, 2011.

**FOR FURTHER INFORMATION CONTACT:** Scott Davis, Director, Disaster Recovery and Special Issues Division, Office of Block Grant Assistance, Department of Housing and Urban Development, 451 7th Street SW., Room 7286, Washington, DC 20410, telephone number (202) 708–3587. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Relay Service at (800) 877–8339. Facsimile inquiries may be sent to Mr. Davis at (202) 401–2044. (Except for the ''800'' number, these telephone numbers are not toll-free.)

**SUPPLEMENTARY INFORMATION:**

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### I. Applicability

The guidance presented in this Notice is applicable to all active HUD CDBG disaster recovery grants, and will be incorporated by reference into **Federal Register** notices governing all future CDBG disaster recovery grants. Table 1, below, illustrates the active grants next to the pertinent appropriation law. The following guidance is applicable to all new programs initiated and submitted to HUD in an Action Plan Amendment subsequent to the date of this Notice.

TABLE 1—ACTIVE CDBG DISASTER RECOVERY GRANTS

| Appropriation law | Date enacted | Grantee |
|---|---|---|
| Public Law 107–73 ..... | November 26, 2001 ..... | State of New York. |
| Public Law 107–117 ..... | January 10, 2002 ..... | State of New York. |
| Public Law 107–206 ..... | August 2, 2002 ..... | State of New York. |
| Public Law 108–324 ..... | October 13, 2004 ..... | States of Alabama, California, Florida, Maryland, North Carolina, Ohio, Pennsylvania, Puerto Rico, Virginia and West Virginia. |
| Public Law 109–148 ..... | December 30, 2005 ..... | States of Alabama, Florida, Louisiana, Mississippi, and Texas. |
| Public Law 109–234 ..... | June 15, 2006 ..... | States of Alabama, Florida, Louisiana, Mississippi, and Texas. |
| Public Law 110–116 ..... | November 13, 2007 ..... | State of Louisiana. |
| Public Law 110–252 ..... | June 30, 2008 ..... | States of Arkansas, Colorado, Illinois, Indiana, Iowa, Maine, Minnesota, Mississippi, Missouri, Montana, Nebraska, Oklahoma, South Dakota, West Virginia, and Wisconsin. |
| Public Law 110–329 ..... | September 30, 2008 ..... | States of Arkansas, California, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Mississippi, Missouri, Puerto Rico, Tennessee, Texas, and Wisconsin. |
| Public Law 111–212 ..... | July 29, 2010 ..... | States of Kentucky, Rhode Island, and Tennessee; City of Cranston, City of Warwick, City of Memphis, Nashville-Davidson County, and Shelby County. |

This guidance applies to all CDBG disaster recovery expenditures, programs, and activities, regardless of whether a grantee or subgrantee administers a program. Although this Notice frequently references the term grantee, the actions described are not limited solely to grantees. Rather, it is ultimately the grantee's responsibility to ensure no recipient of funds under its CDBG disaster recovery award has received a duplicate benefit.

This Notice does not apply to any funds received annually under the State CDBG program, or the CDBG Entitlement program, unless those funds have specifically been awarded by the grantee for disaster recovery purposes. All uses of the term ''CDBG'' in this Notice refer to CDBG disaster recovery allocations.

### II. Background

Grantees have requested clarification from HUD regarding the duplication of benefits. This Notice provides information to ensure all active CDBG disaster recovery grantees are in compliance with the Robert T. Stafford

Disaster Relief and Emergency Assistance Act, (42 U.S.C. 5121–5207), as amended, (Stafford Act), and all future CDBG disaster recovery grantees address duplication of benefits issues consistently. This Notice was also developed in consultation with the Small Business Administration (SBA) and the Federal Emergency Management Agency (FEMA).

Most of the CDBG disaster recovery supplemental appropriation laws to date have explicitly required the Secretary of Housing and Urban Development to establish procedures to prevent recipients from receiving any duplication of benefits. In addition, most supplemental appropriation laws also require the Secretary to report quarterly to the Committees on Appropriations with regard to all steps taken to prevent fraud, abuse of funds, and duplication of benefits. Even in the absence of these specific requirements, Stafford Act prohibition on duplication of benefits in section 312 (42 U.S.C. 5155) is applicable to all CDBG disaster recovery grants.

HUD has instituted specific reporting, written procedures, monitoring, and internal audit requirements for each grantee to ensure compliance with program rules for CDBG disaster recovery awards, including rules related to prevention of fraud, abuse, and duplication of benefits. However, HUD has neither designed nor mandated a specific process or method by which grantees must evaluate duplication of benefits; grantees have been encouraged to develop policies and procedures appropriate to their individualized programs. The Department has consistently monitored CDBG disaster recovery grantees to ensure that they are meeting the above requirements and that their policies and procedures are adequately preventing duplication of benefits.

## III. Applicable Law

Two authorities form the foundation of duplication of benefit inquiries—the Stafford Act and applicable ''necessary and reasonable cost principles in 24 CFR part 570 and in OMB Cost Circulars (codified in title 2 of the Code of Federal Regulations). Supplemental appropriations statutes often reinforce and supplement these authorities.

A. *The Stafford Act.* The Stafford Act directs administrators of Federal assistance to ensure that no ''person, business concern or other entity'' will receive duplicative assistance and imposes liability ''to the extent such assistance duplicates benefits available to the person for the same purpose from another source.'' 42 U.S.C. 5155(a) and (c). Because assistance to each person varies widely based on individual insurance coverage and eligibility for Federal funding, grantees cannot comply with the Stafford Act without completing a duplication of benefits analysis specific to each applicant. The Stafford Act provides the framework for the Federal government's role in preparing for and recovering from a disaster. Its duplication of benefits requirements apply to all Federal agencies administering a disaster recovery program providing financial assistance, including CDBG disaster recovery grants. Under the Act's framework, Congress instituted a goal to achieve greater coordination and responsiveness of disaster preparedness and relief programs. 42 U.S.C. 5121.

It also sought to guard against fraud and ineligible uses of taxpayers' funds. The President makes major disaster declarations only when ''response is beyond the capabilities of the State and the affected local governments and that Federal assistance is necessary.'' (42 U.S.C. 5170). Similarly, the prohibition on duplication of benefits ensures that Federal assistance serves only ''to supplement insurance and other forms of disaster assistance.'' To accomplish these goals, the Stafford Act implies a hierarchy of funding (see section VII of this notice: Collecting a Duplication), and prohibits Federal agencies from providing recovery assistance to the extent another source has covered the same portion of that recovery need.

Specifically, section 312 of the Stafford Act prohibits any person, business concern, or other entity from receiving ''any part of such loss as to which he has received financial assistance under any other program or from insurance or any other source.'' 42 U.S.C. 5155(a). A duplication occurs when a beneficiary receives assistance from multiple sources for a cumulative amount that exceeds the total need for a particular recovery purpose. The amount of the duplication is the amount of assistance provided in excess of need.

The Stafford Act requires a fact-specific inquiry into assistance received by each person, household, or entity. A grantee may not make a blanket determination that a duplication of benefits does not exist for all beneficiaries or recipients under a disaster recovery program. As a result, all disaster recovery funds must be governed by policies and procedures to prevent duplication of benefits.

In disaster recovery, it is common for multiple sources of funds to be used to address a single need. Grantees are advised to coordinate program designs and choices with related funding sources. Together, grantees and funders can determine the best approaches to minimize or eliminate duplication, increase leverage, and maximize community and individual outcomes. Furthermore, the Stafford Act provides that receipt of partial benefits for a major disaster or emergency shall not preclude provision of additional Federal assistance for any part of a loss or need for which benefits have not been provided. 42 U.S.C. 5155(b). Thus, to comply with the Stafford Act, grantees should ensure that each program provides assistance to a person or entity only to the extent that the person or entity has a disaster recovery need that has not been fully met. Any recipient receiving a duplicate benefit may be liable to the Federal government. 42 U.S.C. 5155(c).

B. *Necessary and Reasonable Cost Principles.* Cost principles applicable to all CDBG disaster recovery grantees require that costs are necessary and reasonable. These Federal cost principles are described in OMB Circulars and codified in title 2 of the Code of Federal Regulations. HUD grantees and subrecipients must generally adhere to the cost principles applicable to the specific type of entity (2 CFR part 225 (OMB Circular A–87), *Cost Principles for State, Local, and Indian Tribal Governments,* 2 CFR part 230 (OMB Circular 122), *Cost Principles for Non-profit Organizations,* 2 CFR part 220 (OMB Circular A–21), *Cost Principles for Educational Institutions,* or 45 CFR part 74, *Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts with Hospitals,* as applicable). State grantees are subject to 24 CFR 570.489(d), which requires that states shall have fiscal and administrative requirements which ensure that funds received are only spent ''for reasonable and necessary costs of operating programs.''

Federal necessary and reasonable cost principles apply to:

- State grantees (and their state recipients) through 24 CFR 570.489(d);
- Subrecipients of state grantees according to CDBG disaster recovery Notices, which typically require subrecipient agreements to comply with 24 CFR 570.503; and
- Local government grantees receiving CDBG disaster recovery grants directly from HUD (and their subrecipients) through 24 CFR 570.610.

Section 570.489(d) of Title 24 Code of Federal Regulations and the Federal cost principles applicable to all types of entities include reasonability requirements that prohibit costs that have already been or will be paid from

another source. For example, principles and standards established by 2 CFR part 225 (OMB Circular A–87), *Cost Principles for State, Local, and Indian Tribal Governments,* state that a cost assigned to a grant must be ''necessary and reasonable for proper and efficient performance and administration of Federal awards.'' 2 CFR part 225, Appendix A (C)(1)(a). A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made. Other factors related to the reasonableness of the cost are described in the basic guidelines in 2 CFR part 225, Appendix A (C)(2). This requirement applies to a grantee's costs in administering its disaster recovery program, as well as the ultimate uses of the funds by the grantee.

Grantees must also make decisions about which types and amounts of cost items are necessary and reasonable given the applicable Federal laws, terms, and conditions of the Federal award, or other governing regulations. In the context of the Stafford Act duplication of benefits provision, the grantee must conduct an individualized review of each beneficiary and the purpose for which CDBG disaster recovery funds are provided. Specifically, the grantee must determine whether a cost is necessary and reasonable; if a cost has already been or will be paid from another source, it is presumed to violate the necessary and reasonable standard.

## IV. Framework for Determining CDBG Disaster Recovery Assistance

The paragraphs in this section of this Notice illustrate the primary considerations that must be taken into account when analyzing need and duplication of benefits under CDBG disaster recovery. While the Department is providing a suggested framework, grantees have the discretion to develop other methods or procedures to evaluate and address the calculation of need and assessment of duplication of benefits. Grantees are required to establish a duplication of benefits policy that explains and describes all methods and procedures to prevent the duplication of benefits. 42 U.S.C. 5155(a).

Although the potential for duplication of benefits arises most frequently under homeowner rehabilitation programs, it is not limited solely to that program type. Therefore, this Notice seeks to provide general, cross-cutting guidance that can apply to any program.

A grantee that creates several disaster recovery programs should consider whether one program will duplicate assistance provided by another program, even when the secondary program is funded entirely with non-Federal funds.

A. *Assessment of need prior to assistance.* A grantee should first determine the applicant's total post-disaster need in the absence of any duplicative benefits or program caps. Following the identification of total need, duplicative assistance can later be subtracted and program caps applied to arrive at a final award. A rebuilding project's cost estimate is often able to serve as the best demonstration of need.

Some recovery programs not involved with physical rebuilding, such as economic development to provide an affected business with working capital, may not necessarily base awards on construction cost estimates. In such scenarios, the potential award may be determined by the program and be guided by standard underwriting principles; however, it must still be determined to be cost reasonable.

B. *Total assistance available to the person or entity.* Assistance includes all benefits available to the person, including cash and other resources such as insurance proceeds, grants, and SBA loans (private loans not guaranteed by SBA are excepted—see paragraph C). Grantees should identify all assistance received by each person, business concern, or other entity, via insurance, FEMA, SBA, other local, state, or Federal programs, and private or nonprofit charity organizations. See, FEMA Disaster Assistance Policy 9525.3, *Duplication of Benefits—Non-Government Funds.*

Grantees should also identify reasonably anticipated assistance, such as future insurance claims or approved SBA loan proceeds. Reasonably anticipated funds include assistance that has been awarded, but has not yet been received. For example, assume a business was approved to receive an SBA loan for $30,000, but had only received $20,000 when it applied for CDBG disaster recovery assistance for the same purpose. The grantee should identify the full amount of assistance for which the applicant was approved ($30,000).

Funds are not reasonably anticipated when the source and/or amount is indefinite, or the applicant is unaware that he/she may be eligible to receive additional funds at a later date. To address any potential duplication, beneficiaries must enter a signed agreement to repay any assistance later received for the same purpose as the CDBG disaster recovery funds. The grantee must identify a method to monitor compliance with the agreement for a reasonable period, and should articulate this method in its written administrative procedures. Please note that if additional need is established, subsequent funds would not be considered a duplication. See paragraph E, Unmet Need, for more information on this issue.

C. *Non-duplicative assistance excluded from final benefit calculation.* Once the grantee has determined the potential award and the total assistance received or to be received, it can exclude for duplication of benefit purposes, assistance that was: (1) Provided for a different purpose; (2) used for a different, eligible purpose; (3) not available to the applicant; (4) a private loan not guaranteed by SBA; or (5) any other asset or line of credit available to the applicant. Below, each of these categories is explained in greater detail.

1. *Funds for a different purpose.* Any funds provided for a different purpose, or a general, non-specific purpose (*e.g.,* ''disaster relief/recovery''), may be excluded from the final award calculation if they were not used by the applicant for the same purpose.

Funds provided to a homeowner typically fall under one of the following categories: Replacement housing, rehabilitation assistance, or interim (*i.e.*, temporary) housing. Funds provided for replacement housing are generally easy to identify—they assist an individual or household to secure a replacement home in the event their disaster-affected home cannot be rehabilitated. This includes, but is not limited to, downpayment assistance, interim mortgage assistance, and acquisition of the damaged property. While these types of funds may be delivered through separate programs, they all have a uniform purpose—to equip an individual or household with the funds necessary to gain replacement housing.

Rehabilitation includes repair and reconstruction. If a homeowner receives rehabilitation funds from CDBG disaster recovery, all other assistance provided to address that home's rehabilitation must be included. If award amounts are related to a property's value or estimated cost of repair/reconstruction, then HUD will consider them to be for the purpose of rehabilitation or replacement housing.

Funds provided for interim housing, which would be provided if a household is temporarily unable to reside in its permanent residence, are considered to have a different purpose than rehabilitation or replacement housing. For example, if FEMA funds were eligibly used for interim housing, and CDBG funds were provided for home rehabilitation, there is no

duplication regarding those funds because the funds were provided for different purposes. However, any FEMA funds eligibly used for housing replacement or rehabilitation must be considered for that purpose.

Economic development programs may address many unique purposes. Thus, for a more effective administration of these programs, each should be carefully designed from the beginning with clear, identified purposes of the funds.

Finally, when providing funds for the repair, replacement, rehabilitation, or new construction of public facilities or improvements, a grantee must address whether other sources of funds are available for that same purpose and for that specific project because funds used directly by grantees and other government entities for public facilities or other purposes are also subject to the duplication of benefits prohibitions under the Stafford Act.

2. *Funds for same purpose, different eligible use.* Funds used for a different eligible purpose may be excluded from the final award calculation. In some instances, funds provided for the same general purpose as the CDBG disaster recovery funds will have been used by the applicant for a different specific eligible purpose. In these circumstances, if the applicant can document that the funds received were used for a different, *eligible* purpose, then the funds are not duplicative. Each grantee can work with HUD to determine what documentation is appropriate. In general, acceptable documentation may include, but is not limited to, receipts as well as sworn statements and certifications that can be verified or substantiated. FEMA requires individuals to keep receipts or bills for three years to demonstrate how all FEMA-funded assistance was used in meeting an eligible, disaster related need. It is advisable for grantees to remind applicants of this requirement when submitting an application for CDBG assistance that supplements FEMA assistance already received.

Whether the funds are used for an eligible purpose is dependent upon the program that provided the funds. For example, assume a grantee is administering a homeowner rehabilitation program and an applicant to the program previously received housing assistance from FEMA. If the applicant can document that the FEMA funds were used for eligible interim housing costs (such as rent, in accordance with FEMA program eligibility), and not housing replacement or rehabilitation (which may also be an eligible use of the funds), then his or her CDBG award for permanent housing should not be reduced by the amount of FEMA assistance used for interim housing. Because FEMA may allow its recovery funds to be used for multiple purposes, CDBG disaster recovery funds may not duplicate the ultimate use of the FEMA funds.

Because grantees may not be familiar with other Federal programs and allowable uses of funds, should this issue arise, grantees are encouraged to immediately contact their assigned HUD Community Planning and Development (CPD) Representative for further guidance.

This issue may also emerge when a grantee provides multiple homeowner rehabilitation or replacement housing programs, or multiple economic development programs. Thus, grantees are encouraged to clearly define the purpose and intended use of funds under each program.

3. *Funds not available to the applicant.* Funds that are not available to an applicant may also be excluded from the final award calculation. A benefit is available if a person or entity: (1) Would receive it by acting in a commercially reasonable manner, or (2) has received it, and has legal control over it. Commercially reasonable efforts refer to efforts that use a standard of reasonableness defined by what a similar person would do as judged by the standards of the applicable community. Commercially reasonable efforts should be consistent with good faith business judgments. For example, it may be commercially reasonable for a person to elect to receive a lump sum insurance settlement based on estimated cost of repairs to avoid transaction costs associated with the alternative of receiving reimbursement based on actual replacement cost; any additional benefits that theoretically might have been received under another settlement option do not reduce eligibility for assistance.

Funds are not available to the person or entity if the person does not have legal control of the funds when they are received and are used for a non-duplicative purpose. For example, if a homeowner's mortgage requires any insurance proceeds to be applied to reduce the lien balance, then the bank/mortgage holder (not the homeowner) has legal control over those funds. Therefore, the homeowner is legally obligated to use insurance proceeds for that purpose and does not have a choice in using them for any other purpose, such as to rehabilitate the house. Under these circumstances, insurance proceeds do not reduce assistance eligibility. Alternatively, if a disaster-affected homeowner chooses to apply insurance proceeds to reduce an existing mortgage, or requests that the lender demand payment, insurance proceeds reduce the amount of disaster assistance eligibility. In addition, if a mortgage requires insurance proceeds to be used for rehabilitation of the property, those proceeds must be considered as assistance for that purpose.

A homeowner does not need to possess cash assistance to be considered as being in legal control over receiving benefits for a particular purpose. For example, it is common for homeowners to choose to apply to local- or state-administered housing repair or reconstruction programs where the program administrator acts directly to complete the repairs for the homeowner. In this case, the person asks/applies for $10,000 worth of repairs (for example) and the benefit they receive is $10,000 in repair work to the home. The person does not need to have personally possessed the $10,000 in order to be in legal control over receiving that benefit for that specific purpose.

4. *Private loans.* Similarly, for duplication of benefits purposes, private loans may be excluded from the final award calculation. Unlike SBA loans (or any other subsidized loan or Federal loan guarantee program that provides assistance after a major disaster or emergency), private loans not guaranteed by SBA need not be considered duplicative assistance. Congress provided for SBA loans (both direct and guaranteed) as part of the overall statutory scheme for disaster recovery. As such, SBA loans are made pursuant to a government program. Since private loans are not provided under a government program, they do not need to be considered as potentially duplicative assistance. However, when making final award determinations, necessary and reasonable cost principles such as OMB Circular A–87 (2 CFR part 225) apply. While private loans need not be considered for duplication of benefit purposes, a grantee is not prohibited from considering loans for other purposes, such as underwriting. For purposes of this Notice, private loans are non-Federal loans (neither direct nor guaranteed) that are made in a commercial lending transaction for fair market rates with a willing borrower and willing lender, under standard commercial lending terms in which the borrower must repay the full amount of the loan (plus interest, if applicable). This includes private loans for construction and bridge financing, but not forgivable loans. This policy applies regardless of whether the borrower is a business or an individual.

5. *Other assets or lines of credit.* Other assets or lines of credit available to a homeowner or a business owner need not be included in the award calculation. This includes, but is not limited to: Checking or savings accounts, stocks, bonds, mutual funds, pension or retirement benefits, credit cards, mortgages or lines of credit, and life insurance. Please note that these items may be held in the name of an individual, or in the name of a business.

D. *Calculate CDBG disaster recovery award.* The calculation may look as follows: (1) Identify total post-disaster need prior to any assistance; (2) Identify potentially duplicative assistance; (3) Subtract all assistance found to be duplicative, resulting in the maximum potential award amount, or unmet need.

E. *Unmet need.* Long-term recovery is a process, however, disaster recovery needs are calculated at points in time. As a result, a subsequent change in circumstances can affect need. If, after needs are initially calculated and/or a CDBG award has been made, an applicant for CDBG disaster recovery assistance can demonstrate a change in circumstances, such as vandalism, contractor fraud, an increase in the cost of materials and/or labor, a change in local zoning law or building code, or subsequent damage to a home or business that was partially repaired, the grantee may subsequently reevaluate the calculation of the award by taking into account the increased need. However, any reevaluation must be done before the initial need for which the assistance was granted has been fully met (*e.g.,* before the damaged house is fully repaired). In effect, once the house is fully repaired, the need resulting from the disaster impact will have been fully met; but actual costs to the point of completion are eligible.

Oftentimes, unmet need does not become apparent until after CDBG disaster recovery assistance has been provided. For example, a subsequent storm or disaster may affect the unrepaired house or business of an individual or entity that was previously assisted by CDBG disaster recovery for a prior disaster. Therefore, to the extent that an original disaster recovery need (*e.g.,* rehabilitation of a home) was not fully met, but was exacerbated by other factors beyond the government's and individual's control (*e.g.,* lack of contractor availability or vandalism), additional CDBG disaster recovery assistance can be provided to meet the outstanding need. Grantees have discretion to determine the best way to determine and verify additional or unmet need. Physical inspection and professional appraisals are highly recommended. If a subsequent appraisal demonstrates that the CDBG award is in excess of need, the grantee should evaluate whether a duplication of benefits has occurred or whether the applicant's award should be reduced based upon program eligibility criteria.

## V. Example Frameworks for Calculating Disaster Recovery Awards

The tables below illustrate how a grantee may wish to address the process of making disaster recovery awards.

TABLE 2—BASIC FRAMEWORK FOR CALCULATING DISASTER RECOVERY AWARDS

| | |
|---|---|
| 1. Identify Applicant's Total Need Prior to Any Assistance | $100,000 |
| 2. Identify All Potentially Duplicative Assistance | 35,000 |
| 3. Deduct Assistance Determined to be Duplicative | 30,000 |
| 4. Maximum Eligible Award (Item 1 less Item 3) | 70,000 |
| 5. Program Cap (if applicable) | 50,000 |
| 6. Final Award (lesser of Items 4 and 5) | 50,000 |

Table 2 illustrates a basic way to calculate an award for CDBG disaster recovery—taking into account any duplication of benefit and reducing the award since the total unmet need is greater than the program cap set by the grantee. Table 3, below, uses this basic framework to calculate a CDBG disaster recovery homeowner rehabilitation award:

TABLE 3—BASIC FRAMEWORK—HOMEOWNER REHABILITATION

| | |
|---|---|
| 1. Identify Applicant's Total Need Prior to Any Assistance (*e.g.,* rehabilitation cost estimate) | $60,000 |
| 2. Identify All Potentially Duplicative Assistance: | |
| a. FEMA Housing Grant (assumes interim housing is eligible use). | |
| Interim Housing (*e.g.,* rent) | 5,000 |
| Permanent Housing (*e.g.,* repair/rehabilitation) | 15,000 |
| b. SBA Loan | 20,000 |
| c. Insurance (Structure, not Contents) | 15,000 |
| | 55,000 |
| 3. Deduct Assistance Determined to be Duplicative: | |
| a. FEMA Housing Grant (assumes interim housing is eligible use). | |
| Permanent Housing (*e.g.,* repair/rehabilitation) | 15,000 |
| b. SBA Loan | 20,000 |
| c. Insurance (Structure, not Contents) | 15,000 |
| | 50,000 |
| 4. Maximum Eligible Award (Item 1 *less* Item 3) | 10,000 |

TABLE 3—BASIC FRAMEWORK—HOMEOWNER REHABILITATION—Continued

| | |
|---|---|
| 5. Program Cap (if applicable) | 50,000 |
| 6. Final Award (lesser of Items 4 and 5) | 10,000 |

A similar method may be used for most programs, so long as Item 1 is reflective of the program, as for example, illustrated in table 4:

TABLE 4—BASIC FRAMEWORK—INFRASTRUCTURE

| | |
|---|---|
| 1. Identify Applicant's Total Need Prior to Any Assistance (*e.g.,* reconstruction cost estimate) | $100,000 |
| 2. Identify All Potentially Duplicative Assistance: | |
| a. Insurance | 50,000 |
| b. FEMA Public Assistance Funds for Permanent Work | 25,000 |
| | 75,000 |
| 3. Deduct Assistance Determined to be Duplicative | 75,000 |
| 4. Maximum Eligible Award (Item 1 *less* Item 3) | 25,000 |
| 5. Program Cap (if applicable) | 50,000 |
| 6. Final Award (lesser of Items 4 and 5) | 25,000 |

While tables 2, 3, and 4 illustrate basic ways to calculate a CDBG disaster recovery award taking into account any duplication of benefit, table 5 below considers a scenario in which a CDBG award has already been made, however, additional unmet needs were identified subsequent to the award.

TABLE 5—POST-AWARD IDENTIFICATION OF ADDITIONAL UNMET NEED HOMEOWNER REHABILITATION

| | |
|---|---|
| 1. Identify Applicant's Total Need Prior to Any Assistance (*e.g.,* rehabilitation cost estimate) | $60,000 |
| 2. Identify All Potentially Duplicative Assistance: | |
| a. FEMA Housing Grant (assumes interim housing is eligible use). | |
| Interim Housing (*e.g.,* rent) | 5,000 |
| Permanent Housing (*e.g.,* repair/rehabilitation) | 15,000 |
| b. SBA Loan | 20,000 |
| c. Insurance (Structure, not Contents) | 15,000 |
| | 55,000 |
| 3. Deduct Assistance Determined to be Duplicative: | |
| a. FEMA Housing Grant (assumes interim housing is eligible use). | |
| Permanent Housing (*e.g.,* repair/rehabilitation) | 15,000 |
| b. SBA Loan | 20,000 |
| c. Insurance (Structure, not Contents) | 15,000 |
| | 50,000 |
| 4. Initial Award (Item 1 *less* Item 3) | 10,000 |
| 5. Program Cap (if applicable) | 50,000 |
| 6. Initial Final Award (lesser of Items 4 and 5) | 10,000 |
| 7. Demonstrated Additional Unmet Need (*e.g.,* one year later): | |
| a. Actual cost ultimately greater than initially estimated cost | 5,000 |
| 8. Amount Eligible for Additional Award | 5,000 |
| 9. Program Cap (if applicable) | 50,000 |
| 10. Additional Award (Item 8 if lesser of Items 6 + 8 and Item 9) | 5,000 |

Please note that in the above example, some type of documentation must substantiate the amount determined by Item 5. That is, the project files should explain why the original CDBG award was insufficient, and/or why additional funds are necessary to complete the activity. In the above example, the cost of materials may have increased or a

fraudulent contractor may have performed defective construction. In either case, the grantee has the discretion to determine what documentation is sufficient to demonstrate these events. Ultimately, required documentation depends on each particular fact pattern.

**VI. Use of CDBG Funds**

A. *Use of funds for explicit and eligible purposes.* CDBG disaster recovery funds must be used for eligible purposes of the program or activity for which they have been provided. That is, CDBG funds provided for the sole purpose of repairing a home should be used strictly for the repair of that home. They should not be used for any other purpose. Similarly, funds provided to a business for equipment replacement, or structural repair, should be used only for those purposes. While some business assistance programs may provide for-profit entities with working capital, this purpose should be clearly identified from the outset of the program so as not to duplicate other programs or working capital assistance.

B. *Treatment of SBA Loans.* CDBG disaster recovery funds should not be used to pay down an SBA home or business loan. In cases where initial SBA loan amounts approved based on estimated costs are later determined to be inadequate relative to the actual costs to complete home repairs or reconstruction, the SBA will consider re-evaluating an applicant's maximum eligibility to explore if additional assistance may be provided. This also applies to recipients of SBA business loans (including loans for working capital). If need remains after all SBA eligibility has been exhausted, supplemental disaster recovery CDBG funds may be used to address that need.

SBA loans are among the Federal government's primary and standard forms of disaster assistance. As disaster recovery CDBG funds are provided by Congress through supplemental appropriations only in extraordinary circumstances, these funds are intended to supplement rather than supplant SBA assistance. Grantees may, on rare occasion and in extraordinary circumstances, contend that the payment of SBA loans with disaster recovery CDBG for a beneficiary is justified in keeping with all associate laws and regulations. In such an instance, the grantee should contact its CPD representative for guidance.

**VII. Collecting a Duplication**

If a potential duplication is discovered after CDBG disaster recovery assistance has been provided, the grantee may reassess need at that time. If additional need is not demonstrated, disaster recovery funds should be recaptured to the extent they are in excess of the need and duplicate other assistance received by the beneficiary for the same purpose. However, it may depend on what funds were provided last.

Under the Stafford Act, a Federal agency that provides duplicative funds must collect those funds. FEMA regulations at 44 CFR 206.191 set forth a hierarchy of delivery that determines the order in which beneficiaries should receive Federal assistance. This hierarchy is based on which agency has the primary responsibility for providing assistance following a disaster, not which agency actually delivers the assistance first. As an example, in most situations, FEMA and SBA assistance is provided to individuals before supplemental disaster recovery CDBG assistance is able to be delivered. However, there may be cases in which, prior to receiving FEMA or SBA assistance, an applicant receives CDBG assistance for a purpose for which they are FEMA/SBA eligible. In this latter case, subject to the agreement that the grantee should have in place with the applicant, the applicant should reimburse the grantee in an amount equal to all duplicative FEMA or SBA funds subsequently received for purposes which CDBG funds were initially used.

The regulations at 44 CFR 206.191(d) explain that a duplication of benefits occurs when an agency provides assistance which was the primary responsibility of another agency, and the agency with primary responsibility later provides assistance. When the delivery sequence has been disrupted, the disrupting agency is responsible for rectifying the duplication.

Since CDBG disaster recovery provides long-term recovery assistance via supplemental congressional appropriations, and falls lower in the hierarchy of delivery than FEMA or SBA assistance, it is intended to supplement rather than supplant these sources of assistance. If CDBG disaster recovery funds or non-Federal funds were provided last and unknowingly create a duplication, the method of recapturing the CDBG funds, and the timeframe, are the responsibility of the grantee. HUD has no set guidelines or regulations for this process. However, the recapture method and timeframe should be consistent with OMB Circular A–87 (2 CFR part 225) or other applicable cost principles, any relevant guidance or handbook issued by the HUD Office of the Inspector General, and the Stafford Act, which requires that duplicative assistance shall be collected in accordance with chapter 37 of title 31, relating to debt collection. HUD's CPD representatives are available to provide guidance to grantees setting up or revising their duplication of benefits policies and procedures.

**Catalog of Federal Domestic Assistance**

The Catalog of Federal Domestic Assistance numbers for the disaster recovery grants under this Notice are as follows: 14.218; 14.228.

**Finding of No Significant Impact**

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The FONSI is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the docket file must be scheduled by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number). Hearing or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Dated: November 4, 2011.

**Mercedes M. Márquez,**

*Assistant Secretary for Community Planning and Development.*

[FR Doc. 2011–29634 Filed 11–15–11; 8:45 am]

**BILLING CODE 4210–67–P**

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5580–N–02]**

## HUD Draft Environmental Justice Strategy, Extension of Public Comment Period

**AGENCY:** Office of Sustainable Housing and Communities, HUD.

**ACTION:** Notice.

**SUMMARY:** Through this notice, HUD extends the period by which comments may be submitted on HUD's draft Environmental Justice Strategy, for which the availability of review and the opportunity to submit public comments were announced by notice published in the **Federal Register** on October 7, 2011.

**DATES:** *Comment Due Date:* November 23, 2011. Comments may be submitted to *EJStrategy@hud.gov.*

**FOR FURTHER INFORMATION CONTACT:** Kathryn Dykgraaf Office of Sustainable Housing and Communities, Department of Housing and Urban Development, 451 7th Street SW., Room, Washington, DC 20410; telephone number (202) 402–6731 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

**SUPPLEMENTARY INFORMATION:**

## I. Background

By notice published in the **Federal Register** on October 7, 2011 (76 FR 62434), HUD released for review and public comment its draft Environmental Justice Strategy (EJ Strategy). HUD's EJ Strategy is a four-year plan to address environmental justice concerns and increase access to environmental benefits through HUD policies, programs, and activities. HUD's EJ strategy can be found at *http://portal.hud.gov/hudportal/HUD?src=/program_offices/sustainable_housing_communities/HUD_Draft_Environmental_Justice_Strategy.* As HUD noted in the October 7, 2011, notice, the release of the draft is the latest step in a larger Administration-wide effort to ensure strong protection from environmental and health hazards for all Americans. The October 7, 2011, notice provided for the submission of public comments through November 14, 2011.

Through this notice HUD extends the public comment period to November 23, 2011. Comments can be submitted by emailing *EJStrategy@hud.gov.*

HUD will review the comments submitted, and is targeting finalization of the strategy by February 2012. After the strategy is issued in final, HUD and its Federal partners will continue to engage stakeholders through outreach, education and stakeholder events and respond to public comments through annual implementation reports.

Dated: November 7, 2011.

**Mariia Zimmerman,**

*Deputy Director for Sustainable Communities.*

[FR Doc. 2011–29518 Filed 11–15–11; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. (FR–5478–N–06)]**

## Privacy Act of 1974; Notification To Delete and Create a New System of Records, ''HUD/FHA Lender Approval Files'' to New Lender Electronic Assessment Portal

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Notification to Delete and Create a New System of Records.

**SUMMARY:** HUD is providing public notice that it proposes to design a new system, the Lender Electronic Assessment Portal (LEAP), and revise and delete information published in the **Federal Register** (FR) about one of its existing Privacy Act system of records. The creation of the new system is to facilitate migration and streamline efforts for record collection activities under the Federal Housing Administration (FHA) lender approval and recertification process. The new system LEAP will take full custody over the records currently maintained by HUD's Lender Approval Files System of Records Notice (SORN) and will fully automate the manual records process for these records. The HUD/FHA Lender Approval Files SORN contains information pertaining to individuals who are principals or officers of financial institutions seeking approval or approved to originate, service, or hold FHA single family or multifamily insured mortgages, or Title I and Title II insured loans. Fully automating and streamlining HUD's lender approval and recertification process enables HUD's Office of FHA to efficiently perform the workflow operation and the assessments required to ascertain a financial institution's eligibility and/or qualification to participating under a FHA-insured mortgage, or Title I and Title II insured loans. Subsequent changes that have occurred for the previously published notice involve: Changes to the Categories of Individuals Covered by the System, Categories of Records in the System, Purposes of the System, and Routine Uses of Records Maintained in the System, Including Categories of Users and Purposes of Such Users. This notice serves to update, replace and delete the prior SORN reference published in the **Federal Register** on August 22, 1999 for HUD/FHA Lender Approval Files.

**DATES:** *Effective Date:* This proposal shall become effective, without further notice, December 16, 2011, unless comments are received during or before this period which would result in a contrary determination.

*Comments Due Date:* December 16, 2011.

**ADDRESSES:** Interested persons are invited to submit comments regarding this notice to the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street SW., Room 10276, Washington, DC 20410. Communications should refer to the above docket number and title. FAX comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 8 a.m. and 5 p.m., weekdays at the above address.

**FOR FURTHER INFORMATION CONTACT:** For Privacy Act inquiries contact Harold Williams, Acting Departmental Privacy Act Officer, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone number (202) 402–8087. Regarding records maintained in Washington, DC 20410 for the Office of Housing, contact the Director, Lender Approval and Recertification Division, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone number (202) 402–8214. [The above are not toll free numbers.] A telecommunications device for hearing- and speech-impaired persons (TTY) is available at 1–(800) 877–8339 (Federal Information Relay Services).

**SUPPLEMENTARY INFORMATION:** Title 5 U.S.C. 552a(e)(4) and (11) provides that the public be afforded a 30-day period in which to comment on the amended record system. The system report was submitted to the Office of Management and Budget (OMB), the Senate Committee on Homeland Security and Governmental Affairs and the House Committee on Government Reform pursuant to Paragraph 4c of Appendix l to OMB Circular No. A–130, ''Federal Agencies Responsibilities for Maintaining Records About Individuals,'' dated July 25, 1993 (58 FR 36075, July 2, 1993).

Accordingly, this notice deletes prior publication for the HUD/FHA Lender Approval Files SORN and creates a new notice for the HUD's FHA Housing program administrators and accompanying information to be submitted and accessed in the management of HUD's FHA Housing programs by the Office of Housing.

**Authority:** 5 U.S.C. 552a; 88 Stat. 1896; 42 U.S.C. 3535(d).

Dated: November 8, 2011.

**Jerry E. Williams,**

*Chief Information Officer.*

**HUD/SF01.2502**

**SYSTEM NAME:**

Lender Electronic Assessment Portal (LEAP/P278), formerly ''HUD/FHA Lender Approval Files.''

**SYSTEM LOCATION:**

LEAP is hosted on HUD servers located in Charleston, West Virginia.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Individuals covered by the system are principals or officers (*i.e.* director's managers and owners) of financial institutions that seek approval or are approved to originate service or hold single family or multifamily FHA-insured mortgages, or Title I and Title II insured loans.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

All documents and related data required for a lender's application; including entity-level information such as lender institution name and address, business email address, and telephone number, tax identification number, corporate financial and organizational document, licenses and corporate credit reports. Other LEAP information include individual personal information on lending institution officials such as names, social security numbers, credit reports; background investigation documents types, excluded party report and individual resumes, and financial statements.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Title I and Title II of the National Housing Act; 12 U.S.C. 1703, 1709 and 1751b; 42 U.S.C. 1436a and 3535(d).

**PURPOSES:**

To obtain information from lenders and the principals or officers of financial institutions seeking approval or approved to originate, service or hold single family or multifamily FHA-insured mortgages, or Title I and Title II insured loans. The information in this record system enables HUD/FHA to process applications received for (1) Suitability and verification purposes; (2) to ensure conformance to FHA Title I and Title II authorities; (3) to identify specific individuals and roles at lending institutions, permitting correspondence to be addressed to individuals rather than job titles.

Currently, lenders seeking authority to issue FHA-insured mortgages or Title I and Title insured loans must manually submit a paper-based application package, which is analyzed and reviewed by HUD staff. This review ensures the applicant's capability to adhere to the requirements of FHA's mortgage insurance programs. LEAP has been developed to streamline the application process by migrating to electronic transmission of the requisite package.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

**IN ADDITION TO THOSE DISCLOSURES GENERALLY PERMITTED UNDER 5 U.S.C. 552A(B) OF THE PRIVACY ACT, OTHER ROUTINE USES INCLUDE:**

(a.) To the FBI during the course of investigating possible fraud in the FHA mortgage insurance, underwriting, insuring or monitoring process, to the extent necessary to obtain information pertinent to the investigation,

(b.) To the Department of Justice (DOJ) when seeking legal advice or for use in any proceeding, or in preparation for any proceeding, when HUD or any component thereof discloses information to DOJ during the course of an investigation to the extent necessary to obtain information pertinent to the investigation under the FHA Mortgage Insurance Program,

(c.) To HUD contractors, lenders and financial institutions for the purpose of conducting oversight and monitoring of program operations to determine compliance with applicable laws and regulations, and financial reporting requirements,

(d.) Additional Disclosure for Purposes of Facilitating Responses and Remediation Efforts in the Event of a Data Breach. A record from a system of records maintained by HUD may be disclosed to appropriate agencies, entities, and persons when:

(1.) The Department suspects or has confirmed that the security or confidentiality of information in a 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 harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by HUD or another agency or entity) that rely upon the compromised information,

(3.) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the HUD's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm, and

(e.) To a commercial or consumer reporting agency to use in obtaining credit reports on individuals and credit and background reports on entities.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Automated records are stored on magnetic tape/disc/drum and will be maintained on HUD secure servers. Paper records will no longer collected or used by the system.

**RETRIEVABILITY:**

Records are retrieved by name, social security number or other identification number.

**SAFEGUARDS:**

Automated records are maintained in secured areas. Access is limited to authorized personnel with a need-to-know. Paper records are no longer used by the system.

**RETENTION AND DISPOSAL:**

The electronic records in LEAP will be maintained in accordance with Schedule 20 of the NARA General Records Schedule. By reference, retention policies will also mirror Appendix 20 (''Single Family Home Mortgage Program'') of HUD Handbook 2225.6 REV–1 CHG–53.

**SYSTEM MANAGER(S) AND ADDRESS:**

Director, Lender Approval and Recertification Division, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Notification procedure: For information, assistance, or inquiry about existence of records, contact the Acting Departmental Privacy Act Officer identified above.

**NOTIFICATION AND ACCESS PROCEDURES:**

Include the following standard language: ''For information, assistance, or inquiry about the existence of records, contact Harold Williams, Acting Departmental Privacy Act Officer at the Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone number (202) 402–8087. Written requests must include the full name, social security number, date of birth, current address, and telephone number of the individual making the request.''

**CONTESTING RECORD PROCEDURES:**

Include the following standard language: Procedures for the amendment or correction of records, and for applicants who want to appeal initial agency determinations appear in 24 CFR part 16. If additional

information or assistance is needed, it may be obtained by contacting:

(i) In relation to contesting contents of records, the Acting Departmental Privacy Act Officer at HUD, 451 Seventh Street SW., Room 4178, Washington, DC 20410; and,

(ii) In relation to appeals of initial denials, the HUD Departmental Privacy Appeals Officer, Office of General Counsel, HUD, 451 Seventh Street SW., Washington, DC 20410.

**RECORD SOURCE CATEGORIES:**

Source information is received from financial institution principals, and can include corporate documents like articles of incorporation and financial statements.

**EXEMPTION:**

None.

[FR Doc. 2011–29522 Filed 11–15–11; 8:45 am]

BILLING CODE 4210–67–P

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

**[FWS–R9–IA–2011–N242; 96300–1671–0000–P5]**

## Endangered Species; Receipt of Applications for Permit

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

**ACTION:** Notice of receipt of applications for permit.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (ESA) prohibits activities with listed species unless a Federal permit is issued that allows such activities. The ESA laws require that we invite public comment before issuing these permits.

**DATES:** We must receive comments or requests for documents on or before December 16, 2011.

**ADDRESSES:** Brenda Tapia, Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 212, Arlington, VA 22203; fax (703) 358–2280; or *email DMAFR@fws.gov*.

**FOR FURTHER INFORMATION CONTACT:** Brenda Tapia, (703) 358–2104 (telephone); (703) 358–2280 (fax); *DMAFR@fws.gov* (email).

**SUPPLEMENTARY INFORMATION:**

### I. Public Comment Procedures

*A. How do I request copies of applications or comment on submitted applications?*

Send your request for copies of applications or comments and materials concerning any of the applications to the contact listed under **ADDRESSES**. Please include the **Federal Register** notice publication date, the PRT-number, and the name of the applicant in your request or submission. We will not consider requests or comments sent to an email or address not listed under **ADDRESSES**. If you provide an email address in your request for copies of applications, we will attempt to respond to your request electronically.

Please make your requests or comments as specific as possible. Please confine your comments to issues for which we seek comments in this notice, and explain the basis for your comments. Include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) Those that include citations to, and analyses of, the applicable laws and regulations. We will not consider or include in our administrative record comments we receive after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

*B. May I review comments submitted by others?*

Comments, including names and street addresses of respondents, will be available for public review at the address listed under **ADDRESSES**. The public may review documents and other information applicants have sent in support of the application unless our allowing viewing would violate the Privacy Act or Freedom of Information Act. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

### II. Background

To help us carry out our conservation responsibilities for affected species, section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that we invite public comment before final action on these permit applications.

### III. Permit Applications

*A. Endangered Species*

Applicant: Kansas City Zoo, Kansas City, MO; PRT–58124A

The applicant requests a permit to export two live, captive-born black-footed cats (*Felis nigripes*) to France, for the purpose of enhancement of the survival of the species.

Applicant: Zoological Society of Cincinnati dba Cincinnati Zoo & Botanical Garden, Cincinnati, OH; PRT–58183A

The applicant requests a permit to export two live, captive-born black-footed cats (*Felis nigripes*) to Denmark, for the purpose of enhancement of the survival of the species.

Applicant: Maryland Zoo in Baltimore, Baltimore, MD; PRT 54123A

The applicant requests a permit to export 50, live captive-born Panamanian golden frogs (*Atelopus zeteki*) to Canada, for the purpose of enhancement of the survival of the species.

Multiple Applicants

The following applicants each request a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Kevin Hudson, Van Buren, AR; PRT–57071A.

Applicant: Joseph Harrison, Catherine, AL; PRT–56468A.

Applicant: Richard Smith, Capon Bridge, WV; PRT–58302A.

Applicant: Daniel Sullivan, Long Lake, MN; PRT–58185A.

Applicant: Jackson Fulham, College Station, TX; PRT–56462A.

**Brenda Tapia,**

*Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.*

[FR Doc. 2011–29516 Filed 11–15–11; 8:45 am]

BILLING CODE 4310–55–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLWY–957400–12–L19100000–BJ0000–LRCMK1G03341]**

### Filing of Plats of Survey, Nebraska

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The Bureau of Land Management (BLM) is scheduled to file the plats of survey of the lands described below thirty (30) calendar days from the date of this publication in the BLM Wyoming State Office, Cheyenne, Wyoming.

**FOR FURTHER INFORMATION CONTACT:** Bureau of Land Management, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, Wyoming 82003.

**SUPPLEMENTARY INFORMATION:** This survey was executed at the request of the Bureau of Indian Affairs and is necessary for the management of these lands. The lands surveyed are:

The plat and field notes representing the dependent resurvey of portions of the subdivisional lines, the subdivision of certain sections, the adjusted 1928–29 meanders of the dry bed of old lake (Tract 37) and the adjusted 1929 meanders of the right bank of the Missouri River, and the corrective dependent resurvey of a portion of the original 1867 meanders of the right bank of the Missouri river, and the survey of the subdivision of certain sections, and the meander of a portion of the present right bank of the Missouri River, fractional Township 25 North, Range 10 East, of the Sixth Principal Meridian, Nebraska, Group No. 168, was accepted November 3, 2011.

Copies of the preceding described plat and field notes are available to the public at a cost of $1.10 per page.

Dated: November 9, 2011.

**John P. Lee,**

*Chief Cadastral Surveyor, Division of Support Services.*

[FR Doc. 2011–29580 Filed 11–15–11; 8:45 am]

**BILLING CODE 4310–22–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Reclamation

**[INT–DES–11–58]**

### Draft Programmatic Environmental Impact Statement for the Integrated Water Resource Management Plan, Yakima River Basin Water Enhancement Project, Benton, Kittitas, Klickitat, and Yakima Counties, WA

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice of availability and public meetings.

**SUMMARY:** The Bureau of Reclamation, in cooperation with the Washington State Department of Ecology, the joint lead agency, has prepared a draft Programmatic Environmental Impact Statement for the Integrated Water Resource Management Plan, Yakima River Basin Water Enhancement Project. The draft Programmatic Environmental Impact Statement (DPEIS) is available for public review and comment.

**DATES:** Submit written comments on the draft Programmatic Environmental Impact Statement on or before January 3, 2012

Three public open house meetings will be held on the following dates to share information about the proposed action:

- Monday, December 5, 2011, 1:30 p.m. to 3:30 p.m. and from 5 p.m. to 7 p.m., Cle Elum, Washington.
- Tuesday, December 6, 2011, 1:30 p.m. to 3:30 p.m. and from 5 p.m. to 7 p.m., Ellensburg, Washington.
- Wednesday, December 14, 2011, 1:30 p.m. to 3:30 p.m. and from 5 p.m. to 7 p.m., Yakima, Washington.

**ADDRESSES:** Submit written comments or requests for copies to Candace McKinley, Environmental Program Manager, Bureau of Reclamation, Columbia-Cascades Area Office, 1917 Marsh Road, Yakima, WA 98901; or by email to *yrbwep@usbr.gov.*

The draft Programmatic Environmental Impact Statement is also available on the Bureau of Reclamation's Web site at *http://www.usbr.gov/pn/programs/yrbwep/2011integratedplan/index.html.*

The public open house meetings will be held at:

- *Cle Elum*—Cle Elum Ranger District, Tom L. Craven Conference Room, 803 W. Second Street.
- *Ellensburg*—Hal Holmes Center, 209 N. Ruby Street.
- *Yakima*—Yakima Area Arboretum, 1401 Arboretum Way.

See the **SUPPLEMENTARY INFORMATION** section for locations where copies of the draft Programmatic Environmental Impact Statement is available for public review.

**FOR FURTHER INFORMATION CONTACT:** Candace McKinley, (509) 575–5848, ext. 232; or *email* at *CMckinley@usbr.gov.* TTY users may dial 711 to obtain a toll-free TTY relay.

**SUPPLEMENTARY INFORMATION:**

#### Background

In 1979, Congress initiated the Yakima River Basin Water Enhancement Project (YRBWEP) in response to long-standing water resource problems in the basin. The YRBWEP involves developing a plan to achieve four objectives: (1) Provide supplemental water for presently irrigated lands; (2) provide water for new lands within the Yakama Indian Reservation; (3) provide water for increased instream flows for aquatic life; and (4) identify a comprehensive approach for efficient management of basin water supplies.

Initial efforts in the mid-1980s (Phase 1) focused on improving fish passage by rebuilding fish ladders and constructing fish screens at existing diversions. Phase 2 in the 1990s focused on water conservation/water acquisition activities, tributary fish screens, and long-term management needs. Efforts under these initial phases were hindered by the ongoing uncertainties associated with adjudication of the basin surface waters that began in 1978. With the adjudication process now largely completed, most of the water right uncertainties have been addressed.

In 2003, the Bureau of Reclamation (Reclamation) and the Washington State Department of Ecology (Ecology) initiated the Yakima River Basin Water Storage Feasibility Study to examine storage augmentation in the Yakima River basin. This study emphasized evaluation of a proposed Black Rock Reservoir, which was the focus of the Yakima River Basin Water Storage Feasibility Study Draft Planning Report/Environmental Impact Statement (PR/EIS) issued in January 2008.

The narrow focus of the legislative authorization in combination with comments on the Draft PR/EIS prompted Ecology to separate from the National Environmental Policy Act (NEPA) process. In mid-2008, Ecology initiated a separate evaluation of the Yakima basin's water supply problems, including consideration of habitat and fish passage needs. Reclamation continued the NEPA process consistent with its legislative authorization and issued the Yakima River Basin Water Storage Feasibility Study Final PR/EIS in December 2008. Following issuance

of the Final PR/EIS, Reclamation selected the No Action Alternative. Ecology completed its study and issued a separate Final Environmental Impact Statement (FEIS) for the Yakima River Basin Integrated Water Resource Management Alternative in June 2009 under SEPA. The Integrated Water Resource Management Alternative evaluated in the Ecology FEIS relied upon a range of water management and habitat improvement approaches to resolve the long-standing water resource problems in the basin.

The DPEIS describes and analyzes the potential effects of two alternatives. Under the Action Alternative, Reclamation and Ecology would implement an Integrated Water Resource Management Plan based on the following elements:

1. Fish Passage (fish passage improvements at Cle Elum, Bumping, Clear Lake, Keechelus, Kachess, and Tieton Dams);
2. Structural/Operational Changes (Cle Elum Dam pool raise, Kittitas Reclamation District canal modifications, Keechelus to Kachess pipeline, subordination of power generation at Roza and Chandler Power Plants and Wapatox canal improvements.);
3. Surface Storage (new Wymer Dam and Reservoir, Bumping Reservoir enlargement, Kachess inactive storage);
4. Groundwater Storage (groundwater infiltration prior to storage control and aquifer storage and recovery);
5. Habitat protection and enhancement (targeted watershed protection and enhancements;
6. Enhanced Water Conservation (agricultural water and municipal/domestic conservation); and
7. Market-Based Reallocation of Water Resources (institutional improvements to facilitate market-based water transfers).

Under the No Action Alternative, Reclamation and Ecology would not implement development of new surface water storage in the Yakima River basin or expansion of programs to protect or enhance fish habitat, nor would Reclamation and Ecology implement structural and operational changes enhanced water conservation, market-based reallocation of water resources, or groundwater storage.

**Purpose and Need for Action**

The current water resources infrastructure of the Yakima River basin has not been capable of consistently meeting aquatic resource demands for fish and wildlife habitat, dry-year irrigation demands, and municipal water supply demands. Specific needs that the Integrated Plan is proposed to address include: Anadromous and resident fish populations are seriously depleted from historic levels due to the following major factors:

- Dams and other obstructions block fish passage to upstream tributaries and spawning grounds;
- Riparian habitat and floodplain functions have been degraded by past and present land use practices; and
- Irrigation operations have altered stream flows, resulting in flows at certain times of the year that are too high in some reaches and too low in others to provide good fish habitat.

Demand for irrigation water significantly exceeds supply in drought years, leading to severe prorationing (delivery of a reduced water supply) for proratable, or junior, water rights holders:

- A water supply of 70 percent of proratable water rights during a drought year would provide a minimally acceptable supply to prevent severe economic losses to farmers. This number was reached following extensive discussions with stakeholders regarding the lowest level of water supply that could be accommodated without catastrophic losses to crops, assuming aggressive water management techniques were employed. This 70-percent threshold is similar to the State of Washington's definition of a drought condition contained in RCW 43.83B.400, which recognizes a drought when water supply for a significant portion of a geographic area falls below 75 percent of normal and is likely to cause undue hardship for various water uses and users.

Demand for municipal and domestic water supplies is difficult to meet because of the following factors:

- Water rights in the basin are fully appropriated, making it difficult to acquire water rights to meet future municipal and domestic water demand;
- Pumping groundwater for irrigation and municipal uses may reduce surface water flows in some locations, which may affect existing water rights; and
- Hydraulic continuity between groundwater and surface water in the basin creates uncertainty over the status of groundwater rights and permit exempt wells within the basin's appropriative water rights system (first in time first in right), potentially making groundwater use junior to nearly all surface water use.

Climate change projections indicate that there will be less runoff available from reservoirs, increasing the need for prorationing and reducing flows for fish.

These problems have created a need to restore ecological functions in the Yakima River system and to provide more reliable and sustainable water resources for the health of the riverine environment, and for agriculture and municipal and domestic needs. These needs should be addressed in a way that anticipates increased water demands and changes in water supply related to climate change.

The purposes of the Integrated Plan are to:

- Implement a comprehensive program of water resource and habitat improvements in response to existing and forecast needs of the Yakima River basin; and
- Develop an adaptive approach for implementing these initiatives and for long-term management of basin water supplies that contributes to the vitality of the regional economy and sustains the health of the riverine environment.

**Proposed Federal Action**

Reclamation proposes to implement an integrated water resource management plan in the Yakima River basin as part of the Yakima River Basin Water Enhancement Project to improve water supply reliability during drought years to 70 percent of proratable supply for participating irrigation districts; improve the ability of water managers to respond and adapt to potential effects of climate change; provide opportunities for comprehensive ecological restoration and enhancement addressing instream flows, aquatic habitat, and fish passage; provide economic stimulus to the Yakima River basin that will benefit the larger Central Washington area; and develop a comprehensive approach for efficient management of water supplies for irrigated agriculture, municipal and domestic uses, and power generation.

**Locations for Public Review**

Copies of the DPEIS are available for public review and inspection at the following locations:

- Bureau of Reclamation, Columbia-Cascades Area Office, 1917 Marsh Road, Yakima, Washington 98901.
- Washington State Department of Ecology, 15 W. Yakima Avenue, Suite 200, Yakima, Washington 98902.

*Libraries*

- Carpenter Memorial Library, 302 N Pennsylvania Ave, Cle Elum, Washington 98922.
- Ellensburg Public Library, 209 N Ruby St, Ellensburg, Washington 98926.
- Roslyn Public Library, 201 S. First St, Roslyn, Washington 98941.
- Benton City Library, 810 Horne Dr, Benton City, Washington 99320.
- Kennewick Library, 1620 S Union St, Kennewick, Washington 99338.

- Kittitas Public Library, 200 N Pierce St, Kittitas, Washington 98934.
- Mid-Columbia Library, 405 S Dayton St, Kennewick, Washington 99336.
- Pasco Library, 1320 W Hopkins St, Pasco, Washington 99301.
- Prosser Library, 902 7th St, Prosser, Washington 99350.
- Richland Public Library, 955 Northgate Dr, Richland, Washington 99352.
- Sunnyside Public Library, 621 Grant Ave, Sunnyside, Washington 98944.
- Toppenish Library, 1 S Elm St, Toppenish, Washington 98948.
- Wapato Library, 119 E 3rd St, Wapato, Washington 98951.
- Washington State Library, Point Plaza East, 6880 Capitol Blvd. SE., Tumwater, Washington 98504.
- West Richland Library, 3803 W Van Giesen St, Richland, Washington 99353.
- Yakama Nation Library, 100 Spiel-Yi Loop, Toppenish, Washington 98948.
- Yakima Valley Regional Library, 102 N 3rd St, Yakima, Washington 98901.

**Special Assistance for Public Meetings**

If special assistance is required to participate in the public meetings, please contact Candace McKinley at (509) 575–5848, ext. 232, or via email at *cmckinley@usbr.gov.* Please notify Ms. McKinley as far in advance as possible to enable Reclamation to secure the needed services. If a request cannot be honored, the requestor will be notified. TTY users may dial 711 to obtain a toll-free TTY relay.

**Public Disclosure**

Before including your name, address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: November 7, 2011.

**Karl E. Wirkus,**

*Regional Director, Pacific Northwest Region.*

[FR Doc. 2011–29577 Filed 11–15–11; 8:45 am]

BILLING CODE 4310–MN–P

## DEPARTMENT OF JUSTICE

**[OMB Number 1105–0071]**

## Agency Information Collection Activities: Extension With Change of a Previously Approved Collection; Comments Requested; National Drug Threat Survey

**ACTION:** 30-Day notice.

The United States Department of Justice (DOJ), National Drug Intelligence Center (NDIC), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 76, Number 167, page 53696 on August 29, 2011, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until December 16, 2011. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

**Overview of This Information Collection**

(1) *Type of Information Collection:* Extension Reinstatement with Change of a Previously Approved Collection.

(2) *Title of the Form/Collection:* National Drug Threat Survey.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* NDIC Form # A–34l.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Federal, State, Tribal, and Local, law enforcement agencies. This survey is a critical component of the National Drug Threat Assessment and other reports and assessments produced by the National Drug Intelligence Center. It provides direct access to detailed drug threat data from state and local law enforcement agencies.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that approximately 3,000 respondents will complete a survey response within approximately 20 minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 1,000 total annual burden hours associated with this collection.

*If additional information is required contact:* Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Room 2E–508, Washington, DC 20530.

**Jerri Murray,**

*Department Clearance Officer, PRA, U.S. Department of Justice.*

[FR Doc. 2011–29506 Filed 11–15–11; 8:45 am]

BILLING CODE 4410–DC–P

## DEPARTMENT OF JUSTICE

## Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on November 9, 2011, a proposed consent decree with D&L Sales, Inc. (''Consent Decree'') in United States vs. D&L Sales, Inc., Civil Action No. 11–cv–01193 was

lodged with the United States District Court for the Western District of Michigan.

The proposed Consent Decree resolves cost recovery and contribution claims under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601–9675, against D&L Sales, Inc. and the Department of Defense, arising from radiological and chemical contamination at the Aircraft Components Inc. Superfund Site near Benton Harbor, Michigan. Under the proposed ability-to-pay Consent Decree, D&L Sales, which has incurred response costs exceeding $675,000 to date, will implement institutional controls to protect the remedy. The Department of Defense will pay $5,649,438 to resolve its alleged contribution liability at the Site.

The Department of Justice will receive for a period of 30 days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either emailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *D&L Sales,* Inc., D.J. Ref. 90–11–3–08695.

During the public comment period, the Consent Decree, may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or emailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $22.25 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by email or fax, forward a check in that amount to the Consent Decree Library at the stated address.

**Maureen Katz,**

*Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 2011–29571 Filed 11–15–11; 8:45 am]

BILLING CODE 4410–15–P

## DEPARTMENT OF LABOR

### Bureau of Labor Statistics

### Proposed Collection, Comment Request

**ACTION:** Notice.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance 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. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed revision of the ''National Compensation Survey.'' A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the Addresses section of this notice.

**DATES:** Written comments must be submitted to the office listed in the **ADDRESSES** section of this notice on or before January 17, 2012.

**ADDRESSES:** Send comments to Nora Kincaid, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue NE., Washington, DC 20212. Written comments also may be transmitted by fax to (202) 691–5111 (this is not a toll free number).

**FOR FURTHER INFORMATION CONTACT:** Nora Kincaid, BLS Clearance Officer, at (202) 691–7628 (this is not a toll free number). (See **ADDRESSES** section.)

**SUPPLEMENTARY INFORMATION:**

### I. Background

The National Compensation Survey (NCS) is an ongoing survey of earnings and benefits among private firms, State, and local government. The NCS is currently the integration of the sampling, collection, and processing for the Employment Cost Index (ECI) and the Employee Benefits Survey (EBS) into a single, unified program of compensation statistics. This integration improves data for policymakers and researchers, reduces respondent burden, improves the utilization of BLS resources, and enhances the published measures of compensation.

Data from the integrated program include estimates of wages covering broad groups of related occupations, and data that directly link benefit plan costs with detailed plan provisions. The integrated program's single sample also produces both time-series indexes and cost levels for industry and occupational groups, thereby increasing the analytical potential of the data. Benefits of the integrated sample include: Improved measures of trends; better integration of benefit costs and plan provisions; data for narrow occupations; and broad regional and occupational coverage. The NCS employs probability methods for selection of occupations. This ensures that sampled occupations represent all occupations in the workforce, while minimizing the reporting burden on respondents. Data from the NCS are used for setting Federal white-collar salaries, determining monetary policy (as a Principal Federal Economic Indicator), and for compensation administrators and researchers in the private sector.

The survey collects data from a sample of employers. These data will consist of information about the duties, responsibilities, and compensation (earnings and benefits) for a sample of occupations for each sampled employer.

Data will be updated on a quarterly basis. The updates will allow for production of data on change in earnings and total compensation.

### II. Current Action

Office of Management and Budget clearance is being sought for the National Compensation Survey.

The NCS collects earnings and work level data on occupations for the nation. The NCS also collects information on the cost, provisions, and incidence of all the major employee benefits through its benefit cost and benefit provision programs and publications.

The Administration's final approved budget for fiscal year 2011 called for an alternative to the Locality Pay Survey (LPS), which was the part of the National Compensation Survey that provides occupational wage data by industry and specific geographic areas. The alternative to the LPS uses data from two current BLS programs—the Occupational Employment Statistics (OES) survey and the ECI program. In this new approach, OES data provides wage data by occupation and by area, while ECI data are used to specify grade level effects. This new approach is also being used to extend the estimation of pay gaps to areas that were not included

in the LPS and these data have been delivered to the Pay Agent.

NCS is reverting to a national survey design in order to preserve the reliability of the ECI and EBS, after the loss of the LPS sample. This also allowed the sample size of the ECI and EBS programs to be reduced by about 25 percent. Starting in Fiscal Year 2013 the new NCS private industry sample will be on a 3 year rotational cycle, which is a change from the previous 5 years rotational cycle for private industry sample members. Sample changes are reflected in the stated collection and respondent burden estimates.

The NCS data on benefit costs is used to produce the ECI and Employer Costs for Employee Compensation. The data provided will be the same, and the series will be continuous.

The NCS will continue to provide employee benefit provision and participation data. These data include estimates of how many workers receive the various employer-sponsored benefits. The data also will include information about the common provisions of benefit plans.

NCS has modified our collection forms, to 14 forms (normally having unique private industry and government initiation and update collection forms and versions.) Two forms are unique for private industry and government sample members who report data through our Secure Sockets Layer (SSL) encryption Web site. For NCS update collection, the forms give respondents their previously reported information, the dates they expected change to occur to these data, and space for reporting these changes.

A second generation version of a Web-based (Internet Data Collection Facility (IDCF)) data collection system is currently being field tested. This will allow survey respondents to easily further refine and breakout the detailed data they send NCS using this Web application.

## III. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- 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.

*Type of Review:* Revision of a currently approved collection.

*Agency:* Bureau of Labor Statistics.

*Title:* National Compensation Survey.

*OMB Number:* 1220–0164.

*Affected Public:* Businesses or other for-profit; not-for-profit institutions; and State, local, and tribal government.

*Total Respondents:* 13,109 (three-year average).

*Total Burden Cost (capital/startup):* $0.

*Total Burden Cost (operating/maintenance):* $0.

All figures in the table below are based on a three-year average. The total respondents in the table are greater than the figure shown above because many respondents are asked to provide information relating to more than one form.

| Form | Total respondents per form | Frequency | Total annual responses | Avg. minutes for the predominant form use** | Total hours |
|---|---|---|---|---|---|
| Establishment collection form (NCS Form 12–1G) | * | | * | 19 | * |
| Establishment collection form (NCS Form 12–1P) | 3,240 | At initiation | 3,240 | 19 | 1,026 |
| Earnings form (NCS Form 12–2G) | * | | * | 20 | * |
| Earnings form (NCS Form 12–2P) | 3,240 | At initiation | 3,240 | 20 | 1,080 |
| Wage Shuttle form computer generated earnings update form #. | 8,160 | 4 | 32,640 | 20 | 10,880 |
| Work Level Form (NCS Form 12–3G) | * | | * | 25 | * |
| Work Level Form (NCS Form 12–3P) | 3,240 | At initiation | 3,240 | 25 | 1,350 |
| Work Schedule Form (NCS 12–4G) | * | | * | 10 | * |
| Work Schedule Form (NCS 12–4P) | 3,240 | At initiation | 3,240 | 10 | 540 |
| Benefits Collection Form (NCS 12–5G) | * | | * | 177 | * |
| Benefits Collection Form (NCS 12–5P) | 3,240 | At initiation | 3,240 | 178.5 | 9,639 |
| Summary of Benefits (Benefit update form SO–1003) is computer generated #. | 8,160 | 4 | 32,640 | 19.90 | 10,826 |
| Collection not tied to a specific form (testing, Quality Assurance/Quality Measurement, etc.)**. | 1,709 | 1.716 | 2,933 | 32.485 | 1,588 |
| Totals | 34,229 | | 88,413 | | 36,929 |

* Most NCS Government forms (NCS 12–XG) are only used for government sample initiations, which is not currently planned during this Clearance cycle.

** Collection forms can have multiple uses. The table above shows the average collection times for the predominant uses of the forms. Record checks (for quality assurance and measurement) are done on a sub-sample of respondents verifying responses for pre-selected sections of the collection forms.

# Includes IDCF form time (Web based screen for SSL encryption Web site secure).

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 also will become a matter of public record.

Signed at Washington, DC, this 9th day of November 2011.

**Kimberley D. Hill,**

*Chief, Division of Management Systems, Bureau of Labor Statistics.*

[FR Doc. 2011–29534 Filed 11–15–11; 8:45 am]

**BILLING CODE 4510–24–P**

## DEPARTMENT OF LABOR

## Bureau of Labor Statistics

## Proposed Collection, Comment Request

**ACTION:** Notice.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance 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. The Bureau of Labor Statistics (BLS) is soliciting comments on the proposed extension of the Labor Market Information (LMI) Cooperative Agreement application package. A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

**DATES:** Written comments must be submitted to the office listed in the **ADDRESSES** section of this notice on or before January 17, 2012.

**ADDRESSES:** Send comments to Carol Rowan, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue NE., Washington, DC 20212. Written comments also may be transmitted by fax to (202) 691–5111 (this is not a toll free number).

**FOR FURTHER INFORMATION CONTACT:** Carol Rowan, BLS Clearance Officer, at (202) 691–7628 (this is not a toll free number). (See **ADDRESSES** section.)

**SUPPLEMENTARY INFORMATION:**

### I. Background

The BLS enters into Cooperative Agreements with State Workforce Agencies (SWAs) annually to provide financial assistance to the SWAs for the production and operation of the following LMI statistical programs: Current Employment Statistics, Local Area Unemployment Statistics, Occupational Employment Statistics, Quarterly Census of Employment and Wages, and Mass Layoff Statistics. The Cooperative Agreement provides the basis for managing the administrative and financial aspects of these programs.

The existing collection of information allows Federal staff to negotiate the Cooperative Agreement with the SWAs and monitor their financial and programmatic performance and adherence to administrative requirements imposed by common regulations implementing Office of OMB Circular A–102 and other grant related regulations. The information collected also is used for planning and budgeting at the Federal level and in meeting Federal reporting requirements.

The Cooperative Agreement application package being submitted for approval is representative of the package sent every year to State agencies. The work statements included in the Cooperative Agreement application also are representative of what is included in the whole LMI Cooperative Agreement package. The final Cooperative Agreement, including the work statements, will be submitted separately to the Office of Management and Budget for review of any minor year-to-year information collection burden changes they may contain.

### II. Current Action

Office of Management and Budget clearance is being sought for an extension to the existing clearance for the LMI Cooperative Agreement package.

### III. Desired Focus of Comments

The BLS is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- 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.

*Type of Review:* Extension of a currently approved collection.

*Agency*: Bureau of Labor Statistics.

*Title:* Labor Market Information (LMI) Cooperative Agreement.

*OMB Number:* 1220–0079.

*Affected Public:* State, Local, or Tribal Governments.

*Frequency:* Monthly, quarterly, annually.

| Information collection | Respondents | Frequency | Responses | Time | Total hours |
|---|---|---|---|---|---|
| Work Statements | 54 | 1 | 54 | 1–2 hr | 54–108 |
| BIF (LMI 1A, 1B) | 54 | 1 | 54 | 1–6 hr | 54–324 |
| Quarterly Automated Financial Reports | 48 | 4 | 192 | 10–50 min | 32–160 |
| Monthly Automated Financial Reports | 48 | 8 | 384 | 5–25 min | 32–160 |
| BLS Cooperative Statistics Financial Report (LMI 2A) | 7 | 12 | 84 | 1–5 hr | 84–420 |
| Quarterly Status Report (LMI 2B) | 1–30 | 4 | 4–120 | 1 hr | 4–120 |
| Budget Variance Request Form | 1–54 | 1 | 1–54 | 5–25 min | 0–23 |
| Total | 1–54 | | 773–942 | | 260–1315 |

*Total Burden Cost (capital/startup):* $0.

*Total Burden Cost (operating/maintenance):* $0.

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 also will become a matter of public record.

Signed at Washington, DC, this 9th day of November 2011.

**Kimberley D. Hill,**

*Chief, Division of Management Systems, Bureau of Labor Statistics.*

[FR Doc. 2011–29535 Filed 11–15–11; 8:45 am]

**BILLING CODE 4510–24–P**

## DEPARTMENT OF LABOR

### Bureau of Labor Statistics

### Proposed Collection, Comment Request

**ACTION:** Notice.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance 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. The Bureau of Labor Statistics (BLS) is soliciting comments on the proposed extension of the *''BLS Occupational Safety and Health Statistics (OSHS) Cooperative Agreement application package.''* A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

**DATES:** Written comments must be submitted to the office listed in the **ADDRESSES** section of this notice on or before January 17, 2012.

**ADDRESSES:** Send comments to Nora Kincaid, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue NE., Washington, DC 20212. Written comments also may be transmitted by fax to (202) 691–5111 (this is not a toll free number).

**FOR FURTHER INFORMATION CONTACT:** Nora Kincaid, BLS Clearance Officer, telephone number (202) 691–7628 (this is not a toll free number). (See **ADDRESSES** section.)

**SUPPLEMENTARY INFORMATION:**

### I. Background

The Secretary of Labor has delegated to the BLS the authority to collect, compile, and analyze statistical data on work-related injuries and illnesses, as authorized by the Occupational Safety and Health Act of 1970 (Pub. L. 91–596). The Cooperative Agreement is designed to allow the BLS to ensure conformance with program objectives. The BLS has full authority over the financial operations of the statistical program. The BLS requires financial reporting that will produce the information that is needed to monitor the financial activities of the BLS Occupational Safety and Health Statistics grantees.

The Cooperative Agreement application package being submitted for approval is representative of the package sent every year to State agencies. The work statements included in the Cooperative Agreement application also are representative of what is included in the whole OSHS Cooperative Agreement package. The final Cooperative Agreement, including the work statements, will be submitted separately to the Office of Management and Budget for review of any minor year-to-year information collection burden changes they may contain.

### II. Current Action

Office of Management and Budget clearance is being sought for an extension to the existing clearance for the OSHS Cooperative Agreement package.

### III. Desired Focus of Comments

The BLS is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- 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.

*Type of Review:* Extension of a currently approved collection.

*Agency*: Bureau of Labor Statistics.

*Title:* BLS Occupational Safety and Health Statistics Cooperative Agreement Application Package.

*OMB Number:* 1220–0149.

*Affected Public:* State Governments.

| Forms | Total respondents | Frequency | Average burden hours | | Estimated total burden hours |
|---|---|---|---|---|---|
| | | | Per response | Annually | |
| BLS–OSHS Work Statements | 54 | 1 | 2 | 2 | 108 |
| BLS–OSHS2 | 54 | 4 | 1 | 4 | 216 |
| Total | 54 | 5 | 3 | 6 | 324 |

*Total Burden Cost (capital/startup):* $0.

*Total Burden Cost (operating/maintenance):* $0.

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 also will become a matter of public record.

Signed at Washington, DC, this 9th day of November 2011.

**Kimberley D. Hill,**

*Chief, Division of Management Systems, Bureau of Labor Statistics.*

[FR Doc. 2011–29536 Filed 11–15–11; 8:45 am]

**BILLING CODE 4510–24–P**

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

**[Docket No. OSHA–2011–0192]**

### Federal Advisory Council on Occupational Safety and Health (FACOSH)

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Announcement of FACOSH meeting and renewal of FACOSH charter.

**SUMMARY:** The Federal Advisory Council on Occupational Safety and Health (FACOSH) will meet Thursday, December 1, 2011, in Washington, DC. This **Federal Register** notice also announces the renewal of the FACOSH charter.

**DATES:** *FACOSH meeting:* FACOSH will meet from 2 p.m. to 4:30 p.m., Thursday, December 1, 2011.

*Submission of comments, requests to speak, and requests for special accommodations:* Comments, requests to speak at the FACOSH meeting, and requests for special accommodations to attend the FACOSH meeting must be submitted (postmarked, sent, transmitted) by November 25, 2011.

**ADDRESSES:** *FACOSH meeting:* FACOSH will meet in Room N–3437 A/B/C, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

*Submission of comments and requests to speak:* Comments and requests to speak at the FACOSH meeting, identified by Docket No. OSHA–2011–0192, may be submitted by one of the following methods:

*Electronically:* You may submit materials, including attachments, electronically at *http://www.regulations.gov,* the Federal eRulemaking Portal. Follow the online instructions for making submissions.

*Facsimile:* If your submission, including attachments, does not exceed 10 pages, you may fax it to the OSHA Docket Office at (202) 693–1648.

*Mail, express delivery, hand delivery, messenger or courier service:* You may submit your comments and requests to the OSHA Docket Office, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2350 (TTY (877) 889–5627). Deliveries (hand, express mail, messenger and courier service) are accepted during the Department of Labor's and OSHA Docket Office's normal business hours, 8:15 a.m.–4:45 p.m., e.t.

*Requests for special accommodations for FACOSH meeting:* Submit requests for special accommodations by telephone, email or hard copy to Ms. Veneta Chatmon, OSHA, Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–1999; email *chatmon.veneta@dol.gov.*

*Instructions:* All submissions must include the Agency name and docket number for this **Federal Register** notice (Docket No. OSHA–2011–0192). Because of security-related procedures, submissions by regular mail may result in a significant delay in their receipt. Please contact the OSHA Docket Office for information about security procedures for making submissions by hand delivery, express delivery, and messenger or courier service. For additional information on submitting comments and requests to speak, see the **SUPPLEMENTARY INFORMATION** section below.

Comments and requests to speak, including any personal information provided, will be posted without change at *http://www.regulations.gov*. Therefore, OSHA cautions interested persons about submitting certain personal information such as Social Security numbers and birthdates.

**FOR FURTHER INFORMATION CONTACT:** *For press inquiries:* Mr. Francis Meilinger, OSHA, Office of Communications, U.S. Department of Labor, Room N–3647, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–1999; email *meilinger.francis2@dol.gov.*

*For general information:* Mr. Francis Yebesi, OSHA, Office of Federal Agency Programs, U.S. Department of Labor, Room N–3622, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2122; email *ofap@dol.gov*.

**SUPPLEMENTARY INFORMATION:**

**FACOSH Meeting**

FACOSH will meet Thursday, December 1, 2011, in Washington, DC. FACOSH meetings are open to the public.

FACOSH is authorized by 5 U.S.C. 7902, section 19 of the Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 668), and Executive Order (E.O.) 11612, as amended, to advise the Secretary of Labor (Secretary) on all matters relating to the occupational safety and health of Federal employees. This includes providing advice on how to reduce and keep to a minimum the number of injuries and illnesses in the Federal workforce and how to encourage each Federal Executive Branch Department and Agency to establish and maintain effective occupational safety and health programs.

The tentative agenda for the FACOSH meeting includes:

- Emerging Issues Subcommittee report and recommendation regarding its analysis of Permissible Exposure Limits applicable to Federal agencies;
- Training Subcommittee report and recommendations update;
- Protecting Our Workers and Ensuring Reemployment (POWER) end-of-year report; and
- Strategic Planning for charter period 2011—2013.

FACOSH meetings are transcribed and detailed minutes of the meetings are prepared. Meeting transcripts, minutes and other materials presented at the meeting are included in the FACOSH meeting record, which is posted at *http://www.regulations.gov.*

**Public Participation**

FACOSH meetings are open to the public. Interested persons may submit a request to make an oral presentation to FACOSH by one of the methods listed in the **ADDRESSES** section. The request must state the amount of time requested to speak, the interest represented (e.g., organization name), if any, and a brief outline of the presentation. Requests to address FACOSH may be granted as time permits and at the discretion of the FACOSH chair.

Interested persons also may submit comments, including data and other information, using one of the methods listed in the **ADDRESSES** section. In particular, OSHA requests comment on issues and ideas for FACOSH to consider in the committee's Strategic Planning for 2011–13 discussion. OSHA will provide all submissions to FACOSH members prior to the meeting and put them in the public docket for that meeting.

Individuals who need special accommodations and wish to attend the FACOSH meeting must contact Ms. Chatmon by one of the methods listed in the **ADDRESSES** section.

**Submissions and Access to Public Record**

You may submit comments and requests to speak (1) electronically, (2) by facsimile, or (3) by hard copy. All submissions, including attachments and other materials, must identify the Agency name and the OSHA docket number for this notice (Docket No. OSHA–2011–0192). You may supplement electronic submissions by uploading documents electronically. If, instead, you wish to submit hard copies of supplementary documents, you must submit a copy to the OSHA Docket Office using the instructions in the **ADDRESSES** section. The additional materials must clearly identify your electronic submission by name, date and docket number.

Because of security-related procedures, the use of regular mail may cause a significant delay in the receipt of submissions. For information about security procedures concerning the delivery of submissions by hand, express delivery, messenger or courier service, please contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627).

Written comments and requests to speak are posted without change at *http://www.regulations.gov*. Therefore, OSHA cautions interested parties about submitting certain personal information such as Social Security numbers and birthdates.

Meeting transcripts, minutes, written comments and requests to speak are included in the public record of the FACOSH meeting. To read or download documents in the public record, go to Docket No. OSHA–2011–0192 at *http://www.regulations.gov*. Although all meeting documents are listed in the *http://www.regulations.gov* index, some documents (e.g., copyrighted material) are not publicly available to read or download through that Web page. All meeting documents, including copyrighted material, are available for inspection and copying at the OSHA Docket Office.

Information on using the *http://www.regulations.gov* to make submissions and to access the docket and exhibits is available at that Web page. Contact the OSHA Docket Office for information about materials not available through the Web page and for assistance in using the Internet to locate documents in the public record.

Electronic copies of this **Federal Register** notice are available at *http://www.regulations.gov*. This notice, as well as news releases and other relevant information, is also available at OSHA's Web page at *http://www.osha.gov*.

**Renewal of FACOSH Charter**

On September 30, 2011, President Obama continued FACOSH for two years through September 30, 2013 (E.O. 13585, 76 FR 62281 (10/7/2011)). In response, on October 19, 2011, the Secretary renewed the FACOSH charter. The FACOSH charter is available to read or download on the FACOSH page on the OSHA Web page at *http://www.osha.gov.*

**Authority and Signature**

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice under the authority granted by section 19 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 668), 5 U.S.C. 7902, the Federal Advisory Committee Act (5 U.S.C. App. 2) and regulations issued under FACA (41 CFR part 102–3), section 1–5 of Executive Order 12196 (45 FR 12729 (7/27/1980)), and Secretary of Labor's Order No. 4–2010 (75 FR 55335 (9/10/2010)).

Signed at Washington, DC, on November 10, 2011.

**David Michaels,**

*Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 2011–29590 Filed 11–15–11; 8:45 am]

**BILLING CODE 4510–26–P**

## LEGAL SERVICES CORPORATION

### Sunshine Act Meetings; Notice

**DATE AND TIME:** The Legal Services Corporation Board of Directors will meet telephonically on November 18, 2011. The meeting will begin at 4 p.m., Eastern Standard Time, and will continue until the conclusion of the Board's agenda.

**LOCATION:** F. William McCalpin Conference Center, Legal Services Corporation Headquarters Building, 3333 K Street NW., Washington DC 20007.

**PUBLIC OBSERVATION:** Unless otherwise noticed herein, the Board meeting will be open to public observation. Members of the public who are unable to attend in person but wish to listen to the public proceeding may do so by following the telephone call-in directions provided below but are asked to keep their telephones muted to eliminate background noises. From time to time, the presiding Chair may solicit comments from the public.

**CALL-IN DIRECTIONS FOR OPEN SESSION:**

- *Call toll-free number:* 1–(866)–451–4981.
- *When prompted, enter the following numeric pass code:* 5907707348.
- When connected to the call, please ''MUTE'' your telephone immediately.

**STATUS OF MEETING:** Open.

**MATTERS TO BE CONSIDERED:** 1. Approval of agenda.

2. Consider and act on matters relating to LSC's 403(b) thrift plan.

- Amendment of plan to permit inclusion of payments after an employee's last day of work, such as vacation leave payouts, and related issues
- Amendment of plan to reflect Civil Service Retirement System (CSRS)-eligible employees' participation in the plan since 2010
- Loan procedures modification to the number of loans that an employee can take out in one year

3. Consider and act on the Board of Directors' report in response to the Inspector General's Semiannual Report to Congress for the period of April 1, 2011 through October 31, 2011.

4. Public Comment.

5. Consider and act on other business.

6. Consider and act on adjournment of meeting.

**CONTACT PERSON FOR INFORMATION:** Katherine Ward, Executive Assistant to the Vice President & General Counsel, at (202) 295–1500. Questions may be sent by electronic mail to *FR_NOTICE_QUESTIONS@lsc.gov.*

**ACCESSIBILITY:** LSC complies with the American's with Disabilities Act and Section 504 of the 1973 Rehabilitation Act. Upon request, meeting notices and materials will be made available in alternative formats to accommodate individuals with disabilities. Individuals who need other accommodations due to disability in order to attend the meeting in person or telephonically should contact Katherine Ward, at (202) 295–1500 or *FR_NOTICE_QUESTIONS@lsc.gov,* at least 2 business days in advance of the meeting. If a request is made without advance notice, LSC will make every effort to accommodate the request but cannot guarantee that all requests can be fulfilled.

Dated: November 9, 2011.

**Victor M. Fortuno,**

*Vice President & General Counsel.*

[FR Doc. 2011–29693 Filed 11–14–11; 11:15 am]

**BILLING CODE 7050–01–P**

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### Records Schedules; Availability and Request for Comments

**AGENCY:** National Archives and Records Administration (NARA).

**ACTION:** Notice of availability of proposed records schedules; request for comments.

**SUMMARY:** The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

**DATES:** Requests for copies must be received in writing on or before December 16, 2011. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

**ADDRESSES:** You may request a copy of any records schedule identified in this notice by contacting Records Management Services (ACNR) using one of the following means:

*Mail:* NARA (ACNR), 8601 Adelphi Road, College Park, MD 20740–6001.

*Email: request.schedule@nara.gov.*

*FAX:* (301) 837–3698.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

**FOR FURTHER INFORMATION CONTACT:** Laurence Brewer, Director, National Records Management Program (ACN), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: (301) 837–1539. Email: *request.schedule@nara.gov*.

**SUPPLEMENTARY INFORMATION:** Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

The schedules listed in this notice are media neutral unless specified otherwise. An item in a schedule is media neutral when the disposition instructions may be applied to records regardless of the medium in which the records are created and maintained. Items included in schedules submitted to NARA on or after December 17, 2007, are media neutral unless the item is limited to a specific medium. (See 36 CFR 1225.12(e).)

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

**Schedules Pending**

1. Department of Agriculture, Agricultural Marketing Service (N1–136–10–2, 20 items, 14 temporary items). General records of the program that monitors, collects, and analyzes data about pesticide residues and food-borne pathogens in agricultural commodities; the master files of an electronic recordkeeping system used to submit data to the final data repositories; ad hoc reports and datasets; and working papers and supporting documentation of laboratories and sampling partners that collect the data. Proposed for permanent retention are master files of two electronic information systems containing data on pesticide residues and food-borne pathogens on selected agricultural products, the corresponding system and data documentation, and annual reports on the data collected.

2. Department of Agriculture, Grain, Inspection, Packers, and Stockyards Administration (N1–545–08–23, 6 items, 6 temporary items). Records relating to the training program, including policy information and tutorial instructions, reports and data used to propose future trainings, plans and cost estimates, administrative material related to securing training facilities, and case files of trainings completed.

3. Department of Agriculture, Risk Management Agency (N1–145–09–2, 31 items, 31 temporary items). Master files of electronic systems containing information to support risk management for producer loss, monitoring, and compliance oversight of agricultural disasters.

4. Department of Agriculture, Rural Development (N1–572–09–3, 1 item, 1 temporary item). Master files of an electronic information system that contains applicant fingerprints and personal information for candidate background investigations.

5. Department of the Army, Agency-wide (N1–AU–09–32, 1 item, 1 temporary item). Master files of an electronic information system used to manage the development and improvement of training ranges. Included are records relating to planning, funding, design, and construction.

6. Department of the Army, Agency-wide (N1–AU–10–25, 1 item, 1 temporary item). Master files of an electronic information system containing target and operating strength data for enlisted Army personnel used for personnel planning purposes.

7. Department of the Army, Agency-wide (N1–AU–10–31, 1 item, 1 temporary item). Master files of an electronic information system containing personnel data on soldiers assigned to special liaison duty.

8. Department of the Army, Agency-wide (N1–AU–10–32, 1 item, 1 temporary item). Master files of an electronic information system used to track manpower authorizations and on-hand strength data.

9. Department of the Army, Agency-wide (N1–AU–10–65, 1 item, 1 temporary item). Master files of an electronic information system containing information about munitions expenditures on training ranges.

10. Department of Commerce, Bureau of the Census (N1–29–12–2, 1 item, 1 temporary item). Paper input records for an obsolete database that generated estimates and projections of manufacturing activity in the United States, Puerto Rico, Canada, Japan, Turkey, and the nations of Western Europe.

11. Department of Defense, Defense Contract Management Agency (N1–558–10–4, 6 items, 6 temporary items). Records relating to human resources and pay administration, including position classification, employment applications and interviews, employee counseling, benefits, employee awards, and training.

12. Department of Energy, Federal Energy Regulatory Commission (N1–138–11–3, 1 item, 1 temporary item). Digests of market publications relating to energy markets, activities, trends, and conditions.

13. Department of Health and Human Services, Centers for Medicare & Medicaid Services (N1–440–11–3, 1 item, 1 temporary item). Master files of an electronic information system containing information captured about patients at admission, discharge, or death, including administrative information, medical information, cognitive status, impairments, and discharge status.

14. Department of Health and Human Services, Centers for Medicare & Medicaid Services (N1–440–11–4, 2 items, 2 temporary items). Records of demonstration and evaluation projects such as award or initiation letters, cost reports, financial statements, correspondence, progress reports, and invoices.

15. Department of Health and Human Services, Food and Drug Administration (N1–88–09–10, 4 items, 4 temporary items). Records relating to managing the agency's Web sites and master files of an electronic system containing internal and external Web site content and related descriptive information.

16. Department of Homeland Security, Transportation Security Administration (N1–560–11–4, 5 items, 5 temporary items). Records of certified cargo screening facility applications that include denied, incomplete, active, withdrawn, and revoked applications. They contain forms, correspondence, memoranda, certifications, notices, reports, and facility assessments.

17. Department of Homeland Security, Transportation Security Administration (N1–560–11–5, 4 items, 4 temporary items). Master files of an electronic information system used to create tabletop transportation security training exercises which contain user profile information, exercise scenarios, guides, feedback, lessons learned, and information sharing in a collaborative space.

18. Department of the Interior, Office of the Special Trustee for American Indians (N1–75–09–4, 4 items, 1 temporary item). Scanned images of correspondence maintained for reference. Original correspondence files are scheduled for permanent retention.

19. Department of Justice (N1–60–10–32, 4 items, 4 temporary items). Records relating to a mentorship program for new hires.

20. Department of Transportation, Federal Transit Administration (N1–408–11–12, 3 items, 2 temporary items). Records of the Office of Research, Demonstration and Innovation, including grant project files and reports. Proposed for permanent retention are record copies of final product reports.

21. Department of the Treasury, Internal Revenue Service (N1–58–10–11, 3 items, 3 temporary items). Master files, outputs, and system documentation of an electronic information system used to track information technology budget allocations and executions.

22. National Archives and Records Administration, Agency-Wide (DAA–0064–2011–0004, 1 item, 1 temporary item). Notification letters, mailed to subjects of a breach in the protection of personally identifiable information, which were returned as undeliverable.

23. Railroad Retirement Board, Bureau of the Actuary (N1–184–09–3, 42 items, 39 temporary items). Actuarial publications and reports working files, gross earnings files, annual wage study files, financial interchange files, retirement and survivor program files, budget projections, and publications. Proposed for permanent retention are bureau program and policy records, actuarial valuations of agency assets and liabilities, and advisory committee records.

24. Securities and Exchange Commission, Ethics Office (N1–266–11–2, 1 item, 1 temporary item). Employee conduct files including documentation on ethics training and guidance received by staff.

25. Social Security Administration, Office of Disability Adjudication and Review (N1–47–10–5, 1 item, 1 temporary item). Records, of requests, hearing documents, recordings, and filed complaints concerning the review of claims of bias and misconduct by administrative law judges.

Dated: November 8, 2011.

**Paul M. Wester, Jr.,**

*Chief Records Officer for the U.S. Government.*

[FR Doc. 2011–29557 Filed 11–15–11; 8:45 am]

**BILLING CODE 7515–01–P**

## NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

### Notice of Proposed Information Collection Requests: Let's Move Museums, Let's Move Gardens

**AGENCY:** Institute of Museum and Library Services, National Foundation for the Arts and the Humanities.

**ACTION:** Notice, request for comments, collection of information.

**SUMMARY:** The Institute of Museum and Library Services (IMLS), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance 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 (44 U.S.C. Chapter 35). 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. By this notice, IMLS is soliciting comments concerning a survey to gather information to identify museums that are currently or have plans to provide interactive experiences (exhibitions); afterschool, summer and other targeted programs, and food service operations that help fight childhood obesity. The data collection

will help to identify best practices and collect information about the capacity of museums to reach the public with important public health messages.

A copy of the proposed information collection request can be obtained by contacting the individual 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 15, 2012.

IMLS is particularly interested in comments that help the agency to:

- 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.

**ADDRESSES:** Send comments to: Mamie Bittner, Institute of Museum and Library Services, 1800 M Street NW., 9th Floor, Washington, DC 20036. *Telephone:* (202) 653–4630. *Email: mbittner@imls.gov* or by *teletype* (TTY/TDD) for persons with hearing difficulty at (202) 653–4614.

**SUPPLEMENTARY INFORMATION:**

## I. Background

The Institute of Museum and Library Services is the primary source of federal support for the Nation's 123,000 libraries and 17,500 museums. The Institute's mission is to create strong libraries and museums that connect people to information and ideas. The Institute works at the national level and in coordination with state and local organizations to sustain heritage, culture, and knowledge; enhance learning and innovation; and support professional development. IMLS conducts policy research, analysis, and data collection to extend and improve the Nation's museum, library, and information services. The policy research, analysis, and data collection is used to: Identify national needs for, and trends in museum, library, and information services; measure and report on the impact and effectiveness of museum, library, and information services throughout the United States; identify best practices; and develop plans to improve museum, library, and information services of the United States and strengthen national, State, local, regional, and international communications and cooperative networks. (20 U.S.C. Chapter 72, 20 U.S.C. 9108).

## II. Current Actions

The information collection will be used by IMLS and its Let's Move partners, the White House Office of Domestic Policy and museum service organizations to assess the level of participation of the Nation's museums in the Let's Move initiative.

The intent of the collection:

- Develop a list of museums and gardens that are interested in delivering public health messages so that we can provide them with information (products of IMLS-supported grants, examples of best practices, links to resources) to support their efforts.
- Incorporate museums and gardens into the Let's Move effort and enable them to share information about their activities that promote healthy food choices and physical activity
- The list will be used by project partners for follow on activities to help to get feedback on implementing Let's Move activities and programs.
- Participating museums will be contacted about IMLS grant opportunities, but participation in Let's Move Museums and Let's Move Gardens will not be a factor in awarding grants.

*Agency:* Institute of Museum and Library Services.

*Title: Let's Move* Museums, *Let's Move* Gardens.

*OMB Number:* 3137–0080.

*Agency Number:* 3137.

*Frequency:* Annual.

*Affected Public:* Museums, state, local, tribal government and not-for-profit institutions.

*Number of Respondents:* 2,000.

*Estimated Time per Respondent:* .17.

*Total Annual Costs to Respondents:* $6,069.

*Total Annualized to Federal Government:* $55,120.

**FOR FURTHER INFORMATION CONTACT:** Mamie Bittner, Institute of Museum and Library Services, 1800 M Street NW., 9th Floor, Washington, DC 20036. *Telephone:* (202) 653–4630. *Email: mbittner@imls.gov* or by *teletype* (TTY/TDD) for persons with hearing difficulty at (202) 653–4614.

Date: November 10, 2011.

**Kim Miller,**

*Management Analyst.*

[FR Doc. 2011–29586 Filed 11–15–11; 8:45 am]

BILLING CODE 7536–01–P

# NATIONAL TRANSPORTATION SAFETY BOARD

## Public Aircraft Oversight Safety Forum

The National Transportation Safety Board (NTSB) will convene a Public Aircraft Oversight Safety Forum which will begin at 9 a.m., Wednesday, November 30, 2011. NTSB Chairman Deborah A.P. Hersman will chair the two-day forum and all five Board Members will participate. The forum is open to all and free to attend (there is no registration).

Public aircraft are operated by a federal, state, or local government for the purpose of fulfilling governmental functions such as national defense, intelligence missions, firefighting, search and rescue, law enforcement, aeronautical research, or biological or resource management. Government organizations conducting public aircraft operations supervise their own flight and maintenance operations without oversight from the Federal Aviation Administration (FAA).

The goals of the forum, entitled ''Public Aircraft Oversight Forum: Ensuring Safety for Critical Missions'', are to (1) raise awareness of the importance of effective oversight in ensuring the safety of public aircraft operations; (2) identify where responsibility lies for oversight of public aircraft operations; and (3) facilitate the sharing of best practices and lessons learned across a number of parties involved in the oversight of public aircraft operations.

All of these areas will be explored through presentations by invited representatives from federal, state, and local government entities, aviation industry trade associations, and civil operators contracting with government agencies. At the conclusion of all presentations for each topic area, presenters will take part in a question and answer discussion with Board Members and NTSB staff.

Below is the preliminary forum agenda:

**Wednesday, November 30**

—Welcome and Opening Remarks.
—Defining Public Aircraft.
—Defining Oversight.
—The Role of the FAA in Public Aircraft Oversight.

—Oversight of Government-Owned Aircraft.

**Thursday, December 1**

—Oversight of Contracted Aircraft.
—Contractors' Perspective on Public Aircraft Oversight.
—Role of Organizations Representing Public Aircraft Operators and Contractors.
—Closing Remarks.

A detailed agenda and list of participants will be released closer to the date of the event.

Organizations and individuals can submit questions for consideration as part of the question and answer discussions. Submissions should directly address one or more of the forum's seven topic areas (identified by the panel titles) and should be submitted to *publicaircraft@ntsb.gov.* The deadline for receipt is November 25, 2011.

The forum will be held in the NTSB Board Room and Conference Center, located at 429 L'Enfant Plaza, SW., Washington, DC. The public can view the forum in person or by webcast at *http://www.ntsb.gov.*

NTSB Media Contact: Bridget Serchak, (202) 314–6100 (Washington, DC), *Bridget.serchak@ntsb.gov.*

*NTSB Forum Manager:* Georgia Struhsaker, (808) 329–9161 (Hawaii), *Georgia.Struhsaker@ntsb.gov.*

Dated: November 10, 2011.

**Candi R. Bing,**

*Federal Register Liaison Officer.*

[FR Doc. 2011–29626 Filed 11–15–11; 8:45 am]

**BILLING CODE 7533–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 40–9091; NRC–2011–0148]**

## Strata Energy, Inc., Ross Uranium Recovery Project; New Source Material License Application; Notice of Intent To Prepare a Supplemental Environmental Impact Statement

**AGENCY:** U.S. Nuclear Regulatory Commission.

**ACTION:** Notice of intent to prepare a supplemental environmental impact statement.

**SUMMARY:** Strata Energy, Inc. (Strata) submitted an application for a new source material license for the Ross Uranium Recovery Project to be located in Crook County, Wyoming, 32 miles northeast of Gillette, Wyoming and 30 miles northwest of Sundance, Wyoming. The application proposes the construction, operation, and decommissioning of uranium *in-situ* recovery (ISR), also known as *in-situ* leach, facilities and restoration of the aquifer from which the uranium is being extracted. Strata submitted the application for the new source material license to the U.S. Nuclear Regulatory Commission (NRC) by a letter dated January 4, 2011. A notice of receipt and availability of the license application, including the Environmental Report (ER), and opportunity to request a hearing was published in the **Federal Register** on July 13, 2011 (76 FR 41308). The purpose of this notice of intent is to inform the public that the NRC will be preparing a site-specific Supplemental Environmental Impact Statement (SEIS) to the Generic Environmental Impact Statement for *In-Situ* Leach Uranium Milling Facilities (ISR GEIS) for a new source material license for the Ross Uranium Recovery Project, as required by Title 10 of the *Code of Federal Regulations* (10 CFR) 51.26. In addition, as outlined in 36 CFR 800.8, ''Coordination with the National Environmental Policy Act (NEPA),'' the NRC plans to use the environmental review process as reflected in 10 CFR part 51 to coordinate compliance with Section 106 of the National Historic Preservation Act (NHPA).

**FOR FURTHER INFORMATION CONTACT:** For general information on the NRC NEPA process or the environmental review process related to the Ross Uranium Recovery Project application, please contact the NRC Environmental Project Manager, Alan Bjornsen, at (301) 415–1195 or *Alan.Bjornsen@nrc.gov.*

Information and documents associated with the Ross Uranium Project, including the license application, are available for public review through the NRC electronic reading room: *http://www.nrc.gov/reading-rm/adams.html* and on the NRC's Ross Uranium Recovery Project Web page: *http://www.nrc.gov/materials/uranium-recovery/license-apps/ross.html.* Documents may also be obtained from NRC's Public Document Room at the U.S. Nuclear Regulatory Commission Headquarters, 11555 Rockville Pike (first floor), Rockville, Maryland.

**SUPPLEMENTARY INFORMATION:**

### 1.0 Background

Strata submitted the application for a new source material license to the NRC for ISR facilities by a letter dated January 4, 2011. A notice of receipt and availability of the license application, including the ER, and opportunity to request a hearing was published in the **Federal Register** on July 13, 2011 (76 FR 41308). One request for hearing was received on October 27, 2011.

The NRC is preparing a draft SEIS that will tier off the ISR GEIS (NUREG–1910). While NRC's Part 51 regulations do not require scoping for SEISs, the NRC staff is planning to place ads in newspapers serving communities near the proposed site, requesting information and comments from the public regarding the proposed action. Also, NRC staff met with, and gathered information from, Federal, State, and local agencies as well as with public interest groups in conjunction with a visit to the proposed site. NRC staff may also use relevant information gathered during scoping for the GEIS to define the scope of the SEIS. In preparing the SEIS, the NRC staff is consulting with Bureau of Land Management, U.S. Fish & Wildlife Service, U.S. Army Corps of Engineers, Wyoming Department of Environmental Quality, Wyoming State Historic Preservation Office, Tribal Historic Preservation Offices, Wyoming Game and Fish Department, National Park Service, and the Crook County Natural Resource District in preparing the SEIS. The Bureau of Land Management is a cooperating agency with the NRC, under the Memorandum of Understanding, signed on November 30, 2009.

The NRC has begun evaluating the potential environmental impacts associated with the proposed ISR facility in parallel with the review of the license application. This environmental evaluation will be documented in draft and final SEISs in accordance with NEPA and NRC's implementing regulations contained in 10 CFR part 51. The NRC is required by 10 CFR 51.20(b)(8) to prepare an Environmental Impact Statement (EIS), or supplement to an EIS, for the issuance of a new license to possess and use source material for uranium milling. The ISR GEIS and the site-specific SEIS fulfill this regulatory requirement. The purpose of the present notice is to inform the public that the NRC staff will prepare a site-specific supplement to the ISR GEIS as part of the review of the application.

### 2.0 Ross ISR Facilities

The proposed ISR facilities, if licensed, would include a central processing plant and appurtenant features, accompanying wellfields, and wastewater retention (storage) ponds. The ISR process involves the dissolution of the water-soluble uranium from the mineralized host sandstone rock by pumping oxidants (oxygen or hydrogen peroxide) and chemical compounds (sodium

bicarbonate) through a series of injection wells. The uranium-rich solution is transferred from production wells to either the central processing plant or satellite facility for uranium concentration using ion exchange columns. Final processing is conducted in the central processing plant to produce yellowcake, which would be sold to offsite facilities for further processing and eventual use as commercial fuel for use in nuclear power reactors.

### 3.0 Alternatives To Be Evaluated

*No-Action*—The no-action alternative would be to deny the license application. Under this alternative, the NRC would not issue the license. This serves as a baseline for comparison.

*Proposed action*—The proposed Federal action is to issue a license to use or process source material at the proposed ISR facilities. The license review process analyzes the construction, operation, and decommissioning of ISR facilities and restoration of the aquifer from which the uranium is being extracted. The ISR facilities would be located in Crook County, Wyoming, 32 miles northeast of Gillette, Wyoming and 30 miles northwest of Sundance, Wyoming. The applicant would be issued an NRC license under the provisions of 10 CFR part 40. Other alternatives not listed here may be identified through the environmental review process.

### 4.0 Environmental Impact Areas To Be Analyzed

The following areas have been tentatively identified for analysis in the SEIS:

- *Land Use:* Plans, policies, and controls;
- *Transportation:* Transportation modes, routes, quantities, and risk estimates;
- *Geology and Soils:* Physical geography, topography, geology, and soil characteristics;
- *Water Resources:* Surface and groundwater hydrology, water use and quality, and the potential for degradation;
- *Ecology:* Wetlands, aquatic, terrestrial, economically and recreationally important species, threatened and endangered species;
- *Air Quality:* Meteorological conditions, ambient background, pollutant sources, and the potential for degradation;
- *Noise:* Ambient, sources, and sensitive receptors;
- *Historical and Cultural Resources:* Historical, archaeological, and traditional cultural resources;
- *Visual and Scenic Resources:* Landscape characteristics, manmade features and viewshed;
- *Socioeconomics:* Demography, economic base, labor pool, housing, transportation, utilities, public services/facilities, and education;
- *Environmental Justice:* Potential disproportionately high and adverse impacts to minority and low-income populations;
- *Public and Occupational Health:* Potential public and occupational consequences from construction, routine operation, transportation, and credible accident scenarios (including natural events);
- *Waste Management:* Types of wastes expected to be generated, handled, stored and disposed of; and
- *Cumulative Effects:* Impacts from past, present, and reasonably foreseeable future actions at and near the site(s).

This list is not intended to be all inclusive, nor is it a predetermination of potential environmental impacts.

### 5.0 The NEPA Process

The SEIS for the Ross Uranium Recovery Project will be prepared pursuant to the NRC's NEPA Regulations at 10 CFR part 51. The NRC will continue its environmental review of the application and as soon as practicable, the NRC and its contractor will prepare and publish a draft SEIS. The NRC currently plans to have a 45-day public comment period for the draft SEIS. Availability of the draft SEIS and the dates of the public comment period will be announced in the **Federal Register** and the NRC Web site: *http://www.nrc.gov.* The final SEIS will include responses to public comments received on the draft SEIS.

Dated at Rockville, Maryland, this 7th day of November, 2011.

For the Nuclear Regulatory Commission.

**Gregory Suber,**

*Acting Deputy Director, Environmental Protection and Performance Assessment Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.*

[FR Doc. 2011–29566 Filed 11–15–11; 8:45 am]

BILLING CODE 7590–01–P

## POSTAL REGULATORY COMMISSION

**[Docket No. A2012–43; Order No. 960]**

## Post Office Closing

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** This document informs the public that an appeal of the closing of the Andover, Illinois 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 14, 2011: Administrative record due (from Postal Service); December 5, 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 28, 2011, the Commission received a petition for review of the Postal Service's determination to close the Andover post office in Andover, Illinois. The petition for review was filed by Ron Peterson (Petitioner) and is postmarked October 20, 2011. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2012–43 to consider Petitioner's appeal. If Petitioner would like to further explain his position with supplemental information or facts, Petitioner may either file a Participant Statement on PRC Form 61 or file a brief with the Commission no later than December 2, 2011.

*Categories of issues apparently raised.* Petitioner contends that (1) There were factual errors contained in the Final Determination; and (2) the Postal Service failed to provide substantial evidence in support of the determination (*see* 39 U.S.C. 404(d)(5)(c)).

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 14, 2011. *See* 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service to this notice is November 14, 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 participant's submissions also will be posted on the 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, *http://www.prc.gov,* or by contacting the Commission's docket section at *prc-dockets@prc.gov* or via telephone at (202) 789–6846.

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 the Petitioners and respondents, 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 December 5, 2011. A notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site, *http://www.prc.gov,* 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 Commission rules, if any motions are filed, responses are due 7 days after any such motion is filed. *See* 39 CFR 3001.21.

*It is ordered:*

1. The Postal Service shall file the applicable administrative record regarding this appeal no later than November 14, 2011.

2. Any responsive pleading by the Postal Service to this notice is due no later than November 14, 2011.

3. The procedural schedule listed below is hereby adopted.

4. Pursuant to 39 U.S.C. 505, Manon A. Boudreault is designated officer of the Commission (Public Representative) to represent the interests of the general public.

5. The Secretary shall arrange for publication of this notice and order and Procedural Schedule in the **Federal Register**.

By the Commission.

**Shoshana M. Grove,**

*Secretary.*

PROCEDURAL SCHEDULE

| | |
|---|---|
| October 28, 2011 | Filing of Appeal. |
| November 14, 2011 | Deadline for the Postal Service to file the applicable administrative record in this appeal. |
| November 14, 2011 | Deadline for the Postal Service to file any responsive pleading. |
| December 2, 2011 | Deadline for Petitioners' Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)). |
| December 5, 2011 | Deadline for notices to intervene (*see* 39 CFR 3001.111(b)). |
| December 22, 2011 | Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)). |
| January 6, 2012 | Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)). |
| January 13, 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 17, 2012 | Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)). |

[FR Doc. 2011–29570 Filed 11–15–11; 8:45 am]

**BILLING CODE 7710–FW–P**

## POSTAL REGULATORY COMMISSION

**[Docket No. A2012–45; Order No. 962]**

## Post Office Closing

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** This document informs the public that an appeal of the closing of the Orchard, Iowa 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 14, 2011: Administrative record due (from Postal Service); December 5, 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 28, 2011, the Commission received two petitions for review of the Postal Service's determination to close the Orchard post office in Orchard, Iowa. The first petition for review was filed by Judith

A. Schimpf. The second petition for review was filed by Philip K. Lack. The earliest postmark date is October 19, 2011. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2012–45 to consider Petitioners' appeal. If Petitioners would like to further explain their position with supplemental information or facts, Petitioners may either file a Participant Statement on PRC Form 61 or file a brief with the Commission no later than December 2, 2011.

*Categories of issues apparently raised.* Petitioners contend that (1) The Postal Service failed to adequately consider the economic savings resulting from the closure (*see* 39 U.S.C. 404(d)(2)(A)(iv)); (2) there are factual errors contained in the Final Determination; and (3) the Postal Service failed to provide substantial evidence in support of the determination (*see* 39 U.S.C. 404(d)(5)(c)).

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 14, 2011. *See* 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service to this notice is November 14, 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 participant's submissions also will be posted on the 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, *http://www.prc.gov,* or by contacting the Commission's docket section at *prc-dockets@prc.gov* or via telephone at (202) 789–6846.

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 the Petitioners and respondents, 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 December 5, 2011. A notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site, *http://www.prc.gov,* 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 Commission rules, if any motions are filed, responses are due 7 days after any such motion is filed. *See* 39 CFR 3001.21.

*It is ordered:*

1. The Postal Service shall file the applicable administrative record regarding this appeal no later than November 14, 2011.

2. Any responsive pleading by the Postal Service to this notice is due no later than November 14, 2011.

3. The procedural schedule listed below is hereby adopted.

4. Pursuant to 39 U.S.C. 505, Emmett Rand Costich is designated officer of the Commission (Public Representative) to represent the interests of the general public.

5. The Secretary shall arrange for publication of this notice and order and Procedural Schedule in the **Federal Register**.

By the Commission.

**Shoshana M. Grove,**

*Secretary.*

PROCEDURAL SCHEDULE

| | |
|---|---|
| October 28, 2011 | Filing of Appeal. |
| November 14, 2011 | Deadline for the Postal Service to file the applicable administrative record in this appeal. |
| November 14, 2011 | Deadline for the Postal Service to file any responsive pleading. |
| December 5, 2011 | Deadline for notices to intervene (*see* 39 CFR 3001.111(b)). |
| December 2, 2011 | Deadline for Petitioners' Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)). |
| December 22, 2011 | Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)). |
| January 6, 2012 | Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)). |
| January 13, 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 16, 2012 | Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)). |

[FR Doc. 2011–29573 Filed 11–15–11; 8:45 am]

BILLING CODE 7710–FW–P

## POSTAL REGULATORY COMMISSION

**[Docket No. A2012–44; Order No. 961]**

## Post Office Closing

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** This document informs the public that an appeal of the closing of the Deer Grove, Illinois 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 14, 2011: Administrative record due (from Postal Service); December 5, 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 28, 2011, the Commission received a petition for review of the Postal Service's determination to close the Deer Grove post office in Deer Grove, Illinois. The petition for review was filed by Galen R. Hooper (Petitioner) and is postmarked October 20, 2011. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2012–44 to consider Petitioner's appeal. If Petitioner would like to further explain his position with supplemental information or facts, Petitioner may either file a Participant Statement on PRC Form 61 or file a brief with the Commission no later than December 2, 2011.

*Categories of issues apparently raised.* Petitioner contends 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) the Postal service failed to consider whether or not it will continue to provide a maximum degree of effective and regular postal services to the community (*see* 39 U.S.C. 404(d)(2)(A)(iii)); and (3) the Postal Service failed to adequately consider the economic savings resulting from the closure (*see* 39 U.S.C. 404(d)(2)(A)(iv)).

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 14, 2011. *See* 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service to this notice is November 14, 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 participant's submissions also will be posted on the 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, *http://www.prc.gov,* or by contacting the Commission's docket section at *prc-dockets@prc.gov* or via telephone at (202) 789–6846.

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 the Petitioners and respondents, 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 December 5, 2011. A notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site, *http://www.prc.gov,* 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 Commission rules, if any motions are filed, responses are due 7 days after any such motion is filed. *See* 39 CFR 3001.21.

*It is ordered:*

1. The Postal Service shall file the applicable administrative record regarding this appeal no later than November 14, 2011.

2. Any responsive pleading by the Postal Service to this notice is due no later than November 14, 2011.

3. The procedural schedule listed below is hereby adopted.

4. Pursuant to 39 U.S.C. 505, Kenneth E. Richardson is designated officer of the Commission (Public Representative) to represent the interests of the general public.

5. The Secretary shall arrange for publication of this notice and order and Procedural Schedule in the **Federal Register.**

By the Commission.

**Shoshana M. Grove,**

*Secretary.*

PROCEDURAL SCHEDULE

| | |
|---|---|
| October 28, 2011 | Filing of Appeal. |
| November 14, 2011 | Deadline for the Postal Service to file the applicable administrative record in this appeal. |
| November 14, 2011 | Deadline for the Postal Service to file any responsive pleading. |
| December 5, 2011 | Deadline for notices to intervene (*see* 39 CFR 3001.111(b)). |
| December 2, 2011 | Deadline for Petitioners' Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)). |
| December 22, 2011 | Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)). |
| January 6, 2012 | Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)). |
| January 13, 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). |

PROCEDURAL SCHEDULE—Continued

| | |
|---|---|
| February 17, 2012 ..... | Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)). |

[FR Doc. 2011–29572 Filed 11–15–11; 8:45 am]

BILLING CODE 7710–FW–P

## POSTAL SERVICE

### Market Test of Experimental Product: ''First-Class Tracer''

**AGENCY:** Postal Service ™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of a market test of an experimental product in accordance with statutory requirements.

**DATES:** November 16, 2011.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth A. Reed, (202) 268–3179.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice pursuant to 39 U.S.C. 3641(c)(1) that it will begin a market test of its ''First-Class Tracer'' experimental product on or after December 7, 2011. The Postal Service has filed with the Postal Regulatory Commission a notice setting out the basis for the Postal Service's determination that the market test is covered by 39 U.S.C. 3641 and describing the nature and scope of the market test. Documents are available at *http://www.prc.gov,* Docket No. MT2012–1.

**Stanley F. Mires,**

*Attorney, Legal Policy & Legislative Advice.*

[FR Doc. 2011–29514 Filed 11–15–11; 8:45 am]

BILLING CODE 7710–12–P

## RAILROAD RETIREMENT BOARD

### Proposed Collection; Comment Request

*Summary:* In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

*Comments are invited on:* (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

*Title and purpose of information collection:* Annual Earnings Questionnaire for Annuitants in Last Pre-Retirement Non-Railroad Employment; OMB 3220–0179.

Under section 2(e)(3) of the Railroad Retirement Act (RRA), an annuity is not payable for any month in which a beneficiary works for a railroad. In addition, an annuity is reduced for any month in which the beneficiary works for an employer other than a railroad employer and earns more than a prescribed amount. Under the 1988 amendments to the RRA, the Tier II portion of the regular annuity and any supplemental annuity must be reduced by one dollar for each two dollars of Last Pre-Retirement Non-Railroad Employment (LPE) earnings for each month of such service. However, the reduction cannot exceed fifty percent of the Tier II and supplemental annuity amount for the month to which such deductions apply. The LPE generally refers to an annuitant's last employment with a non-railroad person, company, or institution prior to retirement which was performed whether at the same time of, or after an annuitant stopped railroad employment. The collection obtains earnings information needed by the RRB to determine if possible reductions in annuities are in order due to LPE.

The RRB utilizes Form G–19L, *Annual Earnings Questionnaire for Annuitants in Last Pre-Retirement Non-Railroad Employment,* to obtain LPE earnings information from annuitants. One response is requested of each respondent. Completion is required to retain a benefit. The RRB proposes no changes to Form G–19L.

ESTIMATE OF ANNUAL RESPONDENT BURDEN

[The estimated annual respondent burden is as follows]

| Form number | Annual responses | Time (minutes) | Burden (hours) |
|---|---|---|---|
| G–19L ..... | 300 | 15 | 75 |
| Total ..... | 300 | ..... | 75 |

*Additional Information or Comments:* To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, contact Charles Mierzwa, the RRB Clearance Officer, at (312) 751–3363 or *Charles.Mierzwa@RRB.GOV.* Comments regarding the information collection should be addressed to Patricia Henaghan, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 or emailed to *Patricia.Henaghan@RRB.GOV.* Written comments should be received within 60 days of this notice.

**Charles Mierzwa,**

*Clearance Officer.*

[FR Doc. 2011–29544 Filed 11–15–11; 8:45 am]

BILLING CODE 7905–01–P

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–65718; File No. SR–NASDAQ–2011–147]**

## Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Option Fee Disputes

November 9, 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 November 1, 2011, The NASDAQ Stock Market LLC (''NASDAQ'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASDAQ. 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 NASDAQ Stock Market LLC proposes to create a new Rule 7056 entitled ''NASDAQ Options Fee Disputes'' to specify the requirements to dispute fees. The Exchange also proposes to rename Rule 7050 entitled ''NASDAQ Options Market.''

While fee changes pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on January 3, 2012.

The text of the proposed rule change is set forth below. Proposed new text is in italics and deleted text is in brackets.

* * * * *

7050. NASDAQ Options Market—*Fees*

The following charges shall apply to the use of the order execution and routing services of the NASDAQ Options Market for all securities.

* * * * *

*7056. NASDAQ Options Fee Disputes*

*(a) All fee disputes concerning fees which are billed by the Exchange must be submitted to the Exchange in writing and must be accompanied by supporting documentation.*

*(b) All fee disputes must be submitted no later than sixty (60) days after receipt of a billing invoice.*

*(c) This Rule applies to the following NASDAQ Options Market fees:*

*(1) Rule 7050 ''NASDAQ Options Market—Fees''; and*

*(2) Rule 7053 ''NASDAQ Options Market—Access Services,'' with the exception of the TradeInfo Fee.*

* * * * *

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The proposes a new Rule 7056 entitled ''NASDAQ Options Fee Disputes'' to require all fee disputes to be submitted to the Exchange in writing[3] and accompanied by supporting documentation within sixty days of receipt of an invoice. The sixty days would first apply to invoices related to transactional billing in January 2012 and would apply thereafter.[4] The Exchange proposes to apply this new Rule 7056 to the fees in Rule 7050 entitled ''NASDAQ Options Market'' and Rule 7053 entitled ''NASDAQ Options Market—Access Services'' with the exception of the TradeInfo Fee. The Exchange believes that this practice will conserve Exchange resources which are expended when untimely billing disputes require staff to research applicable fees and order information beyond two months after the transaction occurred.

The Exchange believes that NOM Participants should be aware of any billing errors within two months of receiving an invoice. The Exchange provides NOM Participants with the ability to sign-up to receive certain daily reports.[5] These reports allow NOM Participants to view trade data and fees prior to receiving a billing invoice. In addition, NOM Participants have access to a password protected Web site, which provides NOM Participants an electronic copy of current and historical invoices, as well as the supporting details for assessed charges.[6] NOM Participants have the ability to retrieve trade information from this Web site on a T +1 basis. The Exchange is excluding the TradeInfo Fee, which is billed separately to NOM Participants and is not included in the reports described herein.

In addition, the Exchange proposes to amend the title of Exchange Rule 7050 from ''NASDAQ Options Market'' to ''NASDAQ Options Market—Fees.'' The Exchange believes that the proposed title provides a more specific description of Rule 7050 and will assist NOM Participants in locating these fees within the Rules.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[7] in general, and furthers the objectives of Section 6(b)(5) of the Act[8] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by providing a uniform practice for disputing fees.

The Exchange believes the requirement that all fee disputes, for certain specified fees, must be submitted to the Exchange within sixty days from receipt of the invoice will provide its members with guidance on disputing fees. The Exchange's members are provided with ample tools to properly and timely monitor and account for various charges incurred in a given month. The proposal equally applies to all NOM Participants who have the ability to access the aforementioned reports. Also, the Exchange's administrative costs would be lowered as a result of this policy.

The Exchange believes that the proposal to rename Rule 7050 from ''NASDAQ Options Market'' to ''NASDAQ Options Market—Fees'' will assist NOM Participants in locating those fees within the Rules.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange invoice specifies the Exchange contact persons with whom to dispute the invoice.

[4] This proposal would not apply to invoices related to December 2011 billing.

[5] These reports include, but are not limited to, daily traded against report and daily cancel fee reports.

[6] The Web site is MyNASDAQOMX.com. *See* Options Trader Alert #2011–60.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act [9] and Rule 19b–4(f)(6) [10] 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–NASDAQ–2011–147 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2011–147. 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 the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2011–147 and should be submitted on or before December 7, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2011–29507 Filed 11–15–11; 8:45 am]

**BILLING CODE 8011–01–P**

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[11] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–65720; File No. SR–Phlx–2011–147]**

## Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Complex Order Rebates and Fees for Adding and Removing Liquidity

November 9, 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 November 1, 2011, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to amend its Complex Order Fees in Section I of its Fee Schedule entitled ''Rebates and Fees for Adding and Removing Liquidity in Select Symbols.''

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqtrader.com/micro.aspx?id=PHLXfilings,* at the principal office of the Exchange, on the Commission's Web site at *http://www.sec.gov*, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of the proposed rule change is to amend Section I, Part B of the Exchange's Fee Schedule for Complex Orders. A Complex Order is any order involving the simultaneous purchase and/or sale of two or more different options series in the same underlying security, priced at a net debit or credit based on the relative prices of the individual components, for the same account, for the purpose of executing a particular investment strategy. Furthermore, a Complex Order can also be a stock-option order, which is an order to buy or sell a stated number of units of an underlying stock or ETF coupled with the purchase or sale of options contract(s).[3]

The Exchange is proposing to: (i) Eliminate all references to Designated Options;[4] (ii) amend its Customer Complex Order Rebate for Adding Liquidity for all Select Symbols,[5] which will now include the Designated Options; and (iii) amend its Complex Order Fees for Removing Liquidity for Select Symbols, which will now include the Designated Options.

The Exchange proposes to eliminate the Customer Complex Order Rebate for Adding Liquidity in Designated Options and the Complex Order Fees for Removing Liquidity in Designated Options. Designated Options will be paid the rebates and assessed the fees applicable to Select Symbols. The Exchange initially filed a proposed rule change[6] to pay a different Customer Complex Order Rebate to Add Liquidity and assess different Complex Order Fees for Removing Liquidity for Designated Options as compared to Select Symbols. In that filing, the Exchange noted that it believed that the proposed Complex Order rebate and fees for the Designated Options would attract additional order flow to the Exchange.

At this time, the Exchange is proposing to remove the Complex Order rebate and fees for Designated Options and instead assess those Designated Options the same rates that apply to the Select Symbols. The Exchange is combining Designated Options and Select Symbols into one category. The Exchange is increasing the Customer Complex Order Rebate for Adding Liquidity and also increasing the Fees for Removing Liquidity in the combined category. The Exchange believes that increasing the Complex Order Customer Rebate for Adding Liquidity will further attract additional order flow to the Exchange. The Exchange believes that increasing the Complex Order Fees for Removing Liquidity will assist the Exchange in recouping certain costs associated with its Fees and Rebates for Adding and Removing Liquidity while not impeding the Exchange from continuing to increase its order flow.

Currently, the Exchange pays a Customer Complex Order Rebate for Adding Liquidity in Designated Options of $0.27 per contract. The Exchange proposes to eliminate the Customer Complex Order Rebate for Adding Liquidity in Designated Options and instead apply the Complex Order Rebate for Adding Liquidity in Select Symbols to those symbols by removing the text ''except in Designated Options **'' from the Fee Schedule. The Exchange currently pays a Customer Complex Order Rebate for Adding Liquidity in Select Symbols of $0.24 per contract. The Exchange is proposing to increase that Customer Complex Order Rebate for Adding Liquidity in Select Symbols to $0.30 per contract.

Currently, the Exchange assesses the following Complex Order Fees for Removing Liquidity in Select Symbols and Designated Options, respectively.

| | Customer | Directed participant | Specialist, ROT, SQT and RSQT | Firm | Broker-dealer | Professional |
|---|---|---|---|---|---|---|
| Fee for Removing Liquidity in all Select Symbols except in Designated Options | $0.25 | $0.27 | $0.29 | $0.30 | $0.35 | $0.30 |
| Fee for Removing Liquidity in Designated Options | 0.00 | 0.28 | 0.29 | 0.30 | 0.35 | 0.30 |

The Exchange proposes to amend the Complex Order Fees for Removing Liquidity for all Select Symbols, including the Designated Options, for a Directed Participant,[7] Specialist,[8] ROT,[9] SQT[10] and RSQT,[11] Firm and Professional[12] as follows:

[3] *See* Exchange Rule 1080, Commentary .08(a)(i).

[4] The Exchange defines Designated Options in Section I of its Fee Schedule as the following options: (i) Standard and Poor's Depositary Receipts/SPDRs (''SPY''); (ii) the PowerShares QQQ Trust (''QQQ'') ®; (iii) Apple, Inc. (''AAPL''); (iv) iShares Russell 2000 Index (''IWM''); (v) Bank of America Corporation (''BAC''); (vi) Citigroup, Inc. (''C''); (vii) SPDR Gold Trust (''GLD''); (viii) Intel Corporation (''INTC''); (ix) JPMorgan Chase & Co. (''JPM''); (x) iShares Silver Trust (''SLV''); (xi) Financial Select Sector SPDR (''XLF''); and (xii) Ford Motor Company (''F'') (taken together, ''Designated Options'').

[5] All Designated Options are also Select Symbols.

[6] *See* Securities Exchange Act Release No. 65049 (August 5, 2011), 76 FR 49810 (August 11, 2011) (SR–Phlx–2011–103).

[7] The term ''Directed Participant'' applies to transactions for the account of a Specialist, Streaming Quote Trader or Remote Streaming Quote Trader resulting from a Customer order that is (1) Directed to it by an order flow provider, and (2) executed by it electronically on Phlx XL II.

[8] A Specialist is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a).

[9] A Registered Options Trader (''ROT'') includes a Streaming Quote Trader (''SQT''), a Remote Streaming Quote Trader (''RSQT'') and a Non-SQT, which by definition is neither a SQT nor a RSQT. A Registered Option Trader is defined in Exchange Rule 1014(b) as a regular member or a foreign currency options participant of the Exchange located on the trading floor who has received permission from the Exchange to trade in options for his own account. *See* Exchange Rule 1014 (b)(i) and (ii).

[10] An SQT is defined in Exchange Rule 1014(b)(ii)(A) as an ROT who has received permission from the Exchange to generate and submit option quotations electronically in options to which such SQT is assigned.

[11] An RSQT is defined Exchange Rule in 1014(b)(ii)(B) as an ROT that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically in options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange.

[12] The term ''professional'' means any person or entity that (i) Is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). *See* Rule 1000(b)(14).

| Customer | Directed participant | Specialist, ROT, SQT and RSQT | Firm | Broker-dealer | Professional |
|---|---|---|---|---|---|
| $0.00 | 0.30 | 0.32 | 0.35 | 0.35 | 0.35 |

Customers and Broker-Dealers would remain at the same rates applicable today for Designated Options. The Exchange proposes to eliminate the Designated Options category by removing the text ''except in Designated Options **'' from the Fee Schedule. The Exchange would also eliminate any other references to Designated Options in Section I of the Fee Schedule.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act [13] in general, and furthers the objectives of Section 6(b)(4) of the Act [14] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members. The Exchange also believes that there is an equitable allocation of reasonable rebates among Exchange members.

The Exchange believes that it is reasonable and equitable to only pay a Complex Order Rebate for Adding Liquidity to Customers, as compared to other market participants, because the Customer rebate will attract Customer order flow to the Exchange for the benefit of all market participants. Likewise, the Exchange believes that it is reasonable to not assess a Complex Order Fee for Removing Liquidity for Customers, because this also will attract Customer order flow to the Exchange which in turn also benefits all market participants.

The Exchange believes that its proposal to eliminate the Designated Options category and pay an increased Customer Complex Order Rebate to Add Liquidity for all Select Symbols, which would now include the Designated Options, is reasonable because this will attract additional order flow to the Exchange. The Exchange also believes that it is equitable and not unfairly discriminatory to pay all Select Symbols, including the Designated Options, a higher Customer Rebate for Adding Liquidity for Complex Orders because all the symbols in Section I will be paid a uniform rebate to transact Customer orders.

The Exchange believes that it is reasonable to assess higher Complex Order Fees for Removing Liquidity for a Directed Participant, Specialist, ROT, SQT and RSQT, Firm and Professional because the rates will remain within the range of fees assessed today for Single contra-side orders.[15] In addition, the Complex Order Fees for Removing Liquidity are within the range of fees at the International Securities Exchange, LLC (''ISE'').[16] The Exchange proposes to increase the Complex Order Fees for Removing Liquidity, but continue to assess market makers [17] lower rates as compared to other market participants because market makers have obligations to the market, which do not apply to Firms, Professionals and Broker-Dealers.[18] Directed Participants are assessed a different Complex Order Fee for Removing Liquidity as compared to other market makers because they have higher quoting obligations as compared to market makers.[19] Firms, Broker-Dealers and Professionals would be assessed equal rates and Customers would not be assessed a fee.[20]

The Exchange believes that it is equitable and not unfairly discriminatory to increase the Complex Order Fees for Removing Liquidity for Select Symbols, including the Designated Options, for all market participants except Customers and Broker-Dealers because these fees would apply uniformly to these market participants.[21] In addition, the Complex Order Fees for Removing Liquidity are comparable to the complex order fees at ISE.[22]

The Exchange operates in a highly competitive market comprised of nine U.S. options exchanges in which sophisticated and knowledgeable market participants can readily send order flow to competing exchanges if they deem fee levels at a particular exchange to be excessive. The Exchange believes that the Complex Order fees and rebates it pays/assesses must be competitive with fees and rebates in place on other exchanges. The Exchange believes that this competitive marketplace impacts the fees and rebates present on the Exchange today and influences the proposals set forth above.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others*

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[23] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(4).

[15] Single contra-side orders are in Section I, Part A of the Exchange's Fee Schedule. There is one distinction, namely the Customer Fee for Removing Liquidity for a Single contra-side order is $0.25 per contract and there will be no Fee for Removing Liquidity for Complex Orders in the new combined Fee for Removing Liquidity for Select Symbols, which will include the Designated Options.

[16] *See* ISE's Schedule of Fees.

[17] The Exchange market maker category includes Specialists (*see* Rule 1020) and ROTs (Rule 1014(b)(i) and (ii), which includes SQTs (*see* Rule 1014(b)(ii)(A)) and RSQTs (*see* Rule 1014(b)(ii)(B)).

[18] *See* Exchange Rule 1014 titled ''Obligations and Restrictions Applicable to Specialists and Registered Options Traders.''

[19] *See* Exchange Rule 1014 titled ''Obligations and Restrictions Applicable to Specialists and Registered Options Traders.''

[20] Customers are not assessed a Complex Order Fee for Removing Liquidity today in Designated Options. Customers are assessed a $0.25 per contract Complex Order Fee For Removing Liquidity in the Select Symbols today. The Broker-Dealer fee would remain the same.

[21] Today, Customers are assessed a Complex Order Fee for Removing Liquidity in all Select Symbols, except Designated Options, of $0.25 per contract. This proposal would result in a decrease for Customers currently paying the $0.25 per contract fee today, as the proposed Customer rate in the combined category will be $0.00. The Exchange believes that this is reasonable because it is within the range of fees assessed by other exchanges. ISE does not assess its customers a complex order taker fee. *See* ISE's Schedule of Fees. The Exchange believes that decreasing the Customer Fee for Removing Liquidity in Complex Orders in the Select Symbols is equitable and not unfairly discriminatory because today there is no Complex Order Fee for Removing Liquidity for Designated Options and the proposed rates will uniformly assess no fee for Customers in the combined category.

[22] *See* ISE's Schedule of Fees.

[23] 15 U.S.C. 78s(b)(3)(A)(ii).

whether the proposed rule should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2011–147 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2011–147. 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 Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2011–147 and should be submitted on or before December 7, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2011–29510 Filed 11–15–11; 8:45 am]

**BILLING CODE 8011–01–P**

[24] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–65725; File No. SR–CBOE–2011–007]**

## Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of Proposed Rule Change to Adopt Rules in Connection With S&P 500 Option Variance Basket Trades

November 10, 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 26, 2011, Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The filing proposes to adopt rules in connection with S&P 500 option variance basket trades. 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange is proposing a new offering, called S&P 500 variance trades, which will allow investors to electronically trade a portfolio of S&P 500 Index options (SPX options) in a single transaction. An S&P 500 variance trade (also referred to as the ''basket'' or ''variance trade basket''), is intended to replicate S&P 500 implied variance.[3] Demand for volatility products has increased dramatically in recent years, and variance baskets will provide investors with another way to efficiently trade S&P 500 volatility.[4]

As an initial matter, S&P 500 variance trades will only trade electronically on CBOE (open-outcry S&P 500 variance trades will not be possible); each day, one or more new S&P 500 variance trade baskets will be available for trading, and transactions in each basket will occur on that day only; and, no market orders will be accepted. Each basket will consist of a portfolio of SPX options defined by the Exchange the day before it is available for trading. All of the constituent options of the basket will have the same expiration date and will be centered around an at-the-money strike price. It is expected that a full ''strip'' consisting of all series in the strike range would be offered every day.[5] Each basket will also have a unique ticker symbol. Market prices for S&P 500 variance trades will be expressed and quoted in volatility terms (*e.g.* 21.24). Trade quantities will be expressed in contracts. Each contract will have a multiplier of $10,000 or more, as determined and published by the Exchange (the Exchange would not

[3] ''Implied Variance'' refers to the market's expectation of daily price changes of a reference asset that is implied by the price of an option or a portfolio of options overlying that reference asset. Implied variance is related to the more commonly-used term, ''implied volatility,'' which is the square root of implied variance. The reference asset for S&P 500 variance trades is the S&P 500 Index. The portfolio of options intended to replicate S&P 500 implied variance is comprised of S&P 500 Index (SPX) options.

[4] The Exchange notes that S&P 500 variance trades do not replicate variance swaps.

[5] The Exchange notes that the proposed rule allows the Exchange to determine the days on which S&P 500 variance trades will be allowed, and that the Exchange will make publicly available a detailed description of the formulas and methodology used to deconstruct S&P 500 variance trades into constituent SPX option series. Further, for each day on which S&P 500 variance trades are allowed, the Exchange will publish, after the close of trading on the previous day, the options comprising the portfolio for the next day.

change the multiplier intraday).[6] The multiplier for S&P 500 variance trades represents the aggregate ''vega'' exposure of the SPX option series that comprise the S&P 500 variance trade portfolio. Vega is a term frequently used by volatility traders to describe the change in value of a contract corresponding to a one-point change in volatility. For example, assuming a vega exposure of $50,000, an investor would expect to pay approximately $50,000 more for a variance basket portfolio with a trade price of 21.00 than he/she would if the trade price was 20.00.

The display and trading of S&P 500 variance trades will be handled very much like the display and trading of typical listed options. That is, Trading Permit Holders may submit orders in S&P 500 variance trades for interaction with resting S&P 500 variance trade orders. These orders will be submitted to the System electronically like orders in other products. Thus, once an S&P 500 variance trade basket has been announced and established by the Exchange (after the close of trading), users may submit pre-opening orders in that basket for execution the following day. The same opening process utilized for other listed options will be used for S&P 500 variance trades, and trading in the S&P 500 variance trade basket will continue throughout the day just like other products traded on the Exchange.

S&P 500 variance trade processing will be different from other listed options in several respects. First, trading interest in the disseminated quote for an S&P 500 variance trade shall be ranked pursuant to one of the matching algorithms set forth in Rule 6.45A which may be different from the matching algorithm in place for other option products, including SPX. The Exchange would announce via Regulatory Circular the applicable matching algorithm. Second, once a match occurs, the Exchange will use a formula to deconstruct the match into individual trades in the constituent SPX options that comprise the basket, and those individual trades will each print concurrently.

The algorithm used to deconstruct S&P 500 variance trades into constituent SPX option legs is a two step process. The first step assigns the number of contracts traded for each SPX option series. The number of SPX contracts is a function of the S&P 500 variance trade price and trade quantity, as well as time to expiration, interest rates and the strike prices of constituent SPX option legs. The following formula defines the trade quantity for each series in the S&P 500 variance trade basket:

$$N_i = \frac{2}{T}\left[\Delta K_i \big/ K_i^2\right] e^{RT} \times \left[\textit{vega notional} \big/ 2\times\sigma\right] \times 100$$

$N_i$ Trade quantity of $i^{th}$ option in portfolio
$\sigma$ Variance basket trade price (expressed in volatility terms)
T Time to expiration
$K_i$ Strike price of $i^{th}$ option in portfolio
$\Delta K_i$ Interval between strike prices
R Risk-free interest rate to expiration
''vega notional'' Variance basket quantity times contract multiplier (*e.g.,* $50,000)

The second step assigns trade prices for each SPX option in the S&P 500 variance trade. The System (1) calculates a baseline implied volatility for each constituent SPX option. The System performs this calculation by using a Black Model and backing out implied volatility levels based on the mid-quote prices of constituent SPX options prevailing at the time of the variance basket trade execution. The System then (2) calculates an initial ''interim volatility'' value using the mid-quote SPX option prices as input values to the VIX formula (the VIX formula is presented in Example 1 below; a detailed description of the VIX formula may be found in the *VIX White Paper,* which is available on the CBOE Web site at *http://www.cboe.com/micro/vix/vixwhite.pdf*). Next, the System (3) compares the variance basket trade price with the interim volatility value. If the variance basket trade price is less (greater) than the interim volatility value, the System (4) decreases (increases) the implied volatilities of all of the constituent SPX options by the same amount and then calculates a set of simulated option prices using the Black Model and the adjusted implied volatilities. The System then (5) uses the simulated option prices as input values to the VIX formula; the resulting output of the VIX formula serves as a new interim volatility value. The System then continues to repeat Steps 3 through 5 until the interim volatility value matches the S&P 500 option variance basket trade price. Finally, the System (6) creates a series of matched trades for all of the constituent SPX option series using, as trade prices, the simulated option prices that cause the interim volatility value to match the S&P 500 option variance basket trade price.

Once trade prices are determined for each constituent series, the System executes and reports the constituent trades. The execution prices are unrelated to the existing market for the applicable series, therefore, pursuant to paragraph (c) of proposed Rule 6.53B, constituent trades are executed and reported without regard for existing bids and offers on the Exchange. This is appropriate because S&P 500 variance trades involve the execution of an investment strategy across numerous series. Prevailing bids and offers in each such series cannot satisfy the overall execution strategy of an S&P 500 variance trade particularly when considering that the execution prices reflect pricing that is not based (directly or indirectly) on the quoted prices at the time of execution. To highlight to users that executions of S&P 500 variance trades are not associated with the quoted prices in the respective SPX series at the time of execution, each constituent execution will be reported with the ''benchmark'' indicator. This indicator was created to facilitate the execution of benchmark orders as contemplated by the Options Order Protection and Locked/Crossed Market Plan (the ''Linkage Plan''). A benchmark order is an order for which the price is not based, directly or indirectly, on the quoted price of the option at the time of the order's execution and for which the material terms were not reasonably determinable at the time a commitment to trade the order was made.[7] While the benchmark indicator was created for the reporting of multiply listed option executions that meet the benchmark definition, the Exchange believes it will be useful to append the indicator to the execution of constituent series of an S&P 500 variance trade so SPX traders know that the executions were not related to the quoted price at the time of the print. Thus, the use of the indicator in this context is for informational purposes and the

[6] The Exchange expects to typically use a higher multiplier, but seeks to establish a $10,000 minimum to allow investors greater flexibility to fine-tune their investment objectives for short-dated options and/or low volatility levels.

[7] CBOE does not currently offer functionality or order types that can utilize the benchmark exception to the Linkage Plan.

constituent executions are not actually benchmark trades pursuant to the Linkage Plan.

To summarize, users will submit S&P 500 variance trade orders with limit prices that will execute when marketable against other limit orders resident in the book. Once the execution occurs, the System will ''deconstruct'' the match and calculate executions in the applicable individual SPX series that comprise the S&P 500 variance trade basket. The System will then print each constituent series execution. Only these constituent executions will be sent to the Options Clearing Corporation for clearing. Once the process is completed, the S&P 500 variance trade transaction will cease to exist but each party to the transaction will have traded the constituent series. In essence, the S&P 500 variance trade process allows Trading Permit Holders to trade a basket of SPX options (across different series) in one transaction (*i.e.* one basket trade explodes into numerous SPX executions). To illustrate the process, three examples are provided below.

Example 1

On the day before the trade date and after the close, CBOE publishes, through its Web site or in some other format, a set of parameters for an S&P 500 variance trade that will be available for trading the following business day. This information identifies the individual SPX option series comprising the variance trade portfolio. This example uses the DEC 2011 variance trade and is highlighted in the following table:

| SPX expiration | Strike range | $K_0$ | Min. strike interval | Contract multiplier ($vega/contract) |
|---|---|---|---|---|
| DEC 2011 | 500—1500 | 1125 | 25 | $50,000 |

In addition, the following values need to be known as of trade date:

Time to DEC 2011 Expiration (T): 0.34795 years (127 days).

Risk-Free Interest Rate to DEC 2011 (R): 0.02% [8].

Order Entry and Trade Match

- Broker A enters a limit order to sell 2 S&P 500 DEC 2011 variance trade at 33.50.
- Trader B and Trader C each respond by submitting an order to buy one contract at 33.00.
- Broker A eventually cancels the 33.50 offer and replaces it with a 33.00 offer.
- The DEC 2011 variance trade matches at 33.00. Trader B buys 1 contract at 33.00 and Trader C buys 1 contract at 33.00.
- Fill reports for the variance trade executions are sent to Broker A, Trader B and Trader C.
- The variance trades are then ''deconstructed'' by the System to create a series of matched trades in all of the SPX option series comprising the variance trade.

Post trade match processing

The following table shows the bid/ask and mid-quote prices for DEC 2011 SPX options immediately following the execution of the variance trade:

| P/C | Strike price (K) | Bid | Ask | Mid-quote | ΔK |
|---|---|---|---|---|---|
| P | 500 | $0.55 | $1.50 | $1.03 | 25 |
| P | 525 | 0.75 | 1.55 | 1.15 | 25 |
| P | 550 | 1.10 | 2.05 | 1.58 | 25 |
| P | 575 | 1.50 | 2.45 | 1.98 | 25 |
| P | 600 | 2.00 | 2.95 | 2.48 | 25 |
| P | 625 | 2.35 | 3.48 | 2.91 | 25 |
| P | 650 | 2.70 | 4.00 | 3.35 | 25 |
| P | 675 | 3.50 | 5.00 | 4.25 | 25 |
| P | 700 | 5.00 | 5.90 | 5.45 | 25 |
| P | 725 | 5.20 | 7.10 | 6.15 | 25 |
| P | 750 | 6.40 | 8.30 | 7.35 | 25 |
| P | 775 | 7.80 | 9.70 | 8.75 | 25 |
| P | 800 | 10.50 | 11.30 | 10.90 | 25 |
| P | 825 | 11.40 | 14.20 | 12.80 | 25 |
| P | 850 | 13.30 | 16.10 | 14.70 | 25 |
| P | 875 | 15.70 | 18.50 | 17.10 | 25 |
| P | 900 | 18.70 | 21.60 | 20.15 | 25 |
| P | 925 | 21.60 | 25.30 | 23.45 | 25 |
| P | 950 | 24.90 | 28.60 | 26.75 | 25 |
| P | 975 | 29.20 | 33.10 | 31.15 | 25 |
| P | 1000 | 33.40 | 37.30 | 35.35 | 25 |
| P | 1025 | 39.00 | 42.70 | 40.85 | 25 |
| P | 1050 | 44.50 | 48.40 | 46.45 | 25 |
| P | 1075 | 51.40 | 55.30 | 53.35 | 25 |
| P | 1100 | 59.20 | 63.10 | 61.15 | 25 |
| P ($K_0$) | 1125 | 67.60 | 71.50 | 69.55 | 25 |
| C ($K_0$) | 1125 | 90.10 | 94.00 | 92.05 | |
| C | 1150 | 74.90 | 78.80 | 76.85 | 25 |
| C | 1175 | 61.30 | 65.20 | 63.25 | 25 |
| C | 1200 | 48.40 | 52.30 | 50.35 | 25 |
| C | 1225 | 37.30 | 41.20 | 39.25 | 25 |
| C | 1250 | 27.80 | 31.70 | 29.75 | 25 |

[8] Interest rate on U.S. Treasury Bill maturing December 15, 2011.

| P/C | Strike price (K) | Bid | Ask | Mid-quote | ΔK |
|---|---|---|---|---|---|
| C | 1275 | 20.10 | 23.60 | 21.85 | 25 |
| C | 1300 | 13.60 | 16.70 | 15.15 | 25 |
| C | 1325 | 9.20 | 11.10 | 10.15 | 25 |
| C | 1350 | 5.60 | 7.50 | 6.55 | 25 |
| C | 1375 | 3.60 | 5.10 | 4.35 | 25 |
| C | 1400 | 2.00 | 3.60 | 2.80 | 25 |
| C | 1425 | 1.25 | 2.20 | 1.73 | 25 |
| C | 1450 | 0.65 | 1.60 | 1.13 | 25 |
| C | 1475 | 0.45 | 1.05 | 0.75 | 25 |
| C | 1500 | 0.35 | 0.70 | 0.53 | 25 |

Deconstruction Algorithm

The algorithm used to deconstruct S&P 500 variance trades into constituent SPX option series executions is a 2-step process.

*Step 1.* The System first determines the number of contracts ($N_i$) for each SPX option series comprising the variance trade on a ''per variance trade contract'' basis. As shown below, the number of SPX contracts is a function of the $vega/contract (*e.g.,* $50,000) and the trade price for the matched variance trade (volatility—σ), as well as time to expiration (T), interest rates (R), the strike prices of constituent SPX option legs ($K_i$) and the strike price interval ($\Delta K_i$).

The following formula defines the trade quantity for each series in the variance trade:

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$$N_i = \frac{2}{T}\left[\Delta K_i \Big/ K_i^2\right] e^{RT} \times \left[\$vega\,/\,contract \Big/ 2\times\sigma\right] \times 100$$

For example, the trade quantity for the SPX DEC 2011 500 put ($N_{500\ Put}$) is given by:

$$N_{500\ Put} = \frac{2}{T}\left[\Delta K_{500} \Big/ K_{500}^2\right] e^{RT} \times \left[50{,}000 \Big/ 2\times\sigma\right] \times 100$$

$$N_{500\ Put} = \frac{2}{0.34795}\left[25 \Big/ 500^2\right] 1.0000696 \times \left[50{,}000 \Big/ 2\times 33.00\right] \times 100 = 43.54874928$$

| P/C | Strike Price (K) | ΔK | $\left[\$vega/contract / 2\times\sigma\right]$ "Variance Units" | Contracts ($N_i$) |
|---|---|---|---|---|
| P | 500 | 25 | 757.58 | 44 |
| P | 525 | 25 | 757.58 | 39 |
| P | 550 | 25 | 757.58 | 36 |
| P | 575 | 25 | 757.58 | 33 |
| P | 600 | 25 | 757.58 | 30 |
| P | 625 | 25 | 757.58 | 28 |
| P | 650 | 25 | 757.58 | 26 |
| P | 675 | 25 | 757.58 | 24 |
| P | 700 | 25 | 757.58 | 22 |
| P | 725 | 25 | 757.58 | 21 |
| P | 750 | 25 | 757.58 | 19 |
| P | 775 | 25 | 757.58 | 18 |
| P | 800 | 25 | 757.58 | 17 |
| P | 825 | 25 | 757.58 | 16 |
| P | 850 | 25 | 757.58 | 15 |
| P | 875 | 25 | 757.58 | 14 |
| P | 900 | 25 | 757.58 | 13 |
| P | 925 | 25 | 757.58 | 13 |
| P | 950 | 25 | 757.58 | 12 |
| P | 975 | 25 | 757.58 | 11 |
| P | 1000 | 25 | 757.58 | 11 |
| P | 1025 | 25 | 757.58 | 10 |
| P | 1050 | 25 | 757.58 | 10 |
| P | 1075 | 25 | 757.58 | 9 |
| P | 1100 | 25 | 757.58 | 9 |
| P (K0) | 1125 | 25 | 757.58 | 5 |
| C (K0) | 1125 | | 757.58 | 4 |
| C | 1150 | 25 | 757.58 | 8 |
| C | 1175 | 25 | 757.58 | 8 |
| C | 1200 | 25 | 757.58 | 8 |
| C | 1225 | 25 | 757.58 | 7 |
| C | 1250 | 25 | 757.58 | 7 |
| C | 1275 | 25 | 757.58 | 7 |
| C | 1300 | 25 | 757.58 | 6 |
| C | 1325 | 25 | 757.58 | 6 |
| C | 1350 | 25 | 757.58 | 6 |
| C | 1375 | 25 | 757.58 | 6 |
| C | 1400 | 25 | 757.58 | 6 |
| C | 1425 | 25 | 757.58 | 5 |
| C | 1450 | 25 | 757.58 | 5 |
| C | 1475 | 25 | 757.58 | 5 |
| C | 1500 | 25 | 757.58 | 5 |

Since there are no fractional option contracts, the value for $N_{500\ Put}$ is rounded to 44. The same calculation is conducted for each SPX option series comprising the variance trade. The results are shown in the table below. It should be noted that both puts and calls are traded at the $K_0$ (in this case, 1125) strike.

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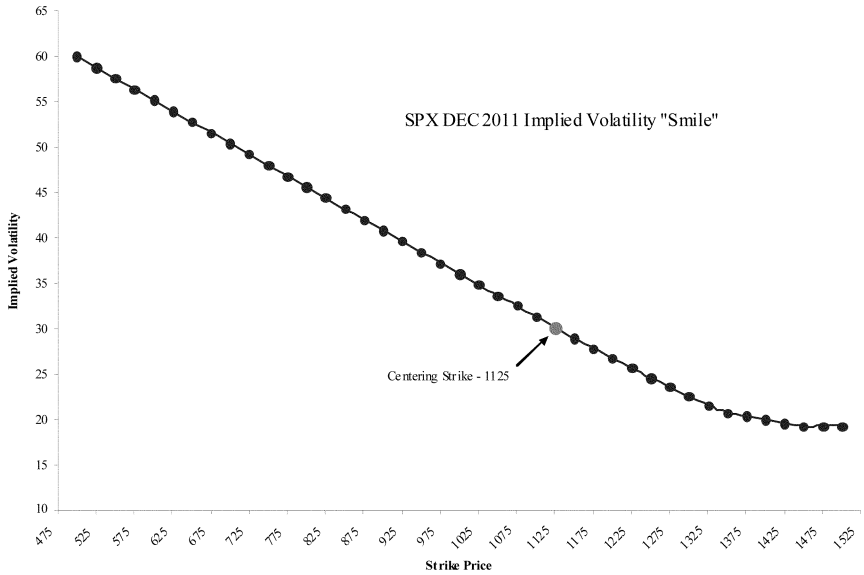
*Step 2.* Next, the System generates trade prices for each SPX option—$Q(K_i)$—in the S&P 500 variance trade. The System (1) calculates a baseline implied volatility for each constituent SPX option. The System performs this calculation by using a Black Model and backing out implied volatility levels based on mid-quote prices of constituent SPX options prevailing at the time of the variance basket trade execution. In this example, the baseline implied volatilities range from a low of about 20 for the 1500 call to a high of about 60 for the 500 put. The implied volatilities of the 1125 put and 1125 call (''centering strike'') are each about 30. The graph below shows the implied volatilities of the SPX options comprising the December 2011 variance basket. A representation of implied volatility as a function of strike price is commonly referred to as a volatility ''smile.''




The System then (2) calculates an initial ''interim volatility'' value using the mid-quote SPX option prices as input values to the VIX formula[9] [10]

$$\sigma^2 = \frac{2}{T}\sum_i \frac{\Delta K_i}{K_i^2} e^{RT} Q(K_i) - \frac{1}{T}\left[\frac{F}{K_0} - 1\right]^2$$

$\sigma^2$ Variance (volatility-squared); VIX = $\sigma \times 100$
T Time to expiration
F Forward SPX level
$K_0$ Variance strip centering strike price
$K^i$ Strike price of ith option
$\Delta K_i$ Interval between strike prices
R Risk-free interest rate to expiration
$Q(K_i)$ Price of option with strike $K_i$.

In this example, the initial interim volatility value for the SPX options comprising the DEC 2011 variance trade is 33.59. Next, the System (3) compares the variance basket trade price with the interim volatility value. Since in this example, the variance basket trade price of 33.00 is less than the interim volatility value of 33.59, the System (4) would decrease the implied volatilities of all of the constituent SPX options by the same amount and then calculate a set of simulated option prices using the Black Model and the adjusted implied volatilities. The System then (5) uses the simulated option prices as input values to the VIX formula; the resulting output of the VIX formula serves as a new interim volatility value. The System then continues to repeat Steps 3 through 5 until the interim volatility value matches the S&P 500 option variance basket trade price. In this example, the interim volatility value matches the target trade price of 33.00 when the baseline implied volatilities are decreased by 0.46 volatility points. When the simulated option values calculated by reducing the baseline implied volatilities by 0.46 volatility points are used as input values to the VIX formula, the result—rounded to the nearest hundredth—matches the variance basket trade price.[11]

At this point, the System (6) creates a series of matched trades for all of the constituent SPX option series using, as trade prices, the simulated option prices that cause the interim volatility value to match the S&P 500 option variance basket trade price.

With trade quantities determined and SPX option prices assigned, the System creates the following 42 matched trades in constituent SPX series—a total of 604 SPX options contracts per S&P 500 variance trade contract, with a total portfolio value of just over $830,000.

[9] Please see ''More than you ever wanted to know about volatility swaps'' by Kresimir Demeterfi, Emanuel Derman, Michael Kamal and Joseph Zou, Goldman Sachs Quantitative Strategies Research Notes, March 1999.

[10] Please *see* ''VIX White Paper'' at *www.cboe.com/vixwhite.pdf*

[11] As a practical matter, the minimum increment of change to the baseline volatilities is not limited to 1/100th of a volatility point. Rather, the System uses as much precision as it needs in order to calculate an interim volatility value that, when rounded to the nearest hundredth, matches the variance basket trade price.

| P/C | Strike price | Mid-quote option price | Baseline implied volatility | Adjusted implied volatility | Trade price (rounded) | Trade quantity | Trade value |
|---|---|---|---|---|---|---|---|
| P | 500 | $1.03 | 60.00 | 59.54 | $0.79 | 44 | $3,476 |
| P | 525 | 1.15 | 58.80 | 58.34 | 1.05 | 39 | 4,095 |
| P | 550 | 1.58 | 57.60 | 57.14 | 1.36 | 36 | 4,896 |
| P | 575 | 1.98 | 56.40 | 55.94 | 1.74 | 33 | 5,742 |
| P | 600 | 2.48 | 55.20 | 54.74 | 2.20 | 30 | 6,600 |
| P | 625 | 2.91 | 54.00 | 53.54 | 2.75 | 28 | 7,700 |
| P | 650 | 3.35 | 52.80 | 52.34 | 3.39 | 26 | 8,814 |
| P | 675 | 4.25 | 51.60 | 51.14 | 4.15 | 24 | 9,960 |
| P | 700 | 5.45 | 50.40 | 49.94 | 5.04 | 22 | 11,088 |
| P | 725 | 6.15 | 49.20 | 48.74 | 6.08 | 21 | 12,768 |
| P | 750 | 7.35 | 48.00 | 47.54 | 7.27 | 19 | 13,813 |
| P | 775 | 8.75 | 46.80 | 46.34 | 8.65 | 18 | 15,570 |
| P | 800 | 10.90 | 45.60 | 45.14 | 10.24 | 17 | 17,408 |
| P | 825 | 12.80 | 44.40 | 43.94 | 12.06 | 16 | 19,296 |
| P | 850 | 14.70 | 43.20 | 42.74 | 14.14 | 15 | 21,210 |
| P | 875 | 17.10 | 42.00 | 41.54 | 16.52 | 14 | 23,128 |
| P | 900 | 20.15 | 40.80 | 40.34 | 19.23 | 13 | 24,999 |
| P | 925 | 23.45 | 39.60 | 39.14 | 22.31 | 13 | 29,003 |
| P | 950 | 26.75 | 38.40 | 37.94 | 25.83 | 12 | 30,996 |
| P | 975 | 31.15 | 37.20 | 36.74 | 29.82 | 11 | 32,802 |
| P | 1000 | 35.35 | 36.00 | 35.54 | 34.35 | 11 | 37,785 |
| P | 1025 | 40.85 | 34.80 | 34.34 | 39.51 | 10 | 39,510 |
| P | 1050 | 46.45 | 33.60 | 33.14 | 45.35 | 10 | 45,350 |
| P | 1075 | 53.35 | 32.50 | 32.04 | 52.23 | 9 | 47,007 |
| P | 1100 | 61.15 | 31.30 | 30.84 | 59.76 | 9 | 53,784 |
| P ($K_0$) | 1125 | 69.55 | 30.10 | 29.64 | 68.28 | 5 | 34,140 |
| C ($K_0$) | 1125 | 92.05 | 30.10 | 29.64 | 91.08 | 4 | 36,432 |
| C | 1150 | 76.85 | 28.90 | 28.44 | 75.70 | 8 | 60,560 |
| C | 1175 | 63.25 | 27.80 | 27.34 | 61.82 | 8 | 49,456 |
| C | 1200 | 50.35 | 26.70 | 26.24 | 49.27 | 8 | 39,416 |
| C | 1225 | 39.25 | 25.60 | 25.14 | 38.16 | 7 | 26,712 |
| C | 1250 | 29.75 | 24.50 | 24.04 | 28.54 | 7 | 19,978 |
| C | 1275 | 21.85 | 23.50 | 23.04 | 20.68 | 7 | 14,476 |
| C | 1300 | 15.15 | 22.50 | 22.04 | 14.31 | 6 | 8,586 |
| C | 1325 | 10.15 | 21.50 | 21.04 | 9.36 | 6 | 5,616 |
| C | 1350 | 6.55 | 20.70 | 20.24 | 5.95 | 6 | 3,570 |
| C | 1375 | 4.35 | 20.30 | 19.84 | 3.90 | 6 | 2,340 |
| C | 1400 | 2.80 | 19.90 | 19.44 | 2.45 | 6 | 1,470 |
| C | 1425 | 1.73 | 19.50 | 19.04 | 1.48 | 5 | 740 |
| C | 1450 | 1.13 | 19.20 | 18.74 | 0.89 | 5 | 445 |
| C | 1475 | 0.75 | 19.20 | 18.74 | 0.58 | 5 | 290 |
| C | 1500 | 0.53 | 19.20 | 18.74 | 0.37 | 5 | 185 |

The S&P 500 variance trade seller would see 42 sell transactions totaling 1,208 SPX options with an aggregate value $1.66 million. Each of the two S&P 500 variance trade buyers would see 42 buy transactions totaling 604 SPX options with an aggregate value of $830,000.

Example 2

Following is a hypothetical historical example of a MAR 2011 S&P 500 variance trade on December 29, 2010. After the close on December 28, 2010 CBOE publishes the following parameters for the S&P 500 variance trade effective for the next trade date—December 29. The information defining the SPX options effective for MAR 2011 basket is highlighted below:

| SPX expiration | Strike range | $K_0$ | Min. strike interval | Contract multiplier ($vega/contract) |
|---|---|---|---|---|
| MAR 2011 | 600–1600 | 1250 | 25 | $50,000 |

Order Entry and Trade Match

- Broker A receives an order to buy 2 SPX MAR 2011 S&P 500 variance trade basket contracts at 20.50.
- Trader B posts an offer to sell 2 contracts at 20.75.
- Broker A eventually cancels the 20.50 bid and replaces it with a 20.75 bid.
- The variance basket trade matches at 20.75.
- The System begins to deconstruct the S&P 500 variance trade basket into a series of matched trades in all of the SPX option series comprising the S&P 500 variance trade basket.

Deconstruction

As previously described, the algorithm used to deconstruct S&P 500 variance trades into constituent SPX option trades is a 2-step process; the first step assigns the number of contracts traded for each SPX option series comprising the S&P 500 variance trade basket, and the second step

assigns trade prices to those SPX option series. The following table shows the SPX option mid-quote prices prevailing at the time of the S&P 500 variance trade execution, as well as the trade quantities and trade prices assigned by the deconstruction algorithm. In this example, the S&P 500 variance trade was deconstructed into 42 separate matched trades, totaling over 2,400 SPX option contracts (1,206 SPX contracts per variance trade basket) and over $1 million in option premium ($521,000 per variance trade basket).

| P/C | Strike price | Mid-quote option price | Trade price (rounded) | Trade quantity | Trade value |
|---|---|---|---|---|---|
| P | 600 | $0.10 | $0.09 | 155 | $1,395 |
| P | 625 | 0.08 | 0.12 | 143 | 1,716 |
| P | 650 | 0.10 | 0.15 | 132 | 1,980 |
| P | 675 | 0.13 | 0.20 | 122 | 2,440 |
| P | 700 | 0.25 | 0.26 | 114 | 2,964 |
| P | 725 | 0.50 | 0.34 | 106 | 3,604 |
| P | 750 | 0.33 | 0.43 | 99 | 4,257 |
| P | 775 | 0.45 | 0.55 | 93 | 5,115 |
| P | 800 | 0.53 | 0.69 | 87 | 6,003 |
| P | 825 | 0.83 | 0.86 | 82 | 7,052 |
| P | 850 | 0.75 | 1.07 | 77 | 8,239 |
| P | 875 | 1.23 | 1.33 | 73 | 9,709 |
| P | 900 | 1.23 | 1.65 | 69 | 11,385 |
| P | 925 | 1.80 | 2.03 | 65 | 13,195 |
| P | 950 | 2.20 | 2.50 | 62 | 15,500 |
| P | 975 | 2.60 | 3.07 | 59 | 18,113 |
| P | 1000 | 3.10 | 3.77 | 56 | 21,112 |
| P | 1025 | 4.05 | 4.65 | 53 | 24,645 |
| P | 1050 | 5.20 | 5.73 | 51 | 29,223 |
| P | 1075 | 6.95 | 7.09 | 48 | 34,032 |
| P | 1100 | 8.40 | 8.80 | 46 | 40,480 |
| P | 1125 | 10.40 | 10.97 | 44 | 48,268 |
| P | 1150 | 13.35 | 13.97 | 42 | 58,674 |
| P | 1175 | 17.20 | 17.84 | 40 | 71,360 |
| P | 1200 | 22.15 | 22.94 | 39 | 89,466 |
| P | 1225 | 28.75 | 29.73 | 37 | 110,001 |
| P ($K_0$) | 1250 | 37.45 | 38.51 | 17 | 65,467 |
| C ($K_0$) | 1250 | 44.00 | 45.06 | 19 | 85,614 |
| C | 1275 | 29.70 | 30.77 | 34 | 104,618 |
| C | 1300 | 19.05 | 19.98 | 33 | 65,934 |
| C | 1325 | 11.20 | 12.03 | 32 | 38,496 |
| C | 1350 | 5.90 | 6.53 | 31 | 20,243 |
| C | 1375 | 3.10 | 3.48 | 29 | 10,092 |
| C | 1400 | 1.43 | 1.70 | 28 | 4,760 |
| C | 1425 | 0.78 | 0.90 | 27 | 2,430 |
| C | 1450 | 0.45 | 0.49 | 26 | 1,274 |
| C | 1475 | 0.48 | 0.40 | 26 | 1,040 |
| C | 1500 | 0.18 | 0.33 | 25 | 825 |
| C | 1525 | 0.50 | 0.29 | 24 | 696 |
| C | 1550 | 0.20 | 0.26 | 23 | 598 |
| C | 1575 | 0.15 | 0.23 | 22 | 506 |
| C | 1600 | 0.15 | 0.22 | 22 | 484 |

Example 3

Following is a hypothetical historical example of a JUN 2012 S&P 500 variance trade on April 29, 2011.

After the close on April 28, 2011 CBOE publishes the following parameters for the S&P 500 variance trade effective for the next trade date—April 29, 2011. The information defining the SPX options effective for JUN 2012 basket is highlighted below:

| SPX expiration | Strike range | $K_0$ | Min. strike interval | Contract multiplier ($vega/contract) |
|---|---|---|---|---|
| JUN 2012 | 400–1800 | 1325 | 25 | $50,000 |

Order Entry and Trade Match

- Broker A receives an order to buy 2 SPX JUN 2012 baskets at 22.50.
- Trader B responds with an offer to sell 2 contracts at 22.75.
- Broker A eventually cancels the 22.50 bid and replaces it with a 22.75 bid.
- The S&P 500 variance trade matches at 22.75.
- The System begins to deconstruct the trade into a series of matched trades in all of the SPX option series comprising the S&P 500 variance trade.

Deconstruction

As previously described, the algorithm used to deconstruct variance trades into constituent SPX option trades is a 2-step process; the first step assigns the number of contracts traded for each SPX option series comprising the S&P 500 variance trade and the

second step assigns trade prices to those SPX option series. The following table shows the SPX option mid-quote prices prevailing at the time of the S&P 500 variance trade execution, as well as the trade quantities and trade prices assigned by the deconstruction algorithm. In this example, the S&P 500 variance trade was deconstructed into 46 separate matched trades, totaling over 800 SPX option contracts (412 SPX contracts per variance trade basket) and over 1.1 million in option premium (567,000 per variance trade basket).

| P/C | Strike price | Mid-quote option price | Trade price (rounded) | Trade quantity | Trade value |
|---|---|---|---|---|---|
| P | 400 | $0.73 | $0.40 | 122 | $4,880 |
| P | 450 | 1.08 | 0.75 | 96 | 7,200 |
| P | 500 | 1.65 | 1.29 | 78 | 10,062 |
| P | 550 | 2.45 | 2.07 | 64 | 13,248 |
| P | 600 | 3.35 | 3.15 | 54 | 17,010 |
| P | 650 | 4.55 | 4.57 | 46 | 21,022 |
| P | 700 | 6.15 | 6.46 | 30 | 19,380 |
| P | 725 | 7.05 | 7.41 | 19 | 14,079 |
| P | 750 | 8.15 | 8.45 | 17 | 14,365 |
| P | 775 | 9.30 | 9.59 | 16 | 15,344 |
| P | 800 | 10.45 | 10.83 | 15 | 16,245 |
| P | 825 | 11.90 | 12.26 | 14 | 17,164 |
| P | 850 | 13.45 | 13.84 | 13 | 17,992 |
| P | 875 | 15.25 | 15.65 | 13 | 20,345 |
| P | 900 | 17.15 | 17.64 | 12 | 21,168 |
| P | 925 | 19.25 | 19.82 | 11 | 21,802 |
| P | 950 | 21.55 | 22.20 | 11 | 24,420 |
| P | 975 | 24.10 | 24.81 | 10 | 24,810 |
| P | 1000 | 27.05 | 27.65 | 10 | 27,650 |
| P | 1025 | 30.10 | 30.76 | 9 | 27,684 |
| P | 1050 | 33.45 | 34.15 | 9 | 30,735 |
| P | 1075 | 37.20 | 38.03 | 8 | 30,424 |
| P | 1100 | 41.20 | 42.07 | 8 | 33,656 |
| P | 1125 | 45.65 | 46.68 | 8 | 37,344 |
| P | 1150 | 50.50 | 51.51 | 7 | 36,057 |
| P | 1175 | 55.85 | 56.86 | 7 | 39,802 |
| P | 1200 | 61.70 | 62.74 | 7 | 43,918 |
| P | 1225 | 68.20 | 69.27 | 6 | 41,562 |
| P | 1250 | 75.25 | 76.38 | 6 | 45,828 |
| P | 1275 | 83.05 | 84.25 | 6 | 50,550 |
| P | 1300 | 91.50 | 92.71 | 6 | 55,626 |
| P ($K_0$) | 1325 | 100.85 | 102.09 | 3 | 30,627 |
| C ($K_0$) | 1325 | 115.00 | 116.35 | 3 | 34,905 |
| C | 1350 | 100.35 | 101.73 | 5 | 50,865 |
| C | 1375 | 86.65 | 87.99 | 5 | 43,995 |
| C | 1400 | 73.90 | 75.17 | 5 | 37,585 |
| C | 1425 | 62.35 | 63.60 | 5 | 31,800 |
| C | 1450 | 51.80 | 53.04 | 5 | 26,520 |
| C | 1475 | 42.45 | 43.52 | 4 | 17,408 |
| C | 1500 | 34.25 | 35.28 | 6 | 21,168 |
| C | 1550 | 21.20 | 22.05 | 8 | 17,640 |
| C | 1600 | 12.30 | 13.02 | 6 | 7,812 |
| C | 1625 | 9.10 | 9.80 | 4 | 3,920 |
| C | 1650 | 6.70 | 7.21 | 5 | 3,605 |
| C | 1700 | 3.45 | 3.92 | 10 | 3,920 |
| C | 1800 | 0.90 | 1.07 | 12 | 1,284 |

Example 4

Following is a hypothetical historical example of an October 2011 S&P 500 variance trade on August 11, 2011.

After the close on August 10, 2011 CBOE publishes the following parameters for the S&P 500 variance trade effective for the next trade date—August 11, 2011. The information defining the SPX options effective for JUN 2012 basket is highlighted below:

| SPX expiration | Strike range | $K_0$ | Min. strike interval | Contract multiplier ($vega/contract) |
|---|---|---|---|---|
| OCT 2012 | 825–1325 | 1125 | 25 | $10,000 |

Order Entry and Trade Match

- Broker A receives an order to buy 2 SPX OCT 2011 baskets at 14.75.
- Trader B responds with an offer to sell 2 contracts at 15.00.
- Broker A eventually cancels the 14.75 bid and replaces it with a 15.00 bid.

• The S&P 500 variance trade matches at 15.00.

• The System begins to deconstruct the trade into a series of matched trades in all of the SPX option series comprising the S&P 500 variance trade.

Deconstruction

As previously described, the algorithm used to deconstruct variance trades into constituent SPX option trades is a 2-step process; the first step assigns the number of contracts traded for each SPX option series comprising the S&P 500 variance trade and the second step assigns trade prices to those SPX option series. The following table shows the SPX option mid-quote prices prevailing at the time of the S&P 500 variance trade execution, as well as the trade quantities and trade prices assigned by the deconstruction algorithm. In this example, the S&P 500 variance trade was deconstructed into 22 separate matched trades, totaling 330 SPX option contracts (165 SPX contracts per variance trade basket) and about $160,000 in option premium ($80,000 per variance trade basket).

| P/C | Strike price | Mid-quote option price | Trade price (rounded) | Trade quantity | Trade value |
|---|---|---|---|---|---|
| P | 825 | $0.01 | $0.01 | 26 | $26 |
| P | 850 | 0.02 | 0.02 | 24 | 48 |
| P | 875 | 0.05 | 0.05 | 22 | 110 |
| P | 900 | 0.10 | 0.10 | 22 | 220 |
| P | 925 | 0.20 | 0.20 | 20 | 400 |
| P | 950 | 0.39 | 0.39 | 18 | 702 |
| P | 975 | 0.76 | 0.76 | 18 | 1,368 |
| P | 1000 | 1.42 | 1.43 | 18 | 2,574 |
| P | 1025 | 2.58 | 2.59 | 16 | 4,144 |
| P | 1050 | 4.54 | 4.55 | 16 | 7,280 |
| P | 1075 | 7.78 | 7.80 | 14 | 10,920 |
| P | 1100 | 12.73 | 12.75 | 14 | 17,850 |
| P ($K_0$) | 1125 | 20.05 | 20.07 | 8 | 16,056 |
| C ($K_0$) | 1125 | 42.85 | 42.87 | 6 | 25,722 |
| C | 1150 | 28.12 | 28.14 | 12 | 33,768 |
| C | 1175 | 16.85 | 16.87 | 12 | 20,244 |
| C | 1200 | 8.98 | 8.99 | 12 | 10,788 |
| C | 1225 | 4.13 | 4.14 | 12 | 4,968 |
| C | 1250 | 1.58 | 1.59 | 10 | 1,590 |
| C | 1275 | 0.49 | 0.50 | 10 | 500 |
| C | 1300 | 0.12 | 0.12 | 10 | 120 |
| C | 1325 | 0.02 | 0.02 | 10 | 20 |

Additional Considerations

Because of the electronic nature of the deconstruction process, option variance baskets will not trade in open outcry on the Exchange trading floor. Only electronically submitted trading interest will be handled by the Exchange. Also, as there are no position limits for SPX options, there will be no limits for executions associated with S&P 500 variance trades. Because SPX options are what actually change hands at the conclusion of an S&P 500 variance trade, reporting limits applicable to SPX options will continue to apply pursuant to CBOE Rule 24.4, Interpretation and Policy .03. Similarly, the minimum increment for bids and offers in S&P 500 variance trades as well as trading hours will be the same as the minimum increment applicable to SPX.

The Exchange expects S&P 500 variance trades to appeal to institutional users and not to retail customers. Because of the complex nature of S&P 500 variance trades, the Exchange will only allow orders from Trading Permit Holders who have affirmatively communicated to the Exchange a desire to submit orders in S&P 500 variance trades. Thus, orders from retail brokerage firms (or any firms) that have not opted to submit orders in S&P 500 variance trades, will not be allowed to send orders into the Exchanges matching engine. Any such orders would be rejected by the System.

The Exchange represents that appropriate surveillance will be in place in connection with the trading of variance baskets. Indeed, because S&P 500 variance trades result in the execution of standard SPX options, unique surveillance methods are not necessary. Executions that are associated with an S&P 500 variance trade will be surveilled to the same extent as all other SPX executions.

Lastly, CBOE has analyzed its capacity and represents that it believes the Exchange and the Options Price Reporting Authority have the necessary systems capacity to handle the additional traffic associated with S&P 500 option variance basket trades.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') [12] and the rules and regulations thereunder and, in particular, the requirements of Section 6(b) of the Act.[13] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [14] requirements that the rules of an exchange be designed to remove impediments to and to perfect the mechanism for a free and open market in that the introduction of S&P 500 variance trades will allow market participants to more efficiently trade an entire option portfolio replicating S&P 500 implied variance. In addition, the Exchange understands that market participants may seek to effect comparable investment strategies in the other-the-counter marketplace and believes that the introduction of S&P 500 variance trades will attract order flow to the Exchange, increase the variety of exchange-sponsored investment vehicles available to investors, and provide a valuable trading tool to institutional investors. Thus, the proposed rule change will permit market participants to trade S&P 500 variance trades in an environment subject to exchange-based rules that provides price transparency and eliminates contra-party risk through the role of the OCC as issuer, thereby

[12] 15 U.S.C. 78s(b)(1) [*sic*].

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

removing impediments to a free and open market consistent with the Act. Further, S&P 500 variance trades will be subject to CBOE's rules, regulations and oversight, which serve to protect investors and the public interest and provide enhanced investor protection and market surveillance.

Allowing constituent trades to be executed and reported without regard for existing bids and offers on the Exchange is consistent with the benchmark order exception in the Linkage Plan [15] as well as with the benchmark exception of the SEC's Order Protection Rule under Regulation NMS (Rule 611(b)(7)).[16] Appending the benchmark designator to these executions would alert users that the executions are not related to the prevailing bids and offers, and will therefore help remove impediments to and to perfect the mechanism for a free and open market.

Requiring permit holders to affirmatively indicate a desire to transmit S&P 500 variance trades to the Exchange before the Exchange would process such orders will help ensure that retail customers and other users that may not intend to transact in variance trades will not do so inadvertently which also helps to protect investors and the public interest.

Lastly, the Exchange believes S&P 500 variance trades will be useful to investors because they will facilitate the use of highly liquid SPX options to hedge and trade the growing number of volatility-related products currently available in both the listed and over-the-counter markets which serves to help remove impediments to and to perfect the mechanism for a free and open market.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule change.

[15] Section 5(b)(xi) of the Linkage Plan.

[16] 17 CFR 242.611(b)(7).

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. In particular, the Commission seeks comment on the following:

1. The Exchange's proposal would allow the constituent SPX option trades of a variance trade basket to be executed and reported without regard to existing bids and offers on the Exchange in SPX at the time of the transaction. The Commission requests comment on this aspect of the Exchange's proposal, including commenters' opinions on whether this would be consistent with the Exchange Act and what, if any, potential impact this proposal might have on market participants.

2. The Commission notes that the proposal seeks to use the ''benchmark'' indicator for informational purposes when reporting the constituent legs of a variance trade transaction, though such trades would not be benchmark trades pursuant to Section 5(b)(xi) of the Linkage Plan, which by its terms applies only to inter-market order protection. The Commission requests comment the use of the benchmark trade reporting indicator as proposed.

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–CBOE–2011–007 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2011–007. 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 Exchange. All comments received will be posted without change; the

Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2011–007 and should be submitted on or before December 7, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. 2011–29578 Filed 11–15–11; 8:45 am]

**BILLING CODE 8011–01–P**

[17] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–65719; File No. SR–Phlx–2011–148]**

## Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Qualified Contingent Cross Orders

November 9, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

notice is hereby given that on November 1, 2011, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to amend its Fee Schedule to adopt a rebate related to electronic Qualified Contingent Cross orders (''eQCC Orders'').[3]

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqtrader.com/micro.aspx?id=PHLXfilings,* at the principal office of the Exchange, on the Commission's Web site at *http://www.sec.gov,* and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of the proposed rule change is to amend Section II of the Exchange's Fee Schedule entitled ''Equity Options Fees''[4] to adopt a $0.05 per contract rebate to encourage members to submit a greater number of eQCC Orders. The proposed $0.05 per contract rebate will be paid to members entering electronically executed eQCC Orders.[5] The Exchange believes that this rebate will further incentivize market participants to execute eQCC Orders on the Exchange in Multiply Listed Securities.[6]

The rebate will not apply to Floor Qualified Contingent Cross Orders (''Floor QCC Orders'').[7] QCC Transaction Fees for a Specialist,[8] Registered Options Trader,[9] SQT,[10] RSQT,[11] Professional,[12] Firm and Broker-Dealer are $0.20 per contract.[13]

The Exchange also proposes to amend Section I of the Fee Schedule entitled ''Rebates and Fees for Adding and Removing Liquidity in Select Symbols'' to include a reference to the proposed rebate.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act[14] in general, and furthers the objectives of Section 6(b)(4) of the Act[15] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members. The Exchange also believes that there is an equitable allocation of reasonable rebates among Exchange members.

The Exchange believes that it is reasonable to incentivize members to transact eQCC Orders in Multiply Listed securities[16] by paying a $0.05 per contract rebate to all members entering such orders. The Exchange believes that paying a rebate of $0.05 will sufficiently incentivize its members to send eQCC Orders to the Exchange. Furthermore, the $0.05 rebate is within the range of rebates paid by other exchanges and balances the Exchange's desire to incentivize its members to send order flow to the Exchange while considering the costs attributable to offering such rebates. The Exchange also believes that the $0.05 rebate is reasonable because every eQCC Order is entitled to the rebate and therefore all members are equally eligible to receive the rebate without limitation.

The Exchange is not proposing to pay this rebate for Floor QCC Orders. A

[3] A QCC Order is comprised of an order to buy or sell at least 1000 contracts that is identified as being part of a qualified contingent trade, as that term is defined in Rule 1080(o)(3), coupled with a contra-side order to buy or sell an equal number of contracts. The QCC Order must be executed at a price at or between the National Best Bid and Offer and be rejected if a Customer order is resting on the Exchange book at the same price. A QCC Order shall only be submitted electronically from off the floor to the PHLX XL II System. *See* Rule 1080(o). *See also* Securities Exchange Act Release No. 64249 (April 7, 2011), 76 FR 20773 (April 13, 2011) (SR–Phlx–2011–47) (a rule change to establish a QCC Order to facilitate the execution of stock/option Qualified Contingent Trades (''QCTs'') that satisfy the requirements of the trade through exemption in connection with Rule 611(d) of the Regulation NMS).

[4] Section II includes options overlying equities, ETFs, ETNs, indexes and HOLDRS which are Multiply Listed.

[5] Members will be required to contact the Exchange and obtain an ''R'' account in order to identify these eQCC Orders as orders entered by the member for the purposes of applying the rebate. The Exchange intends to issue an Options Trader Alert to members describing the steps that need to be taken to obtain an ''R'' account.

[6] Multiply Listed Securities include those symbols which are subject to rebates and fees in Section I, Rebates and Fees for Adding and Removing Liquidity in Select Symbols, and Section II, Equity Options Fees.

[7] A Floor QCC Order must: (i) Be for at least 1,000 contracts, (ii) meet the six requirements of Rule 1080(o)(3) which are modeled on the QCT Exemption, (iii) be executed at a price at or between the National Best Bid and Offer (''NBBO''); and (iv) be rejected if a Customer order is resting on the Exchange book at the same price. In order to satisfy the 1,000-contract requirement, a Floor QCC Order must be for 1,000 contracts and could not be, for example, two 500-contract orders or two 500-contract legs. *See* Rule 1064(e). *See also* Securities Exchange Act Release No. 64688 (June 16, 2011) (SR–Phlx–2011–56).

[8] A Specialist is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a).

[9] A Registered Options Trader (''ROT'') includes a SQT, a RSQT and a Non-SQT ROT, which by definition is neither a SQT nor a RSQT. A ROT is defined in Exchange Rule 1014(b) as a regular member or a foreign currency options participant of the Exchange located on the trading floor who has received permission from the Exchange to trade in options for his own account. *See* Exchange Rule 1014(b)(i) and (ii).

[10] An SQT is defined in Exchange Rule 1014(b)(ii)(A) as an ROT who has received permission from the Exchange to generate and submit option quotations electronically in options to which such SQT is assigned.

[11] An RSQT is defined Exchange Rule in 1014(b)(ii)(B) as an ROT that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically in options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange.

[12] The Exchange defines a ''professional'' as any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s) (hereinafter ''Professional'').

[13] QCC Transaction Fees apply to QCC Orders, as defined in Exchange Rule 1080(o), and Floor QCC Orders, as defined in 1064(e). The QCC Transaction Fees, defined in Section II, are applicable to Section I entitled ''Rebates and Fees for Adding and Removing Liquidity in Select Symbols.''

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(4).

[16] The rebate does not apply to Singly Listed Securities. For purposes of this filing, a Singly Listed Option means an option that is only listed on the Exchange and is not listed by any other national securities exchange. *See* Section III of the Exchange's Fee Schedule entitled Singly Listed Options.

member conducting a floor brokerage business has a different business model as compared to members conducting an electronic business.[17] The Exchange believes that it is reasonable to pay a rebate for only eQCC Orders in an attempt to incentivize members to transact eQCC Orders that are processed electronically. In addition, floor brokers, who are the only members that are eligible to enter Floor QCC Orders,[18] which are done through the Exchange's Floor Broker Management System (''FBMS''), are also eligible to receive an Options Floor Broker Subsidy on Floor QCC volume and other executed volume.[19] The Exchange believes that because any floor broker is capable of meeting the volume criteria for the subsidy offered by the Exchange, it is reasonable to offer the proposed rebate only to eQCC Orders, which are submitted electronically from off the floor.

The Exchange believes that utilizing a different rebate structure for eQCC and Floor QCC Orders is reasonable because of the different business models, described herein, that apply to a floor as compared to an electronic business. Furthermore, in assessing whether to offer rebates, the Exchange experiences different competitive pressures from other exchanges with respect to eQCC Orders. The Exchange does not experience the same competitive pressure with rebates for Floor QCC Orders. The Exchange also believes that paying a different rebate for eQCC and Floor QCC Orders is equitable and not unfairly discriminatory because other exchanges distinguish between delivery methods for certain market participants and pay different rebates depending on the method of delivery. This type of distinction is not novel and has long existed within the industry.

The Exchange believes that it is equitable and not unfairly discriminatory to pay a $0.05 rebate for executed eQCC Orders to the executing member because all market participants, with the exception of floor brokers, as described above, that enter orders on an agency basis are uniformly eligible for the proposed rebate. Additionally, the proposed rebate is within the range of tiered rebates offered by the International Securities Exchange, LLC (''ISE'').[20] The Exchange believes that it is equitable and not unfairly discriminatory to pay the $0.05 rebate for Multiply-Listed options as compared to Singly-Listed options because all market participants are eligible to transact Multiply-Listed options.

The Exchange operates in a highly competitive market comprised of nine U.S. options exchanges in which sophisticated and knowledgeable market participants readily can, and do, send order flow to competing exchanges if they deem fee levels at a particular exchange to be excessive. The Exchange believes that the proposed rebate for eQCC Orders must be competitive with rebates offered on other options exchanges. The Exchange believes that this competitive marketplace impacts the rebates present on the Exchange today and influences the proposals set forth above.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[21] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2011–148 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2011–148. 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 Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2011–148 and should be submitted on or before December 7, 2011.

[17] For example, the types of orders that are handled by a floor broker may be larger in size or complex as compared to an order that is processed electronically.

[18] *See* the Exchange's Fee Schedule in Section VII for a list of eligible contracts.

[19] *See* Section VII of the Exchange's Fee Schedule entitled ''Options Floor Broker Subsidy.'' A per contract subsidy is paid based on the contract volume on Customer-to-non-Customer as well as non-Customer-to-non-Customer transactions for that month.

[20] *See* ISE's Schedule of Fees. ISE pays members using its qualified contingent cross and/or solicitation order types a rebate according to a table based on the number of originating contract sides. Once a member reaches a certain volume threshold in qualified contingent cross and/or solicitation orders during the month, ISE pays a rebate to that member entering a qualifying order for all qualified contingent cross and/or solicitation traded contracts for that month. For example, for 0–1,999,999 originating contract sides ISE pays no rebate; for 2,000,000 to 3,499,999 originating contract sides ISE pays $0.03 per contract; for 3,500,000 to 3,999,999 originating contract sides ISE pays $0.05 per contract; and for 4,000,000 or more originating contract sides ISE pays $0.07 per contract.

[21] 15 U.S.C. 78s(b)(3)(A)(ii).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2011–29509 Filed 11–15–11; 8:45 am]

**BILLING CODE 8011–01–P**

## SOCIAL SECURITY ADMINISTRATION

### Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes revisions and extensions to OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB), Office of Management and Budget, *Attn:* Desk Officer for SSA, *Fax:* (202) 395–6974, *Email address: OIRA_Submission@omb.eop.gov.*

(SSA), Social Security Administration, DCRDP, *Attn:* Reports Clearance Officer, 107 Altmeyer Building, 6401 Security Blvd., Baltimore, MD 21235, *Fax No.:* (410) 966–2830, *Email address: OPLM.RCO@ssa.gov.*

I. The information collections below are pending at SSA. SSA will submit them to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than January 17, 2012. Individuals can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at (410) 965–8783 or by writing to the above email address.

1. *Statement of Marital Relationship (by One of the Parties)—20 CFR 404.726—0960–0038.* SSA must obtain a signed statement from a spousal applicant if the applicant claims a common-law marriage to the insured, in a state in which these marriages are recognized, and no formal marriage documentation exists. SSA uses information we collect on form SSA–754–F4 to determine if an individual applying for spousal benefits meets the criteria of common-law marriage under state law. The respondents are applicants for spouse's Social Security benefits or Supplemental Security Income (SSI) payments.

*Type of Request:* Extension of an OMB-approved information collection.

| Collection instrument | Number of responses | Frequency of response | Average burden per response (minutes) | Estimated total annual burden (hours) |
|---|---|---|---|---|
| SSA–754–F4 | 30,000 | 1 | 30 | 15,000 |

2. *Application for a Social Security Number Card, and the Social Security Number Application Process (SSNAP)—20 CFR 422.103—422.110—0960–0066.* SSA collects information on the SS–5 (used in the United States) and SS–5–FS (used outside the United States) to issue original or replacement Social Security cards. SSA also enters the application data into the Social Security Number Application Process (SSNAP) when applicants request a new or replacement card via telephone or in person.

In addition, hospitals collect the same information on SSA's behalf for newborn children through the Enumeration-at-Birth process. In this process, parents of newborns provide hospital birth registration clerks with information required to register these newborns. Hospitals send this information to State Bureaus of Vital Statistics (BVS), and they send the information to SSA's National Computer Center. SSA then uploads the data to the SSA mainframe along with all other enumeration data, and we assign the newborn a Social Security Number (SSN) and issue a Social Security card.

The respondents for this collection are applicants for original and replacement Social Security cards who use any of the modalities described above.

*Type of Request:* Revision of an OMB-approved information collection.

| SS–5 Application scenario | Number of respondents | Frequency of response | Average burden per response (minutes) | Estimated total annual burden (hours) |
|---|---|---|---|---|
| Respondents who do not have to provide parents' SSNs | 10,500,000 | 1 | 8.5 | 1,487,500 |
| Respondents whom we ask to provide parents' SSNs (when applying for original SSN cards for children under age 18) | 400,000 | 1 | 9 | 60,000 |
| Applicants age 12 or older who need to answer additional questions so SSA can determine whether we previously assigned an SSN | 1,100,000 | 1 | 9.5 | 174,167 |
| Applicants asking for a replacement SSN card beyond the new allowable limits (*i.e.,* who must provide additional documentation to accompany the application) | 600 | 1 | 60 | 600 |
| Authorization to SSA to obtain personal information cover letter | 500 | 1 | 15 | 125 |
| Authorization to SSA to obtain personal information follow-up cover letter | 500 | 1 | 15 | 125 |
| Totals | 12,001,600 | | | 1,722,517 |

[22] 17 CFR 200.30–3(a)(12).

*Cost Burden:* The state BVSs incur costs of approximately $9.5 million for transmitting data to SSA's mainframe. However, SSA reimburses the states for these costs.

3. *Medicaid Use Report—20 CFR 416.268—0960–0267. Section 20 CFR 416.268* of the *Code of Federal Regulations* requires SSA to determine eligibility for (1) Special SSI cash payments and for (2) special SSI eligibility status for a person who works despite a disabling condition. It also provides that, in order to qualify for special SSI eligibility status, an individual must establish that termination of eligibility for benefits under *Title XIX* of *the Act* would seriously inhibit the ability to continue employment. SSA uses the information required by this regulation to determine if an individual is entitled to special title XVI SSI payments and, consequently, to Medicaid. The respondents are SSI recipients for whom SSA has stopped payments based on earnings.

*Type of Request:* Extension of an OMB-approved information collection.

| Regulation section | Number of responses | Frequency of response | Average burden per response (minutes) | Estimated total annual burden (hours) |
|---|---|---|---|---|
| 20 CFR 416.268 | 60,000 | 1 | 3 | 3,000 |

4. *Supplemental Security Income Claim Information Notice—20 CFR 416.210—0960–0324. Section 1611(e)(2) of the Social Security Act* requires an individual to file for and obtain all payments (annuities, pensions, disability benefits, veteran's compensation, *etc.*) for which they are eligible before qualifying for SSI payments. Individuals do not qualify for SSI if they do not first apply for all other benefits. SSA uses the information on form SSA–L8050–U3 to verify and establish a claimant or recipient's eligibility under the SSI program. Respondents are SSI applicants or recipients who may be eligible for other payments from public or private programs.

*Type of Request:* Revision of an OMB-approved information collection.

| Collection instrument | Number of responses | Frequency of response | Average burden per response (minutes) | Estimated total annual burden (hours) |
|---|---|---|---|---|
| SSA–L–8050–U3 | 7,500 | 1 | 10 | 1,250 |

5. *Filing Claims Under the Federal Tort Claims Act—20 CFR 429.101–429.110—0960–0667.* The Federal Tort Claims Act is the legal mechanism for compensating persons injured by negligent or wrongful acts that occur during the performance of official duties by Federal employees. In accordance with the law, SSA accepts monetary claims filed under the Federal Tort Claims Act for damages against the United States, loss of property, personal injury, or death resulting from an SSA employee's negligent or wrongful act or omission. The regulation sections cleared under this information collection request require claimants to provide information SSA can use to investigate and determine whether to make an award, compromise, or settlement under the Federal Tort Claims Act. The respondents are individuals or entities filing a claim under the Federal Tort Claims Act.

*Type of Request:* Extension of an OMB-approved information collection.

| Regulation section | Number of responses | Frequency of response | Average burden per response (minutes) | Estimated total annual burden (hours) |
|---|---|---|---|---|
| 429.102; 429.103 [1] | 1 | ..... | ..... | 1 |
| 429.104(a) | 31 | 1 | 5 | 3 |
| 429.104(b) | 25 | 1 | 5 | 2 |
| 429.104(c) | 2 | 1 | 5 | 0 |
| 429.106(b) | 10 | 1 | 10 | 2 |
| Totals | 69 | ..... | ..... | 8 |

[1] The 1 hour represents a placeholder burden. We are not reporting a burden for this collection because respondents complete OMB-approved form SF–95.

6. *Application for Extra Help with Medicare Prescription Drug Plan Costs—20 CFR 418.3101—0960–0696.* The Medicare Modernization Act of 2003 mandated the creation of the Medicare Part D prescription drug coverage program and the provision of subsidies for eligible Medicare beneficiaries. SSA uses Form SSA–1020 and the i1020, the Application for Extra Help with Medicare Prescription Drug Plan Costs, to obtain income and resource information from Medicare beneficiaries and to make a subsidy decision. The respondents are Medicare beneficiaries applying for the Part D low-income subsidy.

*Type of Request:* Revision of an OMB-approved information collection.

| Collection instrument | Number of responses | Frequency of response | Average burden per response (minutes) | Estimated total annual burden (hours) |
|---|---|---|---|---|
| SSA–1020 (paper application form) | 724,238 | 1 | 30 | 362,119 |
| i1020 (online application) | 409,189 | 1 | 25 | 170,495 |
| Field office interview | 278,613 | 1 | 30 | 139,307 |
| Totals | 1,412,040 | | | 671,921 |

II. SSA submitted the information collection below to OMB for clearance. Your comments regarding the information collection would be most useful if OMB and SSA receive them within 30 days from the date of this publication. To be sure we consider your comments, we must receive them no later than December 16, 2011. Individuals can obtain copies of the OMB clearance package by calling the SSA Reports Clearance Officer at (410) 965–8783 or by writing to the above email address.

**General Request for Social Security Records—eFOIA—20 CFR 402.130—0960–0716**

Interested members of the public use this electronic request to ask SSA for information under the Freedom of Information Act (FOIA). SSA also uses this information to track the number and type of requests, fees charged, payment amounts, and whether SSA responded to public requests within the required 20 days. Respondents are members of the public including individuals, institutions, or agencies requesting information or documents under FOIA.

*Type of Request:* Revision of an OMB-approved information collection.

| Collection instrument | Number of respondents | Frequency of response | Average burden per response (minutes) | Estimated total annual burden (hours) |
|---|---|---|---|---|
| eFOIA | 5,000 | 1 | 3 | 250 |

Dated: November 9, 2011.

**Faye Lipsky,**

*Reports Clearance Officer, Center for Reports Clearance, Social Security Administration.*

[FR Doc. 2011–29482 Filed 11–15–11; 8:45 am]

**BILLING CODE 4191–02–P**

## DEPARTMENT OF STATE

**[Public Notice 7687]**

## 60-Day Notice of Proposed Information Collection: Gender Assessment Surveys, OMB Control Number 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:* Gender Assessment Surveys.
- *OMB Control Number:* None.
- *Type of Request:* New Collection.
- *Originating Office:* Bureau of Educational and Cultural Affairs, Office of Policy and Evaluation, Evaluation Division (ECA/P/V).
- *Form Number:* SV2011–0027; SV2011–0028; SV2011–0029; SV2011–0030.
- *Respondents:* Fortune/U.S. State Department Global Women's Mentoring Partnership Program participants from 2006 through 2010, International Leaders in Education Program (ILEP) participants from 2006 through 2010, Institute for Representative Government (IRG) participants from 2003 through 2010, and American Fellows Program participants from 2006–2010.
- *Estimated Number of Respondents:* 778 annually (146—Fortune; 257—ILEP; 200—IRG, 175—Fellows).
- *Estimated Number of Responses:* 778 annually (146—Fortune; 257—ILEP; 200—IRG, 175—Fellows).
- *Average Hours per Response:* 31 minutes (35—Fortune; 35—ILEP; 20—IRG; 35—Fellows).
- *Total Estimated Burden:* 404 hours annually (85—Fortune; 150—ILEP; 67—IRG; 102—Fellows).
- *Frequency:* One time.
- *Obligation to Respond:* Voluntary.

**DATES:** The Department will accept comments from the public up to 60 days from November 16, 2011.

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

- *Email: HaleMJ2@state.gov.*
- *Mail (paper, disk, or CD–ROM submissions):* ECA/P/V, SA–5, C2 Floor, Department of State, Washington, DC 20522–0505
- *Fax:* (202) 632–6320.
- *Hand Delivery or Courier:* ECA/P/V, SA–5, C2 Floor, Department of State, 2200 C Street NW., 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, to Michelle Hale, ECA/P/V, SA–5, C2 Floor, Department of State, Washington, DC 20522–0582, who may be reached on (202) 632–6312 or at *HaleMJ2@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**

To meet OMB and Congressional reporting requirements, this request for a new information collection clearance will allow ECA/P/V, as part of the Gender Assessment Evaluation, to conduct surveys of exchange participants in the Fortune, ILEP, IRG, and American Fellows programs between the years of 2003 and 2010. Collecting this data will help ECA/P/V assess and measure the similar and different impacts the programs had on men and women participants.

**Methodology**

Evaluation data will be collected via Survey Gizmo, an on-line surveying tool. It is anticipated that a very limited number of participants may receive a hard copy of the surveys.

Dated: November 4, 2011.

**Matt Lussenhop,**

*Director of the Office of Policy and Evaluation, Bureau of Educational and Cultural Affairs, Department of State.*

[FR Doc. 2011–29645 Filed 11–15–11; 8:45 am]

BILLING CODE 4710–05–P

## TENNESSEE VALLEY AUTHORITY

**[Meeting No. 11–04]**

### Sunshine Act Meeting Notice

November 17, 2011.

The TVA Board of Directors will hold a public meeting on November 17, 2011, at the Hunter Henry Center, One Hunter Henry Boulevard, Mississippi State University, Mississippi. The public may comment on any agenda item or subject at a *public listening session* which begins at 9 a.m. (CT). Following the end of the public listening session, the meeting will be called to order to consider the agenda items listed below. On-site registration will be available until 15 minutes before the public listening session begins at 9 a.m. (CT). Pre-registered speakers will address the Board first. TVA management will answer questions from the news media following the Board meeting.

*Status:* Open.

**Agenda**

Chairman's Welcome.

**Old Business**

Approval of minutes of August 18, 2011, Board Meeting.

**New Business**

1. Report from President and CEO (including Financial Report from CFO).
2. Report of the Customer and External Relations Committee.
A. Green Power Providers Program.
3. Report of the Finance, Rates, and Portfolio Committee.
A. Off-Peak Pricing Product Overlay.
B. Section 13 Tax Equivalent Payments.
C. John Sevier Combined Cycle Plant Service Agreement.
4. Report of the Nuclear Oversight Committee.
5. Report of the Audit, Risk, and Regulation Committee.
A. Distributor Regulation Policy.
B. Selection of TVA's External Auditor for Fiscal Year 2012.
6. Report of the People and Performance Committee.
A. 2011 Performance Report.
B. Future Performance Goals.
C. Compensation and Incentive Plans.
7. Board Governance.
A. Committee Appointments and Transition Planning.
B. Amendments to TVA Board Practices.
8. Recognition of departing Directors.

*For more information:* Please call TVA Media Relations at (865) 632–6000, Knoxville, Tennessee. People who plan to attend the meeting and have special needs should call (865) 632–6000. Anyone who wishes to comment on any of the agenda in writing may send their comments to: TVA Board of Directors, Board Agenda Comments, 400 West Summit Hill Drive, Knoxville, Tennessee 37902.

Dated: November 10, 2011.

**Ralph E. Rodgers,**

*General Counsel and Secretary.*

[FR Doc. 2011–29685 Filed 11–14–11; 11:15 am]

BILLING CODE 8120–08–P

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### Applications of Orange Air, LLC for Certificate Authority

**AGENCY:** Department of Transportation.

**ACTION:** Notice of Order to Show Cause (Order 2011–11–11) Dockets DOT–OST–2011–0073 and DOT–OST–2011–0074.

**SUMMARY:** The Department of Transportation is directing all interested persons to show cause why it should not issue orders finding Orange Air, LLC, fit, willing, and able, and awarding it certificates of public convenience and necessity to engage in interstate and foreign charter air transportation of persons, property, and mail using one large aircraft.

**DATES:** Persons wishing to file objections should do so no later than November 30, 2011.

**ADDRESSES:** Objections and answers to objections should be filed in Dockets DOT–OST–2011–0073 and DOT–OST–2011–0074 and addressed to U.S. Department of Transportation, Docket Operations, (M–30, Room W12–140), 1200 New Jersey Avenue SE., West Building Ground Floor, Washington, DC 20590, and should be served upon the parties listed in Attachment A to the order.

**FOR FURTHER INFORMATION CONTACT:** Vanessa R. Balgobin, Air Carrier Fitness Division (X–56, Room W86–487), U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590, (202) 366–9721.

Dated: November 9, 2011.

**Robert A. Letteney,**

*Deputy Assistant Secretary for Aviation and International Affairs.*

[FR Doc. 2011–29555 Filed 11–15–11; 8:45 am]

BILLING CODE P

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary of Transportation

**[Docket No. OST–2011–0202]**

### Privacy Act of 1974; System of Records Notice

**AGENCY:** Office of the Secretary, Department of Transportation (DOT).

**ACTION:** Notice to establish a new system of records.

**SUMMARY:** The Department of Transportation's Office of the Secretary of Transportation (DOT/OST) intends to establish a DOT-wide System of Records under the Privacy Act of 1974 (5 U.S.C. 552a) to create and maintain civil rights program records which are not covered by the Government-wide System of Records Notices (SORNs) of the Office of Personnel Management [OPM/GOVT–1] and the Equal Employment Opportunity Commission [EEOC/GOV–1]. OPM/GOVT–1 covers general personnel records pertaining to Federal employees and EEOC/GOV–1 covers equal employment opportunity records pertaining to claims by Federal employees and applicants for Federal employment who allege they have been discriminated against by a Federal agency under Title VII of the Civil Rights Act of 1964, as amended; Section 15 of the Age Discrimination in Employment Act, Section 501 of the Rehabilitation Act of 1973, as amended; and the Equal Pay Act.

The DOT system, known as the Departmental Office of Civil Rights System (DOCRS), is used to track

correspondence, inquiries, complaints, and appeals filed by individuals, small business, or representatives of individuals or small business who believe they have been subjected to prohibited discrimination or retaliation by a DOT Federally-assisted or Federally-conducted program or activity. DOCRS is more thoroughly detailed below and in the Privacy Impact Assessment (PIA) prepared for the information technology (IT) system that DOT uses for its internal and external civil rights programs. The PIA can be found on the DOT Privacy Web site at *http://www.dot.gov/privacy.*

**DATES:** Effective December 16, 2011. Written comments should be submitted on or before the effective date. DOT/OST may publish an amended SORN in light of any comments received.

**ADDRESSES:** You may file comments identified by the docket number DOT–OST–2011–0202 by any of by any of the following methods:

○ *Federal Rulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for submitting comments.

○ *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave. SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

○ *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Ave. SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal Holidays.

○ *Fax:* (202) 493–2251.

*Instructions:* You must include the agency name and docket number DOT–OST–2011–0202 or the Regulatory Identification Number (RIN) for the rulemaking at the beginning of your comment. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

*Privacy Act:* Anyone is able to search the electronic form of all comments received in 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 (65 FR 19477–78), or you may visit *http://DocketsInfo.dot.gov.*

*Docket:* For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or to the street address listed above. Follow the online instructions for accessing the docket.

**FOR FURTHER INFORMATION CONTACT:** For general questions, please contact: Joseph E. Austin, Associate Director, External Civil Rights Programs Division, Departmental Office of Civil Rights, Office of the Secretary of Transportation, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590, or (202) 366–5992. For privacy issues, please contact: Claire Barrett, Departmental Chief Privacy Officer, Office of the Chief Information Officer, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590; *claire.barrett@dot.gov;* or (202) 366–8135.

**SUPPLEMENTARY INFORMATION:**

## I. DOT's Civil Rights Program

DOT, through assigned civil rights personnel in each DOT component (chiefly, the Departmental Office of Civil Rights (DOCR) within OST), is responsible for ensuring that DOT does not discriminate against its employees or applicants for employment (''internal''); enforcing civil rights laws prohibiting discrimination and retaliation by DOT Federally-assisted and Federally-conducted programs and activities against members of the public; and investigating and responding to complaints filed by DOT employees pursuant to sections 504 and 508 of the Rehabilitation Act of 1973, as amended (together, these three activities comprise DOT's ''external'' civil rights programmatic responsibilities). DOT's enforcement activities with respect to this program include:

- Documenting, investigating, and responding to ''internal'' and ''external'' civil rights complaints and inquiries;
- Conducting reviews of DOT Federally-funded recipients to assess their compliance with civil rights laws; and
- Adjudicating and issuing written decisions in administrative appeals filed with DOT/DOCR by small businesses (including sole proprietorships) that have been denied certification as a ''disadvantaged business enterprise'' (DBE) or airport concessions DBE (ACDBE) by a DOT Federally-assisted recipient pursuant to 49 CFR Parts 23 and 26.

## II. The Privacy Act

The Privacy Act (5 U.S.C. 552a) governs the means by which the Federal Government collects, maintains, and uses personally identifiable information (PII) in a System of Records. A ''System of Records'' is a group of any records under the control of a Federal agency from which information about individuals is retrieved by name or other personal identifier. The Privacy Act requires each agency to publish in the **Federal Register** a System of Records notice (SORN) identifying and describing each System of Records the agency maintains, including the purposes for which the agency uses PII in the system, the routine uses for which the agency discloses such information outside the agency, and how individuals to whom a Privacy Act record pertains can exercise their rights under the Privacy Act (*e.g.,* to determine if the system contains information about them and to contest inaccurate information).

Under the Privacy Act, an agency is permitted to exempt certain types of systems from certain requirements of the Privacy Act, after completing a formal rulemaking process to revise the agency's Privacy Act regulations to add the system to the agency's list of exempt systems. The XCRS system is eligible for exemption because it will contain law enforcement investigatory material. On [date], DOT published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register**, proposing exemptions for this system. The NPRM can be accessed through *http://www.regulations.gov,* Docket Number DOT–OST–2011–0202. Comments on the proposed exemptions must be submitted to the docket for that rulemaking, by any of the methods outlined in the NPRM. Comments on other parts of the SORN must be submitted in writing, by any of the methods outlined in this Notice.

In accordance with 5 U.S.C. 552a(r), a report on the establishment of this System of Records has been sent to Congress and to the Office of Management and Budget.

### System Number: DOT/ALL–24

**SYSTEM NAME:**

Departmental Office of Civil Rights System.

**SECURITY CLASSIFICATION:**

Unclassified, sensitive.

**SYSTEM LOCATION:**

Records are maintained by the DOT Departmental Office of Civil Rights, and DOT component civil rights offices. The electronic records systems are maintained on a server that is physically located at a contractor facility in Sterling, Virginia. The server is hosted and maintained by Micropact Engineering, Inc., headquartered in Herndon, Virginia. The system owner is the Departmental Office of Civil Rights (DOCR), S–30, U.S. Department of Transportation (DOT), 1200 New Jersey

Avenue SE., Room W78–320, Washington, DC 20590.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM OF RECORDS:**

Members of the public (including DOT employees filing complaints pursuant to sections 504 and 508 of the Rehabilitation Act of 1973, as amended) who have submitted inquiries, complaints, or appeals to DOT, alleging discrimination by DOT or by third parties pertaining to DOT Federally-assisted or DOT Federally-conducted programs or activities; individuals who are the subjects of external civil rights inquiries, complaints and appeals; and witnesses who are interviewed concerning same.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Records of civil rights discrimination inquiries, complaints, and appeals received by DOT from members of the public, DOT employees, small businesses or representatives of these groups; records compiled during the investigation of the complaints and appeals; and records of responsive actions taken by DOT, including complaint information, statements, exhibits, reports and correspondence; records concerning applications for certification as a disadvantaged business enterprise, including business name, contact information, and name of business owners. The records may contain the following personally identifiable information (PII):

- Personal contact information for individual complainants, complaint subjects, DBE appellants, and/or witnesses who are involved in particular discrimination claims, such as name, home address, email address, and home telephone number;
- Identification information and descriptive details about individual complainants, such as the last four digits of the complainant's Social Security Number, date of birth, race, color, national origin, sex, religion, age (40 or over), disability, sexual orientation, parental status, and/or genetic information; and
- Financial information pertaining to individual owners of small businesses that have been denied ''disadvantaged business enterprise'' (DBE) certification.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

42 U.S.C. 2000d *et seq.,* § 12101 *et seq.,* 42 U.S.C. 6101 *et seq.;* 29 U.S.C. 794, 749d; 49 U.S.C. 47113; and Executive Order 13160.

**PURPOSE(S):**

DOT Civil Rights personnel use the contact information, identification information, and descriptive details to document, investigate, and respond to civil rights complaints, inquiries, and DBE appeals, and to conduct reviews of Federally-funded recipients to assess their compliance with civil rights laws. In DBE appeal cases, DOT/DOCR staff use financial information when necessary to make personal net worth determinations about sole proprietors claiming DBE status. DOT may utilize contractors to assist with certain tasks; for example, contractors may help DOCR analyze financial information for personal net worth determinations in DBE appeal cases.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records of information contained in this system may be disclosed outside of DOT as a routine use pursuant to 5 U.S.C. 552a(b)(3), as follows:

A. To the United States Department of Justice (DOJ), including United States Attorneys Offices, or other Federal agency conducting litigation or in proceedings before any court, adjudicative or administrative body, when it is necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DOT or any component thereof;
2. Any employee of DOT in his/her official capacity;
3. Any employee of DOT in his/her individual capacity where the DOJ or DOT has agreed to represent the employee; or
4. The United States, or any agency thereof, is a party to the litigation or has an interest in such litigation and DOT determines that the records are both necessary and relevant to the litigation and the use of such records is compatible with the purpose for which DOT collected the records.

B. To recipients of Federal financial assistance, witnesses, or consultants if necessary to assist DOCR in resolving civil rights complaint or in obtaining additional information or expert advice relevant to the investigation of a civil rights complaint.

C. To an adjudicative body before which DOT or one of its components is authorized to appear or to an individual or entity designated by the DOT or otherwise empowered to resolve or mediate disputes to the extent that the disclosure is necessary and relevant to the litigation or alternative dispute resolution (ADR).

D. To a party, counsel, representative or witness in a litigation or ADR if relevant and necessary to the litigation or ADR.

E. To a congressional office in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

F. To the National Archives and Records Administration (NARA) or other Federal government agencies pursuant to records management inspections being conducted under the authority of Title 44 of the United States Code.

G. To an agency, organization, or individual for the purpose of performing audit or oversight operations authorized by law, but only to the extent that such information is necessary and relevant to the audit of oversight function.

H. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement or other assignment for DOT, when necessary to accomplish and agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DOT officers and employees.

I. To another Federal agency with responsibility for labor or employment relations or other issues, including Equal Employment Opportunity issues, when that agency has jurisdiction over issues reported to the DOT Departmental Office of Civil Rights, or component civil rights and civil liberties staff, and staff of components who do not have a designated civil rights and civil liberties office, but who perform related functions.

J. To States, DOT Federal-funding recipients, and members of the public, the following information regarding entities determined ineligible for DBE certification: Business name, the business owner(s), type and date of the denial, and name of the entity that made the decision.

K. See ''Prefatory Statement of General Routine Uses'' (available at *http://www.dot.gov/privacy/privacyactnotices*).

Other possible routine uses of the information, applicable to all DOT Privacy Act systems of records, are published in the **Federal Register** at 75 FR 82132, December 29, 2010, under ''Prefatory Statement of General Routine Uses'' (available at *http://www.dot.gov/privacy/privacyactnotices*).

**DISCLOSURE TO CONSUMER REPORTING AGENCIES:**

None.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM—**

**STORAGE:**

Records are maintained in an electronic database and in paper files. Certain records are maintained only in paper files (for example, financial documents, photographs, and audio recordings).

**RETRIEVABILITY:**

Records are retrieved by the complainant's, inquirer's, or DBE appellant's name or case number, address, telephone number, or email address.

**SAFEGUARDS:**

Electronic files are stored in secure, password-protected databases. Users must sign a Rules of Behavior document prior to being granted access to the electronic systems. Any paper files and system-generated reports containing PII are labeled as containing PII and are stored in locked file cabinets and/or in a locked file room. Only the System Administrator and authorized Civil Rights personnel in DOCR and in each DOT component are allowed access to the files, and on a ''need-to-know'' basis.

**RETENTION AND DISPOSAL:**

DOT is preparing a new records disposition schedule (Standard Form 115) for submission to the National Archives and Records Administration (NARA), which will include the following proposed retention periods:

- *General Information:* Destroy/delete 3 years after inquiry date, unless needed longer for legal or audit purposes.
- *Complaints and DBE Appeals:* Destroy/delete 5 years after final decision, unless needed longer for legal or audit purposes. A redacted copy of the final decision (with PII removed) may be retained longer for reference purposes.
- *De-certifications and Denials:* Delete immediately if decision to de-certify or deny certification is reversed or rescinded.

**SYSTEM MANAGER AND ADDRESS:**

Director, Departmental Office of Civil Rights (DOCR), S–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W78–320, Washington, DC 20590.

**NOTIFICATION PROCEDURE:**

At any time, an individual inquirer, complainant, or DBE appellant may contact the System Manager to request access to review his or her personal information in the system and request changes, as appropriate. During the pendency of the investigation, DOT may deny the individual access to the investigation files if necessary to avoid compromising the investigation. The investigator may require that the request be submitted in writing and include the requester's name, mailing address, telephone number, and/or email address, a description of the records requested, and a sworn statement (either a notarized statement or a statement signed under penalty of perjury) that the requester is the individual who he or she claims to be.

**RECORD ACCESS PROCEDURE:**

Same as indicated under ''Notification procedure.''

**CONTESTING RECORD PROCEDURE:**

Same as indicated under ''Notification procedure.''

**RECORD SOURCE CATEGORIES:**

Information is obtained from individuals making inquiries; correspondents; complainants; complaint subjects; DBE appellants; interviewees; investigation reports; and review of records.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

Pursuant to subsection (k)(2) of the Privacy Act (5 U.S.C. 552a), because this system will contain investigatory material compiled for law enforcement purposes, a Notice of Proposed Rulemaking (NPRM) is pending to revise DOT's Privacy Act regulations (49 CFR part 10, Appendix, part II) to exempt this system from the requirements of the following Privacy Act subsections, for the reasons stated in the proposed revision: (c)(3) (Accounting of Certain Disclosures), (d) (Access to Records), (e)(4)(G), (H), and (I) (Agency Requirements), and (f) (Agency Rules) to the extent that DOCRS contains investigatory material compiled for law enforcement purposes.

Issued in Washington, DC on November 9, 2011.

**Claire Barrett,**

*Departmental Chief Privacy Officer.*

[FR Doc. 2011–29551 Filed 11–15–11; 8:45 am]

BILLING CODE 4910–62–P

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[FMCSA Docket No. FMCSA–2011–0194]**

### Qualification of Drivers; Exemption Applications; Diabetes Mellitus

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of final disposition.

**SUMMARY:** FMCSA announces its decision to exempt sixteen individuals from its rule prohibiting persons with insulin-treated diabetes mellitus (ITDM) from operating commercial motor vehicles (CMVs) in interstate commerce. The exemptions will enable these individuals to operate CMVs in interstate commerce.

**DATES:** The exemptions are effective November 16, 2011. The exemptions expire on November 16, 2013.

**FOR FURTHER INFORMATION CONTACT:** Elaine M. Papp, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov*, FMCSA, Room W64–224, Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

#### Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at: *http://www.regulations.gov.*

*Docket:* For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Privacy Act:* Anyone may search the electronic form of all comments received into any of DOT's dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, or other entity). You may review DOT's Privacy Act Statement for the Federal Docket Management System (FDMS) published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf.*

#### Background

On October 3, 2011, FMCSA published a notice of receipt of Federal diabetes exemption applications from sixteen individuals and requested comments from the public (76 FR 61140). The public comment period closed on November 2, 2011. No comments were received.

FMCSA has evaluated the eligibility of the sixteen applicants and determined that granting the exemptions to these individuals would achieve a level of safety equivalent to or

greater than the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(3).

**Diabetes Mellitus and Driving Experience of the Applicants**

The Agency established the current requirement for diabetes in 1970 because several risk studies indicated that drivers with diabetes had a higher rate of crash involvement than the general population. The diabetes rule provides that ''A person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control.''

*(49 CFR 391.41(b)(3))*

FMCSA established its diabetes exemption program, based on the Agency's July 2000 study entitled ''A Report to Congress on the Feasibility of a Program to Qualify Individuals with Insulin-Treated Diabetes Mellitus to Operate in Interstate Commerce as Directed by the Transportation Act for the 21st Century.'' The report concluded that a safe and practicable protocol to allow some drivers with ITDM to operate CMVs is feasible. The September 3, 2003 (68 FR 52441) **Federal Register** notice in conjunction with the November 8, 2005 (70 FR 67777) **Federal Register** notice provides the current protocol for allowing such drivers to operate CMVs in interstate commerce.

These sixteen applicants have had ITDM over a range of 1 to 26 years. These applicants report no severe hypoglycemic reactions resulting in loss of consciousness or seizure, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning symptoms in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the past 5 years. In each case, an endocrinologist verified that the driver has demonstrated a willingness to properly monitor and manage his/her diabetes mellitus, received education related to diabetes management, and is on a stable insulin regimen. These drivers report no other disqualifying conditions, including diabetes-related complications. Each meets the vision requirement at 49 CFR 391.41(b)(10).

The qualifications and medical condition of each applicant were stated and discussed in detail in the October 3, 2011, **Federal Register** notice and they will not be repeated in this notice.

**Discussion of Comment**

FMCSA did not receive any comments in this proceeding.

**Basis for Exemption Determination**

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the diabetes requirement in 49 CFR 391.41(b)(3) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. The exemption allows the applicants to operate CMVs in interstate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered medical reports about the applicants' ITDM and vision, and reviewed the treating endocrinologists' medical opinion related to the ability of the driver to safely operate a CMV while using insulin.

Consequently, FMCSA finds that in each case exempting these applicants from the diabetes requirement in 49 CFR 391.41(b)(3) is likely to achieve a level of safety equal to that existing without the exemption.

**Conditions and Requirements**

The terms and conditions of the exemption will be provided to the applicants in the exemption document and they include the following: (1) That each individual submit a quarterly monitoring checklist completed by the treating endocrinologist as well as an annual checklist with a comprehensive medical evaluation; (2) that each individual reports within 2 business days of occurrence, all episodes of severe hypoglycemia, significant complications, or inability to manage diabetes; also, any involvement in an accident or any other adverse event in a CMV or personal vehicle, whether or not it is related to an episode of hypoglycemia; (3) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (4) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

**Conclusion**

Based upon its evaluation of the sixteen exemption applications, FMCSA exempts Mark D. Anderson, David A. Basher, Brian H. Berthiaume, Eric D. Blocker, Sr., Barry W. Campbell, Kevin M. Donohue, Milton T. Gardiner, Raymond A. Jack, Quency T. Johnson, Kenny B. Keels, Jr., Gene A. Michaels, Jason M. Pritchett, Steven R. Sibert, Cassie J. Silbernagel, Lewis B. Taylor and James A. Terilli from the ITDM requirement in 49 CFR 391.41(b)(3), subject to the conditions listed under ''Conditions and Requirements'' above.

In accordance with 49 U.S.C. 31136(e) and 31315 each exemption will be valid for two years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315. If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: November 9, 2011.

**Larry W. Minor,**

*Associate Administrator, Office of Policy.*

[FR Doc. 2011–29630 Filed 11–15–11; 8:45 am]

BILLING CODE 4910–EX–P

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2011–0300]**

### Qualification of Drivers; Exemption Applications; Diabetes Mellitus

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA).

**ACTION:** Notice of applications for exemption from the diabetes mellitus standard; request for comments.

**SUMMARY:** FMCSA announces receipt of applications from 20 individuals for exemption from the prohibition against persons with insulin-treated diabetes mellitus (ITDM) operating commercial motor vehicles (CMVs) in interstate commerce. If granted, the exemptions would enable these individuals with ITDM to operate CMVs in interstate commerce.

**DATES:** Comments must be received on or before December 16, 2011.

**ADDRESSES:** You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2011–0300 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the

on-line instructions for submitting comments.

• *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

• *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

• *Fax:* 1 (202) 493–2251.

*Instructions:* Each submission must include the Agency name and the docket numbers for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided. Please see the Privacy Act heading below for further information.

*Docket:* For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. For acknowledgment of receipt of your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

*Privacy Act:* Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf*.

**FOR FURTHER INFORMATION CONTACT:** Elaine M. Papp, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

## Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal Motor Carrier Safety Regulations for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the 2-year period. The 20 individuals listed in this notice have recently requested such an exemption from the diabetes prohibition in 49 CFR 391.41(b)(3), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by the statutes.

## Qualifications of Applicants

*George T. Beard*

Mr. Beard, age 57, has had ITDM since 2004–2005. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Beard understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Beard meets the requirements of the vision requirement at 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds an operator's license from Virginia.

*Gary L. Breitenbach*

Mr. Breitenbach, 48, has had ITDM since 2011. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Breitenbach understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Breitenbach meets the requirements of the vision requirement at 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A Commercial Driver's License (CDL) from South Carolina.

*Matthew G. Denisov*

Mr. Denisov, 39, has had ITDM since age 18. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Denisov understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Denisov meets the requirements of the vision requirement at 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class O operator's license from Nebraska.

*Marlin L. Enquist*

Mr. Enquist, 63, has had ITDM for approximately 2 years. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Enquist understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Enquist meets the requirements of the vision requirement at 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from South Dakota.

*Steven W. Gerling*

Mr. Gerling, 58, has had ITDM since 2009. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Gerling understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Gerling meets the requirements of the vision requirement

at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Iowa.

*Jackie D. Greenlee*

Mr. Greenlee, 64, has had ITDM since approximately 2003. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Greenlee understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Greenlee meets the requirements of the vision requirement at 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Ohio.

*Justin W. Jackson*

Mr. Jackson, 21, has had ITDM since 1998. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Jackson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Jackson meets the requirements of the vision requirement at 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Oklahoma.

*Edward L. Keith*

Mr. Keith, 55, has had ITDM since 2011. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Keith understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Keith meets the requirements of the vision requirement at 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Illinois.

*David T. Kylander*

Mr. Kylander, 58, has had ITDM since 2008. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Kylander understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Kylander meets the requirements of the vision requirement at 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class F operator's license from Missouri.

*Eugene J. Nowicki*

Mr. Nowicki, 60, has had ITDM for the past 6 years. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Nowicki understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Nowicki meets the requirements of the vision requirement at 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Michigan.

*Jonathan R. Oskin*

Mr. Oskin, 30, has had ITDM since 2008. His endocrinologist examined him in 2008 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Oskin understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Oskin meets the requirements of the vision requirement at 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class C operator's license from Pennsylvania.

*Kevin A. Perdue*

Mr. Perdue, 39, has had ITDM since the age of 20. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Perdue understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Perdue meets the requirements of the vision requirement at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2011 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class C operator's license from Maryland.

*Michael E. Pleak*

Mr. Pleak, 49, has had ITDM since 2011. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Pleak understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Pleak meets the requirements of the vision requirement at 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Chauffeur license from Indiana.

*Sarah M. Powell*

Ms. Powell, 46, has had ITDM since 1989. Her endocrinologist examined her in 2011 and certified that she has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no

recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. Her endocrinologist certifies that Ms. Powell understands diabetes management and monitoring has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. Powell meets the requirements of the vision requirement at 49 CFR 391.41(b)(10). Her ophthalmologist examined her in 2011 and certified that she has stable nonproliferative diabetic retinopathy. She holds a Class D operator's license from New Mexico.

*Christopher C. Stephenson*

Mr. Stephenson, 44, has had ITDM since 2011. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Stephenson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely.

Mr. Stephenson meets the requirements of the vision requirement at 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Kansas.

*Richard F. VanPelt*

Mr. VanPelt, 70, has had ITDM since 2009. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. VanPelt understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. VanPelt meets the requirements of the vision requirement at 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from New York.

*Michael A. Villareal*

Mr. Villareal, 59, has had ITDM since 2008. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Villareal understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Villareal meets the requirements of the vision requirement at 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Arizona.

*Richard L. White*

Mr. White, 30, has had ITDM since 1988. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. White understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. White meets the requirements of the vision requirement at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class R operator's license from Mississippi.

*Jon W. Wood*

Mr. Wood, 41, has had ITDM since 2009. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Wood understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Wood meets the requirements of the vision requirement at 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have/has stable diabetic retinopathy. He holds a Class D operator's license from Minnesota.

*Paul A. Wright*

Mr. Wright, 58, has had ITDM since 1989. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Wright understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Wright meets the requirements of the vision requirement at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2011 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from New York.

**Request for Comments**

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated in the date section of the notice.

FMCSA notes that section 4129 of the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users requires the Secretary to revise its diabetes exemption program established on September 3, 2003 (68 FR 52441).[1] The revision must provide for individual assessment of drivers with diabetes mellitus, and be consistent with the criteria described in section 4018 of the Transportation Equity Act for the 21st Century (49 U.S.C. 31305).

Section 4129 requires: (1) Elimination of the requirement for 3 years of experience operating CMVs while being treated with insulin; and (2) establishment of a specified minimum period of insulin use to demonstrate stable control of diabetes before being allowed to operate a CMV.

In response to section 4129, FMCSA made immediate revisions to the diabetes exemption program established by the September 3, 2003 notice. FMCSA discontinued use of the 3-year driving experience and fulfilled the requirements of section 4129 while continuing to ensure that operation of CMVs by drivers with ITDM will achieve the requisite level of safety

[1] Section 4129(a) refers to the 2003 notice as a ''final rule.'' However, the 2003 notice did not issue a ''final rule'' but did establish the procedures and standards for issuing exemptions for drivers with ITDM.

required of all exemptions granted under 49 U.S.C. 31136(e).

Section 4129(d) also directed FMCSA to ensure that drivers of CMVs with ITDM are not held to a higher standard than other drivers, with the exception of limited operating, monitoring and medical requirements that are deemed medically necessary.

The FMCSA concluded that all of the operating, monitoring and medical requirements set out in the September 3, 2003 notice, except as modified, were in compliance with section 4129(d). Therefore, all of the requirements set out in the September 3, 2003 notice, except as modified by the notice in the **Federal Register** on November 8, 2005 (70 FR 67777), remain in effect.

Issued on: November 9, 2011.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2011–29628 Filed 11–15–11; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

**[Docket No. FRA 2011–001–N–16]**

### Proposed Agency Information Collection Activities; Comment Request

**AGENCY:** Federal Railroad Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, the Federal Railroad Administration (FRA) hereby announces that it is seeking renewal of the following currently approved information collection activities. Before submitting these information collection requirements for clearance by the Office of Management and Budget (OMB), FRA is soliciting public comment on specific aspects of the activities identified below.

**DATES:** Comments must be received no later than January 17, 2012.

**ADDRESSES:** Submit written comments on any or all of the following proposed activities by mail to either: Ms. Janet Wylie, Office of Planning and Administration, RPD–3, Federal Railroad Administration, 1200 New Jersey Ave. SE., Mail Stop 20, Washington, DC 20590, or Ms. Kimberly Toone, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Ave. SE., Mail Stop 35, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, ''Comments on OMB control number 2130–0548.'' Alternatively, comments may be transmitted via facsimile to (202) 493–6170, or via email to Mr. Wylie at *janet.wylie@dot.gov,* or to Ms. Toone at *kim.toone@dot.gov*. Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

**FOR FURTHER INFORMATION CONTACT:** Ms. Janet Wylie, Office of Planning and Administration, RPD–3, Federal Railroad Administration, 1200 New Jersey Ave, SE., Mail Stop 20, Washington, DC 20590 (*telephone:* (202) 493–6353) or Ms. Kimberly Toone, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Ave. SE., Mail Stop 35, Washington, DC 20590 (*telephone:* (202) 493–6132). (These telephone numbers are not toll-free.)

**SUPPLEMENTARY INFORMATION:** The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, § 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to provide 60-days notice to the public for comment on information collection activities before seeking approval for reinstatement or renewal by OMB. 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). Specifically, FRA invites interested respondents to comment on the following summary of proposed information collection activities regarding (i) Whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (ii) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (iii) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (iv) ways for FRA to minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.,* permitting electronic submission of responses). See 44 U.S.C. 3506(c)(2)(A)(I)–(iv); 5 CFR 1320.8(d)(1)(I)–(iv). FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) Reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a ''user friendly'' format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce information requested. See 44 U.S.C. 3501.

Below is a brief summary of the information collection activities that FRA will submit for clearance by OMB as required under the PRA:

*Title:* Railroad Rehabilitation and Improvement Financing Program.

*OMB Control Number:* 2130–0548.

*Status:* Regular Review.

*Type of Request:* Extension without change of a previously approved collection.

*Abstract:* Title V of the Railroad Revitalization and Regulatory Reform Act of 1976 (Act), 45 U.S.C. 821 *et seq.,* authorized the Federal Railroad Administration (FRA) to provide railroads financial assistance through the purchase of preference shares, and the issuance of loan guarantees. Section 7203 of the Transportation Equity Act for the 21st Century of 1998, Public Law 105–178 (1998) (TEA 21), and subsequent amendments in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Public Law 109–59 (2005) SAFETEA–LU and the Rail Safety Improvement Act of 2008 (RSIA), Division A of Public Law 110–432 have since replaced the previous Title V financing program. On July 6, 2000, FRA published a final rule (FR) with procedures and requirements to cover applications of financial assistance in the form of direct loans and loan guarantees consistent with the changes made to Title V of the Act by section 7203 of TEA 21. On September 29, 2010, FRA published a Notice Regarding Consideration and Processing of Applications for Financial Assistance Under the Railroad Rehabilitation and Improvement Financing (RRIF) Program. The collection of information is used by FRA staff to determine the legal and financial eligibility of applicants for direct loans regarding eligible projects. Eligible projects include: (1) Acquisition, improvement or rehabilitation of intermodal or rail equipment or facilities (including tracks, components of tracks, bridges, yards, buildings, and shops); (2) Refinancing outstanding debt incurred for these purposes; or (3) Development or establishment of new intermodal or

railroad facilities. The aggregate unpaid principal amounts of obligations cannot exceed $35.0 billion at any one time, and not less than $7.0 billion is to be available solely for projects benefitting freight railroads other than Class I carriers. The Secretary of Transportation has delegated his authority under the RRIF Program to the FRA Administrator in 1 CFR 1.49.

*Affected Public:* State and local governments, government sponsored authorities and corporations, railroads, and joint ventures that include at least one railroad.

REPORTING BURDEN

| CFR section | Respondent universe | Total annual responses | Average time per response (hours) | Total annual burden hours |
|---|---|---|---|---|
| 260.23—Form and Content of Application | 75,635 potential applicants. | 18 applications | 20 | 360 |
| 260.25—Additional Information Loan Guarantees | 650 potential | 15 financial documents | 50 | 750 |
| 260.31—Execution and Filing of Application | 75,635 potential | 18 executed app | .6 | 10.8 |
| Certificates with Original Application | 75,635 potential | 18 certificates | .6 | 10.8 |
| Transmittal Letters | 75,635 potential | 18 letters | .6 | 10.8 |
| Application Packages | 75,635 potential | 18 packages | 1.5 | 27 |
| 260.33—Information Statements | 75,635 potential | 18 statements | *30 | 9 |
| 260.35—Environmental Impact Statement | 75,635 potential | 1 Impact Statement | 15,552 | 15,552 |
| Environmental Assessment | 75,635 potential | 2 Assessments | 4,992 | 9,984 |
| Categorical Exclusions | 75,635 potential | 15 exclusions | 176 | 2,640 |
| Environmental Consultations | 75,635 potential | 5 consultations | 1 | 5 |
| 260.41—Inspection and Reporting—Financial Records and Other Documents. | 75,635 potential | 18 financial records | 10 | 180 |

* In minutes.

*Total Responses:* 164.

*Estimated Total Annual Burden:* 29,539.4.

Pursuant to 44 U.S.C. 3507(a) and 5 CFR 1320.5(b), 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

**Authority:** 44 U.S.C. 3501–3520.

Issued in Washington, DC, on November 9, 2011.

**Kimberly Coronel,**

*Director, Office of Financial Management, Federal Railroad Administration.*

[FR Doc. 2011–29605 Filed 11–15–11; 8:45 am]

BILLING CODE 4910–06–P

## DEPARTMENT OF TRANSPORTATION

## Federal Railroad Administration

**[Docket Number FRA–2011–0077]**

## Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance from certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

The National Passenger Railroad Corporation (Amtrak) hereby petitions FRA for a temporary waiver from 49 CFR part 214, subpart C, seeking relief from the requirement to provide Roadway Worker Protection (RWP) for contractors and contractor employees (herein referred to as ''workers'') using hand tools within the 4-foot fouling envelope of a track in publicly accessible areas, specifically passenger station platforms. The waiver is sought for the express purpose of performing manual snow removal with hand tools, which extend into the tactile warning area of a passenger platform (if equipped with a tactile warning strip) or other warning areas beyond and including a similarly positioned and contrasting painted line (if not equipped), while the worker is behind the area and in a position of safety. The tactile warning area is the area beyond and including a 24-inch wide strip of truncated domes that is installed along the full length of the public use areas of a passenger platform (pursuant to the Americans with Disabilities Act (ADA) standards) and that is generally positioned approximately 24 inches from the outside of the nearest rail. The request for relief from the regulation is limited to platforms outside of the Northeast Corridor at stations for which Amtrak is not the operating railroad.

Section 214.7 defines fouling a track as ''the placement of an individual or an item of equipment in such proximity to a track that the individual or equipment could be struck by a moving train or on-track equipment or, in any case, is within four feet of the field side of the near running rail.'' In the case of a platform, 4 feet from the field side of the rail generally encompasses the space between the outside of the nearest rail and the platform plus the width of a 24-inch ADA-required tactile strip.

Currently, workers performing passenger station snow removal activities, which breach the tactile (or painted) warning area with hand tools, must be provided with on-track safety in accordance with the RWP rule, while pedestrians and the riding public may move throughout the system in the very same areas without restriction.

Contractor workers performing snow removal on passenger service infrastructure not owned by Amtrak are not qualified to provide on-track safety. Thus, workers may remove snow from platform areas behind the tactile (or paint-delineated) warning area, but must not remove snow in the area of the tactile (or paint-delineated) warning area without first establishing on-track safety in accordance with the RWP rule. As a result of this requirement, hazardous conditions on platforms remain unaddressed. Amtrak believes that the proposed ''Alternate Protection'' protocol used for specific snow removal activities will permit workers to address unsafe platform conditions from a safe location in a safe and timely manner without the worker being struck by a train while occupying the area of the platform behind the tactile warning strip or contrasting painted line.

Amtrak believes that an improvement to the safety of the riding public will take place in the form of faster response times, reduced hazardous walking conditions, and reduced passenger incidents should the waiver be granted. Amtrak submits that it is logical to assume that removing snow and ice from the tactile or paint-delineated warning areas of passenger station platforms would result in a reduction in slips, trips, and falls due to inclement weather at station platforms.

Amtrak also believes that no negative impact to the safety of workers removing snow will occur under the plan based upon examination of publicly-available data regarding passenger and employee injuries and fatalities on railroad passenger station platforms. Rail transit systems, outside of the umbrella of FRA regulation, currently do not have prescriptive requirements regarding contractor and employee protection when removing snow from station platforms. Under Federal Transit Administration oversight, no consistent RWP requirements exist nationwide. Such systems are permitted to perform snow removal activities at station platforms in accordance with protection requirements that the transit agency itself adopts. Many rail transit agencies have adopted policies similar to the practices that Amtrak proposes in this waiver, with no appreciable difference in worker injuries and fatalities on station platforms when compared to FRA data.

Amtrak conducted a comparative data analysis between transit systems and passenger railroads regarding worker injuries in station areas, as well as compared the average rate of injury to patrons within the transit industry to that of Amtrak's claimed injuries. The rate of worker injuries on transit systems in areas that regularly deal with climatic conditions, such as snow and ice, is consistent with (or in many cases below) the accident/injury rates of FRA-regulated passenger railroads in similar areas. While acknowledging that its analysis was not a comparison between data collected under the exact same conditions and criteria, Amtrak submits that there is value in comparison between similar modes of transportation. Amtrak believes that the program for alternate protection for snow removal at station platforms, as proposed, (1) Will provide an equivalent level of safety for workers who manually remove snow, according to the requirements under RWP, and (2) will improve the safety of the riding public. As such, Amtrak believes that relief from the application of fouling protection required when manually removing snow from a publicly accessible station platform is in the public's interest and consistent with railroad safety.

Slippery or snow-covered platform surfaces pose a significant risk to passengers, especially if such conditions exist close to the platform's edge. This potential risk continues so long as the slippery or snow-covered surfaces exist. In contrast, the potential risk to workers is intermittent due to dependence upon the presence of a train. Considering the differing levels of potential risk from both time-based and quantity-based perspectives, risk to passengers is significantly greater than the potential risk to workers.

Amtrak believes the RWP regulation was not written with consideration of risk to the traveling public, which occurs continuously so long as hazardous conditions due to snow-covered surfaces exist. Rather, the regulation is strictly focused on risk reduction for railroad workers. Passenger railroads are obligated to assign equal importance to the safety of passengers and workers. Amtrak believes that under the proposed procedures, workers will not be exposed to greater risk than they would under the on-track safety requirements (under the RWP rule) while manually removing snow; and passenger risk will be greatly reduced.

To ensure that workers using the alternate program to remove snow from platforms are not exposed to undue risk, the following conditions are proposed by Amtrak in its alternate program:

a. Workers are not permitted to use powered equipment, such as snow blowers, to clear the tactile edge area of snow without appropriate on-track safety in accordance with the RWP rule.

b. Any need for the worker to breach the strip or come within the 4-foot clearance envelope to push snow from the platform will require on-track safety in accordance with the RWP rule.

c. Amtrak will train workers to be constantly alert for the movement of trains and to remain in areas of the platform, which are inaccessible to trains.

d. The Amtrak training program for alternate snow removal protection details the conditions under which on-track safety in accordance with the RWP rule is needed, as well as the explicit conditions under which workers may occupy the station areas behind the tactile edge to remove snow.

e. The training program explains the purpose of a good faith challenge as well as how to execute a challenge should work need to be performed that requires on-track safety in accordance with the RWP rule or is otherwise thought to be unsafe by the worker.

f. Workers must demonstrate an understanding of the types of conditions that would require protection above and beyond that which would be permitted under this proposal, as well as the methods to execute a good faith challenge.

g. Prior to any work commencing, workers must hold a job briefing.

h. Workers removing snow from station platforms under alternate snow removal protection will not be permitted to work in single-man crews.

Under the alternate snow removal protection procedures, work groups would be required to appoint a safety monitor. The safety monitor would be required to conduct the job briefing and to maintain a means to contact Amtrak personnel as necessary. Safety monitors would observe all work for compliance with the requirements of the protection procedures and would ensure that all work would stop in the presence of a train.

Amtrak is dedicated to ensuring the safety of the riding public, as well as the safety of contractors and employees. Amtrak does not wish to seek a waiver from the RWP requirements when a worker is fouling the track in order to remove snow from areas other than the platform (*e.g.,* clearing an inner-track walkway, or when a worker is required to breach the tactile edge with his or her person).

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.,* Waiver Petition Docket Number FRA–2011–0077) and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m.

and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov.*

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or at *http://www.dot.gov/privacy.html.*

Issued in Washington, DC, on November 9, 2011.

**Robert C. Lauby,**

*Deputy Associate Administrator for Regulatory and Legislative Operations.*

[FR Doc. 2011–29616 Filed 11–15–11; 8:45 am]

**BILLING CODE 4910–06–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

**[FTA Docket No. FTA–2011–0068]**

### Agency Information Collection Activity Under OMB Review

**AGENCY:** Federal Transit Administration, DOT.

**ACTION:** Notice of request for comments.

**SUMMARY:** The Federal Transit Administration invites public comment about our intention to request the Office of Management and Budget's (OMB) approval to renew the following information collection: 49 U.S.C. Section 5320—Paul S. Sarbanes Transit in Parks Program.

The information collected is to monitor projects and satisfy Congressional requests. The **Federal Register** notice with a 60-day comment period soliciting comments was published on August 29, 2011 (Citation 76 FR 53714). No comments were received from that notice.

**DATES:** Comments must be submitted before December 16, 2011. A comment to OMB is most effective if OMB receives it within 30 days of publication.

**FOR FURTHER INFORMATION CONTACT:** Sylvia L. Marion, Office of Administration, Office of Management Planning, (202) 366–6680.

**SUPPLEMENTARY INFORMATION:**

*Title:* 49 U.S.C. Section 5320—Paul S. Sarbanes Transit in Parks Program.

*Abstract:* Section 3021 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act—A Legacy for Users (SAFETEA–LU), as amended, established the Paul S. Sarbanes Transit in Parks Program (Transit in Parks Program—49 U.S.C. 5320). The program is administered by FTA in partnership with the Department of the Interior (DOI) and the U.S. Department of Agriculture's Forest Service. The program provides grants to Federal land management agencies that manage an eligible area, including but not limited to the National Park Service, the Fish and Wildlife Service, the Bureau of Land Management, the Forest Service, the Bureau of Reclamation; and State, tribal and local governments with jurisdiction over land in the vicinity of an eligible area, acting with the consent of a federal land management agency, alone or in partnership with a Federal land management agency or other governmental or non-governmental participant. The purpose of the program is to provide for the planning and capital costs of alternative transportation systems that will enhance the protection of national parks and Federal lands; increase the enjoyment of visitors' experience by conserving natural, historical, and cultural resources; reduce congestion and pollution; improve visitor mobility and accessibility; enhance visitor experience; and ensure access to all, including persons with disabilities.

*Estimated Total Annual Burden:* 1,220 hours.

**ADDRESSES:** All written comments must refer to the docket number that appears at the top of this document and be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street NW., Washington, DC 20503, Attention: FTA 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.

Dated: November 9, 2011.

**Ann M. Linnertz,**

*Associate Administrator for Administration.*

[FR Doc. 2011–29524 Filed 11–15–11; 8:45 am]

**BILLING CODE 4910–57–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

**[FTA Docket No. FTA–2011–0067]**

### Agency Information Collection Activity Under OMB Review

**AGENCY:** Federal Transit Administration, DOT.

**ACTION:** Notice of request for comments.

**SUMMARY:** The Federal Transit Administration invites public comment about our intention to request the Office of Management and Budget (OMB) to extend the approval of the following information collection:

49 U.S.C. Section 5330—Rail Fixed Guideway Systems, State Safety Oversight. The information collected is used to monitor the safety of the rail transit agencies. The **Federal Register** notice with a 60-day comment period soliciting comments was published on August 29, 2011 (Citation 76 FR 53713). No comments were received from that notice.

**DATES:** Comments must be submitted before December 16, 2011. A comment to OMB is most effective if OMB receives it within 30 days of publication.

**FOR FURTHER INFORMATION CONTACT:** Sylvia L. Marion, Office of Administration, Office of Management Planning, (202) 366–6680.

**SUPPLEMENTARY INFORMATION:**

*Title:* 49 U.S.C. Section 5330—Rail Fixed Guideway Systems, State Safety Oversight.

*Abstract:* 49 U.S.C. 5330 requires States to designate a State Safety Oversight (SSO) agency to oversee the safety and security of each rail transit agency within the State's jurisdiction. To comply with Section 5330, SSO agencies must develop program standards which meet FTA's minimum requirements. In the Program Standard, which must be approved by FTA, each SSO agency must require each rail transit agency in the State's jurisdiction to prepare and implement a System Safety Program Plan (SSPP) and System

Security Plan (SSP). The SSO agency also requires the rail transit agencies in its jurisdiction to conduct specific activities, such as accident investigation, implementation of a hazard management program, and the management of an internal safety and security audit process. SSO agencies review and approve the SSPPs and SSPs of the rail transit agencies. Once every three years, States conduct an on-site review of the rail transit agencies in their jurisdictions to assess SSPP/SSP implementation and to determine whether these plans are effective and if they need to be updated. SSO agencies develop final reports documenting the findings from these on-site reviews and require corrective actions. SSO agencies also review and approve accident investigation reports, participate in the rail transit agency's hazard management program, and oversee implementation of the rail transit agency's internal safety and security audit process. SSO agencies review and approve corrective action plans and track and monitor rail transit agency activities to implement them.

Collection of this information enables each SSO agency to monitor each rail transit agency's implementation of the State's requirements as specified in the Program Standard approved by FTA. Without this information, States would not be able to oversee the rail transit agencies in their jurisdictions. Recommendations from the National Transportation Safety Board (NTSB) and the Government Accountability Office (GAO) have encouraged States and rail transit agencies to devote additional resources to these safety activities and safety oversight in general.

SSO agencies also submit an annual certification to FTA that the State is in compliance with Section 5330 and an annual report documenting the State's safety and security oversight activities. FTA uses the annual information submitted by the States to monitor implementation of the program. If a State fails to comply with Section 5330, FTA may withhold up to five percent of the funds appropriated for use in a State or urbanized area in the State under section 5307. The information submitted by the States ensures FTA's compliance with applicable federal laws, OMB Circular A–102, and 49 CFR part 18, ''Uniform Administrative Requirements for Grants and Cooperative Agreements with State and Local Governments.''

*Estimated Total Annual Burden:* 142,393 hours.

**ADDRESSES:** All written comments must refer to the docket number that appears at the top of this document and be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street NW., Washington, DC 20503, Attention: FTA 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.

Issued on: November 7, 2011.

**Ann M. Linnertz,**

*Associate Administrator for Administration.*

[FR Doc. 2011–29526 Filed 11–15–11; 8:45 am]

**BILLING CODE 4910–57–P**

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## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

**[FTA Docket No. FTA–2011–0069]**

### Agency Information Collection Activity Under OMB Review

**AGENCY:** Federal Transit Administration, DOT.

**ACTION:** Notice of request for comments.

**SUMMARY:** The Federal Transit Administration invites public comment about our intention to request the Office of Management and Budget's (OMB) to extend the approval of the following information collection:

49 U.S.C. Section 5316—Job Access and Reverse Commute Program.

The information collected is used to determine eligibility for funding and to monitor the grantees' progress in implementing and completing project activities. The **Federal Register** notice with a 60-day comment period soliciting comments was published on August 29, 2011, (Citation 76 FR 53712). No comments were received from that notice.

**DATES:** Comments must be submitted before December 16, 2011. A comment to OMB is most effective if OMB receives it within 30 days of publication.

**FOR FURTHER INFORMATION CONTACT:** Sylvia L. Marion, Office of Administration, Office of Management Planning, (202) 366–6680.

**SUPPLEMENTARY INFORMATION:**

*Title:* 49 U.S.C. Section 5316—Job Access and Reverse Commute Program.

*Abstract:* 49 U.S.C. 5316, the Job Access and Reverse Commute (JARC) Program, authorizes the Secretary of Transportation to make grants to states for areas with a population of less than 200,000 and designated recipients in urbanized areas of 200,000 persons or greater to transport welfare recipients and other low-income individuals to and from jobs and activities related to employment. Grant recipients are required to make information available to the public and to publish a program of projects which identifies the subrecipients and projects for which the State or designated recipient is applying for financial assistance. FTA uses the information to determine eligibility for funding and to monitor the grantees' progress in implementing and completing project activities. FTA collects performance information annually from designated recipients in rural areas, small urbanized areas, other direct recipients for small urbanized areas, and designated recipients in urbanized areas of 200,000 persons or greater. FTA collects milestone and financial status reports from designated recipients in large urbanized areas on a quarterly basis. The information submitted ensures FTA's compliance with applicable Federal laws.

*Estimated Total Annual Burden:* 122,374 hours.

**ADDRESSES:** All written comments must refer to the docket number that appears at the top of this document and be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street NW., Washington, DC 20503, Attention: FTA 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.

Dated: November 9, 2011.

**Ann M. Linnertz,**

*Associate Administrator for Administration.*

[FR Doc. 2011–29527 Filed 11–15–11; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

**[Docket No. FTA–2011–0064]**

### Notice of Proposed Buy America Waiver

**AGENCY:** Federal Transit Administration (FTA), DOT.

**ACTION:** Notice of proposed Buy America waiver.

**SUMMARY:** The Philadelphia Center City District (CCD) has asked the Federal Transit Administration (FTA) to waive its Buy America requirements as applied to a proposed contract award for the renovation of Dilworth Plaza adjacent to City Hall in Philadelphia, Pennsylvania. More specifically, CCD is seeking a waiver for the procurement of glass panels needed to construct two structural glass pavilions covering stairs leading from the surface level to underground transit stations operated by the Southeastern Pennsylvania Transportation Authority.

**DATES:** Comments must be received by November 23, 2011. Late-filed comments will be considered to the extent practicable.

**ADDRESSES:** Please submit your comments by only one of the following means, identifying your submissions by docket number FTA–2011–0064. All electronic submissions must be made to the U.S. Government electronic site at *http://www.regulations.gov.* Commenters should follow the instructions below for mailed and hand-delivered comments.

(1) *Web site: http://www.regulations.gov.* Follow the instructions for submitting comments on the U.S. Government electronic docket site;

(2) *Fax:* (202) 493–2251;

(3) *Mail:* U.S. Department of Transportation, 1200 New Jersey Avenue SE., Docket Operations, M–30, Room W12–140, Washington, DC 20590–0001.

(4) *Hand Delivery:* Room W12–140 on the first floor of the West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Instructions:* All submissions must make reference to the ''Federal Transit Administration'' and include docket number FTA–2011–0064. Due to security procedures in effect since October 2001, mail received through the U.S. Postal Service may be subject to delays. Parties making submissions responsive to this notice should consider using an express mail firm to ensure the prompt filing of any submissions not filed electronically or by hand. Note that all submissions received, including any personal information therein, will be posted without change or alteration to *www.regulations.gov.* For more information, you may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or visit *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Jayme L. Blakesley at (202) 366–0304 or *jayme.blakesley@dot.gov.*

**SUPPLEMENTARY INFORMATION:** The purpose of this Notice is to seek public comment on whether the Federal Transit Administration should waive its Buy America requirements of 49 CFR part 661 to permit the Center City District to award a construction contract for the renovation of Dilworth Plaza, located adjacent to City Hall in Philadelphia, Pennsylvania, where no proposal submitted to CCD included a valid Buy America Certificate of Compliance.

The FTA's general requirements concerning domestic preference for the procurement of manufactured products are set forth in 49 U.S.C. 5323(j). Under 49 U.S.C. 5323(j)(2)(B), and the implementing regulation, 49 CFR 661.7(c), those requirements may be waived if the goods produced in the United States are not produced in a sufficient and reasonably available amount. The FTA will presume that conditions exist to grant a non-availability waiver if no responsive and responsible bid is received that offers the items produced in the United States. 49 CFR 661.7(c)(1).

Structural glass is a manufactured product. As such, it must comply with the standard set forth at 49 CFR 661.5(d): All of the manufacturing processes for the product must take place in the United States. A manufacturing process requires the alteration of materials or elements resulting in either added value or transformation of those materials or elements into a functionally different end product.

On September 20, 2011, CCD received proposals from nine general contractors. The proposals included glass panels to be utilized in the construction of two structural glass pavilions as part of the renovations. Based on research conducted in early 2011, CCD's design team concluded that no glass manufacturer had the capability to fabricate the glass panels in the United States. This is due to the size of the panels and the laminated glass make-up and edge polishing requirements. Although five proposals included a Buy America Certificate of Compliance, CCD determined that each proposer certifying compliance offered glass panels that included at least one manufacturing process occurring outside the United States.

The two all-glass entry pavilions are to be comprised of structural glass panels including glazing and other systems as follows:

a. Pavilion Walls (52 total panels): Frameless 5-ply (10 mm ply) laminated heat strengthened low iron glass panels with ionoplast interlayer, DuPont™ SentryGlas or approved equal. The manufacturer must be capable of fabricating the described panel with the following dimensions—61″ x 232″.

b. Pavilion Roof Panels (36 total panels): Frameless 7-ply (10 mm ply) laminated heat strengthened low iron glass panels with ionoplast interlayer DuPont™ SentryGlas or approved equal. The manufacturer must be capable of fabricating the described panel with the following dimensions—56″ x 202″.

The glass edges of single plies must be machine-polished. The panels must be fabricated so that all sealant joints are capable of withstanding tensile and shear stresses imposed, and capable of withstanding joint movements imposed without failing adhesively or cohesively.

To ensure consistent quality of appearance and performance, CCD has specified that the glass panels must be produced by a single manufacturer or fabricator for each kind and condition of glass indicated in the specifications, and composed of primary glass obtained from a single source for each type and class required. Heat-Treated Float Glass must be fabricated to ASTM C 1048; Type I; Quality-Q3; Class I (clear). Wall panels must be fabricated by horizontal (roller-hearth) process with roll-wave distortion parallel to bottom edge of glass as installed.

Of the manufacturing processes described above, it is FTA's understanding that facilities do not exist in the United States to perform one or more of the manufacturing processes. CCD has requested a non-availability waiver that would allow certain processes to occur outside the United States. If granted, the non-availability waiver for this project would be limited to the specific manufacturing processes that cannot be done in the U.S. All other manufacturing processes would need to take place in the United States, as required by the Buy America rules.

In the interest of transparency, FTA has published copies of CCD's request to

the docket. Interested parties may access these materials by visiting the docket site at *http://www.regulations.gov,* docket number FTA–2011–0064. Before deciding whether to grant CCD's request, FTA seeks comment from all interested parties. FTA requests that commenters describe the manufacturing process for structural glass and identify the processes that can and cannot be performed in the United States. Please submit comments by November 23, 2011. Late-filed comments will be considered to the extent practicable.

Issued this 8th day of November, 2011.

**Dorval R. Carter, Jr.,**

*Chief Counsel.*

[FR Doc. 2011–29525 Filed 11–15–11; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[U.S. DOT Docket No. NHTSA–2011–0162]**

### Reports, Forms, and Recordkeeping Requirements

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Request for public comment on proposed collection of information.

**SUMMARY:** Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatements of previously approved collections.

This document describes an Information Collection Request (ICR) for which NHTSA intends to seek OMB approval.

**DATES:** Comments must be submitted on or before January 17, 2012.

**ADDRESSES:** Direct all written comments to the U.S. Department of Transportation Dockets, 1200 New Jersey Ave. SE., Washington, DC 20590. You may also submit comments electronically at *http://www.regulations.gov.* All comments should refer to the Docket No. NHTSA–2011–0162.

**FOR FURTHER INFORMATION CONTACT:** Jessica Cicchino, Ph.D., Contracting Officer's Technical Representative, Office of Behavioral Safety Research (NTI–131), National Highway Traffic Safety Administration, 1200 New Jersey Ave. SE., W46–491, Washington, DC 20590. Dr. Cicchino's phone number is (202) 366–2752 and her email address is *jessica.cicchino@dot.gov.*

**SUPPLEMENTARY INFORMATION:** Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulations (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) How to enhance the quality, utility, and clarity of the information to be collected; and

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks public comment on the following proposed collection of information:

*Title:* Instrumented On-Road Study of Motorcycle Riders.

*Type of Request:* New information collection request.

*OMB Clearance Number:* None.

*Form Number:* This collection of information uses no standard forms.

*Requested Expiration Date of Approval:* 3 years from date of approval.

*Summary of the Collection of Information:* In this study, the National Highway Traffic Safety Administration (NHTSA) will be conducting on-road instrumented vehicle data collection with a total of 160 motorcycle riders to examine motorcycle riders' behaviors as they typically ride. Volunteers will be recruited to have their motorcycles outfitted for one year with instrumentation such as cameras, GPS, and accelerometers that will capture data on normal riding behavior whenever their motorcycles are ridden.

Before participating in the on-road portion of the study, participating motorcycle riders will be asked to complete intake questionnaires that will ask about their demographics, riding history, self-reported behavior, and perceptions. After completing the on-road study, participants will be asked to complete a short debriefing interview that will focus on their experiences riding with the instrumentation in the past year. If a participant is involved in a motorcycle crash during the study, he or she may be asked additional questions about the circumstances surrounding the crash. This subjective data will be combined with the objective data from the instrumentation on actual riding behavior to help NHTSA develop a better understanding of if a rider's demographic characteristics, riding history, self-reported behavior, and perceptions are linked to his or her behavior on the road.

*Need and Use of Information:* The National Highway Traffic Safety Administration (NHTSA) was established to reduce the mounting number of deaths, injuries, and economic losses resulting from motor vehicle crashes on the Nation's highways. As part of this statutory mandate, NHTSA is authorized to conduct research as a foundation for the development of motor vehicle standards and traffic safety programs.

Motorcycle fatalities have increased over the past decade at an alarming rate. In 2009, 4,462 motorcycle riders were killed in the US. This marks the first time the number of motorcycle fatalities has decreased after steadily increasing over 11 years; however, even with this decline, the number of motorcycle fatalities in 2009 was nearly double that from a decade earlier. Motorcycles made up 3% of the registered vehicles in the US in 2009 but motorcyclists accounted for 13% of the total traffic fatalities.

Knowledge of both how riders successfully avoid crashes and of behaviors that correlate with and contribute to crash risk is crucial to developing effective countermeasures to reduce motorcycle crashes and fatalities. Data describing actual events are difficult to collect. Riders and law enforcement officers are not always aware of what caused a crash after the fact. It is even more difficult to identify behavioral factors associated with safe riding, and the actions of riders during evasive maneuvers that did not result in a police-reportable crash. Studies using instrumented vehicles to collect data on the real-world driving of passenger car and truck drivers have provided unprecedented information describing

actual events occurring for drivers as they negotiate the roadway system. The goal of this study is to collect similar data from motorcycle operators using instrumented motorcycles.

Participating riders' responses to a series of questionnaires on their demographics, riding history, self-reported behavior, and perceptions will augment the data collected from their instrumented motorcycles. Information collected from questionnaires will allow NHTSA to investigate if these rider characteristics are related to safe and unsafe on-motorcycle riding behavior. A debriefing interview will collect additional subjective information on the rider's experiences riding with the instrumentation over the prior year. In support of its mission, NHTSA will use the information from the questionnaires and interviews, in conjunction with the naturalistic data collected from the instrumented motorcycles, to decrease crashes and resulting injuries and fatalities, and provide informational support to States, localities, and law enforcement agencies that will aid them in their efforts to reduce motorcycle crashes.

*Description of the Likely Respondents (Including Estimated Number, and Proposed Frequency of Response to the Collection of Information):* Participation in the study will be voluntary. Each of the 160 participants in the on-road instrumented motorcycle portion of the study will be asked to complete intake questionnaires, capturing demographic characteristics, riding history, self-reported behavior, and perceptions, during his or her instrumentation session and to complete a debriefing interview as the instrumentation is being removed from his or her motorcycle one year later.

If a participant in the study is involved in a crash while riding the instrumented motorcycle, he or she may be asked to participate in one additional interview on the circumstances surrounding the crash. Based on the number of crashes that occurred per mile driven in a prior instrumented car study and the number of motorcycle injury crashes per mile ridden in 2009, NHTSA estimates that 20 motorcycle crashes may occur during this study.

*Estimate of the Total Annual Reporting and Record Keeping Burden Resulting from the Collection of Information:* The intake questionnaires are estimated to take 75 minutes to complete, and the debriefing interview is estimated to last 15 minutes. Intake questionnaires will be completed during the time when the respondent's motorcycle is being instrumented, and the debriefing interview will be completed while the instrumentation is being removed from the respondent's motorcycle after the one-year period of on-road data collection. This results in an estimated burden of 200 hours of burden for the intake questionnaires (160 respondents × 75 minutes), and 40 hours of burden for the debriefing interviews (160 respondents × 15 minutes).

A rider involved in a crash on his or her instrumented motorcycle during the on-road data collection period may be asked to participate in an additional interview regarding the circumstances that surrounded the crash. This interview would take approximately 60 minutes, and NHTSA estimates that 20 motorcycle crashes may occur during this study. Thus, the estimated burden for post-crash interviews is 20 hours (20 respondents × 60 minutes).

The total estimated information collection burden for this project is 260 hours over one year: 200 hours for the intake questionnaires, 40 hours for the debriefing interviews, and 20 hours for possible post-crash interviews. The respondents will not incur any record-keeping burden or record-keeping cost from the information collection.

**Authority:** 44 U.S.C. 3506(c)(2)(A).

**Jeffrey Michael,**

*Associate Administrator, Research and Program Development.*

[FR Doc. 2011–29361 Filed 11–15–11; 8:45 am]

BILLING CODE 4910–59–P

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[Docket No. NHTSA–2011–0126]**

### Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (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 August 22, 2011 [FR Doc. 2010–22008].

**DATES:** Comments must be submitted on or before December 16, 2011.

**FOR FURTHER INFORMATION CONTACT:** Kil-Jae Hong, NHTSA, 1200 New Jersey Avenue SE., W52–232, NPO–520, Washington, DC 20590. Ms. Hong's telephone number is (202) 493–0524 and email address is *kil-jae.hong@dot.gov.*

**SUPPLEMENTARY INFORMATION:** In compliance with the Paperwork Reduction Act of 1995, NHTSA conducted a qualitative phase of Consumer Research which included Focus Groups. Based upon the qualitative phase research results, NHTSA developed the materials for Phase 2 of the Consumer Research plan. This notice announces that the ICR for Phase 2 consumer research, abstracted below, has been forwarded to OMB requesting review and comment. The ICR describes the nature of the information collection and its expected burden. This is a request for new collection.

*Title:* 49 CFR 575—Consumer Information Regulations (sections 103 and 105) Quantitative Research.

*OMB Number:* Not Assigned.

*Type of Request:* New collection.

*Abstract:* The Energy Independence and Security Act of 2007 (EISA), enacted in December 2007, included a requirement that the National Highway Traffic Safety Administration (NHTSA) develop a consumer information and education campaign to improve consumer understanding of automobile performance with regard to fuel economy, Greenhouse Gases (GHG) emissions and other pollutant emissions; of automobile use of alternative fuels; and of thermal management technologies used on automobiles to save fuel. A critical step in developing the consumer information program is to conduct proper market research to understand consumers' knowledge surrounding these issues, evaluate potential consumer-facing messages in terms of clarity and understand the communications channels in which these messages should be present. The research will allow NHTSA to refine messaging to enhance comprehension and usefulness and will guide the development of an effective communications plan. NHTSA proposes a multi-phased research project to gather the data and apply analyses and results from the project to develop the consumer information program and education campaign.

*Affected Public:* Passenger vehicle consumers.

*Estimated Total Annual Burden:* 500 hours.

*Number of Respondents:* 1,500.

The estimated annual burden hour for the online survey is 500 hours. Based on the Bureau of Labor and Statistics' median hourly wage (all occupations) in the May 2010 National Occupational Employment and Wage Estimates, NHTSA estimates that it would cost an average of $16.27 per hour if all respondents were interviewed on the job. Therefore, the agency estimates that the cost associated with the burden hours is $8,135 ($16.27 per hour x 500 interviewing hours).

*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 Departments 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.

**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.

Issued in Washington, DC, on November 10, 2011.

**Gregory A. Walter,**

*Senior Associate Administrator, Policy and Operations.*

[FR Doc. 2011–29607 Filed 11–15–11; 8:45 am]

**BILLING CODE 4910–59–P**

## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

**[Docket No. PHMSA–2011–0241, (Notice No. 11–10)]**

### Safety Advisory: Unauthorized Marking of Compressed Gas Cylinders

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

**ACTION:** Safety Advisory Notice.

**SUMMARY:** An undetermined number of high pressure DOT specification cylinders were improperly marked from approximately August 2007 to August 2011 and marked with a RIN of B377.

Prior to filling these cylinders, a person must verify that the cylinder has been properly requalified by an authorized requalification company and properly marked.

**FOR FURTHER INFORMATION CONTACT:** Morgan Welding and Supply, Mr. Daniel Horosko, Owner or Mr. Matthew Stepps, Manager, 488 Finley Road, Albion, MI, Telephone (517) 629–6566.

**SUPPLEMENTARY INFORMATION:**

This notice advises the public that PHMSA has recently confirmed the marking and sale of certain high pressure DOT specification cylinders that were marked with a requalification identification number (RIN) without performing a visual inspection and hydrostatic test. The company that marked the cylinders does not have authority from the Associate Administrator to requalify high pressure DOT cylinders. The evidence suggests that if a cylinder purchased from Morgan Welding and Supply, Albion, Michigan is marked with a ''B377'' in which the individual letter and numbers appear to be stamped individually, the mark may have been improperly placed on the cylinder. The cylinder did not undergo the complete series of safety tests and inspections required by the Hazardous Materials Regulations (HMR) and may not possess the structural integrity to safely contain its contents under pressure during normal transportation and use. Extensive property damage, serious personal injury, or death could result from a rupture of the cylinder. Individuals who identify a cylinder marked with the RIN ''B377'' stamped with individual letter/numbers that are not in a square pattern, are advised to remove these cylinders from service and contact Morgan Welding and Supply, Albion, MI for further instructions.

However, the RIN ''B377'' is currently authorized to Midwest Cylinder Inc., located in Cleaves, OH. Cylinders purchased from Midwest Cylinder Inc. will have the proper RIN ''B377'' and have been properly requalified. Cylinders from Midwest Cylinder Inc. can also be identified by blue paint highlighting the requalification markings. The RIN, ''B377'' has been stamped on the cylinder with a square pattern stamp so the marks will appear uniform and straight.

Issued in Washington, DC, on November 4, 2011.

**Magdy El-Sibaie,**

*Associate Administrator for Hazardous Materials Safety.*

[FR Doc. 2011–29495 Filed 11–15–11; 8:45 am]

**BILLING CODE 4910–60–P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[Docket No. AB 1076 (Sub-No. 1X)]**

### Caddo Valley Railroad Company—Abandonment Exemption—in Pike and Clark Counties, AR

On October 27, 2011, Caddo Valley Railroad Company (CVRR) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a segment of the Norman Branch Line extending between milepost 429.45, near Gurdon, and milepost 447, near Antoine, a distance of 17.55 miles, in Pike and Clark Counties, Ark. (the line).[1] The line traverses United States Postal Service Zip Codes 71943 and 71922, and includes the stations of Summit (milepost 433.1), Okolona (milepost 441.0), and Pike City Junction (milepost 446.5).

CVRR states that, based on information in CVRR's possession, the line does not contain Federally granted rights-of-way. Any documentation in CVRR's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by February 14, 2012.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a $1,500 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of

[1] On November 9, 2011, CVRR filed a letter with the Board attaching a letter dated October 7, 2011, from counsel for Arkansas Midland Railroad Company, Inc. (AKMD). AKMD notes that CVRR acquired the Norman Branch, which includes the line at issue here, from AKMD under the Board's feeder line statute at 49 U.S.C. 10907. *See Caddo Antoine & Little Mo. R.R.—Feeder Line Acquis.—Ark. Midland R.R. Co. Line Between Gurdon & Birds Mill, Ark.,* 4 S.T.B. 326 (1999). AKMD further states that on September 29, 2011, AKMD reacquired from CVRR the segment of the Norman Branch between milepost 426.88 in Gurdon and milepost 429.45 north of Gurdon and, as part of the same transaction, waived its statutory right of first refusal with respect to the rest of the Norman Branch. *See* 49 U.S.C. 10907(h).

rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than December 6, 2011. Each trail request must be accompanied by a $250 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to Docket No. AB 1076 (Sub-No. 1X), and must be sent to: (1) Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001; and (2) Richard H. Streeter, 5255 Partridge Lane NW., Washington, DC 20016. Replies to the petition are due on or before December 6, 2011.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Assistance, Governmental Affairs and Compliance at (202) 245–0238 or refer to the full abandonment regulations at 49 CFR pt. 1152. Questions concerning environmental issues may be directed to the Board's Office of Environmental Analysis (OEA) at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–(800)–877–8339.

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by OEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact OEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA generally will be within 30 days of its service.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: November 10, 2011.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

**Jeffrey Herzig,**

*Clearance Clerk.*

[FR Doc. 2011–29592 Filed 11–15–11; 8:45 am]

**BILLING CODE 4915–01–P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[Docket No. AB 1076X]**

### Caddo Valley Railroad Company—Abandonment Exemption—in Clark, Pike, and Montgomery Counties, AR

Caddo Valley Railroad Company (CVRR) has filed a verified notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments* to abandon the portion of the Norman Branch Line extending between milepost 447, near Antoine, to milepost 479.2, at the end of the line near Birds Mill, a distance of 32.2 miles, in Clark, Pike, and Montgomery Counties, Ark. (the line).[1] The line traverses United States Postal Service Zip Codes 71921, 71922, 71940, and 71943.

CVRR has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) the line is stub-ended and not capable of handling overhead traffic; (3) no formal complaint filed by a user of rail service on the Line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the Line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period. CVRR has further certified that the requirements at 49 CFR 1105.7(c) (environmental report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on December 16, 2011, unless stayed pending reconsideration.[2] Petitions to stay that do not involve environmental issues,[3] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[4] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by November 28, 2011. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by December 6, 2011, with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to CVRR's representative: Richard H. Streeter, 5255 Partridge Lane NW., Washington, DC 20016.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

CVRR has filed a combined environmental and historic report that addresses the effects, if any, of the abandonment on the environment and historic resources. OEA will issue an environmental assessment (EA) by November 21, 2011. Interested persons may obtain a copy of the EA by writing to OEA (Room 1100, Surface Transportation Board, Washington, DC 20423–0001) or by calling OEA at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Information Relay Service at 1–(800) 877–8339. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), CVRR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the Line. If

[1] On November 9, 2011, CVRR filed a letter with the Board attaching a letter dated October 7, 2011, from counsel for Arkansas Midland Railroad Company, Inc. (AKMD). AKMD notes that CVRR acquired the Norman Branch, which includes the line at issue here, from AKMD under the Board's feeder line statute at 49 U.S.C. 10907. *See Caddo Antoine & Little Mo. R.R.—Feeder Line Acquis.—Ark. Midland R.R. Co. Line Between Gurdon & Birds Mill, Ark.,* 4 S.T.B. 326 (1999). AKMD further states that on September 29, 2011, AKMD reacquired from CVRR the segment of the Norman Branch between milepost 426.88 in Gurdon and milepost 429.45 north of Gurdon and, as part of the same transaction, waived its statutory right of first refusal with respect to the rest of the Norman Branch. *See* 49 U.S.C. 10907(h).

[2] CVRR indicated a proposed consummation date of December 12, 2011. The earliest this transaction may be consummated is December 16, 2011. *See* 49 CFR 1152.50(d)(2).

[3] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Office of Environmental Analysis (OEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Serv. Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[4] Each OFA must be accompanied by the filing fee, which is currently set at $1,500. *See* 49 CFR 1002.2(f)(25).

consummation has not been effected by CVRR's filing of a notice of consummation by November 16, 2012, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: November 10, 2011.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

**Jeffrey Herzig,**

*Clearance Unit.*

[FR Doc. 2011–29591 Filed 11–15–11; 8:45 am]

**BILLING CODE 4915–01–P**

# FEDERAL REGISTER

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Part II

## Commodities and Future Trading Commission

## Securities and Exchange Commission

17 CFR Parts 4, 275 and 279

Reporting by Investment Advisers to Private Funds and Certain Commodity Pool Operators and Commodity Trading Advisors on Form PF; Final Rule

**COMMODITY FUTURES TRADING COMMISSION**

**17 CFR Part 4**

**RIN 3038–AD03**

**SECURITIES AND EXCHANGE COMMISSION**

**17 CFR Parts 275 and 279**

**[Release No. IA–3308; File No. S7–05–11]**

**RIN 3235–AK92**

# Reporting by Investment Advisers to Private Funds and Certain Commodity Pool Operators and Commodity Trading Advisors on Form PF

**AGENCIES:** Commodity Futures Trading Commission and Securities and Exchange Commission.

**ACTION:** Joint final rules.

**SUMMARY:** The Commodity Futures Trading Commission (''CFTC'') and the Securities and Exchange Commission (''SEC'') (collectively, ''we'' or the ''Commissions'') are adopting new rules under the Commodity Exchange Act and the Investment Advisers Act of 1940 to implement provisions of Title IV of the Dodd-Frank Wall Street Reform and Consumer Protection Act. The new SEC rule requires investment advisers registered with the SEC that advise one or more private funds and have at least $150 million in private fund assets under management to file Form PF with the SEC. The new CFTC rule requires commodity pool operators (''CPOs'') and commodity trading advisors (''CTAs'') registered with the CFTC to satisfy certain CFTC filing requirements with respect to private funds, should the CFTC adopt such requirements, by filing Form PF with the SEC, but only if those CPOs and CTAs are also registered with the SEC as investment advisers and are required to file Form PF under the Advisers Act. The new CFTC rule also allows such CPOs and CTAs to satisfy certain CFTC filing requirements with respect to commodity pools that are not private funds, should the CFTC adopt such requirements, by filing Form PF with the SEC. Advisers must file Form PF electronically, on a confidential basis. The information contained in Form PF is designed, among other things, to assist the Financial Stability Oversight Council in its assessment of systemic risk in the U.S. financial system.

**DATES:** The effective date for the addition of 17 CFR 4.27 (rule 4.27 under the Commodity Exchange Act), 17 CFR 275.204(b)–1 (rule 204(b)–1 under the Investment Advisers Act of 1940) and 17 CFR 279.9 (Form PF), as well as the revision to the authority citation for 17 CFR part 4, is March 31, 2012. See section III of this Release for compliance dates.

**FOR FURTHER INFORMATION CONTACT:** CFTC: Amanda L. Olear, Special Counsel, Telephone: (202) 418–5283, Email: *aolear@cftc.gov,* or Kevin P. Walek, Assistant Director, Telephone: (202) 418–5463, Email: *kwalek@cftc.gov,* Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581; SEC: David P. Bartels, Senior Counsel, or Sarah G. ten Siethoff, Senior Special Counsel, at (202) 551–6787 or *IArules@sec.gov,* Office of Investment Adviser Regulation, Division of Investment Management, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–8549.

**SUPPLEMENTARY INFORMATION:** The CFTC is adopting rule 4.27 [17 CFR 4.27] under the Commodity Exchange Act (''CEA'') [1] and Form PF.[2] The SEC is adopting rule 204(b)–1 [17 CFR 275.204(b)–1] and Form PF [17 CFR 279.9] under the Investment Advisers Act of 1940 [15 U.S.C. 80b] (''Advisers Act'').[3]

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## I. Background

### *A. The Dodd-Frank Act and the Financial Stability Oversight Council*

On July 21, 2010, President Obama signed into law the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act'').[4] One significant focus of this legislation is to ''promote the financial stability of the United States'' by, among other measures, establishing better monitoring of emerging risks using a system-wide perspective.[5] To further this goal, the Act establishes the Financial Stability Oversight Council (''FSOC'') and directs it to monitor risks to the U.S. financial system. The Act also gives FSOC a number of tools to carry out this mission.[6] For instance, FSOC may

[1] 7 U.S.C. 1a.

[2] Form PF is a joint form between the SEC and the CFTC only with respect to sections 1 and 2 of the Form. Sections 3 and 4 of the Form are adopted solely by the SEC.

[3] 15 U.S.C. 80b. Unless otherwise noted, when we refer to the Advisers Act, or any paragraph of the Advisers Act, we are referring to 15 U.S.C. 80b of the United States Code, at which the Advisers Act is codified, and when we refer to Advisers Act rule 204(b)–1, or any paragraph of this rule, we are referring to 17 CFR 275.204(b)–1 of the Code of Federal Regulations in which this rule will be published. In addition, when we refer to the ''Investment Company Act,'' or any paragraph of the Investment Company Act, we are referring to 15 U.S.C. 80a of the United States Code, at which the Investment Company Act of 1940 is codified.

[4] Public Law 111–203, 124 Stat. 1376 (2010).

[5] S. Rep. No. 111–176, at 2–3 (2010) (''Senate Committee Report'').

[6] *See* Sections 113 and 120 of the Dodd-Frank Act. In a recent rulemaking release, FSOC explained that its response to any potential threat to financial stability will be based on an assessment of the circumstances. *See Authority to Require Supervision and Regulation of Certain Nonbank*

determine that a nonbank financial company will be subject to the supervision of the Board of Governors of the Federal Reserve System (''FRB'') if the company may pose risks to U.S. financial stability as a result of its activities or in the event of its material financial distress.[7] In addition, FSOC may issue recommendations to primary financial regulators, like the SEC and CFTC, for more stringent regulation of financial activities that FSOC determines may create or increase systemic risk.[8]

The Dodd-Frank Act anticipates that various regulatory agencies, including the Commissions, will support FSOC.[9] To that end, the Dodd-Frank Act amended section 204(b) of the Advisers Act to require that the SEC establish reporting and recordkeeping requirements for advisers to private funds,[10] many of which must also register for the first time as a consequence of the Dodd-Frank Act.[11] These new requirements may include maintaining records and filing reports containing such information as the SEC deems necessary and appropriate in the public interest and for investor protection or for the assessment of systemic risk by FSOC.[12] The SEC and CFTC must jointly issue, after consultation with FSOC, rules establishing the form and content of any reports to be filed under this new authority.[13]

On January 26, 2011, in a joint release, the CFTC and SEC proposed new rules and a new reporting form intended to implement this statutory mandate.[14] In the release, the SEC proposed new Advisers Act rule 204(b)–1, which would require private fund advisers to file Form PF periodically with the SEC.[15] In addition, the CFTC proposed new rule 4.27,[16] which would require private fund advisers that are also registered as CPOs or CTAs with the CFTC to satisfy certain proposed CFTC systemic risk reporting requirements, should the CFTC adopt such requirements, by filing Form PF.[17] Today, we are adopting these proposed rules and Form PF with several changes from the proposal that are designed to respond to commenter concerns. Consistent with the proposal, advisers must report on Form PF certain information regarding the private funds they manage, and this information is intended to complement information the SEC collects on Form ADV and information the CFTC separately has proposed to collect from CPOs and CTAs.[18] Collectively, these reporting forms will provide FSOC and the Commissions with important information about the basic operations and strategies of private funds and help establish a baseline picture of potential systemic risk in the private fund industry.

The SEC is adopting Advisers Act rule 204(b)–1 and Form PF to enable FSOC to obtain data that will facilitate monitoring of systemic risk in U.S. financial markets. Our understanding of the utility to FSOC of the data to be collected is based on our staffs' consultations with staff representing the members of FSOC. The design of Form PF is not intended to reflect a determination as to where systemic risk exists but rather to provide empirical data to FSOC with which it may make a determination about the extent to which the activities of private funds or their advisers pose such risk. The information made available to FSOC will be collected for FSOC's use by the Commissions in their role as the primary regulators of private fund advisers. The policy judgments implicit in the information required to be reported on Form PF reflect FSOC's role as the primary user of the reported

*Financial Companies,* Financial Stability Oversight Counsel Release (Oct. 11, 2011) (''FSOC Second Notice'').

[7] Section 113 of the Dodd-Frank Act. The Dodd-Frank Act also directs FSOC to recommend to the FRB heightened prudential standards for designated nonbank financial companies. Section 112(a)(2) of the Dodd-Frank Act.

[8] Section 120 of the Dodd-Frank Act.

[9] *See, e.g.,* section 112(d)(1) of the Dodd-Frank Act, which authorizes FSOC to collect information from member agencies to support its functions. *See also* FSOC Second Notice, *supra* note 6 (explaining that information reported on Form PF will be important to FSOC's policy-making in regard to the assessment of systemic risk among private fund advisers).

[10] Section 202(a)(29) of the Advisers Act defines the term ''private fund'' as ''an issuer that would be an investment company, as defined in section 3 of the Investment Company Act, but for section 3(c)(1) or 3(c)(7) of that Act.'' Section 3(c)(1) of the Investment Company Act provides an exclusion from the definition of ''investment company'' for any ''issuer whose outstanding securities (other than short-term paper) are beneficially owned by not more than one hundred persons and which is not making and does not presently propose to make a public offering of its securities.'' Section 3(c)(7) of the Investment Company Act provides an exclusion from the definition of ''investment company'' for any ''issuer, the outstanding securities of which are owned exclusively by persons who, at the time of acquisition of such securities, are qualified purchasers, and which is not making and does not at that time propose to make a public offering of such securities.'' The term ''qualified purchaser'' is defined in section 2(a)(51) of the Investment Company Act.

[11] *See* sections 402, 403, 407 and 408 of the Dodd-Frank Act. The SEC recently adopted rule 203–1(e) providing a transition period for certain private advisers previously relying on the repealed exemption in section 203(b)(3) of the Advisers Act. The transition rule requires these advisers to register with the SEC by March 30, 2012. *See Rules Implementing Amendments to the Investment Advisers Act of 1940,* Investment Advisers Act Release No. IA–3221 (June 22, 2011), 76 FR 42950 (July 19, 2011) (''Implementing Adopting Release''). *See also Exemptions for Advisers to Venture Capital Funds, Private Fund Advisers With Less Than $150 Million in Assets Under Management, and Foreign Private Advisers,* Investment Advisers Act Release No. IA–3222 (June 22, 2011), 76 FR 39646 (July 6, 2011) (''Exemptions Adopting Release'').

[12] The Dodd-Frank Act does not identify specific information to be included in these reports, but section 204(b) of the Advisers Act does require that the records and reports required under that section cumulatively include a description of certain information about private funds, such as the amount of assets under management, use of leverage, counterparty credit risk exposure, and trading and investment positions for each private fund advised by the adviser. *See Reporting by Investment Advisers to Private Funds and Certain Commodity Pool Operators and Commodity Trading Advisors on Form PF,* Investment Advisers Act Release No. 3145 (January 26, 2011), 76 FR 8068 (February 11, 2011) (''Proposing Release'') at n. 13 and accompanying text.

[13] *See* section 211(e) of the Advisers Act.

[14] As discussed below, Form PF is a joint form between the SEC and the CFTC only with respect to sections 1 and 2 of the Form.

[15] Throughout this Release, we use the term ''private fund adviser'' to mean any investment adviser that (i) Is registered or required to register with the SEC (including any investment adviser that is also registered or required to register with the CFTC as a CPO or CTA) and (ii) advises one or more private funds. Advisers solely to venture capital funds or advisers solely to private funds that in the aggregate have less than $150 million in assets under management in the United States that rely on the exemption from registration under, respectively, section 203(l) or 203(m) of the Advisers Act (''exempt reporting advisers'') are not required to file Form PF. *See infra* section II.A.7 of this Release.

[16] Because the CFTC is not adopting the remainder of proposed CEA rule 4.27 at the same time as it is adopting this rule, the CFTC has modified the designation of CEA rule 4.27(d) to be the sole text of that section. *See Commodity Pool Operators and Commodity Trading Advisors: Amendments to Compliance Obligations* (Jan. 26, 2011), 76 FR 7976 (Feb. 11, 2011) (''CFTC Proposing Release''). Additionally, the CFTC has made some revisions to the text of rule 4.27 to: (1) Clarify that the filing of Form PF with the SEC will be considered substitute compliance with certain CFTC reporting obligations (*i.e.,* for Schedules B and C of Form CPO–PQR and Schedule B of Form CTA–PR as proposed) should the CFTC determine to adopt such requirements and (2) to allow CPOs and CTAs who are otherwise required to file Form PF the option of submitting on Form PF data regarding commodity pools that are not private funds as substitute compliance with certain CFTC reporting obligations (*i.e.,* for Schedules B and C of Form CPO–PQR and Schedule B of Form CTA–PR as proposed) should the CFTC determine to adopt such requirements.

[17] For these private fund advisers, filing Form PF through the Form PF filing system would be a filing with both the SEC and CFTC. Irrespective of their filing a Form PF with the SEC, the CFTC has proposed that all private fund advisers that are also registered as CPOs and CTAs with the CFTC would be required to file Schedule A of Form CPO–PQR (for CPOs) or Schedule A of Form CTA–PR (for CTAs). *See* CFTC Proposing Release, *supra* note 16.

[18] *See* Proposing Release, *supra* note 12, at n. 16, comparing the purposes of Form ADV and Form PF. References in this Release to Form ADV or terms defined in Form ADV or its glossary are to the form and glossary as amended in the Implementing Adopting Release, *supra* note 11.

information for the purpose of monitoring systemic risk. The SEC would not necessarily have required the same scope of reporting if the information reported on Form PF were intended solely for the SEC's use.

We expect the information collected on Form PF and provided to FSOC will be an important part of FSOC's systemic risk monitoring in the private fund industry.[19] We note that, simultaneous with the consultations between our staffs and the staff representing FSOC's members, FSOC has been building out its standards for assessing systemic risk across different kinds of financial firms and has proposed guidance and standards for determining which nonbank financial companies should be designated as subject to FRB supervision.[20] In its most recent release on this subject, FSOC confirmed that the information reported on Form PF is important not only to conducting an assessment of systemic risk among private fund advisers but also to determining how that assessment should be made.[21]

The Commissions received more than 35 letters responding to the proposal, with trade associations, investment advisers and law firms accounting for most of the comments. Commenters representing investors were generally supportive of the proposal but thought it should have required more of private fund advisers.[22] Some of these supporters argued, in particular, for more detailed and more frequent reporting than we proposed.[23] In contrast, advisers and those writing on their behalf expressed concern regarding the scope, frequency and timing of the proposed reporting.[24] A number of these commenters generally supported the systemic risk monitoring goals of the Dodd-Frank Act or the broad framework of the proposal but argued that specific aspects of the proposal were impractical or burdensome.[25] We respond to these comments in section II of this Release.

This rulemaking is intended primarily to support FSOC, consistent with the mandate to adopt private fund reporting requirements under the Dodd-Frank Act. Determinations made with respect to the Form PF reporting requirements have been made in furtherance of this goal and to comply with this legislative mandate.

*B. International Coordination*

The Dodd-Frank Act states that FSOC shall coordinate with foreign financial regulators in assessing systemic risk.[26] In recognition of this, our proposal discussed the potential importance of international regulatory coordination in responding to future financial crises.[27] A number of groups have continued to advance international efforts relating to the collection of systemic risk information. For example, recent reports from the Financial Stability Board (''FSB''), International Monetary Fund (''IMF'') and Bank for International Settlements (''BIS'') emphasize the importance of identifying and addressing gaps in the information available to systemic risk regulators.[28] One goal of this coordination is to collect comparable information regarding private funds, which will aid in the assessment of systemic risk on a global basis.[29] Several commenters agreed that international coordination in connection with private fund reporting is important and encouraged us to take an approach consistent with international precedents.[30]

To this end, our staffs have consulted with the United Kingdom's Financial Services Authority (the ''FSA''), the European Securities and Markets Authority (''ESMA''), the International Organization of Securities Commissions (''IOSCO'') and Hong Kong's Securities and Futures Commission.[31] The FSA

[19] *See* section 204(b) of the Advisers Act. Today, regulators have little reliable data regarding this rapidly growing sector and frequently have to rely on data from other sources, which when available may be incomplete. *See, e.g.,* FSOC 2011 Annual Report, *http://www.treasury.gov/initiatives/fsoc/Pages/annual-report.aspx* (''FSOC 2011 Annual Report'') at 69. The SEC recently adopted amendments to Form ADV that will require the reporting of important information regarding private funds, but this includes little or no information regarding, for instance, performance, leverage or the riskiness of a fund's financial activities. *See* Implementing Adopting Release, supra note 11. The data collected through Form PF will be more reliable than existing data regarding the industry and significantly extend the data available through the revised Form ADV.

[20] *See, e.g.,* FSOC Second Notice, *supra* note 6; *Authority to Require Supervision and Regulation of Certain Nonbank Financial Companies,* Financial Stability Oversight Council Release (Jan. 18, 2011), 76 FR 4555 (Jan. 26, 2011); *Advance Notice of Proposed Rulemaking Regarding Authority to Require Supervision and Regulation of Certain Nonbank Financial Companies,* Financial Stability Oversight Council Release (Oct. 1, 2010), 75 FR 61653 (Oct. 6, 2010).

[21] *See* FSOC Second Notice, *supra* note 6 (''[FSOC] recognizes that the quantitative thresholds it has identified for application during [the initial stage of review] may not provide an appropriate means to identify a subset of nonbank financial companies for further review in all cases across all financial industries and firms. While [FSOC] will apply [such] thresholds to all nonbank financial companies, including * * * asset management companies, private equity firms, and hedge funds, these companies may pose risks that are not well-measured by the quantitative thresholds approach. * * * Using [Form PF] and other data, [FSOC] will consider whether to establish an additional set of metrics and thresholds tailored to evaluate hedge funds and private equity firms and their advisers.'').

[22] *See, e.g.,* comment letter of the American Federation of Labor and Congress of Industrial Organizations (Apr. 12, 2011) (''AFL–CIO Letter''); comment letter of the Council of Institutional Investors (Apr. 11, 2011) (''CII Letter'') (agreeing that ''the SEC's proposal will facilitate FSOC's ability to promote the soundness of the U.S. financial system'' but noting that the commenter's own working group report favored real-time reporting of position-level information).

[23] *See* AFL–CIO Letter (''We support the Proposed Rule, but believe it should be strengthened in a few key areas by requiring more frequent reporting, omitting the arbitrary distinction by investment strategy, and adding additional disclosure requirements necessary to protect investors and prevent systemic risks.''); comment letter of the Americans for Financial Reform (Apr. 12, 2011) (''AFR Letter'') (endorsing the AFL–CIO Letter).

[24] *See, e.g.,* comment letter of the Alternative Investment Management Association (Apr. 12, 2011) (''AIMA General Letter''); comment letter of the Investment Adviser Association (Apr. 12, 2011) (''IAA Letter''); comment letter of the Managed Funds Association (Apr. 8, 2011) (''MFA Letter''); comment letter of the Private Equity Growth Capital Council (Apr. 12, 2011) (''PEGCC Letter''); comment letter of Seward & Kissel, LLP (Apr. 12, 2011) (''Seward Letter''); comment letter of the Securities Industry and Financial Markets Association, Asset Management Group (Apr. 12, 2011) (''SIFMA Letter'').

[25] *See, e.g.,* comment letter of BlackRock Inc. (Apr. 12, 2011) (''BlackRock Letter''); IAA Letter (stating that they ''fully support the Commission's goal of enhancing transparency of private funds that may be deemed to present systemic risk to the U.S. financial markets'' but arguing that the proposal is too broad in scope); MFA Letter (supporting ''the approach proposed by the SEC and CFTC to collect information from registered private fund managers through periodic, confidential reports on Form PF'' and stating that the collection of data from market participants, including investment advisers and the funds they manage, ''is a critical component of effective systemic risk monitoring and regulation'').

[26] *See* section 175(b) of the Dodd-Frank Act. *See also* Proposing Release, *supra* note 12, at nn. 19–22 and accompanying text.

[27] *See* Proposing Release, *supra* note 12, at section I.B.

[28] *See, e.g.,* FSB, IMF and BIS, *Macroprudential Policy Tools and Frameworks, Update to G20 Finance Ministers and Central Bank Governors* (Feb. 14, 2011) (highlighting the need for ''[d]esign and collection of better information and data to support systemic risk identification and modelling [sic]''); FSB, *Shadow Banking: Scoping the Issues, A Background Note of the Financial Stability Board* (Apr. 12, 2011) (''FSB Shadow Banking Report'') (''authorities should cast the net wide, looking at all non-bank credit intermediation to ensure that data gathering and surveillance cover all the activities within which shadow banking-related risks might arise''); FSB and IMF, *The Financial Crisis and Information Gaps, Implementation Progress Report* (June 2011) (''Report on Information Gaps'').

[29] *See, e.g.,* Report on Information Gaps, *supra* note 28, at 5. The Commissions expect that they may share information reported on Form PF with various foreign financial regulators under information sharing agreements in which the foreign regulator agrees to keep the information confidential.

[30] *See, e.g.,* comment letter of the American Bar Association, Federal Regulation of Securities Committee and Private Equity and Venture Capital Committee (Apr. 11, 2011) (''ABA Committees Letter''); AIMA General Letter; comment letter of the Committee on Capital Markets Regulation (Apr. 12, 2011) (''CCMR Letter'').

[31] These consultations began prior to issuance of the Form PF proposal and have continued during

was the first to develop significant experience with hedge fund reporting, conducting a voluntary, semi-annual survey beginning in October 2009 by sampling large hedge fund groups based in the United Kingdom.[32] IOSCO, in turn, used the guidelines established in the FSA Survey, together with its own report on hedge fund oversight, in coordinating a survey of hedge funds conducted by IOSCO's members (including the SEC and CFTC) as of the end of September 2010.

Most recently, ESMA has proposed its own template for private fund reporting, which shares many common elements with the FSA Survey (as well as the IOSCO survey and Form PF).[33] ESMA's proposed template will serve as the basis for mandatory private fund reporting in Europe under the European Union's Directive on alternative investment fund managers (''EU Directive'') and is expected eventually to supersede the FSA Survey in the United Kingdom. The proposed ESMA template is broader in scope than the FSA Survey, requiring information about a wide range of alternative investment funds, including private equity funds, venture capital funds and real estate funds.[34] Form PF includes many of the types of information collected through the FSA Survey and proposed to be collected in the ESMA template, and a number of the changes we are making from the proposal further align Form PF with these international approaches to private fund reporting.[35]

## II. Discussion

The SEC is adopting Form PF and rule 204(b)–1 under the Advisers Act with several changes from the proposal that are designed to respond to commenter concerns. Under the new rule, SEC-registered investment advisers must report systemic risk information to the SEC on Form PF if they advise one or more private funds.[36] The final rule and changes from the proposal are discussed below.[37]

In addition, the CFTC is adopting rule 4.27 with minor revisions.[38] This new rule provides that, for registered CPOs and CTAs that are also registered as investment advisers with the SEC and are required to file Form PF, filing Form PF serves as substitute compliance for certain of the CFTC's proposed systemic risk reporting requirements should the CFTC adopt such requirements.[39] The CFTC has revised the new rule to allow CPOs and CTAs who are otherwise required to file Form PF the option of submitting on Form PF data regarding commodity pools that are not private funds as substitute compliance with certain of the CFTC's proposed systemic risk reporting requirements should the CFTC adopt such requirements.[40] The CFTC believes that the revisions to the CEA rule adopted in this Release provide additional clarity with respect to the filing obligations of dually registered CPOs and CTAs. Because commodity pools that are reported or required to be reported on Form PF are categorized as hedge funds for purposes of Form PF, as discussed below, CPOs and CTAs filing Form PF need to complete only the sections applicable to hedge fund advisers.[41]

As discussed above and in the Proposing Release, we have designed Form PF, in consultation with staff representing FSOC's members, to provide FSOC with information important to its understanding and monitoring of systemic risk in the private fund industry.[42] Based on our staffs' consultations with staff representing FSOC's members, we expect that FSOC will use the information collected on Form PF, together with market data from other sources, to assist in determining whether and how to deploy its regulatory tools. This may include, for instance, identifying private funds that merit further analysis or deciding whether to recommend to a primary financial regulator, like the SEC or CFTC, more stringent regulation of the financial activities of the private fund industry.[43]

Although the Form we are adopting will provide information useful to FSOC's regulatory mission, the Form has not been designed to be FSOC's exclusive source of information regarding the private fund industry.[44] FSOC's recently proposed guidance regarding its process for designating nonbank financial companies that may pose risks to U.S. financial stability for FRB supervision helps to illustrate how FSOC may use the Form PF data along with other data sources.[45] This guidance would establish a three-stage process for determinations, at least in non-emergency situations. In the first and second stages, FSOC would screen firms using progressively more granular analyses of publicly available data and data that, like Form PF, are collected by other regulators. In the third stage, FSOC would work with the Office of Financial Research (''OFR'') to conduct an in-depth review of specific firms identified in the first two stages, and this would generally involve OFR collecting additional, targeted information directly from these firms.[46]

the development of the final rules and Form. *See also* Proposing Release, *supra* note 12, at nn. 24–32 and accompanying text.

[32] *See, e.g.,* Financial Services Authority, *Assessing the Possible Sources of Systemic Risk from Hedge Funds: A Report on the Findings of the Hedge Fund Survey and the Hedge Fund as Counterparty Survey* (July 2011), *available at http://www.fsa.gov.uk/pubs/other/hedge_fund_report_july2011.pdf* (''FSA Survey''). *See also* Proposing Release, *supra* note 12, at nn. 27–30 and accompanying text.

[33] *See ESMA's draft technical advice to the European Commission on possible implementing measures of the Alternative Investment Fund Managers Directive,* ESMA/2011/209 (July 2011), available at *http://www.esma.europa.eu/index.php?page=consultation_details&id=185 (''ESMA Proposal'')*. *See also* Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EU and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (published July 1, 2011, in the Official Journal of the European Union).

[34] For additional discussion of international efforts relating to systemic risk monitoring in private equity funds, *see* Proposing Release, *supra* note 12, at nn. 33–35 and accompanying text.

[35] *See, e.g., infra* notes 227, 231, 244–246, 258, 279, 283 and 297 and accompanying text.

[36] *See* Advisers Act rule 204(b)–1.

[37] As noted above, section 204(b) of the Advisers Act gives the SEC authority to establish both reporting and recordkeeping requirements for private fund advisers. *See supra* note 12 and accompanying text. One commenter asked why the SEC proposed reporting requirements before proposing recordkeeping requirements for private fund advisers, expressing concern that advisers would need to know what records to maintain in order to report on Form PF. *See* comment letter of Congressman Darrell E. Issa, Chairman of the House Committee on Oversight and Government Reform (Sept. 20, 2011) (''Issa Letter''). Recordkeeping requirements serve a number of important purposes, such as ensuring that advisers maintain adequate documentation relevant to the disposition of their clients' and investors' assets and that SEC examiners are able to effectively inspect advisers' operations. The SEC does not believe, however, that establishing recordkeeping requirements is a necessary prerequisite to establishing reporting requirements.

[38] *See supra* note 16.

[39] *See* CEA rule 4.27. For purposes of this rule, it is the CFTC's position that any false or misleading statement of a material fact or material omission in the jointly adopted sections (sections 1 and 2) of Form PF that is filed by these CPOs and CTAs shall constitute a violation of section 6(c)(2) of the CEA.

[40] *Id.*

[41] Form PF is a joint form between the SEC and the CFTC only with respect to sections 1 and 2 of the Form. Accordingly, private fund advisers that are also CPOs or CTAs would be obligated to complete only section 1 and, if they meet the applicable threshold, section 2 of Form PF.

[42] *See* Proposing Release, *supra* note 12, at section II.A and at n. 49.

[43] *See supra* note 6.

[44] *See* Proposing Release, *supra* note 12, at n. 50 and accompanying text.

[45] *See* FSOC Second Notice, *supra* note 6. *See also* section 113 of the Dodd-Frank Act for a discussion of the matters that FSOC must consider when determining whether a U.S. nonbank financial company will be supervised by the FRB and subject to prudential standards.

[46] *See* sections 153 and 154 of the Dodd-Frank Act. One commenter expressed support for our approach, agreeing that, ''Form PF should be used to obtain enough information to make a preliminary assessment, which can be followed up with data

Continued

Similarly, in determining whether to exercise its other authorities for addressing potential systemic risks, we expect that FSOC would likely utilize data from other sources in addition to Form PF.

Form PF is primarily intended to assist FSOC in its monitoring obligations under the Dodd-Frank Act, but the Commissions may use information collected on Form PF in their regulatory programs, including examinations, investigations and investor protection efforts relating to private fund advisers. In section VI.A of this Release, we discuss some of the ways in which the SEC could use proposed Form PF data for its regulatory activities and investor protection efforts.

As discussed in more detail below, the amount and type of information required on Form PF varies based on both the size of the adviser and the types of funds managed. For instance, Form PF requires more detailed information from advisers managing a large amount of hedge fund or liquidity fund assets than from advisers managing fewer assets or other types of funds. This scaled approach is intended to provide FSOC with a broad picture of the private fund industry while relieving smaller advisers from much of the detailed reporting.[47] Based on our staffs' consultations with staff representing FSOC's members, we understand that obtaining this broad picture will help FSOC to contextualize its analysis and assess whether systemic risk may exist across the private fund industry and to identify areas where OFR may want to obtain additional information. This scaled approach is also designed to reflect the different implications for systemic risk that may be presented by different investment strategies.

*A. Who Must File Form PF*

An investment adviser must file Form PF if it: (1) Is registered or required to register with the SEC; (2) advises one or more private funds; and (3) had at least $150 million in regulatory assets under management attributable to private funds as of the end of its most recently completed fiscal year.[48] A CPO or CTA that is also registered or required to register with the SEC as an investment adviser and satisfies the other conditions described above must file Form PF with respect to any commodity pool it manages that is a ''private fund'' and may file Form PF with respect to any commodity pool it manages that is not a ''private fund.''[49] By filing Form PF with respect to these commodity pools, a CPO will be deemed to have satisfied certain filing requirements for these pools under the CFTC's regulatory regime should the CFTC adopt such requirements.[50]

We have modified the conditions under which an adviser must file Form PF by adding a minimum reporting threshold of $150 million in private fund assets under management.[51] Under the proposal, all private fund advisers registered with the SEC would have been required to file Form PF. The Dodd-Frank Act modified the Advisers Act's minimum registration requirements so that most advisers with less than $100 million in assets under management must register with one or more states rather than the SEC.[52] In addition, the Dodd-Frank Act created exemptions from SEC registration for advisers solely to venture capital funds and for advisers solely to private funds that in the aggregate have less than $150 million in assets under management in the United States.[53] As a result, under our proposed approach, most advisers with under $100 million in assets under management, and many advisers with less than $150 million in private fund assets under management, would not have reported on Form PF because they would not be registered with the SEC. However, some registered advisers with relatively few private fund assets would have been required to report on Form PF while exempt advisers with less than $150 million in private fund assets under management would not have been required to file Form PF.

Commenters argued that this outcome was not justified from a systemic risk perspective and recommended a minimum reporting threshold for advisers based on the amount of private fund assets under management.[54] One commenter proposed setting the threshold at $150 million to match the new private fund adviser exemption under section 203(m) of the Advisers Act.[55] From the perspective of systemic risk monitoring, it does not appear at this time that the value of gathering this information from registered advisers with less than $150 million in private fund assets under management justifies the burden to these advisers.

Most private fund advisers that are required to file Form PF will only need to complete section 1 of the Form. This section requires advisers to provide certain basic information regarding any private funds they advise in addition to information about their private fund assets under management and their funds' performance and use of leverage. We describe the information to be collected under section 1 of Form PF in further detail in section II.C.1 of this Release.

As discussed below, however, certain larger private fund advisers must complete additional sections of Form PF, which require more detailed information.[56] Specifically, three types

requests and dialogue for those firms who may potentially pose systemic risks—Form PF should not be considered the 'complete picture' of the private fund industry.'' AIMA General Letter.

[47] In this Release, we refer to advisers that do not satisfy a Large Private Fund Adviser threshold as ''smaller private fund advisers.'' This is not intended to imply that these advisers are small, only that they fall under certain of the Form's reporting thresholds. *See* section VI of this Release for a discussion of entities that are regarded as small for purposes of the Advisers Act.

[48] *See* Advisers Act rule 204(b)–1. This rule requires advisers to calculate the value of private fund assets under management pursuant to instructions in Form ADV, which provide a uniform method of calculating assets under management for regulatory purposes under the Advisers Act. *See* Implementing Adopting Release, *supra* note 11, at section II.A.3 (discussing the rationale underlying the new instructions for calculating assets under management for regulatory purposes).

[49] *See supra* note 10 for the definition of ''private fund.''

[50] *See* CEA rule 4.27. In the Proposing Release, the CFTC stated that a CPO registered with the CFTC that is also registered as a private fund adviser with the SEC will be deemed to have satisfied its filing requirements for Schedules B and C of Form CPO–PQR by completing and filing the applicable portions of Form PF for each of its commodity pools that satisfy the definition of ''private fund'' in the Dodd-Frank Act.

[51] *See* Advisers Act rule 204(b)–1.

[52] *See* section 203A of the Advisers Act. *See also* Implementing Adopting Release, *supra* note 11, at section II.A.

[53] *See* sections 203(l) and 203(m) of the Advisers Act and rules 203(l)–1 and 203(m)–1 under the Advisers Act. *See also* Exemptions Adopting Release, *supra* note 11.

[54] *See, e.g.,* IAA Letter; Seward Letter. Two commenters also supported a minimum reporting threshold based on the size of individual funds, suggesting an exclusion for funds ''with net asset values of less than $250 million and that are less than 5% of a manager's assets under management * * *.'' MFA Letter; *see also* BlackRock Letter. We do not believe that a threshold based on fund size would be appropriate because the aggregate amount of assets in smaller funds that an adviser controls may contribute significantly to the adviser's total ability to affect financial markets and the $150 million minimum reporting threshold that we are adopting, based on the adviser's private fund assets under management, will adequately differentiate between advisers with only smaller funds and those with significant fund assets.

[55] *See* IAA Letter.

[56] *See* Instruction 3 to Form PF. With this scaled approach, the reporting requirements we are adopting reflect the Dodd-Frank Act directive that, in formulating systemic risk reporting and recordkeeping for investment advisers to mid-sized private funds, the SEC take into account the size, governance, and investment strategy of such funds to determine whether they pose systemic risk. *See* section 203(n) of the Advisers Act. The Dodd-Frank Act also provides that the SEC may establish different reporting requirements for different classes of fund advisers, based on the type or size of private

of ''Large Private Fund Advisers'' would be required to complete certain additional sections of Form PF:

- Any adviser having at least $1.5 billion in regulatory assets under management attributable to hedge funds as of the end of any month in the prior fiscal quarter; [57]
- Any adviser managing a liquidity fund and having at least $1 billion in combined regulatory assets under management attributable to liquidity funds and registered money market funds as of the end of any month in the prior fiscal quarter; [58] and
- Any adviser having at least $2 billion in regulatory assets under management attributable to private equity funds as of the last day of the adviser's most recently completed fiscal year.[59]

These large advisers must complete additional sections of Form PF, with large hedge fund advisers completing section 2 and large liquidity fund and private equity fund advisers completing sections 3 and 4, respectively.[60] The information each of these sections requires is tailored to the type of fund, focusing on relevant areas of financial activity that have the potential to raise systemic concerns. We discuss these areas of financial activity as they relate to hedge funds, liquidity funds and private equity funds in greater detail in the Proposing Release and below.[61]

1. ''Hedge Fund'' Definition

Registered advisers managing hedge funds must submit information on Form PF regarding the financing and activities of these funds in section 1 of the Form, and large hedge fund advisers are required to provide additional information in section 2 of the Form.[62] Form PF defines ''hedge fund'' generally to include any private fund having any one of three common characteristics of a hedge fund: (a) A performance fee that takes into account market value (instead of only realized gains); (b) high leverage; or (c) short selling.[63] Solely for purposes of Form PF, a commodity pool that is reported or required to be reported on Form PF is treated as a hedge fund.

A number of commenters addressed the ''hedge fund'' definition. Some of these suggested that we eliminate the distinctions among fund types and instead require all advisers to complete the entire Form so that advisers could not use the definitions to avoid reporting requirements.[64] Others, however, urged us to narrow the definition so that fewer funds would be classified as hedge funds.[65] Form PF generally requires more information regarding hedge funds than other types of funds, and in most cases, an adviser must conclude that a fund is not a hedge fund in order to classify it as one of the six other types of private fund defined in Form PF.[66] As a result, narrowing the ''hedge fund'' definition in Form PF could have a significant effect on reporting. Commenters persuaded us, however, that certain revisions to the proposed definition would result in a more accurate grouping of funds, thereby improving the quality of the data collected and, at the same time, reducing the reporting burdens on some advisers.[67]

First, we have expressly excluded from the ''hedge fund'' definition in Form PF vehicles established for the purpose of issuing asset backed securities (''securitized asset funds'').[68] One commenter noted that these funds could have been categorized as hedge funds under our proposal, which was not the intended result.[69] Although the issuance of asset backed securities may have systemic risk implications, the questions on Form PF regarding hedge funds would not yield relevant data regarding securitized asset funds. As a result, including responses regarding securitized asset funds in the hedge fund data could distort the information FSOC obtains from questions directed at hedge funds.

Second, we have modified clause (a) Of the ''hedge fund'' definition in Form PF, which classifies a fund as a hedge fund if it uses performance fees or allocations that are calculated by taking into account unrealized gains. One

fund being advised. *See* section 204(b) of the Advisers Act.

[57] *See* Instruction 3 to Form PF. To determine whether an adviser must file a quarterly report at the end of the second quarter, it must look to its hedge fund assets under management as of the end of each month in the first quarter. *See infra* text accompanying note 112. We have modified the amount of this threshold from the proposal. For a discussion of this modification and the reasons for establishing the threshold at this amount, see below in section II.A.4.a of this Release (including notes 90–92 and accompanying text).

[58] *See supra* note 57. For a discussion of the reasons for establishing the threshold at this amount, see below in section II.A.4.a of this Release.

[59] *See* Instruction 3 to Form PF. For a discussion of the reasons for establishing the threshold at this amount, see below in section II.A.4.a of this Release.

[60] As adopted, Form PF requires advisers to determine whether they meet the large adviser thresholds less frequently than was proposed (quarterly rather than daily for hedge fund and liquidity fund advisers and annually rather than quarterly for private equity advisers). We discuss this change in section II.A.4 of this Release.

[61] *See* sections II.A.1, II.A.2 and II.A.3 of the Proposing Release, *supra* note 12, and sections II.C.2, II.C.3 and II.C.4 of this Release.

[62] Several commenters debated whether the hedge fund industry generally, or any hedge fund in particular, could pose systemic risk. *See, e.g.,* AFL–CIO Letter and CII Letter, identifying hedge fund activities that could have systemic consequences; and AIMA General Letter and MFA Letter, arguing that no hedge fund operating today is likely to be systemically significant. Even among skeptical commenters, however, there was recognition that ''there is no concrete data to draw conclusions either way, and that the exercise [of reporting] will be useful to allow the FSOC to make evidence-based conclusions.'' AIMA General Letter; *see also* MFA Letter. As discussed in the Proposing Release, we believe that Congress expected hedge fund advisers would be required to report under Title IV of the Dodd-Frank Act and that information regarding certain activities of hedge funds may be important to FSOC's monitoring of systemic risk. *See* Proposing Release, *supra* note 11, at nn. 54–61 and accompanying text.

[63] *See* Glossary of Terms to Form PF. We are defining the term ''hedge fund'' in Form PF solely for purposes of determining what information an adviser is required to report on the Form. This definition does not apply with respect to any other form or regulation of either Commission unless otherwise specified. The SEC has recently adopted this same definition in amendments to Form ADV. *See* Implementing Adopting Release, *supra* note 11, at nn. 248–255 and accompanying text. The CFTC has not adopted any definition of ''hedge fund'' beyond that adopted solely for purposes of Form PF.

[64] *See, e.g.,* AFL–CIO Letter.

[65] *See, e.g.,* ABA Committees Letter; AIMA General Letter; IAA Letter; PEGCC Letter; SIFMA Letter; comment letter of TCW Group, Inc. (Apr. 12, 2011) (''TCW Letter'').

[66] *See* Glossary of Terms to Form PF. Altogether, the seven types of private fund defined in Form PF are: (1) Hedge fund; (2) liquidity fund; (3) private equity fund; (4) real estate fund; (5) securitized asset fund; (6) venture capital fund; and (7) other private fund.

[67] The ''hedge fund'' definition, as well as the six other private fund definitions used in Form PF, are also included in the SEC's recent revisions to Form ADV. *See* Implementing Adopting Release, *supra* note 11, at section II.C.1. Although the SEC received no comments on these same definitions in the context of that rulemaking, the SEC believes that having consistent definitions in the two forms is important. As a result, the SEC considered in the context of that rulemaking the comments received on these definitions in Form PF and determined, when adopting revisions to Form ADV, to make several changes in that form. The changes we are making to these definitions as used in Form PF conform the two sets of definitions so that both forms use identical terms (with the exception that, for purposes of Form PF, all commodity pools about which an adviser is reporting are treated as hedge funds, while in Form ADV, only commodity pools that are private funds are treated as hedge funds). *See* Implementing Adopting Release, *supra* note 11, at nn 248–255. The CFTC has not adopted any definition of ''hedge fund'' beyond that adopted solely for purposes of Form PF.

[68] Specifically, the ''hedge fund'' definition in Form PF now refers to any private fund having one of the listed characteristics and excludes securitized asset funds. Under the proposal, a fund that satisfied the ''hedge fund'' definition would have been categorized as a hedge fund even if it otherwise would have satisfied the ''securitized asset fund'' definition. As adopted, Form PF defines ''securitized asset fund'' as any private fund ''whose primary purpose is to issue asset backed securities and whose investors are primarily debt-holders.'' We have also modified this definition from the proposal so that it is no longer defined by reference to the ''hedge fund'' definition. *See* Glossary of Terms to Form PF.

[69] *See* TCW Letter.

commenter pointed out that even funds that do not allow for the payment of such fees or allocations, such as private equity funds, may be required to accrue or allocate these amounts in their financial statements to comply with applicable accounting principles.[70] It was not intended for funds that accrue or allocate these fees or allocations solely for financial reporting purposes to be classified as hedge funds, so we have clarified that clause (a) relates only to fees or allocations that may be *paid* to an investment adviser (or its related persons).[71]

Third, we have addressed another commenter's concern that clause (a) could inadvertently capture certain private equity funds because, although these funds typically calculate currently payable performance fees and allocations based on realized amounts, they will sometimes reduce these fees and allocations by taking into account ''unrealized losses net of unrealized gains in the portfolio.'' [72] Funds should not be classified as hedge funds for purposes of Form PF based solely on this practice, and we have clarified that clause (a) would not include performance fees or allocations the calculation of which may take into account unrealized gains solely for the purpose of reducing such fees or allocations to reflect net unrealized losses.

Finally, several commenters asserted that clause (c) of the ''hedge fund'' definition, which looks to whether a fund may engage in short selling, should include an exception for a *de minimis* amount of short selling or exclude short selling intended to hedge the fund's exposures.[73] However, short selling appears to be, for purposes of Form PF, a potentially important distinguishing feature of hedge funds, many of which may, as the name suggests, use short selling to hedge or manage risk of various types. On the other hand, we also understand that many funds pursuing traditional investment strategies use short positions to hedge foreign exchange risk and to manage the duration of interest rate exposure, and we are persuaded that including funds within the definition of ''hedge fund'' in Form PF solely because they use these particular techniques would dilute the meaningfulness of the category. Therefore, we have modified clause (c) to provide an exception for short selling that hedges currency exposure or manages duration.[74]

Commenters arguing that, instead of a definition, the Commissions should take an approach similar to that used in the FSA Survey, which outlined common hedge fund characteristics and allowed an adviser ''to make its own good faith judgment as to whether a particular fund is a hedge fund,'' were not persuasive.[75] Such an approach could effectively defer to the adviser the determination of whether to report on Form PF information about hedge funds—an approach that might be appropriate for a voluntary survey, like the FSA's, but one that would significantly compromise the value of data collected for FSOC and thus would fail to achieve the purpose of this rulemaking.

Two other commenters suggested instead that we eliminate all of the private fund definitions and require that every private fund adviser complete the entire Form.[76] These commenters were concerned that any distinction among funds tied to the amount or type of information required would encourage advisers to change strategies in order to avoid reporting. Although we are sensitive to these concerns, we believe that distinguishing fund types is important for two reasons. First, by distinguishing among types of funds, we are able to limit the information collection burdens on advisers to funds for which the information is most relevant.[77] Second, separating reported data by fund strategy allows extraneous information to be excluded, which we believe will improve its utility to FSOC and the Commissions.

Several commenters also expressed concern that clauses (b) and (c) of the ''hedge fund'' definition in Form PF are too broad because many funds have the capacity to borrow or incur derivative exposures in excess of the specified amounts or to engage in short selling but do not in fact engage, or intend to engage, in these practices.[78] These commenters generally argued that clauses (b) and (c) should focus on actual or contemplated use of these practices rather than potential use. Changes to the ''hedge fund'' definition in response to these comments have not been made because clauses (b) and (c) properly focus on a fund's ability to engage in these practices. Even a fund for which leverage or short selling is an important part of its strategy may not engage in that practice during every reporting period. Thus, the suggested approach could result in incomplete data sets for hedge funds, a class of funds that may be systemically significant. However, a private fund would not be a ''hedge fund'' for purposes of Form PF solely because its organizational documents fail to prohibit the fund from borrowing or incurring derivative exposures in excess of the specified amounts or from engaging in short selling so long as the fund in fact does not engage in these practices (other than, in the case of clause (c), short selling for the purpose of hedging currency exposure or managing duration) and a reasonable investor would understand, based on the fund's offering documents, that the fund will not engage in these practices.

Finally, some commenters recommended that a fund should not be classified as a ''hedge fund'' for purposes of Form PF unless it satisfies at least two of the prongs of the ''hedge fund'' definition (rather than any one prong).[79] The definition is designed to identify funds that are an appropriate subject for the higher level of reporting to which hedge funds will be subject

[70] *See* TCW Letter.

[71] Some commenters objected to clause (a) of the ''hedge fund'' definition more generally, arguing that it is too broad because some traditional/long only funds use performance fees or allocations calculated by taking into account unrealized gains. *See, e.g.,* AIMA General Letter; TCW Letter. However, based on our staffs' discussions with staff representing FSOC's members, we believe that funds using these types of fees are often active in markets that FSOC may desire to monitor for concentration risks. In addition, Form PF is intended to provide FSOC with a broad picture of the private fund industry so that it has context against which to assess systemic risk. An important part of this is gathering information about funds with similar characteristics, such as performance fees based on unrealized gains, so that industry-wide comparisons can be made. The inclusion of any particular fund in a reporting group, whether as a result of the private fund definitions or the reporting thresholds, does not represent a conclusion that the fund engages in activities that pose systemic risk.

[72] *See* PEGCC Letter.

[73] *See* IAA Letter; PEGCC Letter; SIFMA Letter; TCW Letter.

[74] We have also made a change to clause (c) to clarify that this clause includes traditional short sales and any transaction resulting in a short exposure to a security or other asset (such as using a derivative instrument to take a short position). The purpose of this definition is to categorize funds that engage in certain types of market activity, and therefore, whether the definition applies should not depend on the form in which the fund engages in that activity.

[75] ABA Committees Letter. *See also* AIMA General Letter; IAA Letter; Seward Letter.

[76] *See* AFL–CIO Letter; AFR Letter.

[77] For instance, one commenter, in agreeing that Form PF appropriately differentiates ''between the reporting requirements for hedge funds and private equity funds,'' pointed out that section 2 of the Form, which would be completed by large hedge fund advisers, contains many questions that ''are not relevant to private equity funds.'' This commenter also explained that requiring response to ''questions that are not directly related to'' the operations of private equity advisers would impose burdens on both FSOC and the advisers. *See* comment letter of Lone Star U.S. Acquisitions (Apr. 12, 2011) (''Lone Star Letter'').

[78] *See, e.g.,* AIMA General Letter; IAA Letter; PEGCC Letter; SIFMA Letter; TCW Letter.

[79] *See, e.g.,* Lone Star Letter; PEGCC Letter; TCW Letter.

under Form PF, and, based on our staffs' consultations with staff representing FSOC's members, we believe that any one of the identified characteristics is sufficient to appropriately distinguish a fund for this purpose. We have not, therefore, made the change these commenters suggested. The changes to the ''hedge fund'' definition discussed above are intended to more accurately group private funds for purposes of Form PF and, thereby, improve the quality of information reported.

2. ''Liquidity Fund'' Definition

Registered advisers managing liquidity funds must submit information on Form PF regarding the financing and activities of these funds in section 1 of the Form, and large liquidity fund advisers are required to provide additional information in section 3 of the Form.[80] For purposes of Form PF, a ''liquidity fund'' is any private fund that seeks to generate income by investing in a portfolio of short term obligations in order to maintain a stable net asset value per unit or minimize principal volatility for investors.[81] Commenters did not address the ''liquidity fund'' definition, which the SEC is adopting as proposed.

3. ''Private Equity Fund'' Definition

Registered advisers managing private equity funds must submit information on Form PF regarding the financing and activities of these funds in section 1 of the Form, and large private equity advisers are required to provide additional information in section 4 of the Form.[82] Consistent with the proposal, Form PF defines ''private equity fund'' as any private fund that is not a hedge fund, liquidity fund, real estate fund, securitized asset fund or venture capital fund and does not provide investors with redemption rights in the ordinary course.[83] Two commenters advocated for a definition of ''private equity fund'' that would not depend on whether a fund is a hedge fund.[84] This approach could, however, create gaps between the definitions and encourage advisers to structure around the reporting requirements.[85] The changes we have made to the ''hedge fund'' definition substantially address the concerns of these commenters.[86] Therefore, we believe that the proposed approach to defining ''private equity fund'' continues to be appropriate for the purposes of Form PF.

4. Large Private Fund Adviser Thresholds

a. Amounts

As noted above, we are adopting a threshold of $1.5 billion in hedge fund assets under management for large hedge fund adviser reporting, $1 billion in combined liquidity fund and registered money market fund assets under management for large liquidity fund adviser reporting, and $2 billion in private equity fund assets under management for large private equity fund adviser reporting.[87] These thresholds are designed so that the group of Large Private Fund Advisers filing Form PF will be relatively small in number but represent a substantial portion of the assets of their respective industries. For example, we estimate that approximately 230 U.S.-based advisers each managing at least $1.5 billion in hedge fund assets represent over 80 percent of the U.S. hedge fund industry based on assets under management.[88] Similarly, SEC staff estimates that the approximately 155 U.S.-based advisers each managing over $2 billion in private equity fund assets represent approximately 75 percent of the U.S. private equity fund industry based on committed capital.[89]

The threshold we are adopting for large hedge fund advisers reflects an increase from the $1 billion threshold that we proposed. We do not expect,

[80] Form PF is a joint form between the SEC and the CFTC only with respect to sections 1 and 2 of the Form. Section 3 of the Form, which requires more specific reporting regarding liquidity funds, is only required by the SEC.

[81] *See* Glossary of Terms to Form PF. As discussed in the Proposing Release, liquidity funds can resemble registered money market funds, certain features of which may make them susceptible to runs and thus create the potential for systemic risk. *See* Proposing Release, *supra* note 12, at section II.A.2.

[82] Form PF is a joint form between the SEC and the CFTC only with respect to sections 1 and 2 of the Form. Section 4 of the Form, which requires more specific reporting regarding private equity funds, is only required by the SEC.

[83] *See* Glossary of Terms to Form PF. The definitions of ''real estate fund'' and ''venture capital fund'' are being adopted as proposed, and changes to the definition of ''securitized asset fund'' are discussed above. *See supra* note 69. These definitions are primarily intended to exclude these types of funds from our definition of ''private equity fund'' to improve the quality of data reported on Form PF relating to private equity funds.

[84] *See* PEGCC Letter (proposing an alternative that largely inverts the proposed ''hedge fund'' definition but would allow for short selling and soften other distinctions); SIFMA Letter (suggesting an alternative that would define a ''private equity fund'' as a private fund having ''a large number of sophisticated, third-party institutional and high net worth investors'' and satisfying ten additional criteria, including that ''the fund and its investment activities are not subject to regulatory restrictions or limitations.'').

[85] Some commenters were concerned that creating any distinctions among funds would encourage advisers to change strategies in order to avoid reporting. *See supra* note 76 and accompanying text. The SEC believes, based on its staff's consultations with staff representing FSOC's members, that this risk is best addressed by tightly integrating the definitions.

[86] *See supra* notes 64–79 and accompanying text for a discussion of comments on the ''hedge fund'' definition and the changes we are making from the proposal. Some of these comments reflected concern that the breadth of the ''hedge fund'' definition would cause it to capture some private equity funds. Commenters arguing for an independent ''private equity fund'' definition expressed similar concerns. As discussed above, certain of the changes we are making to the ''hedge fund'' definition are designed to address these concerns.

[87] As proposed, we are requiring that an adviser determine whether it meets a threshold and qualifies as a large hedge fund adviser, large liquidity fund adviser or large private equity adviser based solely on the assets under management attributable to the particular types of fund. Two commenters suggested that we instead require advisers to aggregate all of their assets under management, regardless of strategy, for purposes of the thresholds. *See* AFL–CIO Letter; AFR Letter. These commenters cautioned that our approach could allow advisers with substantial private fund assets under management to nevertheless avoid classification as a Large Private Fund Advisers. We are sensitive to these commenters' concerns, but we continue to believe that the hedge fund, liquidity fund and private equity fund business models are sufficiently distinct that for FSOC's purposes they are most appropriately analyzed on a separate basis.

[88] *See Billion Dollar Club*, HedgeFund Intelligence (''HFI'') (Oct. 3, 2011). We estimate that, in addition to the 230 U.S.-based hedge fund advisers that will exceed the threshold, approximately 23 non-U.S. private fund advisers will also be classified as large hedge fund advisers, for a total of approximately 250 large hedge fund advisers. We have based this estimate of non-U.S. advisers on IARD data as of October 1, 2011, showing that, among currently registered private fund advisers, fewer than 10% are non-U.S. advisers. (We are not aware of any reason that recent changes in the exemptions available under the Advisers Act would affect the relative representation of U.S. and non-U.S. advisers.) One commenter suggested that estimates based on HFI data should be grossed up because the database is under-inclusive. *See* comment letter of the Alternative Investment Management Association (Jul. 26, 2011) (''AIMA AUM Letter''). Although we acknowledge that this database is likely somewhat under-inclusive, we believe that the amount of assets under management not represented in the database is relatively small because the aggregate amount of assets reported to the database is consistent with other data sources estimating the total size of the hedge fund industry. In addition, we believe the uncounted assets are likely skewed toward the smaller advisers in the industry because the identity and size of the industry's largest advisers are relatively consistent across sources. As a result, although this database may under-represent the total amount of hedge fund industry assets under management, the count of large hedge fund advisers is likely to be relatively accurate. The changes to the ''hedge fund'' definition discussed above will likely result in fewer funds being classified as hedge funds than under the proposed definition. However, these changes are intended to more accurately group private funds for purposes of Form PF and should more closely align the definition to the estimates discussed above.

[89] Preqin. The Preqin data relating to private equity fund committed capital is available in File No. S7–05–11. We estimate that, in addition to the 155 U.S.-based private equity advisers that will exceed the threshold, approximately 16 non-U.S. private fund advisers will also be classified as large private equity advisers, for an approximate total of 170 large private equity advisers. *See supra* note 88 for a discussion of the basis for this estimate.

however, that this increase will substantially change the group of advisers that were estimated in the proposal would be classified as large hedge fund advisers. Rather, the change is intended simply to adjust for a difference in how assets under management are measured in Form PF compared to how they are measured in the commercial databases that we consulted in proposing the $1 billion threshold amount. Form PF uses the definition of ''regulatory assets under management'' that the SEC recently adopted in connection with amendments to its Form ADV. This definition measures assets under management *gross* of outstanding indebtedness and other accrued but unpaid liabilities. One commenter pointed out, however, that the assets under management that advisers report to the currently available third-party databases are generally calculated on a *net* basis.[90] In other words, without adjustment, our proposed threshold of $1 billion in gross assets would have captured advisers with less than $1 billion in net assets, expanding the group of advisers classified as large hedge fund advisers beyond what we intended.[91] We believe this revised threshold strikes an appropriate balance between obtaining information regarding a significant portion of the hedge fund industry while minimizing the burden imposed on smaller advisers.[92]

An adviser managing liquidity funds must combine liquidity fund and registered money market fund assets for purposes of determining whether it meets the threshold for more extensive reporting regarding its liquidity funds. Liquidity funds and registered money market funds often pursue similar strategies, invest in the same securities and present similar risks. An adviser is, however, only required to report information about unregistered liquidity funds on Form PF. This information will supplement data the SEC collects about registered money market funds on its Form N–MFP and provide FSOC a more complete picture of large liquidity pools and their management. The SEC expects this approach to the reporting threshold to capture approximately 80 of the most significant managers of liquidity funds.[93] Commenters supported this approach, which we are adopting as proposed.[94]

Based on our staffs' consultations with staff representing FSOC's members, we believe that requiring basic information from all registered advisers over the minimum reporting threshold but more extensive and detailed information only from advisers meeting the higher thresholds is important to enabling FSOC to obtain a broad picture of the private fund industry. We understand that obtaining this broad picture will help FSOC to contextualize its analysis and assess whether systemic risk may exist across the private fund industry and to identify areas where OFR may want to obtain additional information. At the same time, requiring that only these Large Private Fund Advisers complete additional reporting requirements under Form PF will provide systemic risk information for a substantial majority of private fund assets while minimizing burdens on smaller private fund advisers that are less likely to pose systemic risk concerns.

Although thresholds set at a higher amount could still yield information regarding much or a majority of the private fund industry's assets under management, such thresholds would potentially impede FSOC's ability to obtain a representative picture of the private fund industry. The activities of private fund advisers may differ significantly depending on size because, for instance, some strategies may be practical only at certain scales.[95] As a result, obtaining information regarding, for instance, 50 percent or 60 percent of the industry's assets under management may not be sufficient to confidently draw conclusions regarding the remaining portion of the industry. However, because relatively few advisers manage most of the industry's assets under management, a substantial reduction in the potential burdens of reporting can be achieved without sacrificing the ability to obtain a more representative picture. For example, setting the threshold to cover, for instance, 80 percent of industry assets under management rather than 100 percent would relieve thousands of advisers from more detailed reporting while still obtaining a reasonably representative picture.[96] There are, however, limits to the range within which this tradeoff can be effectively made. For example, setting the thresholds to cover, for instance, 60 percent of industry assets under management rather than 80 percent would relieve a relatively small segment of advisers from more detailed reporting but might not result in a picture broad enough to be representative. Accordingly, the thresholds have been established to balance FSOC's need for a broad, representative set of data regarding the private fund industry with the desire to limit the potential burdens of private fund systemic risk reporting.

Commenters expressed support for a tiered reporting system based on size.[97]

[90] *See* AIMA AUM Letter.

[91] We are not aware of any existing source with data regarding the gross assets under management of U.S. hedge fund managers. Therefore, based on our staffs' consultations with staff representing FSOC's members, we have established this threshold by multiplying the proposed threshold by an industry average leverage ratio of 1.5 times net assets. The commenter suggested that industry leverage ranges between 1.5 and 3 times net assets but noted that leverage ratios over the preceding 12 months had dropped to 1.1 times investment capital. *See* AIMA AUM Letter; *see also* MFA Letter (citing leverage ratios from 3.0 to as low as 1.16); Andrew Ang, *et al., Hedge Fund Leverage,* National Bureau of Economic Research (Feb. 2011). We have used a leverage ratio at the lower end of this range because, without data regarding the industry's gross assets, it cannot confidently be estimated that a higher threshold would capture a portion of the industry sufficient to allow FSOC to effectively perform systemic risk assessments. Also, although the definition of ''regulatory assets under management'' is measured gross of certain liabilities, it does not capture all forms of leverage that may be included in the sources cited in the AIMA AUM Letter, such as off-balance sheet leverage. As a result, the leverage implied by ''regulatory assets under management'' may be lower than the leverage estimated based on these sources. The AIMA AUM Letter also suggested that the average leverage ratio used should be asset-weighted because advisers with over $1 billion in net assets under management tend to use greater amounts of leverage. However, these larger advisers would exceed the threshold even if measured on a net basis. The adjustment to the threshold to account for leverage is most relevant for the middle group of advisers, not the large advisers, and the leverage ratio we have used is consistent with the leverage ratio this commenter estimates for advisers with $200 million to $1 billion in net assets under management.

[92] Similar adjustments to the thresholds applicable to liquidity fund advisers and private equity fund advisers have not been made because we understand these strategies typically involve little leverage at the fund level. *See infra* note 306 and accompanying text.

[93] *See also* Proposing Release, *supra* note 12, at n. 89. The estimate of the number of large liquidity fund advisers is based on the number of advisers with at least $1 billion in registered money market fund assets under management, as reported on Form N–MFP as of October 1, 2011.

[94] *See* AFL–CIO Letter; AFR Letter.

[95] For example, one commenter cited evidence suggesting that the use of leverage varies significantly with fund size, though they did not state whether this variation continues among advisers with over $1 billion in net assets under management. *See* AIMA AUM Letter. *See also* Ibbotson, Roger G., Peng Chen, and Kevin X. Zhu, 2011, *The ABCs of Hedge Funds: Alphas, Betas, and Costs,* Financial Analysts Journal 67 (1) (''Ibbotson, *et al.''*) at 17–18 (discussing possible explanations for observed differences in returns for larger and smaller hedge funds).

[96] In the PRA analysis below, the SEC estimates that the large adviser thresholds will result in approximately 500 advisers reporting additional information in section 2, 3 or 4 of Form PF while approximately 3,070 advisers will report information only in section 1 and another 700 will not report on Form PF at all because of the minimum reporting threshold. *See infra* section IV.A of this Release.

[97] *See, e.g.,* comment letter of Coalition of Private Investment Companies (Mar. 31, 2011) (''CPIC Letter'') and MFA Letter.

However, most commenters thought the proposed threshold of $1 billion was either too high or too low.[98] Commenters arguing for a lower threshold expressed concern that, at $1 billion, regulators would receive insufficient information to monitor certain types of market behavior with potentially systemic consequences.[99] In contrast, a number of commenters argued that even an adviser with $1 billion in assets under management could not pose systemic risk.[100] Several of these commenters supported an increase to $5 billion, which they argued would still capture over half the hedge fund industry while ensuring that advisers have sufficient operational capabilities to complete the Form.[101]

We have carefully considered these comments in light of the information we understand FSOC desires and its intended use by FSOC. Based on this, the SEC has determined to adopt the proposed threshold for large liquidity fund advisers and to increase the threshold for large private equity fund advisers to $2 billion. We are adopting the threshold for large hedge fund advisers with the corrective change discussed above. Although we understand commenters' concerns that the proposed thresholds are too high and will not permit regulators to detect certain group behaviors among smaller private fund advisers, we believe at this time that the amount of additional information that would be required for this purpose would impose a significant burden on these smaller advisers and not significantly expand FSOC's ability to understand the industry.

On the other hand, in light of the information we understand FSOC desires and its intended use by FSOC, we are also not persuaded that a larger increase in the thresholds would be appropriate. Commenters supporting an increase may be correct that an adviser just exceeding these thresholds could not be large enough to pose systemic risk. However, the thresholds are not intended to establish a cutoff separating the risky from the safe but rather to provide FSOC with sufficient context for the assessment of systemic risk while minimizing the burden imposed on smaller advisers.[102] We understand based on our staffs' consultation with staff representing FSOC's members that, in order to assess potential systemic risk posed by the activities of certain funds, FSOC would benefit from access to data about funds that, on an individual basis, may not be a source of systemic risk. As discussed above, the increase that some commenters supported would result in coverage of a substantially smaller part of the industry, potentially impeding FSOC's ability to obtain a broad picture of the private fund industry.[103]

The SEC is, however, persuaded that an increase in the threshold for large private equity advisers that is smaller than some commenters advocated can be made without sacrificing the ability to obtain a broad picture of the private equity industry. SEC staff estimates that an increase in this threshold to $2 billion from the proposed $1 billion will reduce the portion of U.S. private equity industry assets covered by the more detailed reporting in section 4 of the Form from approximately 85 percent to approximately 75 percent.[104] At the same time, it reduces the number of U.S.-based advisers SEC staff estimates will be categorized as large private equity advisers from approximately 270 to approximately 155.[105] This will significantly mitigate the number of advisers subject to the more detailed reporting while still covering a substantial majority of industry assets. As a result of this change, section 4 of Form PF will cover a smaller portion of U.S. private equity industry assets than section 2 covers of U.S. hedge fund industry assets. However, the SEC believes this result is appropriate because private equity funds tend to pursue a narrower range of strategies than hedge funds, reducing concerns regarding the level of representativeness.

b. Frequency of Testing

The proposal would have required hedge fund and liquidity fund advisers to measure whether they had crossed these thresholds on a daily basis and private equity advisers to measure them on a quarterly basis. The proposed approach was based on our understanding that, as a matter of ordinary business practice, advisers are aware of hedge fund and liquidity fund assets under management on a daily basis, but are likely to be aware of private equity fund assets under management only on a quarterly basis.

However, several commenters argued that advisers would have difficulty monitoring on a daily basis the value of private funds holding complex or illiquid investments.[106] One commenter also noted that, in any given quarter, an adviser could experience significant spikes in the value of its assets under management.[107] These commenters suggested a variety of alternatives, such as testing at the end of the prior reporting period,[108] using an average over the period (possibly based on values at the end of each month in the quarter),[109] or testing at the end of each month.[110] We are persuaded that requiring daily testing of complex or illiquid investments could impose a substantial burden on some advisers,

[98] Compare AFL–CIO Letter and AFR Letter (supporting a lower threshold) to AIMA General Letter; IAA Letter; MFA Letter; PEGCC Letter; SIFMA Letter (supporting a higher threshold). *See also* comment letter of George Merkl (Feb. 22, 2011) (''Merkl February Letter'') (supporting the proposed thresholds).

[99] *See* AFL–CIO Letter (arguing that the proposal would not allow regulators to monitor ''herding'' behavior, which it defines as the tendency for market participants to trade together on one side of the market; also suggesting that, at a minimum, advisers with between $150 million and $1 billion in assets under management ''should be required to complete all applicable sections of Form PF on a semi-annual basis.''); AFR Letter.

[100] *See, e.g.,* AIMA General Letter (also questioning whether the SEC and FSOC have the capacity to analyze the data from all the advisers above the proposed threshold); IAA Letter; MFA Letter; comment letter of Olympus Partners (Apr. 1, 2011) (''Olympus Letter''); PEGCC Letter (preferring that there be no large adviser category for private equity fund advisers because, in their view, these advisers pose little systemic risk); Seward Letter; SIFMA Letter; comment letter of the United States Chamber of Commerce, Center for Capital Markets Competitiveness (Apr. 12, 2011) (''USCC Letter'').

[101] *See, e.g.,* AIMA General Letter (asserting that a $5 billion threshold ''still captures around 50–60% of the US hedge fund industry assets or just over 75 large hedge fund managers.''); MFA Letter (''Based on estimates, 77 hedge fund managers representing approximately 50–60% of hedge fund industry assets would exceed this [$5 billion] threshold.''); Seward Letter; USCC Letter (citing figures similar to those provided in the AIMA General Letter and the MFA Letter in support of a $5 billion threshold). Other commenters asserted that the thresholds should take into account measures of leverage or derivatives exposures rather than just assets under management. *See, e.g.,* ABA Committees Letter; AIMA General Letter. As discussed above, measuring these thresholds using ''regulatory assets under management,'' as defined in Form ADV, implies adjustment for some forms of leverage. Two commenters suggested that, instead of assets under management, the adviser's proprietary assets are the most appropriate measure of assets at risk. *See* PEGCC Letter; USCC Letter. However, private fund advisers exercise significant discretion over the assets they manage, which makes assets under management a more accurate measure of an adviser's ability to affect the U.S. financial system.

[102] *See supra* text accompanying notes 94–96. As noted above, the FSOC Second Notice highlights that even establishing guidelines for evaluating private fund advisers may require the context that Form PF will provide. *See supra* note 21.

[103] In particular, the activities of private fund advisers may differ significantly depending on size and that the portion of industry assets represented by advisers with over $5 billion in private fund assets under management may look substantially different from the portion of industry assets represented by advisers with between, for instance, $1 billion and $5 billion.

[104] *See supra* note 89.

[105] *See supra* note 89.

[106] *See, e.g.,* ABA Committees Letter; BlackRock Letter; MFA Letter; Seward Letter.

[107] *See* ABA Committees Letter.

[108] *See* BlackRock Letter; MFA Letter.

[109] *See* ABA Committees Letter; AIMA General Letter; IAA Letter.

[110] *See* Seward Letter.

and we have, accordingly, modified the Form so that advisers need only test whether their hedge fund or liquidity fund assets meet the relevant threshold as of the end of each month.[111] In addition, as some commenters suggested, the test will look back one quarter so that these advisers know at the start of each reporting period whether they will be required to complete the more detailed reporting required of large hedge fund advisers and large liquidity fund advisers.[112] We did not adopt an approach using an average because it would add unnecessary complexity and potentially allow an adviser whose assets under management have grown significantly during a quarter to delay more detailed reporting for an additional quarter.

Commenters also objected to the proposed quarterly testing with respect to private equity advisers, suggesting that even such infrequent testing may be difficult for some advisers.[113] As we discuss in further detail below, large private equity fund advisers will be required to report information regarding their private equity funds only on an annual (rather than quarterly) basis, with the result that quarterly testing of the threshold is unnecessary.[114] Accordingly, advisers need only test whether their private equity fund assets meet the relevant threshold at the end of each fiscal year.[115]

5. Aggregation of Assets Under Management

For purposes of determining whether an adviser meets the $150 million minimum reporting threshold or is a Large Private Fund Adviser for purposes of Form PF, the adviser must aggregate together:

- Assets of managed accounts advised by the firm that pursue substantially the same investment objective and strategy and invest in substantially the same positions as private funds advised by the firm (''parallel managed accounts'') unless the value of those accounts exceeds the value of the private funds with which they are managed;[116] and
- Assets of private funds advised by any of the adviser's ''related persons'' other than related persons that are separately operated.[117]

These aggregation requirements are designed to prevent an adviser from avoiding Form PF reporting requirements by re-structuring how it provides advice.

We have modified these aggregation requirements from the proposal. As adopted, an adviser may exclude parallel managed accounts if the value of those accounts is greater than the value of the private funds with which they are managed.[118] This change recognizes that, as some commenters noted, an adviser managing a relatively small amount of private fund assets could end up crossing a reporting threshold simply because it has a significant separate account business using a similar strategy.[119] We believe this approach is consistent with section 204(b) of the Advisers Act, the focus of which is private fund reporting.[120] We remain concerned, however, that advisers focusing on private funds may increasingly structure investments as separate accounts to avoid Form PF reporting requirements, which could diminish the utility to FSOC of the information collected on Form PF.[121] Accordingly, an adviser must still include the value of parallel managed accounts in determining whether it meets a reporting threshold if the value of those accounts is less than the value of the private funds managed using substantially the same strategy.[122]

We have also modified these aggregation requirements from the proposal so that advisers may exclude the assets under management of related persons that are separately operated.[123] There was general support for the proposed aggregation of related persons.[124] However, commenters argued that ''[r]equiring aggregation of funds managed by 'any related person' is not possible for many large institutions such as a large firm which operates under separate business units with independent asset management functions and decision making by affiliated entities.''[125]

We are persuaded that advisers may have difficulty gathering the information necessary to aggregate the assets of related persons whose operations are genuinely independent of their own and that, with an appropriate standard of separateness, the risk of evasion is substantially mitigated. Having considered several existing SEC standards of separateness, we believe that the most appropriate for this purpose is the standard the SEC recently adopted in Item 7.A of Form ADV for determining whether an adviser must complete section 7.A of Schedule D to that form with respect to a related

[111] *See* Instruction 3 to Form PF.

[112] *Id. See also supra* note 108.

[113] *See* Merkl February Letter (noting that some private equity funds do not provide first and third quarter financial statements to investors); PEGCC Letter (suggesting annual testing and asserting that the less volatile nature of private equity investments would not justify the cost of quarterly valuation).

[114] *See* section II.B of this Release.

[115] *See* Instruction 3 to Form PF.

[116] *See* Instructions 1, 3, 5, and 6 to Form PF; and Glossary of Terms to Form PF. *See also* definitions of ''dependent parallel management account,'' ''hedge fund assets under management,'' ''liquidity fund assets under management,'' and ''private equity fund assets under management'' in the Glossary of Terms to Form PF.

[117] *See* Instructions 3 and 5 to Form PF. ''Related person'' is defined generally as: (1) All of the adviser's officers, partners, or directors (or any person performing similar functions); (2) all persons directly or indirectly controlling, controlled by, or under common control with the adviser; and (3) all of the adviser's employees (other than employees performing only clerical, administrative, support or similar functions). For purposes of Form PF, a related person is ''separately operated'' if the advisers is not required to complete section 7.A. of Schedule D to Form ADV with respect to that related person. *See* Glossary of Terms to Form PF and Glossary of Terms to Form ADV. In addition, an adviser may, but is not required to, file one consolidated Form PF for itself and its related persons. *See infra* section II.A.6 of this Release.

[118] *See supra* note 116.

[119] *See* IAA Letter; TCW Letter.

[120] An adviser managing primarily separate accounts would, of course, still be subject to the applicable Form PF reporting requirements if its private fund assets, taken alone, would cause it to exceed one or more reporting thresholds.

[121] Commenters disagreed over whether such evasion was likely. One commenter supported the proposed aggregation rules, agreeing that they ''will prevent [an adviser from splitting itself] into smaller components to avoid reporting requirements that are triggered by the amount of assets that are managed by an investment adviser.'' Merkl February Letter. Another commenter, however, was skeptical that advisers would re-structure to avoid reporting because clients typically determine the structure of their investments. *See* IAA Letter. Although clients may in many cases dictate the form of investment, we believe that advisers are not without influence in such structuring decisions and may prefer to avoid reporting on Form PF. (We note that advisers, as fiduciaries, may not subordinate clients' interests to their own such as by altering the structure of investments in a way that is not in the client's best interest in an attempt to remain under the reporting thresholds.)

[122] *See supra* note 116. Some commenters also encouraged us to narrow the definition of ''parallel managed account'' so that fewer accounts or fewer types of accounts would be covered. *See, e.g.,* AIMA General Letter; IAA Letter (suggesting that we replace ''substantially the same'' with the ''same''); comment letter of the Investment Company Institute (Apr. 12, 2011); TCW Letter (suggesting we exclude registered investment companies, undertakings for collective investment in transferable securities (UCITS) and SICAVs). We have, however, determined to adopt this definition as proposed because we believe that it appropriately reflects the total amount of assets that an adviser is managing using a particular strategy. In addition, the changes we are making with respect to how these account assets are treated for purposes of the reporting thresholds, as well as changes discussed below that allow advisers not to aggregate these account assets with their private funds for reporting purposes, substantially address the concerns of these commenters. *See infra* note 335 and accompanying text.

[123] *See supra* note 117. *See also* Proposing Release, *supra* note 12, for the proposed version of Instructions 3, 5 and 6 to Form PF.

[124] *See, e.g.,* Merkl February Letter.

[125] TCW Letter. *See also* IAA Letter.

person.[126] Although the Item 7.A standard was adopted for a somewhat different regulatory purpose, we believe it suits this role as well. In addition, every adviser filing Form PF will have already considered this standard with respect to its related persons, which means that applying the standard in the context of Form PF will impose little or no incremental burden on advisers. Accordingly, for purposes of determining whether an adviser meets one or more of the reporting thresholds, the adviser need only aggregate its private fund assets with those of its related persons for which it is required to complete section 7.A of Schedule D to Form ADV.[127]

For purposes of both the reporting thresholds and responding to questions on Form PF, an adviser may exclude any assets invested in the equity of other private funds.[128] In addition, if any of the adviser's private funds invests substantially all of its assets in the equity of other private funds and, aside from those investments, holds only cash, cash equivalents and instruments intended to hedge currency risk, the adviser may complete only section 1b with respect to that fund and otherwise disregard that fund.[129] These instructions are intended to avoid duplicative reporting, which reduces the burden of reporting for advisers and improves the quality of the data reported.

Based on our staffs' consultation with staff representing FSOC's members, we have expanded from the proposal the scope of assets that may be disregarded under this instruction. The proposed instruction would have allowed advisers to disregard only fund of funds that invest exclusively in other private funds.[130] Commenters expressed concern that the proposed instruction would prove too narrow to accommodate many funds of funds, noting that these funds often hold cash or some amount of direct investments.[131] These commenters generally sought a broader exclusion for funds of funds, suggesting alternatives that would allow these funds to hold essentially unlimited dollar amounts of direct investments while not reporting on Form PF.[132] In light of the purpose for which information is collected on Form PF, we are not convinced that an adviser should not have to report on a fund's direct investments simply because it primarily holds investments in other private funds. However, we are persuaded that our proposed exception for funds of funds was too narrow in that it did not allow for a *de minimis* amount of cash, cash equivalents and currency hedges. These limited non-private fund holdings appear unlikely, on their own, to raise systemic concerns. We are also persuaded that, even where a fund is not necessarily a ''fund of funds'' but holds investments in other private funds, reporting on those investments is unnecessary because information regarding the other private funds will, in most cases, be reported separately on Form PF, and we have modified the instructions accordingly.[133]

If an adviser's principal office and place of business is outside the United States, the adviser may exclude any private fund that, during the adviser's last fiscal year, was not a United States person, was not offered in the United States, and was not beneficially owned by any United States person.[134] This approach is designed to reduce the duplication of reporting requirements that foreign regulators may impose and to allow an adviser to report with respect to only those private funds that are more likely to implicate U.S. regulatory interests.

Reporting for Affiliated and Sub-advised Funds

An adviser may, but is not required to, report the private fund assets that it manages and the private fund assets that its related persons manage on a single Form PF.[135] This is intended to provide private fund advisers with reporting flexibility and convenience, allowing affiliated entities that share reporting and risk management systems to report jointly while also permitting affiliated entities that operate separately to report separately. Commenters did not address

[126] One commenter suggested that we use the standard under section 13 of the Securities Exchange Act of 1934 (''Exchange Act'') or look to whether the related persons ''share information about investment decisions on a real time basis.'' TCW Letter. We are concerned that using the standard under sections 13(d) and 13(g) of the Exchange Act would impose additional burdens on advisers as compared to the Item 7.A standard because advisers will not necessarily have considered the former in the ordinary course of business, and we believe the alternative proposed by this commenter would make it too easy to conclude that a related person is separately operated.

[127] *See supra* note 117. The relevant instruction to Item 7.A of Form ADV reads as follows: ''You do not need to complete Section 7.A. of Schedule D for any related person if: (1) You have no business dealings with the related person in connection with advisory services you provide to your clients; (2) you do not conduct shared operations with the related person; (3) you do not refer clients or business to the related person, and the related person does not refer prospective clients or business to you; (4) you do not share supervised persons or premises with the related person; and (5) you have no reason to believe that your relationship with the related person otherwise creates a conflict of interest with your clients.''

[128] *See* Instruction 7 to Form PF. The adviser must, however, treat these assets consistently for purposes of Form PF. For example, an adviser may not count these assets when determining whether the fund's borrowing may exceed half its net asset value and then disregard these assets for purposes of the reporting thresholds. Although this instruction allows an adviser to disregard these investments in other private funds, it would not allow an adviser to disregard any liabilities of the private fund, even if incurred in connection with an investment in other private funds.

[129] *See* Instruction 7 to Form PF. Solely for purposes of this instruction, an adviser is also permitted to treat as a private fund any non-U.S. fund that would be a private fund had it used U.S. jurisdictional means in offering its securities. A non-U.S. fund that has never used U.S. jurisdictional means in the offering of the securities it issues would not be a private fund. *See infra* note 134; Exemptions Adopting Release, *supra* note 11, at n.294 and accompanying text.

[130] *See* the Proposing Release, *supra* note 12, for the proposed version of Instruction 7 to Form PF. We have also added a new Instruction 8, which clarifies that, except as provided in Instruction 7, all investments in other funds should be included for all purposes under Form PF but that advisers are not required to ''look through'' the other funds to the underlying assets (unless the other fund's purpose is to act as a holding company for the private fund's investments).

[131] *See, e.g.,* ABA Committees Letter; comment letter of Akina Limited (Feb. 25, 2011) (''Akina Letter''); MFA Letter; PEGCC Letter; comment letter of Sidley Austin, LLP (submitted to the CFTC) (Apr. 12, 2011) (''Sidley Letter''); SIFMA Letter.

[132] *Id.* Some commenters also suggested that advisers should not report even the limited information required in section 1b with respect to funds of funds. *See, e.g.,* ABA Committees Letter; Sidley Letter; SIFMA Letter. However, as one commenter pointed out, these funds may be employing leverage at the fund of funds level, which would not be reported if these funds did not complete this section. *See* Merkl February Letter. In addition, information collected in section 1b will provide regulators with information regarding the extent of these funds' investments in other private funds, and certain of the information collected in this section may be important to our investor protection mission. *See infra* notes 133 and 197.

[133] *See* Instruction 7 to Form PF. We have, however, added a new question 10 to Form PF, which requires the adviser to disclose the amount that each private fund has invested in other private funds. This will allow regulators to understand the extent to which these investments occur and are otherwise being disregarded on Form PF. *See infra* note 197.

[134] *See* Instruction 1 to Form PF. This portion of Instruction 1 is only necessary for those funds that fall within the definition of ''private fund.'' A non-U.S. fund that has never used U.S. jurisdictional means in the offering of the securities it issues would not be a private fund. *See* Exemptions Adopting Release, *supra* note 11, at n.294 and accompanying text. We have modified this instruction from the proposal to more closely follow the requirements of Regulation S; the instruction now looks to whether the offering was made ''in the United States'' rather than ''to * * * any *United States person.'' See also* Glossary of Terms to Form PF. ''United States person'' is defined for purposes of Form PF by reference to the definition in rule 203(m)–1, which tracks the definition of a ''U.S. person'' under Regulation S but contains a special rule for discretionary accounts maintained for the benefit of United States persons. *See* Exemptions Adopting Release, *supra* note 11, at section II.B.4.

[135] *See* Instruction 2 to Form PF. *See supra* note 117 for the definition of ''related person.''

this aspect of the proposal, which we are adopting as proposed.

With respect to sub-advised funds, to prevent duplicative reporting, only one adviser should report information on Form PF with respect to that fund.[136] For reporting efficiency and to prevent duplicative reporting, if the adviser that completes information in section 7.B.1. of Schedule D to Form ADV with respect to any private fund is also required to file Form PF, the same adviser is responsible for reporting on Form PF with respect to that fund.[137] However, if the adviser that completes information on Schedule D to Form ADV with respect to the private fund is not required to file Form PF (such as in the case of an exempt reporting adviser), then another adviser must report on that fund on Form PF.[138] If none of the advisers to a fund is required to file Form PF because they are all exempt reporting advisers or do not exceed the minimum reporting threshold, Instruction 4 to Form PF would not require any adviser to file the Form with respect to that fund. Commenters did not address this aspect of the proposal.

7. Exempt Reporting Advisers

Only private fund advisers registered with the SEC (including those that are also registered with the CFTC as CPOs or CTAs) must file Form PF.[139] As noted above, the Dodd-Frank Act created exemptions from SEC registration under the Advisers Act for advisers solely to venture capital funds and for advisers solely to private funds that in the aggregate have less than $150 million in assets under management in the United States.[140] We believe that Congress' determination to exempt these advisers from SEC registration indicates Congress' belief that regular reporting of detailed systemic risk information may not be necessary because they are sufficiently unlikely to pose this kind of risk.[141] After consultation with staff representing FSOC's members and in light of the basic information that the SEC obtains from exempt reporting advisers on Form ADV, the SEC did not propose to extend Form PF reporting to these advisers.[142] Commenters that addressed this aspect of the proposal agreed that exempt reporting advisers should not be required to file Form PF, and we have adopted this approach as proposed.[143]

*B. Frequency of Reporting*

1. Annual and Quarterly Reporting

Most private fund advisers, including large private equity advisers and smaller private fund advisers, are required to complete and file Form PF only once per fiscal year.[144] Large hedge fund advisers and large liquidity fund advisers, on the other hand, must update information relating to their hedge funds or liquidity funds, respectively, each fiscal quarter.[145] Periodic reporting will permit FSOC to monitor periodically certain key information relevant to assessing systemic risk posed by these private funds on both an individual and aggregate basis. More frequent, quarterly reporting for large hedge fund and large liquidity fund advisers is necessary in order to provide FSOC with timely data to identify emerging trends in systemic risk.[146]

The filing requirements we are adopting differ from the proposal in two principal respects. First, the proposal would have required large private equity advisers to report on a quarterly, rather than annual, basis. Second, under the proposal, once an adviser became subject to quarterly reporting, it would have been required to update information with respect to all of its private funds each quarter (not just for the type of private fund that caused it to exceed the large adviser threshold).[147]

A number of commenters responded to our proposal regarding the frequency of reporting. One agreed that quarterly reporting would be appropriate, and two others argued that advisers should report even more frequently because market conditions and portfolios can change rapidly.[148] On the other hand, a number of commenters disagreed with the proposal, suggesting instead that Large Private Fund Advisers should report no more than semi-annually.[149] These commenters argued that semi-

[136] Each adviser that meets the criteria for reporting on Form PF has an independent obligation to file the Form with respect to every fund it advises. *See* Advisers Act rule 204(b)–1(a); Instructions 1 and 3 to Form PF. However, when one adviser files Form PF with respect to a fund for a given reporting period, the other advisers are relieved of their obligation to file for that fund.

[137] *See* Instruction 4 to Form PF. We have modified this instruction from the proposal to clarify who would report in the case that the adviser completing section 7.B.1 of Schedule D to Form ADV with respect to a particular private fund is an exempt reporting adviser or does not meet the new minimum reporting threshold of $150 million in private fund assets under management.

[138] *See* Instruction 4 to Form PF. *See supra* note 48 and accompanying text.

[139] *See* Advisers Act rule 204(b)–1.

[140] *See supra* note 53 and accompanying text.

[141] *See* Senate Committee Report, *supra* note 5, at 74 (''The Committee believes that venture capital funds * * * do not present the same risks as the large private funds whose advisers are required to register with the SEC under this title. Their activities are not interconnected with the global financial system, and they generally rely on equity funding, so that losses that may occur do not ripple throughout world markets but are borne by fund investors alone.''). *See also* Exemptions Adopting Release, *supra* note 11.

[142] *See* Implementing Adopting Release, *supra* note 11, for a discussion of the information exempt reporting advisers are required to provide on Form ADV.

[143] *See* AIMA General Letter; Lone Star Letter. To the extent an exempt reporting adviser is registered with the CFTC as a CPO or CTA, the CFTC has proposed that the adviser would be obligated to file either Form CPO–PQR or CTA–PR, respectively.

[144] *See* Instruction 9 to Form PF.

[145] Even these advisers, however, need only update information regarding other types of funds they manage on an annual basis. For example, a large hedge fund adviser that also manages a small amount of liquidity fund and private equity fund assets must update information relating to its hedge funds each quarter but only needs to update information relating to its liquidity funds and private equity funds when it submits its fourth quarter filing. An adviser that is both a large hedge fund adviser and a large liquidity fund adviser must file quarterly updates regarding both its liquidity funds and hedge funds. *See* Instruction 9 to Form PF.

[146] *See* Proposing Release, *supra* note 12, at section II.C. We also noted in the Proposing Release that we understood hedge fund advisers already collect and calculate on a quarterly basis much of the information that Form PF requires relating to hedge funds. One commenter argued that this is only true with respect to the information required in sections 1a and 1b of Form PF. *See* comment letter of Fidelity Investments (Apr. 12, 2011) (''Fidelity Letter''); *see also* MFA Letter. We have taken these comments into account in determining to extend the reporting deadlines for hedge fund advisers, as discussed below in section II.B.2 of this Release. We note, however, that another commenter also stated that ''Form PF for the most part * * * [requests] information that is part of, or should be part of, the existing risk management processes at the responding institutions,'' and as such ''this information will either be something the adviser produces already, or arguably should.'' Comment letter of MSCI Inc. (submitted to the CFTC) (Apr. 11, 2011) (''MSCI Letter''). Commenters did not address the ability of liquidity funds to prepare and submit quarterly filings, and we continue to believe, as discussed in the Proposing Release, that most liquidity fund advisers collect on a monthly basis much of the information that we are requiring in section 3 of Form PF and that quarterly reporting should, as a result, be relatively efficient for these advisers.

[147] The proposal also would have required reporting based on calendar quarters rather than the adviser's fiscal quarters. We have made this change because some advisers with quarterly updating obligations will now only need to update information about certain funds on an annual basis. The annual reporting is intended to align with typical end of fiscal year reporting activities, and requiring advisers to file separate annual and fourth quarter reports would impose additional burdens. We believe this change will, in practice, have little effect on the reporting (based on IARD data as of October 1, 2011, only about 2% of all registered advisers report a fiscal year ending in a month other than March, June, September or December, though the total may be slightly higher because IARD does not distinguish among, for instance, mid-month and end-of-month fiscal year ends).

[148] *See* CPIC Letter (supporting the proposal with respect to large private funds advisers); AFL–CIO Letter and AFR Letter (arguing for more frequent reporting).

[149] *See, e.g.,* ABA Committees Letter; BlackRock Letter; Fidelity Letter; comment letter of Kleinberg, Kaplan, Wolff & Cohen, P.C. (submitted to the SEC) (Apr. 12, 2011) (''Kleinberg General Letter''); MFA Letter; SIFMA Letter; USCC Letter.

annual reporting would reduce the burden to advisers while also giving regulators more time to analyze the data, and several compared Form PF to the FSA Survey, which has been conducted on a voluntary, semi-annual basis.[150] Another commenter stated that the generally illiquid portfolios of private equity funds fluctuate little in value throughout the year, in its view, making quarterly reporting unnecessary.[151]

After consultation with staff representing FSOC's members, we continue to believe that quarterly reporting is important to provide FSOC with meaningfully current information with respect to the hedge fund and liquidity fund industries and to allow FSOC to identify rapidly emerging trends among these types of funds.[152] Although some commenters suggested that the speed with which markets and portfolios change may warrant even more frequent reporting, we believe at this time that the additional benefit to FSOC from reporting more often than once a quarter would not justify the additional burdens imposed on advisers.[153] On the other hand, we are also not convinced that less frequent (*e.g.,* semi-annual) reporting would provide sufficient, or sufficiently timely, information to enable FSOC to identify and respond to rapidly emerging trends. In addition, we believe that international approaches to private fund reporting may be shifting in favor of quarterly, rather than semi-annual, reporting.[154]

With respect to large private equity advisers, however, the SEC is persuaded that the generally illiquid nature of private equity fund portfolios means that trends emerge more slowly in that sector.[155] As a result, the proposal has been modified so that large private equity advisers are required to report information regarding private equity funds on an annual basis only.[156]

Fewer commenters addressed the frequency of reporting for smaller advisers. One commenter agreed that annual reporting would be appropriate for these advisers,[157] and several others argued that smaller advisers should report more frequently, proposing at least semi-annual filings.[158] Again, although we acknowledge the potential value of more frequent reporting from smaller private fund advisers, we are concerned about the burden this would impose. At this time, we are not convinced that more frequent reporting from smaller private fund advisers would, from a systemic risk monitoring perspective, be justified by the value of the additional data.

As noted above, the requirements we are adopting also differ from the proposal in that even those advisers who must report on a quarterly basis are only required to do so with respect to the type of fund that caused them to exceed the reporting threshold. We are adopting this approach in part because these other funds will include private equity funds, venture capital funds and real estate funds, all of which are likely to have generally illiquid portfolios and for which we believe annual reporting is appropriate, as explained above. This approach also reflects the different implications for systemic risk that may be presented by different investment strategies.

Reporting Deadlines

Large private equity advisers and smaller private fund advisers have 120 days from the end of their fiscal years to file Form PF.[159] In contrast, large hedge fund advisers have 60 days from the end of each fiscal quarter, and large liquidity fund advisers have 15 days.[160] The deadlines we are adopting for large hedge fund advisers, large private equity advisers and smaller advisers are longer than the deadlines we proposed. In particular, we have extended the deadline for large hedge fund advisers from 15 days to 60 days, the deadline for large private equity fund advisers from 15 days to 120 days and the deadline for smaller private fund advisers from 90 days to 120 days.[161]

The proposed deadline of 15 days for large hedge fund and private equity fund advisers attracted significant opposition. Commenters offered a number of reasons to extend the deadline, including that: (1) 15 days is not enough time to prepare and submit a report with reliably accurate data, particularly where the adviser must value illiquid fund assets;[162] (2) other SEC reporting requirements allow more time;[163] (3) the FSA Survey has allowed more time (approximately 30 to 45 days in the most recent surveys) and required less detail;[164] (4) the same personnel will be closing the books at the end of the quarter and completing Form PF;[165] and (5) the more current the information reported, the greater the consequences should it become public.[166] These commenters suggested alternatives that ranged from 45 to 120 days.[167] We understand from the comments, however, that the proposed reporting deadlines would be more problematic for some types of advisers than for

[150] *See, e.g.,* ABA Committees Letter; Kleinberg General Letter.

[151] *See* PEGCC Letter.

[152] Moreover, we believe that quarterly reporting helps to discourage ''window-dressing'' around the reporting dates. *See infra* notes 285–292 and accompanying text.

[153] *See supra* note 148. We also note that FSOC has the authority to direct OFR to gather additional data where systemic risk concerns merit the reporting. *See, e.g.,* sections 153 and 154 of the Dodd-Frank Act.

[154] ESMA's proposed reporting template would impose quarterly reporting requirements on private fund advisers. *See* ESMA Proposal, *supra* note 33.

[155] *See supra* note 151.

[156] *See* Instruction 9 to Form PF.

[157] *See* AIMA General Letter.

[158] *See* AFL–CIO Letter; AFR Letter. *See also* MFA Letter (arguing that all advisers, large and small, should report on a semi-annual basis).

[159] *See* Instruction 9 to Form PF; Advisers Act rule 204(b)–1(a).

[160] *See* Instruction 9 to Form PF. As discussed above, a large hedge fund adviser (or large liquidity fund adviser) that also manages other types of funds must file quarterly updates with respect to its hedge funds (or liquidity funds, as applicable) but only needs to update information regarding its other funds when it files its fourth quarter update. Such an adviser may comply with its filing obligations by initially filing a fourth quarter update that includes only information about its hedge funds (or liquidity funds, as applicable) within 60 days (or 15 days, as applicable) and then amending its filing within 120 days after the end of the quarter to include information about its other funds.

[161] We noted in the Proposing Release that the proposed 90 day deadline would allow these advisers to file amendments at the same time as they file their Form ADV annual updating amendment, which may make certain aspects of the reporting more efficient, such as reporting assets under management. Proposing Release, *supra* note 12, at section II.C. We believe these efficiencies will still be realized because the reporting continues to be ''as of'' the same date as the annual reports on Form ADV and an adviser may still file on or after the date on which it files Form ADV.

[162] *See, e.g.,* ABA Committees Letter; AIMA General Letter; BlackRock Letter; IAA Letter; MFA Letter; USCC Letter.

[163] *See, e.g.,* ABA Committees Letter (noting that Forms N–SAR and N–Q, used by registered investment companies, allow 60 days); AIMA General Letter (pointing to Form 13F (allowing 45 days), Form 10–K (allowing at least 60 days), and Form 10–Q (allowing at least 40 days)); Fidelity Letter; Kleinberg General Letter; MFA Letter (pointing to the 120 days allowed for audited financial statements under the Advisers Act custody rule); TCW Letter.

[164] *See, e.g.,* AIMA General Letter; IAA Letter.

[165] *See, e.g.,* Kleinberg General Letter.

[166] *See, e.g.,* AIMA General Letter; Kleinberg General Letter. Some commenters also pointed to the Form's proposed signature page, which would have required advisers to certify that the information provided is ''true and correct,'' arguing that this standard would be difficult to satisfy in 15 days. *See, e.g.,* AIMA General Letter. As discussed below, we are not adopting the proposed certification requirement. *See infra* notes 183–185 and accompanying text.

[167] *See, e.g.,* AIMA General Letter (45 days); Akina Letter (120 days for private equity fund data); BlackRock Letter (120 days); CPIC Letter (45 days, at least initially); Fidelity Letter (preferably 90 days, but no less than 45 days); IAA Letter (90 days); Kleinberg General Letter (60 days); Lone Star Letter (60 days for private equity fund data); Merkl February Letter (four months for private equity fund data); MFA Letter (120 days); PEGCC Letter (at least 90 days for private equity fund data); Seward Letter (120 days); SIFMA Letter (120 days); TCW Letter (60 days); USCC Letter (120 days).

others. For instance, commenters focusing on private equity advisers generally suggested longer deadlines than commenters focusing on hedge fund advisers, and the valuation of illiquid portfolios is likely to be a more common problem for private equity advisers.[168] Also, although a number of commenters addressed hedge fund advisers and private equity advisers, none commented specifically on whether liquidity fund advisers could meet the proposed deadline.

We are persuaded that longer deadlines are appropriate for large hedge fund advisers and large private equity fund advisers and that, with respect to large private equity fund advisers in particular, the work required to value the generally illiquid portfolios of private equity funds favors a substantially longer reporting deadline than was proposed.[169] A few commenters favored a deadline for large hedge fund advisers longer than the one we are adopting, but several commenters indicated that a deadline shorter than the one we are adopting would be adequate.[170] We believe that our revised approach strikes an appropriate balance between the need to provide FSOC with timely data and the ability of these advisers to prepare and submit Form PF. We also believe it will reduce the burden of reporting for these advisers.

Fewer commenters addressed the proposed reporting deadline of 90 days for smaller advisers. One commenter supported the proposal,[171] but several argued that smaller advisers should have more than 90 days to prepare and submit their filings.[172] Several commenters noted that the Advisers Act custody rule allows advisers up to 120 days to distribute audited financial statements to investors when relying on the annual audit provision under that rule.[173] We believe that our revised deadline of 120 days will enable these advisers to benefit from the availability of financial statements and also help to avoid crowding advisers' calendars with end of year reporting obligations while at the same time providing FSOC with reasonably timely data.

3. Initial Reports

Newly registering private fund advisers are subject to the same Form PF reporting deadlines as currently registered advisers.[174] Advisers are not, however, required to file Form PF with respect to any period that ended prior to the effective date of their registrations. Accordingly, a smaller private fund adviser that registers during its 2013 fiscal year must file Form PF within 120 days following the end of its 2013 fiscal year. It would not, however, need to file Form PF for its 2012 fiscal year. Similarly, a large hedge fund adviser that registers during its third fiscal quarter must file Form PF within 60 days following the end of that quarter but need not file for the preceding fiscal quarter.[175]

We have extended the deadlines for initial filings from the 15 days that we proposed. One commenter argued that the proposed deadline would be too short and suggested 90 days instead.[176] We believe the revised initial filing deadlines are more consistent with the deadlines for updating Form PF discussed above in section II.B.2 of this Release.

4. Transition Filings, Final Filings and Temporary Hardship Exemptions

An adviser must file Form PF to report that it is transitioning to only filing Form PF annually with the Commissions or to report that it no longer meets the requirements for filing Form PF no later than the last day on which the adviser's next Form PF update would be timely.[177] This allows us to determine promptly whether an adviser's discontinuance in reporting is due to it no longer meeting the form's reporting thresholds as opposed to a lack of attention to its filing obligations. Advisers may also avail themselves of a temporary hardship exemption in a similar manner as with other SEC filings if they are unable to file Form PF electronically in a timely manner due to unanticipated technical difficulties.[178] No commenters addressed the proposed transition filings, final filings or temporary hardship exemption, and we are adopting them as proposed.

*C. Information Required on Form PF*

The questions contained in Form PF reflect relevant requirements and considerations under the Dodd-Frank Act, consultations with staff representing FSOC's members, and the Commissions' experience in regulating those private fund advisers that are already registered with the Commissions. As discussed above, with respect to hedge fund advisers in particular, the information collected on Form PF is also broadly based on the guidelines initially developed in the FSA Survey and the IOSCO report on hedge fund oversight, and many of the more detailed items are similar to questions proposed to be included in ESMA's reporting template.[179] Form PF has been designed to collect information to assist FSOC in monitoring and assessing systemic risks that private funds may pose, as discussed in section II.A above.

Commenters' reactions to the scope of Form PF varied, with some proposing further enhancements and others arguing that the proposed reporting is excessive. Commenters arguing for expanded reporting recommended additional questions about counterparty exposures and short selling or suggested having all advisers complete the entire form.[180] In contrast, critics of the proposal argued that information required on Form PF would be unduly burdensome to provide or is available to regulators from other sources.[181] A few commenters who objected to other aspects of the proposal recommended adding several questions that were originally proposed on Form ADV.[182] Although this would expand the Form, these commenters believed that these

[168] *Id.*

[169] We note that many of the questions in section 4, which large private equity fund advisers must file, relate to information that should be available on the financial statements of their portfolio companies. By extending the deadline to 120 days for these advisers, we anticipate that the burden of reporting will be reduced because, in many cases, they will now be able to delay reporting until after receiving financial statements from their portfolio companies.

[170] *See supra* note 167.

[171] *See* AIMA General Letter.

[172] *See, e.g.,* BlackRock Letter (120 days); MFA Letter (120 days); PEGCC Letter (150 days for private equity fund data).

[173] *See, e.g.,* BlackRock Letter; MFA Letter; USCC Letter. *See also* Advisers Act rule 206(4)–2(b)(4).

[174] *See* Advisers Act rule 204(b)-1(a); *supra* section II.B.2 of this Release.

[175] Whether an adviser is a large hedge fund or large liquidity fund adviser would be determined as of the date specified in Form PF, not the date of registration. When filing an initial Form PF, a large hedge fund or large liquidity fund adviser that also manages other types of private fund may rely on the instructions in the Form allowing it to delay updating information regarding these other fund types when filing an update.

[176] *See* AIMA General Letter.

[177] *See* Instruction 9 to Form PF.

[178] *See* Advisers Act rule 204(b)–1(f); Instruction 14 to Form PF. The adviser would complete and file on paper Item A of section 1a and section 5 of Form PF, checking the box in section 1a indicating that it is requesting a temporary hardship exemption. The adviser must file any request for a temporary hardship exemption no later than one business day after the electronic Form PF filing was due. The adviser must then submit the filing that is the subject of the Form PF paper filing in electronic format with the Form PF filing system no later than seven business days after the filing was due.

[179] *See supra* section I.B of this Release.

[180] *See, e.g.,* AFL–CIO Letter; AFR Letter; Merkl February Letter; MSCI Letter; comment letter of Plexus Consulting Group (Feb. 28, 2011). *See also supra* note 76 and accompanying text.

[181] *See, e.g.,* AIMA General Letter; IAA Letter; Olympus Letter; PEGCC Letter. *See infra* note 309 and accompanying text.

[182] *See* IAA Letter; MFA Letter; Seward Letter.

questions, which relate to valuation, beneficial ownership and the identity of service providers, would require competitively sensitive or proprietary information and would be more appropriately reported confidentially on Form PF.

As discussed in greater detail below, Form PF, as adopted, addresses the concerns of many commenters with changes from the proposal that we believe will significantly reduce the burden of reporting and clarify how commenters are expected to respond. At the same time, the final Form preserves much of the information that the proposal would require. Our revised approach is intended to respond to industry concerns while still providing FSOC the information it needs to monitor systemic risk across the private fund industry.

Two of the changes we are making, in particular, illustrate this revised approach. The first is the removal of the proposed certification language. This would have required an authorized individual to affirm ''under penalty of perjury'' that the statements made in Form PF are ''true and correct.'' [183] This certification was borrowed from the SEC's existing Advisers Act reporting form, Form ADV. However, a number of commenters expressed concern that such a standard would be inappropriate for Form PF because the Form requires advisers to provide estimates and exercise significant judgment in preparing responses.[184] In consideration of the nature of the information required on Form PF, we are persuaded that a certification is unnecessary and that a signature confirming that the Form is filed with proper authority is sufficient.[185]

The second change is to increase the ability of advisers to rely on their internal methodologies when reporting on Form PF.[186] A number of commenters encouraged this approach, recommending ''that the instructions to the Form be modified to confirm that advisers be able to rely on the same internal reporting procedures and practices when reporting on the Form that they would use when reporting to advisory clients, unless directly contradicted by the instructions.'' [187] The revised approach strikes an appropriate balance between easing the burden on advisers by allowing them to rely on their existing practices and ensuring that FSOC receives comparable data across the industry. This change is intended, together with the removal of the certification, to clarify that Form PF does not require the time or expense involved in, for instance, an audit of the information included on Form PF, and we anticipate that these changes will reduce the burden that many advisers incur in completing the Form.[188]

The information that Form PF requires and the changes made from the proposal are discussed in detail below.

1. Section 1 of Form PF

Each adviser required to file Form PF must complete all or part of section 1. This section of the Form is divided into three parts: section 1a requires information regarding the adviser's identity and assets under management, section 1b requires limited information regarding the size, leverage and performance of all private funds subject to the reporting requirements, and section 1c requires additional basic information regarding hedge funds. We are adopting Form PF with several changes to the information that advisers are required to report in section 1. These changes, which are discussed in detail below, are intended to respond to industry concerns while still providing FSOC the information it needs to monitor systemic risk across the private fund industry. In general, we expect that these changes will reduce the burden of responding to the Form and more closely align the Form with ESMA's proposed reporting template.

a. Section 1a of Form PF

Item A of section 1a seeks identifying information about the adviser, such as its name and the name of any of its related persons whose information is also reported on the adviser's Form PF. The adviser will also be required to provide its large trader identification number, if any.[189] The addition of the large trader identification number will enhance the value of Form PF information by allowing it to be quickly and accurately linked to other information that may be available to the SEC while imposing little additional burden. Section 1a also requires basic aggregate information about the private funds managed by the adviser, such as the portion of gross (*i.e.,* regulatory) and net assets under management attributable to certain types of private funds.[190] This identifying information

[183] *See* Question 2 and Instruction 11 to Form PF. If the adviser is also registered with the CFTC as CPO or CTA, the signature page also requires the signatory to acknowledge that misstatements or omissions of material fact on Form PF constitute a violation of the CEA. This acknowledgement is included simply to remove any doubt created by the filing of the Form through the SEC rather than directly with the CFTC, which is merely a matter of convenience for advisers.

[184] *See, e.g.,* ABA Committees Letter; AIMA General Letter; Kleinberg General Letter; MFA Letter; PEGCC Letter. Some of these commenters also saw the certification standard and the reporting deadlines as related issues, arguing that the more quickly advisers are required to report, the less confidence they will have in their estimates. *See, e.g.,* BlackRock Letter; Fidelity Letter; PEGCC Letter; SIFMA Letter; USCC Letter. As discussed above in section II.B.2 of this Release, we have also extended the proposed filing deadlines. Several commenters compared Form PF to other SEC forms and suggested that we either require just a signature without a certification or that we use a less stringent standard, such as good faith. *See* MFA Letter (pointing to the certification in the SEC's Schedule 13G). *See also* ABA Committees Letter (comparing Form PF to other SEC forms, including Form N–SAR, Form N–Q, Schedule 13D and Schedule 13G); AIMA General Letter (pointing to Schedule 13G); BlackRock Letter; Kleinberg General Letter.

[185] We note, however, that even absent the certification, a willful misstatement or omission of a material fact in any report filed with the SEC under the Advisers Act is unlawful. *See* section 207 of the Advisers Act. We have also added an instruction to the Form that clarifies when an adviser is required to amend its filing to correct an error. In particular, Instruction 16 to Form PF explains that an adviser is not required to update information that it believes in good faith properly responded to Form PF on the date of filing even if that information is subsequently revised for purposes of the adviser's recordkeeping, risk management or investor reporting (such as estimates that are refined after completion of a subsequent audit). The instruction also explains that large hedge fund advisers and large liquidity fund advisers that comply with their fourth quarter filing obligations by submitting an initial filing followed by an amendment in accordance with Instruction 8 to Form PF will not be viewed as affirming responses regarding one fund solely by providing updated information regarding another fund at a later date.

[186] *See* Instruction 15 to Form PF. As noted in the instruction, we would expect reporting on Form PF to be consistent with information the adviser uses for internal and investor reporting purposes. Methodologies also must be consistently applied, and to the extent we have indicated how an adviser should respond to a question, the answer should be consistent with our instructions. In addition to this general instruction, we have increased the ability of advisers to rely on their own methodologies with a number of specific changes throughout the Form, including permitting advisers to report performance using their existing practices, allowing flexibility in reporting interest rate sensitivities and changing the frequency and substance of reporting for large private equity advisers. *See, e.g., infra* notes 202, 241–242, 247–248 and 258–260 and accompanying text and section II.C.4.

[187] BlackRock Letter. *See also* IAA Letter; MFA Letter; PEGCC Letter; SIFMA Letter; TCW Letter.

[188] If audited information is available at the time an adviser files Form PF, we would of course expect responses to Form PF to be consistent with that audited information.

[189] *See* Question 1 on Form PF.

[190] *See* Question 3 on Form PF. This question requires the adviser to report the portion of its assets under management that are attributable to hedge funds, liquidity funds, private equity funds, real estate funds, securitized asset funds, venture capital funds, other private funds, and funds and accounts other than private funds. We have modified the instructions to Question 3 to improve their consistency and to respond to a commenter's request for clarification regarding the meaning of ''funds and accounts other than private funds.'' *See* MFA Letter. We have also determined not to adopt a proposed question that would have required advisers to report their aggregate gross and net

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will assist us and FSOC in monitoring the amount of assets managed by private fund advisers and the general distribution of those assets among various types of private funds.[191] This information also provides data about the size of the adviser, the nature of the adviser's activities and the extent to which assets are managed rather than owned, which are factors that FSOC must consider in making a determination to designate a nonbank financial company for FRB supervision under the Dodd-Frank Act.[192]

b. Section 1b of Form PF

Section 1b of Form PF elicits certain identifying and other basic information about each private fund the adviser manages. The adviser generally must complete a separate section 1b for each private fund.[193] This section of the Form requires reporting of each private fund's gross and net assets and the aggregate notional value of its derivative positions.[194] It also requires basic information about the fund's borrowings, including a breakdown showing whether the creditor is based in the United States and whether it is a financial institution.[195] Advisers must also report the percentage of the fund's equity held by the five largest equity holders, which provides information about the concentration of the fund's investor base.[196] Two new questions, which we have added in connection with other changes to the Form, also require the value of the fund's investments in other private funds and of the parallel managed accounts managed alongside the fund.[197]

Section 1b also requires that advisers report in response to Question 17 the performance of each fund, both on a gross basis and net of management fees and incentive fees and allocations. Advisers must provide performance information that is consistent with the performance results they report to investors (or use internally, if not reported to investors). Advisers are required, at a minimum, to report annual performance results for the fund's most recently completed fiscal year but only need to report monthly and quarterly performance information if that information is already being calculated for the fund.

Question 17 has been modified from the proposal in response to commenter concerns regarding the burden of providing performance results in the form proposed.[198] In particular, it omits the requirement to report the change in net asset value, allows advisers to report performance gross and net of management fees and incentive fees and allocations (rather than gross and net of incentive fees and allocations only) and makes reporting of monthly and quarterly performance mandatory only for those funds for which advisers are already calculating performance results with that frequency. Commenters were concerned primarily that the proposed instructions to this question would require advisers to calculate performance in a manner different from that used for investor reporting purposes or more frequently than is their current practice.[199] A number of commenters explained that funds with illiquid portfolios, such as private equity funds, typically do not calculate performance on a monthly (and in many cases, even quarterly) basis and that calculating performance more frequently would impose a significant burden on these advisers.[200] As discussed above, we are persuaded that trends emerge more slowly in private funds having illiquid portfolios, meaning that developments in these funds may be tracked using information reported on a less frequent basis.[201] We believe that the revised approach, which allows advisers to rely on their existing procedures for calculating and reporting fund performance, significantly reduces the burden of responding to this question but will nonetheless yield valuable information for FSOC.[202]

regulatory assets under management because this information can be derived from the data reported in Question 3. *See* the Proposing Release, *supra* note 12, for the proposed Question 3 on Form PF.

[191] Question 4 in section 1a of Form PF also permits an adviser to explain any assumptions it made in responding to Form PF. This question is optional. One commenter expressed support for ''providing space for managers to describe any assumptions they make in responding to a question,'' and we are adopting this question substantially as proposed. *See* MFA Letter.

[192] *See* section 113(a) of the Dodd-Frank Act; FSOC Second Notice, *supra* note 6.

[193] However, if the adviser elects to report on an aggregated basis regarding the funds comprising a master-feeder arrangement or a parallel fund structure, it would only file a single section 1b for the master fund in the master-feeder arrangement or for the largest fund in the parallel fund structure. We have modified the approach to aggregation of master-feeder arrangements and parallel fund structures to allow advisers more flexibility in determining how to report. *See* Instruction 5 to Form PF. This change is discussed in greater detail below in section II.C.5 of this Release.

[194] *See* Questions 8, 9 and 13 on Form PF. With respect to Question 13 and similar questions regarding the value of derivatives, the Form requires the adviser to report the gross notional value of its funds' derivative positions, except that options must be reported using their delta adjusted notional value. *See* Instruction 15 to Form PF. In contrast, Questions 8 and 9, and similar questions that refer to gross asset value or net asset value, require valuations based on the instruction in Form ADV for calculating regulatory assets under management. *See* definitions of ''gross asset value'' and ''net asset value'' in the Glossary to Form PF.

[195] *See* Question 12 on Form PF. One commenter suggested that the amount of borrowings should be netted where a private fund is both a lender to and a creditor of a counterparty. *See* MFA Letter. The commenter's approach would, however, obscure the total amount of leverage the fund has incurred, and we have clarified that such amounts should not be netted. Also, in response to this commenter, we have modified the instructions to clarify that collateral should not be netted against borrowings. We have also modified this question, and other questions on the Form requiring a breakdown of creditor types, to split the non-financial institution category into U.S. and non-U.S. creditors. This change is intended to increase the usefulness of this data for the FRB's flow of funds report, which is an important tool for evaluating trends in and risks to the U.S. financial system. *See infra* note 475.

We proposed that advisers completing section 1b also report the identity of, and amount owed to, each creditor to which the fund owed an amount equal to or greater than 5 percent of the fund's net asset value as of the reporting date. *See* the Proposing Release, *supra* note 12, for the proposed Question 10 on Form PF. This question has been moved to section 2b of the Form so that only large hedge fund advisers must provide this information. This change is intended to respond to commenter concerns that completing this question will be burdensome but also preserve information regarding interconnectedness that may be important to FSOC's monitoring of systemic risk among large hedge funds. *See, e.g.,* PEGCC Letter.

[196] *See* Question 15 on Form PF. For purposes of this question and Question 16 on Form PF, beneficial owners are persons who would be counted as beneficial owners under section 3(c)(1) of the Investment Company Act or who would be included in determining whether the owners of the fund are qualified purchasers under section 3(c)(7) of that Act. (15 U.S.C. 80a–3(c)(1) or (7)). The proposal would have required that advisers report the number of beneficial owners of the fund. However, we are not adopting this question because, as a result of our revised approach to reporting on parallel managed accounts, this information will largely duplicate information collected on Form ADV, and we do not believe that receiving updated responses on a quarterly basis from large hedge fund advisers and large liquidity fund advisers is necessary with respect to this information. *See infra* section II.C.5 of this Release. *See also* the Proposing Release, *supra* note 12, for the proposed Question 12(a) on Form PF; Question 13 of section 7.B.1. of Schedule D to Form ADV.

[197] *See* Questions 10 and 11 on Form PF. Question 10, which asks for the value of the fund's investments in other private funds, has been added because our expanded Instruction 7 otherwise allows these investments to be disregarded on Form PF and it is important that FSOC have a basic measure of the extent of assets not otherwise reflected on the Form. This will also serve as a measure of interconnectedness among private funds. *See supra* notes 128 and 131 and accompanying text for a discussion of Instruction 7. Question 11, relating to the value of parallel managed accounts, has been added for similar reasons. *See infra* section II.C.5 of this Release for a discussion of our revised approach to reporting on parallel managed accounts.

[198] *See infra* notes 199 and 200.

[199] *See, e.g.,* ABA Committees Letter; MFA Letter (recommending that ''the Form be revised to request (i) Gross performance and (ii) performance net of all fees'' and suggesting that advisers be permitted to report what they report to private fund investors).

[200] *See, e.g.,* ABA Committees Letter; IAA Letter; Merkl February Letter; MFA Letter; PEGCC Letter; SIFMA Letter; TCW Letter.

[201] *See supra* text accompanying note 156.

[202] *See* Question 17 on Form PF. *See also* Proposing Release, *supra* note 12, at text

We have also added to section 1b two questions that the SEC originally proposed as part of the expanded private fund reporting in Form ADV.[203] The first, Question 14, requires that advisers report the assets and liabilities of each fund broken down using categories that are based on the fair value hierarchy established under U.S. generally accepted accounting principles (''GAAP'').[204] The second, Question 16, requires that advisers provide the approximate percentage of each fund beneficially owned by certain types of investors.[205] As discussed in the Implementing Adopting Release, the SEC determined not to adopt these questions on Form ADV in response to commenter concerns that they would result in the public disclosure of competitively sensitive or proprietary information.[206] We have added these questions to Form PF (with the modifications discussed below) because, as the SEC explained in the Implementing Adopting Release, this information may be important to FSOC's systemic risk monitoring activities and to our investor protection mission.[207]

Commenters responding to these questions as proposed on Form ADV argued that they would be difficult or burdensome to complete. With respect to Question 14, commenters argued that some private funds—especially non-U.S. funds—do not use generally accepted accounting principles (whether U.S. or international) or obtain audited financial statements, making the requirement to report a breakdown of fair values potentially costly.[208] We understand, however, that the group of funds not using some form of generally accepted accounting standard is relatively small and that most private funds already utilize GAAP or other international accounting standards that require the contemplated breakdown of assets and liabilities.[209] In addition, funds are not required to adopt GAAP for these purposes, and Question 14 does not require that the *valuations* within the breakdown of assets and liabilities be audited, or even determined in accordance with GAAP. For instance, an adviser could rely on the procedure for calculating fair value that is specified in a private fund's governing documents.[210] As a result, we are not convinced that the aggregate burden attributable to this reporting is unreasonable or even as significant as some commenters contend. The question has, however, been modified from the proposal to require a breakdown only by category and not by class.[211] For advisers that do not already prepare this breakdown for financial reporting purposes, this revised approach will significantly reduce the work required to respond to this question.[212] Such advisers may, nevertheless, incur additional costs to complete this question, and we are sensitive to these costs. We believe, however, that this question will provide valuable information for FSOC's systemic risk monitoring activities and our investor protection mission and that the associated burden is warranted.[213]

Commenters also expressed concern regarding the burden of reporting the types of beneficial owners investing in each fund, as required in Question 16.[214] One of these commenters noted,

accompanying n. 115 for a discussion of potential uses for this data.

[203] *See* Questions 14 and 16 on Form PF.

[204] Advisers must report this information annually (or on their fourth quarter updates, in the case of large hedge fund and large liquidity fund advisers). This question will provide information indicating the illiquidity and complexity of a fund's portfolio and the extent to which the fund's value is determined using metrics other than market mechanisms. In a recent rulemaking release, FSOC identified this fair value categorization as the type of information that may be important for assessing liquidity risk and maturity mismatch, one factor in determining whether a nonbank financial company may pose systemic risk. *See* FSOC Second Notice, *supra* note 6. *See also Rules Implementing Amendments to the Investment Advisers Act of 1940,* Investment Advisers Act Release No. 3110 (Nov. 19, 2010), 75 FR 77052 (Dec. 10, 2010) (''Implementing Proposing Release'') for the proposed version of Form ADV, Part 1A, section 7.B.(1)A. of Schedule D, question 12. *See also* FASB ASC 820–10–50–2b.

We have modified this question from the proposal to expressly include definitions for Levels 1, 2 and 3 of the hierarchy. This change is intended to minimize ambiguity for advisers that do not utilize GAAP or another international accounting standard that requires the contemplated breakdown of assets and liabilities. Advisers that already prepare this breakdown for financial reporting purposes should respond to this question using the fair value hierarchy established under the applicable accounting standard.

[205] *See* the Implementing Proposing Release for the proposed version of Form ADV, Part 1A, section 7.B.(1)A. of Schedule D, question 17.

[206] *See* Implementing Adopting Release, *supra* note 11, at nn. 246–247. Information filed on Form ADV is made available to the public through the Investment Adviser Public Disclosure (IAPD) Web site. In contrast, information filed on Form PF will generally remain confidential. *See infra* section II.D of this Release.

[207] *Id.* Several commenters responding to the Proposing Release also encouraged us to move these questions from Form ADV to Form PF. *See* IAA; MFA Letter; Seward Letter.

[208] Comment letter of the American Bar Association, Federal Regulation of Securities Committee and Private Equity and Venture Capital Committee (Jan. 31, 2011) (commenting on the Implementing Proposing Release, *supra* note 204) (''ABA Committees Implementing Proposal Letter''); comment letter of the Alternative Investment Management Association (Jan. 24, 2011) (commenting on the Implementing Proposing Release, *supra* note 204) (''AIMA Implementing Proposal Letter''); comment letter of Dechert LLP (Jan. 24, 2011) (commenting on the Implementing Proposing Release, *supra* note 204); comment letter of the Investment Adviser Association (Jan. 24, 2011) (commenting on the Implementing Proposing Release, *supra* note 204) (''IAA General Implementing Proposal Letter''); comment letter of Katten, Muchin, Rosenman, LLP (Jan. 24, 2011) (commenting on the Implementing Proposing Release, *supra* note 204); comment letter of George Merkl (Jan. 25, 2011) (commenting on the Implementing Proposing Release, *supra* note 204); comment letter of the National Venture Capital Association (Jan. 24, 2011) (commenting on the Implementing Proposing Release, *supra* note 204). Some of these commenters further contended that investors would bear any new audit costs or that advisers would not necessarily have audited numbers within 90 days after fiscal year end, when Form ADV is due. *See, e.g.,* ABA Committees Implementing Proposal Letter; AIMA Implementing Proposal Letter; IAA General Implementing Proposal Letter.

[209] *See, e.g.,* Implementing Proposing Release, *supra* note 204, at n. 56. Indeed, even in the context of this rulemaking, the Managed Funds Association suggested that we use a GAAP standard to measure advisers' assets, asserting that ''GAAP information is regularly reported across the industry and is a data point that most managers track in the ordinary course * * *'' MFA Letter. Others advisers may use international accounting standards requiring substantially similar information. In the Implementing Adopting Release, the SEC estimated that only about 3% of registered advisers have at least one private fund client that may not be audited. *See* Implementing Adopting Release, *supra* note 11, at nn. 634–636 and accompanying text.

[210] The fair valuation process need not be the result of a particular mandated procedure and the procedure need not involve the use of a third-party pricing service, appraiser or similar outside expert. The fund's governing documents may provide, for example, that the fund's general partner determines the fair value of the fund's assets. We would, however, expect that an adviser that calculates fair value in accordance with GAAP or another basis of accounting for financial reporting purposes will also use that same basis for purposes of determining the fair value of its assets and liabilities for this purpose.

This question has been modified from the proposal to include a column titled ''cost-based'' for those assets and liabilities valued on the fund's financial statements using a measurement attribute other than fair value. This change recognizes that, even among advisers that already prepare a similar fair value breakdown for financial reporting purposes in accordance with GAAP, some assets and liabilities are not accounted for at fair value and, therefore, would not be included in the fair value hierarchy disclosures.

[211] In other words, although an adviser will need to provide the fund's aggregate assets and liabilities categorized as Level 1, 2 or 3, it will not need to indicate the types of assets and liabilities in each of those categories.

[212] In addition, for advisers that already prepare this breakdown for financial reporting purposes, this revised approach will reduce the amount of information that needs to be re-entered on Form PF.

[213] *See supra* note 204 for a discussion of potential uses for this data.

[214] Comment letter of Debevoise & Plimpton, LLP (Jan. 24, 2011) (commenting on the Implementing Proposing Release, *supra* note 204) (''Debevoise Implementing Proposal Letter''); IAA General Implementing Proposal Letter; comment letter of Shearman & Sterling, LLP (Jan. 24, 2011) (commenting on the Implementing Proposing Release, *supra* note 204) (''Shearman Implementing Proposal Letter''). These commenters argued that advisers may have difficulty obtaining the required information for certain types of funds, particularly

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for instance, that many advisers either do not have this information or keep this information on a basis different from that set out in the Form.[215] We believe, however, that many advisers to private funds are already collecting some of this beneficial ownership data as part of their processes for analyzing compliance with exemptions under the Investment Company Act and the Securities Act of 1933.[216] To the extent this information is not currently collected, we do not anticipate that adding this to the information advisers already routinely collect from fund investors will impose a significant burden. We acknowledge, however, that advisers managing funds with securities outstanding prior to the adoption of Form PF would have to take additional steps in order to obtain this information because the investor diligence process will already have been completed. As a result, with respect to beneficial interests outstanding prior to March 31, 2012, that have not been transferred on or after that date, advisers may respond to Question 16 using good faith estimates based on data available to them without making additional inquiries of investors.

Question 16 has also been modified by adding a row for non-U.S. investors about which the adviser does not have and cannot reasonably obtain beneficial ownership information.[217] This change acknowledges that obtaining beneficial ownership information about certain non-U.S. investors may be difficult for some advisers and ameliorates that burden by allowing advisers to report only the size of the ownership interest about which data is not available. We have also modified from the proposal some of the other categories in this question based on our consultations with staff representing FSOC's members. In particular, we have split out categories regarding individuals and pension plans to obtain a slightly more granular breakdown and added a category for sovereign wealth funds and foreign official institutions. We intend these changes to increase the usefulness of this data for the FRB's flow of funds report, a tool that is used for evaluating trends in and risks to the U.S. financial system.[218]

The information that section 1b requires is designed to allow FSOC to monitor certain systemic trends for the broader private fund industry, such as how certain kinds of private funds perform and exhibit correlated performance behavior under different economic and market conditions and whether certain funds are taking significant risks that may have systemic implications. It is also intended to allow FSOC to monitor borrowing practices across the private fund industry, which may have interconnected impacts on banks and thus the broader financial system. Question 14, which requires that advisers report the assets and liabilities of each fund broken down using categories that are based on the fair value hierarchy established under GAAP, will provide information indicating the illiquidity and complexity of a fund's portfolio and the extent to which the fund's value is determined using metrics other than market mechanisms. In a recent rulemaking release, FSOC identified this fair value categorization as the type of information that may be important for assessing liquidity risk and maturity mismatch, one factor in determining whether a nonbank financial company may pose systemic risk.[219] Finally, as noted above, certain of the information that section 1b requires is designed for use in the FRB's flow of funds report, a tool that is used for evaluating trends in and risks to the U.S. financial system.[220]

c. Section 1c of Form PF

Section 1c is the final part of section 1 and requires advisers to report information regarding the hedge funds they manage, if any. This information includes each fund's investment strategies[221] and the percentage of the fund's assets managed using high-frequency trading strategies.[222] Advisers must also report each hedge fund's significant counterparty exposures (including identity of counterparties).[223] In response to comments, we have modified the questions regarding counterparty exposures to clarify instructions and to reduce the reporting burden by more closely aligning the requirements with information already determined in connection with many contractual trading arrangements.[224]

Finally, section 1c requires information regarding each hedge fund's trading and clearing practices in Question 24 and activities conducted outside the securities and derivatives markets in Question 25. Some commenters supported the reporting required in Question 24.[225] However, one commenter expressed concern that the question as proposed would require burdensome manual aggregation.[226] In response, we have simplified this question by requiring a less detailed breakdown, removing the sub-classes of securities and derivatives included in the proposal. We expect that, by requiring less refinement in the categories of investments, these changes will reduce the burden of responding to this question. The revisions also align this question with the similar questions in the FSA Survey and ESMA's proposed reporting template.[227]

The information required in section 1c is designed to enable FSOC to monitor systemic risk that could be transmitted through counterparty exposure, track how different strategies are affected by and correlated with different market stresses, and follow the

for funds established before the adoption of the reporting requirement.

[215] *See* IAA General Implementing Proposal Letter (stating that the reporting would require ''significant system enhancements'').

[216] 15 U.S.C. 77a.

[217] An adviser may only report in this category beneficial ownership interests that are held through a chain involving one or more third-party intermediaries. If the beneficial owner has, for instance, simply interposed a wholly-owned holding company or trust as the legal owner, the interest would need to be reported in one of the other categories of beneficial owner.

[218] *See infra* note 475. *See also* Flow of Funds Accounts of the United States, *available at http://www.federalreserve.gov/releases/z1/*.

[219] *See supra* note 204.

[220] *See supra* note 218 and accompanying text.

[221] *See* Questions 19 and 20 on Form PF. One commenter, although advising caution in using strategy data to analyze industry trends, asserted that the reporting could provide valuable information about emerging systemic risk. *See* MSCI Letter (''a buildup of assets in one or a set of related strategies should cause the FSOC to question the market's capacity to support such a strategy * * *'' and create ''conditions where crowded trades could be unwound quickly, with a systemic impact.''). Another commenter suggested that we revise the question to allow reporting as of the end of the reporting period rather than over the course of the period and to permit advisers to report based on capital allocation rather than net asset value. *See* MFA Letter. We have revised the instructions to permit both these options. We have, however, also retained the requirement to report based on percentage of net asset value because we believe this will provide valuable information regarding leverage.

[222] *See* Question 21 on Form PF. Some commenters suggested removing this question because, in their view, it would not provide information relevant to systemic risk assessment. *See, e.g.,* AIMA General Letter; MFA Letter. This information may, however, be important to understanding how hedge funds interact with the markets and their role in providing trading liquidity. We have modified the instructions to this question to make it easier for advisers to determine whether a particular fund is using a relevant strategy.

[223] *See* Questions 22 and 23 on Form PF.

[224] *See* MFA Letter. Specifically, these questions have been modified to (i) Clarify that exposure should be mark-to-market exposure (rather than potential exposure), (ii) narrow the conditions under which affiliates are treated as a single counterparty group in order to track legal and contractual arrangements among the parties, (iii) focus on counterparties generally (rather than just trading counterparties), (iv) reference exposures before taking into account collateral postings and (v) be less prescriptive regarding the treatment of assets in custody and unsettled trades.

[225] *See* AFL–CIO Letter; AFR Letter.

[226] *See* MFA Letter.

[227] *See* ESMA Proposal, *supra* note 33.

extent of private fund activities conducted away from regulated exchanges and clearing systems. This information could be important to understanding interconnectedness, which relates to the factors that FSOC must consider in making a determination to designate a nonbank financial company for FRB supervision under the Dodd-Frank Act.[228]

Several commenters agreed that some or all of the information required in section 1c would be valuable.[229] For instance, one commenter, referring to the counterparty information, argued that ''[f]rom a systemic risk perspective, this is the most relevant information on the form, as it goes to the heart of the issue of connectivity.'' [230] Some of these questions, including those about significant trading counterparty exposures and trading and clearing practices, are based on the FSA Survey, and some of the changes from the proposal discussed above more closely align this section with the FSA Survey and ESMA's proposed reporting template, which will promote international consistency in hedge fund reporting.[231]

2. Section 2 of Form PF

A private fund adviser must complete section 2 of Form PF if it had at least $1.5 billion in hedge fund assets under management as of the end of any month in the prior fiscal quarter.[232] This section of the Form requires additional information regarding the hedge funds these advisers manage, which we have tailored to focus on relevant areas of financial activity that have the potential to raise systemic concerns. This information corresponds to areas of potential concern that were identified in the Proposing Release and is designed to assist FSOC in monitoring and assessing the extent to which stresses at hedge funds could have systemic implications.

We are adopting Form PF with several changes to the information that advisers are required to report in section 2. These changes, which are discussed in detail below, are intended to respond to industry concerns while still providing FSOC the information it needs to monitor systemic risk across the hedge fund industry. In general, we expect that these changes will reduce the burden of responding to the Form and more closely align the Form with ESMA's proposed reporting template.

a. Section 2a of Form PF

Section 2a requires certain aggregate information about the hedge funds the adviser manages. For example, Question 26 requires the adviser to report the value of assets invested (on a short and long basis) in different types of securities and commodities (*e.g.,* different types of equities, fixed income securities, derivatives, and structured products). One commenter acknowledged the importance of collecting this information, agreeing that it ''could feed a variety of possible systemic risk indices.'' [233] Some commenters, however, expressed concern regarding the amount of detail required in this question,[234] and the commenter who generally supported this question nonetheless thought the asset classes placed too much emphasis on asset backed securities when compared with other asset classes.[235] In response, the amount of detail regarding asset backed securities has been reduced so that the adviser need only provide a breakdown of mortgage backed securities, asset backed commercial paper, collateralized debt and loan obligations, other asset backed securities and other structured products.[236] We continue to believe, however, that the remaining detail in this question is justified by the potential value of this information to FSOC's systemic risk monitoring activities.[237] One commenter suggested that, instead of the proposed categories of assets, we allow advisers to report based on GAAP classifications under FAS 157.[238] We do not believe this is a workable alternative because FAS 157 does not employ a standard set of asset classes, and the value of this information depends in part on the ability of regulators to make comparisons across funds.[239] We also believe that our approach is more consistent with international hedge fund reporting standards.[240]

Question 26 also requires the adviser to report the duration, weighted average tenor or 10-year bond equivalent of fixed income portfolio holdings (including asset backed securities). This differs from the proposal, which would have required all advisers to report duration. We are giving advisers the option of instead reporting weighted average tenor or 10-year bond equivalents because we understand from comments received that advisers use a wide range of metrics to measure interest rate sensitivity.[241] We expect that this revised approach will reduce the burden of reporting because advisers will generally be able to rely on their existing practices when providing this information. This approach may limit the ability of regulators to make comparisons across advisers but will still yield valuable information about sensitivities to interest rate changes.[242]

Question 27 requires the adviser to report the value of turnover in certain assets classes (including listed equities, corporate bonds, sovereign bonds and futures) in the hedge funds' portfolios during the reporting period. This is intended to provide an indication of the adviser's frequency of trading in those markets and the amount of liquidity hedge funds contribute to those markets. The proposal would have required the adviser to calculate a single turnover rate for its entire hedge fund portfolio. However, commenters warned that this would prove difficult to calculate if an adviser trades in many different instrument types and, in particular, that the value of certain types of derivatives would overwhelm the influence of other instruments on the aggregate turnover

[228] *See* section 113(a) of the Dodd-Frank Act; FSOC Second Notice, *supra* note 6.

[229] *See* AFL–CIO Letter; AFR Letter; MSCI Letter.

[230] *See* MSCI Letter; *infra* note 274.

[231] For example, ESMA's proposed reporting template would ask for identification of the hedge fund's top five counterparties in terms of net credit exposure. It would also ask for estimates of the percentage of the fund's securities or derivatives traded on a regulated exchange versus over the counter and the percentage of the fund's derivatives and repos cleared by a central clearing counterparty versus bilaterally. In addition, the template would require advisers to identify a predominant trading strategy using categories similar to those on Form PF. *See* ESMA Proposal, *supra* note 33.

[232] *See* Instruction 3 to Form PF; *supra* section II.A.4 of this Release.

[233] MSCI Letter.

[234] *See, e.g.,* ABA Committees Letter; MFA Letter.

[235] *See* MSCI Letter.

[236] This question has also been modified to separate foreign exchange derivatives used for investment from those used for hedging in response to a comment arguing that the proposed category should exclude foreign currency hedges. *See* MFA Letter. We have also added a category for physical real estate, which was not included in the FSA Survey but has been added in ESMA's proposed reporting template, in order to increase international consistency. *See* ESMA Proposal, *supra* note 33; *see also supra* note 31. In addition, following consultation with staff representing FSOC's members, we have separated investments in money market funds from other types of cash management funds and deposits from other types of cash equivalents. These changes are intended to provide additional detail regarding how cash equivalents are held because, at times of economic stress, these forms of holdings may have different implications for systemic risk.

[237] *See* Proposing Release, *supra* note 12, at text accompanying n. 120 for a discussion of potential uses for this data.

[238] *See* MFA Letter (this comment letter refers only to GAAP categories, but the commenter clarified on a call with staff that it was referring to the classifications under FAS 157).

[239] We note that nothing would prevent an adviser from relying on its classifications of assets for financial reporting purposes when completing Form PF to the extent that asset classes overlap.

[240] *See* FSA Survey; ESMA Proposal, *supra* note 33.

[241] *See* ABA Committees Letter; MFA Letter.

[242] *See* MSCI Letter (arguing that duration information may not be valuable for making comparisons across the industry because there are many ways in which it may be calculated).

number.[243] These commenters suggested instead that we ask for turnover by asset class, as was done in the FSA Survey (and, more recently, ESMA's proposed reporting template).[244] We found these comments persuasive and have revised the question to request turnover in targeted asset classes.[245]

Question 27 has also been revised to request turnover data expressed as the value of transactions during the period rather than as a rate. This change has been made in order to make the data easier to compare to broader market data and to improve the comparability of the data with data that is or would be collected on the FSA survey and ESMA's proposed reporting template. In addition, we believe that the revised approach will be less burdensome for advisers than calculating the proposed portfolio turnover rate because advisers would have been required to determine the value of purchases and sales during the period as an intermediate step in calculating the portfolio turnover rate.[246]

Finally, in response to Question 28, the adviser must report a geographical breakdown of investments held by the hedge funds it advises.[247] This question has been modified from the proposal to require a less detailed breakdown (focusing on regions rather than countries) with additional, separate disclosure regarding investment in particular countries of interest. These changes are intended to respond to comments we received suggesting that advisers do not track this information in a manner consistent with our proposed, more granular geographical breakdown.[248] We anticipate that the revised approach will reduce the burden of responding to this question because the less granular categories should allow more advisers to rely on their existing classifications.

The information required in section 2a is designed to assist FSOC in monitoring asset classes in which hedge funds may be significant investors and trends in hedge funds' exposures. In particular, it is intended to allow FSOC to identify concentrations in particular asset classes (or in particular geographic regions) that are building or transitioning over time. It will also aid FSOC in examining large hedge fund advisers' role as a source of liquidity in different asset classes. In some cases, section 2a requires that the information be broken down into categories that are designed to facilitate use in the FRB's flow of funds report, a tool that is used for evaluating trends in and risks to the U.S. financial system.[249] This information also is designed to address requirements under section 204(b)(3) of the Advisers Act specifying certain mandatory contents for records and reports that must be maintained and filed by advisers to private funds. For example, it will provide information about the types of assets held and trading practices.

One commenter expressed concern that advisers do not collect or calculate the exposure or turnover information that section 2a requires on a monthly basis or track geographical concentrations.[250] As discussed above, we are adopting section 2a with several changes that are designed to address commenters' concerns and reduce the reporting burden, though we continue to believe that monthly exposure and turnover values will be important to allow FSOC to track trends in the industry and to discourage ''window dressing.''[251] We acknowledge that advisers may incur additional burdens in responding to these questions, and we have taken this into account in considering the costs and benefits of this rulemaking.[252] The revised approach to the information required in section 2a strikes an appropriate balance between the burden imposed and need for the information.

b. Section 2b of Form PF

Consistent with our proposal, section 2b of Form PF requires a large hedge fund adviser to report certain additional information about any hedge fund it advises that has a net asset value of at least $500 million as of the end of any month in the prior fiscal quarter (a ''qualifying hedge fund'').[253] Two commenters disagreed with limiting reporting on section 2b to hedge funds with net assets of $500 million or more, arguing that information regarding smaller funds is important to monitoring certain group behaviors relevant to systemic risk and that smaller funds are equally likely to engage in improper activities, such as insider trading.[254] Two other commenters argued for a higher threshold, suggesting that no fund of this size could be systemically important.[255] We are adopting the

[243] *See* ABA Committees Letter; MFA Letter. Some commenters also argued that this question would not provide information valuable to monitoring systemic risk. *See, e.g.,* ABA Committees Letter; Fidelity Letter; SIFMA Letter. However, based on our consultation with staff representing FSOC's members, we believe that turnover will provide important insight into the role of hedge funds in providing trading liquidity in certain markets.

[244] *See* FSA Survey, *supra* note 32; ESMA Proposal, *supra* note 33.

[245] This is generally consistent with the international standards, though, unlike the FSA Survey and ESMA's proposed reporting template, we do not include derivatives (other than futures) because we have focused on assets classes where we believe turnover is currently most likely to occur at rates that raise systemic concerns.

[246] *See* the Proposing Release, *supra* note 12, for the proposed definition of ''turnover rate'' in the Glossary of Terms to Form PF.

[247] *See* Question 28 on Form PF.

[248] *See* ABA Committees Letter; MFA Letter. We have not, as one commenter suggested, used any particular service provider's methodology of categorizing geographical exposures because our staff understands, based on conversations with industry representatives, that there is no single methodology that hedge fund advisers employ. *See* MFA Letter (suggesting that we use ''Bloomberg's country of risk methodology''). In response to commenter concerns, we have removed some of the instructions regarding how the location of investments should be determined and expanded Instruction 15 to explain that the numerator should be calculated in the same manner as gross asset value. *See* MFA Letter. These changes allow advisers to rely on their internal methodologies and service provider reports in determining where to report investments and, by using gross asset value, rather than the more general value definition set out in Instruction 15, avoid the possibility that the reported value of certain derivative instruments would overwhelm the influence of other instruments. We have also added a ''supranational'' region, which is intended to capture investments that, because of their multinational scope, cannot meaningfully be placed in a single region.

[249] *See supra* note 218 and *infra* note 475. For example, in some cases the data is required to be broken down between issuers that are financial institutions and those that are not. The FRB publishes flow of funds data on a quarterly basis.

[250] *See* ABA Committees Letter.

[251] *See infra* notes 285–292 and accompanying text. *See also* Proposing Release, *supra* note 12, at text accompanying n. 120 for a discussion of potential uses for this data.

[252] *See infra* sections IV.B and V of this Release (discussing increases in our burden and cost estimates in response to comments received).

[253] *See* Instruction 3 to Form PF. An adviser is not required to complete section 2 with respect to a fund of hedge funds that satisfies the requirements described in Instruction 7 to Form PF. For purposes of determining whether a private fund is a qualifying hedge fund, the adviser must aggregate any parallel funds and funds that are part of the same master-feeder arrangement and, to the extent discussed above in section II.A.5 of this Release, any parallel managed accounts and relevant funds of related persons. *See* Instructions 5 and 6 to Form PF and the definition of ''qualifying hedge fund'' in the Glossary of Terms to Form PF. *See also infra* section II.C.5 of this Release for a discussion of parallel funds, master-feeder arrangements and aggregation for reporting purposes. This aggregation is intended to prevent an adviser from structuring its activities to avoid the reporting requirements.

[254] *See* AFL–CIO Letter; AFR Letter.

[255] *See* Fidelity Letter (arguing that the FSA threshold of $500 million, upon which the qualifying hedge fund threshold used in the Form PF is based, should be scaled to $2.4 billion based on the relative size of equity markets in the United States and the United Kingdom); SIFMA Letter. As discussed above, these comments appear to be based on the mistaken premise that the thresholds are intended to establish a cutoff separating the risky from the safe. To the contrary, the reporting thresholds are intended only to ensure that FSOC has sufficient context for its analysis while minimizing the burden imposed on advisers. We understand based on our staffs' consultation with staff representing FSOC's members that, in order to

threshold as proposed because we believe it balances the needs of FSOC for information regarding relatively large hedge funds and the burdens of the more detailed reporting that section 2b requires.[256]

Also consistent with our proposal, Question 30 in section 2b requires reporting of the same information as that requested in section 2a regarding exposure to different types of assets except, in this case, the information is reported for each qualifying hedge fund, rather than on an aggregate basis. This question has been modified from the proposal in the same manner as Question 26.[257]

Section 2b also requires, on a per fund basis, data not requested in section 2a. For instance, the adviser must report information regarding the qualifying hedge fund's portfolio liquidity,[258] holdings of unencumbered cash[259] and concentration of positions.[260] These questions have been modified from the proposal to allow advisers to rely more on their own methodologies in responding, consistent with our changes to Instruction 15 to the Form, and to align the Form more closely with ESMA's proposed reporting template. A new Question 31 has been added, which requires the adviser to identify the reporting fund's base currency because this information is necessary to interpret responses to questions regarding foreign exchange exposures and the effect of changes in currency rates on the reporting fund's portfolio.[261]

In Questions 36 through 38, the adviser must also provide information regarding the fund's collateral practices with counterparties.[262] These questions have been significantly modified from the proposal in order to reduce the amount of detail required, including by removing the breakdown of collateral into initial and variation margin. These changes were made because a commenter persuaded us that ''[w]hile some of this information is potentially illuminating in the context of systemic risk * * * this section [as proposed] is more burdensome than it need be for its purpose.''[263] We have also modified these questions by requiring information regarding rehypothecation only with respect to the fund's aggregate collateral (rather than on a counterparty-by-counterparty basis). Commenters persuaded us that, because collateral is often fungible, this question would have been difficult to answer as proposed and that the additional detail is unnecessary.[264] We anticipate that these changes will reduce the burden of responding to these questions.

Question 39 in section 2b also requires the adviser to report whether the hedge fund cleared any trades directly through a central clearing counterparty (''CCP'') during the reporting period. The proposal would have required the adviser to identify the three CCPs to which the fund has the greatest net counterparty credit exposure and provide the amount of that exposure. The information this question requires has been significantly reduced because commenters argued persuasively that the fund's relationship is typically with a swap dealer, futures commission merchant or direct clearing member who then interacts with the CCP rather than directly with a CCP and that, as a result, advisers ''may not have easy access to the data requested by this question.''[265] If responses to the revised question indicate that many reporting funds clear transactions directly through CCPs, the Commissions may consider in the future whether a question like the one proposed should be added to the Form. The change to Question 39 will reduce the burden of responding to the Form.

The information that Questions 30 through 35 require is designed to assist FSOC in monitoring the composition of hedge fund exposures over time as well as the liquidity of those exposures. In addition, information reported in response to Questions 36 through 38 is intended to aid FSOC in its monitoring of credit counterparties' unsecured exposure to hedge funds as well as the hedge fund's exposure and ability to respond to market stresses. Finally, Question 39 is intended to assist FSOC in monitoring whether hedge funds and CCPs become increasingly interconnected over time. This information could be important to understanding, for instance, concentrations in the hedge fund industry and interconnectedness, which relate to the factors that FSOC must consider in making a determination to designate a nonbank financial company for FRB supervision under the Dodd-Frank Act.[266]

Section 2b also requires for each qualifying hedge fund data regarding certain hedge fund risk metrics. For instance, Question 40 requires the adviser to report value at risk (''VaR'') for each month of the reporting period if, during the reporting period, the adviser regularly calculated a VaR metric for the qualifying hedge fund. One commenter confirmed that, ''[f]or all but the most illiquid strategies, hedge fund managers utilize these statistical measures [VaR and similar measures] for internal management and

assess potential systemic risk posed by the activities of certain funds, FSOC would benefit from access to data about funds that, on an individual basis, may not be a source of systemic risk.

[256] In addition, certain of the information that would be obtained with respect to smaller hedge funds will already have been captured on an aggregate basis in section 2a.

[257] *See supra* notes 233–242 and accompanying text for a discussion of those changes.

[258] *See* Question 32 on Form PF. This question requires reporting of the percentage of the fund's portfolio capable of being liquidated within different time periods. *See* Proposing Release, *supra* note 12, at text accompanying n. 124 for a discussion of potential uses for this data. We have modified the instructions to this question to address commenter concerns by allowing advisers to rely more on their own methodologies in responding. *See* CCMR Letter; MFA Letter. We have also conformed the liquidity periods to those included in ESMA's proposed reporting template. *See* ESMA Proposal, *supra* note 33. One commenter objected to the question more generally, saying that the data is not currently tracked in the manner required and many firms would need to ''devote significant time and resources'' to building models and systems. TCW Letter. Another commenter, however, supported this question, noting that ''[t]his [information] is increasingly a request of hedge fund investors, particularly for comingled funds, where a given investor can be adversely impacted by a sudden large redemption by another party.'' MSCI Letter. We have taken into account both of these comments in considering the costs and benefits of this rulemaking and believe that the value of the information to FSOC warrants the potential burden imposed. *See infra* sections IV.B and V of this Release (discussing increases in our burden and cost estimates in response to comments received).

[259] *See* Question 33 on Form PF. In response to a comment we received, we have modified the definition of ''unencumbered cash'' to include the value of ''overnight repos'' used for liquidity management (so long as the assets purchased are U.S. treasury securities or agency securities) because we are satisfied that, for this purpose, the liquidity of these positions is sufficiently cash-like. *See* MFA Letter.

[260] *See* Questions 34 and 35 on Form PF. Question 34 requires the total number of open positions held by the fund, and Question 35 requires reporting, for each position that represents 5% or more of the fund's net asset value, of the position's portion of the fund's net asset value and sub-asset class. One commenter asked for clarification regarding the meaning of ''position,'' as used in these questions and elsewhere in the Form. *See* MFA Letter. In response, we have added an instruction to the Form explaining that advisers should determine whether a set of legal and contractual rights constitutes a ''position'' in a manner consistent with their internal recordkeeping and risk management procedures. *See* Instruction 15 to Form PF. This general instruction also supplants the detailed instructions proposed in Question 35, which have, accordingly, been removed.

[261] *See also* Question 30, regarding reporting fund exposures, and Question 42, regarding the effect of changes in certain market factors on the fund's portfolio.

[262] Questions 36 and 37 focus on collateral practices with the fund's top five counterparties, and Question 38 focuses on rehypothecation of the fund's aggregate collateral.

[263] MSCI Letter.

[264] *See* MFA Letter; MSCI Letter.

[265] MFA Letter; *see also* AIMA General Letter.

[266] *See* section 113(a) of the Dodd-Frank Act; FSOC Second Notice, *supra* note 6.

for investor reporting.'' [267] We are adopting this question substantially as proposed but with several clarifying changes.[268]

In Question 41, the adviser must also indicate whether there are risk metrics other than, or in addition to, VaR that it considers important to managing the fund's risks. Several commenters, noting that some advisers do not use VaR, expressed concern that a negative response regarding the use of VaR would create a presumption that the adviser is not prudently managing risk.[269] This new question will give advisers an opportunity to indicate that they are using risk metrics other than VaR, and it will also provide valuable information regarding industry practice that may inform FSOC's understanding of risk management and future rulemakings.

In addition, Question 42 requires the adviser to report the impact on the fund's portfolio from specified changes to certain identified market factors, if regularly considered in formal testing in the fund's risk management, broken down by the long and short components of the qualifying hedge fund's portfolio. We are adopting this question with several changes from the proposal.[270] Most of the changes clarify the instructions, but the question has also been modified so that an adviser may omit a response to any market factor that it did not regularly consider in formal testing even if the factor could have an impact on the fund's portfolio or the adviser considered it qualitatively.[271] Under the proposal, an adviser would have been permitted to omit a response with respect to a market factor only if it did not regularly consider that factor in the reporting fund's risk management, whether in formal testing or otherwise. This change has been made in response to commenter concerns regarding the potential burden of responding to this question.[272] We believe it will reduce that burden in the aggregate because fewer advisers will need to provide detailed responses and for individual advisers because those without existing quantitative models will not be required to build or acquire them in order to respond to the question.

Some commenters would have preferred removal of Question 42 entirely, arguing that it would not yield information valuable to systemic risk monitoring because the variability in responses would hinder the ability of regulators to make comparisons across funds.[273] However, although variability in the assumptions used to complete the question may limit certain types of industry-wide comparisons, the variability itself, when taken together with other information collected on the Form, may provide important comparative information. Based on our staffs' consultations with staff representing FSOC's members, we believe this question will also provide valuable risk information with respect to individual funds.[274]

Item D of section 2b also requires reporting of certain financing information for each qualifying hedge fund in Question 43. This question includes a monthly breakdown of the fund's secured and unsecured borrowing, the value of the collateral and other credit support posted in respect of the secured borrowing and the types of creditors. Question 43 has been modified from the proposal to clarify instructions and remove some of the detail regarding collateral postings (including information regarding rehypothecation of collateral, which is now covered on an aggregate basis elsewhere in section 2b).[275] We anticipate that these changes will reduce the burden of responding to this question. One commenter argued that advisers would have difficulty responding to the parts of Question 43 relating to the fund's borrowings via prime brokerage because they lack transparency into the prime brokerage relationship.[276] This comment suggests, however, that prime brokers do not currently report this information to advisers, not that advisers are unable to obtain this information on request. It should be noted that advisers have successfully completed the FSA Survey, which includes a similar breakdown of borrowings (though not the collateral information), and that the revisions we have made to this question simplify the collateral reporting requirements.

An adviser must also report in Questions 44 and 45 the fund's total notional derivatives exposures as well as the net mark-to-market value of its uncleared derivatives positions and the value of the collateral and other credit support posted in respect of those uncleared positions. Under the proposal, advisers would have reported only the notional value of the fund's derivatives positions and the value of collateral posted in respect of those positions. One commenter pointed out, however, that the ''absolute value of notional values cannot meaningfully be compared to variation margin amounts'' because margin is posted based on net

[267] *See* MSCI Letter. This commenter, however, cautioned that variability in the calculation of VaR will make meaningful aggregation of this information difficult and suggested removing the question. As proposed, in order to minimize the reporting burden associated with this question, we are not requiring that all advisers calculate VaR using a standardized set of assumptions. Although this approach may, as the commenter suggested, reduce the ability of regulators to make comparisons across hedge funds using this data, we believe that it will also provide valuable risk information with respect to individual funds.

[268] For instance, we have specified the units for reporting the confidence interval and weighting factor, combined the ''none'' and ''equal'' weighting options and clarified that the monthly reporting should be at the end of each month and not for the span of the month.

[269] *See* IAA Letter; MFA Letter.

[270] These include changes intended to clarify (1) How the fund's portfolio should be separated into long and short components, (2) the period over which the changes should be deemed to occur and (3) how to address factors that would otherwise become negative when a given change is applied. We have also modified the magnitude of some of the market factor changes that advisers must test in order to reflect recent data on the frequency with which such changes may occur.

[271] For this purpose, ''formal testing'' means that the adviser has models or other systems capable of simulating the effect of a market factor on the fund's portfolio, not that the specific assumptions outlined in the question were used in testing. If the factor is relevant but not tested, the adviser would need to check a box to that effect but would not report a numerical response.

[272] *See, e.g.,* TCW Letter. This commenter wrote that ''[a]n analyst at the firm estimated that it would take one to two days for the firm's systems to compute and verify the data for one fund's response to [this question].'' Based on a discussion with this commenter, our staff understands that this estimate assumes that the fund holds securities that are very complex to model (such as non-agency mortgage backed securities) and that the modeling is intended to achieve a high level of confidence. Our staff further understands that for many other asset classes, this modeling would require minutes or hours rather than days and that, even for complex securities, advisers are able to obtain approximations about which they are reasonably confident in significantly less time. As a result, we believe that this commenter's estimate represents an effort significantly beyond the likely *average* burden this question requires. We also understand that the majority of the estimated one to two days represents time spent allowing the adviser's systems to calculate the responses and not employee hours. We note, finally, that we have significantly extended the filing deadline for large hedge fund advisers, reducing the likelihood that this task will compete with other tasks for the firm's computing resources and, consequently, the potential systems costs associated with this question. *See supra* section II.B.2 of this Release. Nonetheless, we have taken this comment into account in considering the costs and benefits of this rulemaking. *See infra* sections IV.B and V of this Release (discussing increases in our burden and cost estimates in response to comments received).

[273] *See* IAA Letter; TCW Letter.

[274] *See* Proposing Release, *supra* note 12, at text accompanying n. 127 (discussing potential uses for this data). One commenter suggested removing this question in favor of expanding the questions regarding counterparty exposures so that an adviser would complete those questions using multiple stress scenarios to probe for contingent exposures. *See* MSCI Letter; *see also supra* note 230. We believe at this time that the question we are adopting strikes a more appropriate balance between the value of the information collected and the burden of reporting.

[275] *See supra* note 264 and accompanying text.

[276] *See* MFA Letter.

market values rather than notional amounts.[277] At this commenter's suggestion, this question has been revised to request both notional value and net market value. We have, however, narrowed the scope of transactions about which collateral information is requested. Specifically, an adviser is required to report market values and collateral values only for transactions that are not cleared by a CCP. We have taken this approach because we believe margining practices associated with cleared derivatives make obtaining information regarding collateral practices in connection with those transactions unnecessary. For the same reasons discussed above in connection with changes made to Questions 36 and 37, this question has been revised to reduce the amount of detail required regarding the posting of collateral.[278] We anticipate that these changes will, on net, reduce the burden of responding to Questions 44 and 45 and, by allowing comparisons of collateral practices to net exposures, provide more valuable information for FSOC.

In response to Questions 46 and 47, the adviser must provide a breakdown of the term of the fund's available financing and the identity of, and amount owed to, each creditor to which the fund owed an amount equal to or greater than 5 percent of the fund's net asset value as of the reporting date.[279] One commenter argued that the breakdown of available financing should not include uncommitted lines of credit because the lender may not provide them on request.[280] However, the extent to which financing may become rapidly unavailable is precisely the information this question is designed to elicit. We are adopting Questions 46 and 47 substantially in the form proposed.[281]

The information that Item D of section 2b requires is designed to assist FSOC in monitoring, among other things, the qualifying hedge fund's leverage, the unsecured exposure of credit counterparties to the fund, and the committed term of that leverage, which may be important to monitor if the fund comes under stress. This information is also relevant to the fund's interconnectedness and leverage, which relate to factors that FSOC must consider in making a determination to designate a nonbank financial company for FRB supervision under the Dodd-Frank Act.[282]

Item E of section 2b requires the adviser to report information about each qualifying hedge fund's investor composition and liquidity. Questions 48 and 49, for example, require information regarding the fund's side-pocket and gating arrangements. These questions have been modified to increase their clarity and to require numerical responses regarding gating arrangements only if investors have withdrawal or redemption rights in the ordinary course, potentially reducing the number of advisers that need to respond to all elements of Question 49. Question 48 has also been expanded so that the adviser must check a box indicating whether additional assets have been placed in a side-pocket since the end of the prior reporting period. Without this additional information, FSOC would not be able to distinguish between advisers frequently using side-pockets and those who have simply had a side-pocket in place for an extended period. We believe, therefore, that this additional information will be important to interpreting the information proposed to be collected. We do not anticipate that this addition will significantly increase the burden of responding to this question because we believe that advisers already track assets held in side-pockets and the response only requires checking a box.

Finally, the adviser must provide, in Question 50, a breakdown of the percentage of the fund's net asset value that is locked in for different periods of time. This question has been modified from the proposal to clarify instructions and to improve international consistency by conforming the liquidity periods to those included in ESMA's proposed reporting template.[283]

The information that Item E of section 2b requires is designed to allow FSOC to monitor the hedge fund's susceptibility to failure through investor redemptions in the event the fund experiences stress due to market or other factors. For instance, this information, together with information collected in Questions 32 and 46 and elsewhere on the Form, is intended to assist FSOC in determining whether the fund may have a mismatch in the maturity or liquidity of its assets and liabilities, which relate to factors that FSOC must consider in making a determination to designate a nonbank financial company for FRB supervision under the Dodd-Frank Act.[284]

Certain data in the Form, while filed with the Commissions on an annual or quarterly basis, must be reported on a monthly basis to provide sufficiently granular data to allow FSOC to better identify trends and to mitigate ''window dressing.'' [285] Nearly all of these requirements appear in section 2 of the Form, which only large hedge fund advisers complete. Although no commenters expressly supported the monthly data requirements within the Form, some commenters recommended that large advisers be required to file more often than quarterly, which could impose a greater burden than monthly reporting on a quarterly filing.[286] Several commenters, however, suggested that advisers should only report data as of the end of the quarterly reporting period.[287] One commenter, while conceding that some funds already report certain data to investors on a monthly basis, asserted that such monthly reporting involves significantly less data and is based on internal valuation estimates only.[288] Other commenters doubted that advisers would engage in ''window dressing'' and argued that the increased costs to advisers would outweigh the benefits.[289]

Based on our staffs' consultations with staff representing FSOC's members, we agree with commenters who argued that rapidly changing markets and portfolios merit collecting certain information more often than on a quarterly basis, and we are not persuaded that the large hedge fund and large liquidity fund advisers required to respond to these questions will be overwhelmed by this reporting. Also, as discussed above, we have made several changes that increase the ability of advisers to rely on their own internal methodologies in responding to the Form, which is expected to ease the burden of reporting monthly information by clarifying that advisers need not incur substantial additional

[277] *See* MFA Letter.

[278] *See supra* notes 262–264 and accompanying text.

[279] To improve international consistency, we have conformed the liquidity periods in Question 46 to those included in ESMA's proposed reporting template. *See* ESMA Proposal, *supra* note 33. As explained above, we have moved Question 47 from section 1b to section 2b. *See supra* note 195.

[280] *See* MFA Letter.

[281] *But see, supra* note 279. We have also added an instruction to Question 47 clarifying that the precise legal name of the creditor is not required.

[282] *See* section 113(a) of the Dodd-Frank Act; FSOC Second Notice, *supra* note 6.

[283] *See* ESMA Proposal, *supra* note 33.

[284] *See* section 113(a) of the Dodd-Frank Act; FSOC Second Notice, *supra* note 6.

[285] *See, e.g.,* Questions 27, 28, 31, 33, 34, 43, 44, 45, and 56 on Form PF.

[286] *See* AFL–CIO Letter; AFR Letter. *See also* CII Letter.

[287] *See, e.g.,* BlackRock Letter (arguing that data should be provided, at most, on a quarterly basis); Fidelity Letter; MFA Letter; SIFMA Letter (proposing that reporting be no more frequent than quarterly, at least for private equity fund advisers).

[288] *See* BlackRock Letter.

[289] *See, e.g.,* Fidelity Letter; MFA Letter.

burdens in verifying the data.[290] Finally, the monthly data about which commenters were most concerned were the monthly performance data proposed to be collected in section 1b of the Form.[291] Question 17 has, however, been modified to require monthly data only in the case that the adviser is already calculating it, making the reporting burden essentially one of copying information onto the Form.[292] Accordingly, except as discussed above, we are adopting the requirements to report monthly information as proposed.

3. Section 3 of Form PF

A private fund adviser must complete section 3 of Form PF if it manages one or more liquidity funds and had at least $1 billion in combined liquidity fund and registered money market fund assets under management as of the end of any month in the prior fiscal quarter.[293] Section 3 requires that the adviser report certain information for each liquidity fund it manages. The adviser must provide information regarding the fund's portfolio valuation and its valuation methodology, as well as the liquidity of the fund's holdings.[294] This section also requires information regarding whether the fund, as a matter of policy, is managed in compliance with certain provisions of rule 2a–7 under the Investment Company Act, which is the principal rule through which the SEC regulates registered money market funds.[295] Items B and C of section 3 require the adviser to report the amount of the fund's assets invested in different types of instruments, information for each open position of the fund that represents 5 percent or more of the fund's net asset value and information regarding the fund's borrowings.[296] Finally, Item D of section 3 asks for certain information regarding the fund's investors, including the concentration of the fund's investor base and the liquidity of its ownership interests.[297]

The information that section 3 requires is designed to assist FSOC in assessing the risks undertaken by liquidity funds, their susceptibility to runs, and how their investments might pose systemic risks either among liquidity funds or through contagion to registered money market funds. In addition, this information is intended to aid FSOC in monitoring leverage practices among liquidity funds and their interconnectedness to securities lending programs, which relate to factors that FSOC must consider in making a determination to designate a nonbank financial company for FRB supervision under the Dodd-Frank Act.[298] Finally, this information will assist FSOC in assessing the extent to which the liquidity fund is being managed consistent with restrictions imposed on registered money market funds that might mitigate their likelihood of posing systemic risk. Commenters generally did not address the requirements of section 3, and the SEC is, therefore, adopting this section of the Form substantially as proposed.[299]

4. Section 4 of Form PF

A private fund adviser must complete section 4 of Form PF if it had at least $2 billion in private equity fund assets under management as of the end of its most recently completed fiscal year.[300] This section of the Form requires additional information regarding the private equity funds these advisers manage, which has been tailored to focus on relevant areas of financial activity that have the potential to raise systemic concerns. As discussed in the Proposing Release, information regarding the activities of private equity funds, certain of their portfolio companies and the creditors involved in financing private equity transactions may be important to the assessment of systemic risk.[301] The Proposing Release identified two practices of private equity funds, in particular, that could result in systemic risk: (1) The potential shift of market risk to lending institutions when bridge loans cannot be syndicated or refinanced;[302] and (2) the imposition of substantial leverage on portfolio companies that may themselves be systemically significant.[303]

Several commenters agreed that the activities identified in the Proposing Release are important areas of concern for monitoring systemic risk with respect to private equity funds.[304] Other commenters, however, disagreed with the analysis, arguing that private equity funds and their advisers do not have the potential to pose systemic risk.[305] These commenters affirmed that certain characteristics identified in the

[290] *See supra* note 188 and text accompanying.

[291] *See* Question 17 on Form PF; *supra* section II.C.1.b of this Release.

[292] *See supra* nn. 198–202 and accompanying text.

[293] *See* sections II.A.2 and II.B.4 of this Release for the definition of ''liquidity fund'' and a discussion of this reporting threshold. *See also* Instructions 3, 5, and 6 to Form PF. Form PF is a joint form between the SEC and the CFTC only with respect to sections 1 and 2 of the form. Section 3 of the form, which requires more specific reporting regarding liquidity funds, is only required by the SEC.

[294] *See* Questions 52, 53, and 55 on Form PF. The SEC has modified the instructions to Question 55 to clarify the units in which responses are to be reported and to clarify that the net asset value requested in parts (a) and (b) of Question 55 is the net asset value reported to current and prospective investors, which may or may not be the same as the net asset value reported in Questions 9 and 55(c), which are based on fair value.

[295] *See* Question 54 of Form PF. The restrictions in rule 2a–7 are designed to ensure, among other things, that money market funds' investing remains consistent with the objective of maintaining a stable net asset value. Many liquidity funds state in investor offering documents that the fund is managed in compliance with Investment Company Act rule 2a–7 even though that rule does not apply to liquidity funds.

[296] *See* Questions 56–59 on Form PF. The SEC has modified these questions from the proposal by removing instructions that have been supplanted by general instructions. *See* Instruction 15 to Form PF.

[297] *See* Questions 60–64 on Form PF. For purposes of these questions, beneficial owners are persons who would be counted as beneficial owners under section 3(c)(1) of the Investment Company Act or who would be included in determining whether the owners of the fund are qualified purchasers under section 3(c)(7) of that Act. (15 U.S.C. 80a–3(c)(1) or (7)). The SEC has made clarifying changes to the instructions to Question 64. To improve international consistency, the SEC has also conformed the liquidity periods in Question 64 to those included in ESMA's proposed reporting template. *See* ESMA Proposal, *supra* note 33.

[298] *See* section 113(a) of the Dodd-Frank Act; FSOC Second Notice, *supra* note 6.

[299] The SEC received only one comment specifically addressing the requirements of section 3, which questioned whether requiring information regarding investor liquidity is appropriate considering the focus of liquidity funds on short-term investments. *See* MFA Letter. The SEC continues to believe that this information is important to understanding whether a fund may suffer a mismatch between the maturity of its obligations and the maturity of its investments and is, therefore, adopting this question substantially as proposed. *But see, supra* note 297.

[300] *See* Instruction 3 to Form PF. *See also* sections II.A.3 and II.B.4 of this Release for the definition of ''private equity fund'' and a discussion of this reporting threshold. Form PF is a joint form between the SEC and the CFTC only with respect to sections 1 and 2 of the form. Section 4 of the form, which requires more specific reporting regarding private equity funds, is only required by the SEC.

[301] *See* Proposing Release, *supra* note 12, at section II.A.3.

[302] *See* Proposing Release, *supra* note 12, at nn. 71–73 and accompanying text.

[303] *See* Proposing Release, *supra* note 12, at nn. 74–75 and accompanying text.

[304] *See, e.g.,* AFL–CIO Letter (pointing to evidence that the use of so-called ''covenant-lite'' loans is again expanding); CPIC Letter (noting the importance of gathering information about all types of entities using leverage and asserting that, ''the Commission should not be pressured to scale back further or provide broad exemptions for private equity funds.''); Merkl February Letter. *See also* Proposing Release, *supra* note 12, at n. 73 and accompanying text (discussing risks associated with ''covenant-lite'' loans).

[305] *See, e.g.,* Olympus Letter; PEGCC Letter (contending that private equity funds are like any other shareholders and that they should not be singled out for ''a discriminatory and onerous reporting regime designed to monitor how their portfolio companies use leverage.''); SIFMA Letter.

Proposing Release, including limitations on investor redemption rights and an absence of significant leverage at the fund level, are common to private equity funds and tend to mitigate their potential for systemic risk.[306]

The SEC acknowledges that several potentially mitigating factors suggest that private equity funds may have less potential to pose systemic risk than some other types of private funds, and this has been taken into account in requiring substantially less information with respect to private equity funds than with respect to hedge funds or liquidity funds. The design of Form PF, however, is not intended to reflect a determination as to where systemic risk exists but rather to provide empirical data to FSOC with which it may make a determination about the extent to which the activities of private equity funds or their advisers pose such risk.[307] Based on SEC staff's consultation with staff representing FSOC's members, the SEC continues to believe that targeted information regarding private equity leverage practices may be important to FSOC's monitoring of systemic risk.[308]

One commenter argued that, if the SEC is concerned only with the use of leverage, the information could be gathered more effectively from the financial institutions that lend the money or, in the case of leveraged portfolio companies that are themselves financial institutions, incur the debt.[309] Staff representing FSOC's members has explained to the SEC's staff, however, that collecting leverage data from private equity advisers has several potential advantages. First, it provides a more complete accounting than other data sources of the leverage that may have been imposed on portfolio companies. Although portfolio companies may take on leverage through financial institutions regulated in the United States, they may also incur leverage from other sources, including hedge funds and foreign financial institutions. As a result, portfolio company leverage information collected through U.S. bank regulators would likely provide an incomplete picture and may fail to capture trends with potential systemic importance, such as greater reliance on leverage obtained from outside the regulated financial sectors or from foreign sources. Even if regulators are only concerned about the risks that a portfolio company's debt may impose on financial institutions, those risks cannot be fully understood without information regarding the company's entire balance sheet, including debt from other sources.

Second, because the SEC understands that private equity advisers routinely track the leverage of their portfolio companies, collecting data directly from these advisers is likely to be the most efficient means of monitoring portfolio company leverage. In contrast, obtaining portfolio company leverage information through bank regulators could be less efficient because (1) Banks are less likely to be actively tracking leverage information specifically attributable to portfolio companies, (2) bank regulators do not have a single collection mechanism for this data and (3) data may need to be aggregated across several different bank regulators.

Third, collecting leverage data from private equity advisers would fill gaps in the data that could appear if FSOC were to attempt aggregating information from many different U.S. bank regulators. It also provides a check on any data that may be collected from other sources. Indeed, other types of information that the SEC collects from investment advisers has already proven valuable in cross-checking data that bank regulators collect.[310]

Fourth, FSOC has stated that it is concerned that leveraged lending practices can raise systemic risk concerns.[311] Private equity advisers are repeat participants in the leveraged loan market (often more so than other types of companies that access credit through these markets), and tracking their portfolio company leverage practices can signal trends in emerging risks in those markets. Indeed a recent study found that the private equity fund sponsors' bank relationships were an important factor in explaining the favorable loan terms obtained by private equity portfolio companies, both as a result of the private equity sponsor's repeat interactions reducing information asymmetries and the competition among banks to cross-sell other business to the private equity sponsor.[312] This empirical data suggests that collecting data on private equity portfolio company leverage trends in fact may be the most efficient way to collect systemic risk trend data for the broader leveraged loan market because private equity portfolio companies' practices in this area may be a bellwether due to their sponsors' repeat player status. In addition, this approach appears consistent with an emerging international approach favoring broad monitoring of credit intermediation across the economy.[313]

The SEC is, however, adopting Form PF with several significant changes that reduce the frequency of reporting with respect to private equity funds, as discussed above, and more closely align the required reporting with information available on portfolio company financial statements. These changes, which are discussed in detail below and in section II.B of this Release, are intended to respond to industry concerns while still providing FSOC the information it needs to monitor the potential for systemic risk across the private fund industry. In general, we expect that these changes will reduce the burden of responding to the Form.

[306] *See, e.g.,* Olympus Letter; PEGCC Letter; SIFMA Letter. These commenters also noted that these funds typically focus on long-term investments and are legally isolated from the financial obligations of portfolio companies and other funds. They also asserted that private equity funds and their investments tend to be relatively small and are not interconnected. *See also* Proposing Release, *supra* note 12, at n. 77 and accompanying text.

[307] One industry observer has explained the importance of transparency in allowing regulators to examine where risks may exist in the alternative investment industry, arguing that, ''[r]egulation has to aim at trying to prevent the next crisis, not simply cleaning up the mess from the previous one. It may indeed be the case that the alternative investment industry is too small and/or is leveraged at too low a level, at least relative to average bank sector leverage, to be a likely source of future systemic harm but the opacity issue, which has for a long time hampered supervisors' efforts to understand the industry's significance, makes this hard to tell. Requiring the industry to submit at least to disclosure and transparency obligations that help regulators and central banks do a better job of identifying systemic risk concentrations in the system is a reasonable step forward. Resistance to the imposition of obligations of this sort would merely serve to suggest that there is something to hide.'' Eilis Ferran, *The Regulation of Hedge Funds and Private Equity: A Case Study in the Development of the EU's Regulatory Response to the Financial Crisis,* University of Cambridge and European Corporate Governance Institute (Feb. 2011).

[308] *See* Proposing Release, *supra* note 12, at section II.A.3.

[309] *See* PEGCC Letter.

[310] The SEC's Form N–MFP, for instance, has provided a valuable check against information that banking regulators collect with respect to portfolio holdings of registered money market funds.

[311] *See* FSOC 2011 Annual Report, supra note 19, at 12 (''Although it is difficult to make definitive determinations regarding the appropriateness of risk pricing, there have been some indicators that credit underwriting standards might have overly eased in certain products, such as leveraged loans, reflecting the dynamics of competition among arranging bankers. * * * Sound underwriting standards, which were abandoned in the run-up to the crisis, will encourage greater investor confidence and stability in the market'').

[312] *See* Victoria Ivashina & Anna Kovner, *The Private Equity Advantage: Leveraged Buyout Firms and Relationship Banking,* 24 Rev. of Fin. Studies 7 (July 2011).

[313] *See* FSB Shadow Banking Report, *supra* note 28; ESMA Proposal, *supra* note 33; Proposing Release, *supra* note 12, at n. 33. *See also* CPIC Letter (affirming the importance of gathering information about all types of entities using leverage).

Section 4 requires that large private equity advisers report certain information for each private equity fund they manage, including certain information about guarantees of portfolio company obligations and the leverage of the portfolio companies that the fund controls. Specifically, Question 66 requires information about the amount of guarantees that the adviser, the reporting fund or any other related person of the adviser issues in respect of a portfolio company's obligations.[314] Questions 67 through 70 require the adviser to report: (1) The weighted average debt-to-equity ratio of controlled portfolio companies in which the fund invests, (2) the range of that debt-to-equity ratio among these portfolio companies and (3) the aggregate gross asset value of these portfolio companies.[315]

In addition, Questions 71 and 72 ask for the total amount of borrowings categorized as current liabilities and as long-term liabilities on the most recent balance sheets of the fund's controlled portfolio companies. These questions replace the question that the SEC proposed, which would have required advisers to report the maturity profile of the debt of its private equity funds' controlled portfolio companies.[316] This change has been made in response to commenter concerns regarding the burden of gathering the data that would have been required to respond to the question as proposed.[317] The SEC anticipates that these changes will reduce the burden of responding to these questions because less information is required and the information will be readily available on the financial statements of the fund's controlled portfolio companies.

In response to Questions 73 and 74, the adviser must report the portion of the controlled portfolio companies' borrowings that is payment-in-kind or zero coupon,[318] and whether the fund or any of its controlled portfolio companies experienced an event of default on any of its debt during the reporting period.[319] In addition, Question 75 requires the adviser to provide the identity of the institutions providing bridge financing to the adviser's controlled portfolio companies and the amount of that financing. Question 76 requires certain information if the fund controls any financial industry portfolio company, such as the portfolio company's name, its debt-to-equity ratio, and the percentage of the portfolio company beneficially owned by the fund.[320] Question 79 requires the adviser to report whether any of its related persons co-invest in any of the fund's portfolio companies.

The information that Question 66 requires is intended to provide FSOC information regarding the exposure of large private equity advisers and their funds to the risks of their portfolio companies. The information that Questions 67 through 76 require is designed to allow FSOC to assess the potential exposure of banks and other lenders to the portfolio companies of funds managed by large private equity advisers and to monitor whether trends in those areas could have systemic implications. Information reported in response to Question 76 is also intended to allow FSOC to monitor investments by the funds of large private equity advisers in companies in the financial industry that may be particularly important to the stability of the financial system.

Finally, Questions 77 and 78 require a breakdown of the fund's investments by industry and by geography.[321] Two commenters suggested removing these questions, arguing that the value of the information would not exceed the burden of reporting it.[322] Regulators, however, will be able to use this information to monitor global and industry concentrations among private equity funds, and concentration is one of the factors that FSOC must consider in making a determination to designate a nonbank financial company for FRB supervision under the Dodd-Frank Act.[323] In addition, the information required is largely based on the financial statements of the controlled portfolio companies and, therefore, should be readily available to the adviser.

Most of the reporting in section 4 relates to portfolio companies because the SEC understands that leverage in private equity structures is generally incurred at the portfolio company level.

[314] Following consultation with staff representing FSOC's members, we have broadened the scope of this question to capture guarantees from the adviser and its related persons rather than just those from the reporting fund. This change is intended to allow FSOC and other regulators to confirm broadly whether the adviser or the reporting fund has direct or indirect exposure to the liabilities of portfolio companies in excess of the amounts of their investments. In addition to Question 66, the proposal included a separate question regarding the fund's borrowings, but a commenter pointed out that this substantially duplicated the information requested in Question 13 on Form PF, so the proposed question is not being adopted. *See* comment letter of George Merkl (Mar. 23, 2011). *See also* the Proposing Release, *supra* note 12, for the proposed version of Question 57 on Form PF.

[315] A ''controlled portfolio company'' is defined as a portfolio company that is controlled by the private equity fund, either alone or together with the private equity fund's affiliates or other persons that are, as of the reporting date, part of a club or consortium investing in the portfolio company. ''Control'' has the same meaning as used in Form ADV and generally means the power, directly or indirectly, to direct the management or policies of a person, whether through ownership of securities, by contract, or otherwise. *See* Glossary of Terms to Form PF; Glossary of Terms to Form ADV. One commenter suggested the average ratio required in Question 68 would be unreliable because it depends on accounting methodologies, which may vary. *See* PEGCC Letter. While this measure may have its limitations, the SEC believes, based on its staff's consultations with staff representing FSOC's members, that this question will provide an important indication of portfolio company leverage and is not aware of an alternative that would yield more reliable information without imposing additional burdens on advisers. Question 70, regarding the aggregate gross asset value of the reporting fund's controlled portfolio companies, has been added to provide a measure of scale as context for interpreting the average leverage ratio. An adviser must already know this information in order to calculate the average leverage ratio, so the SEC does not expect this addition to meaningfully increase the reporting burden.

[316] *See* the Proposing Release, *supra* note 12, (discussing the proposed version of Question 62 on Form PF).

[317] *See* IAA Letter.

[318] *See* Question 73 on Form PF. One commenter argued that the SEC should not include this question because it has not identified any systemic risk associated with this type of indebtedness. *See* PEGCC Letter. The indebtedness in question, however, allows the borrower to increase its leverage by deferring interest payments (all at a time subsequent to the creditors making their credit determinations) and may result in additional risk being shifted to systemically important financial institutions or other holders of the debt.

[319] *See* Question 74 on Form PF. One commenter suggested this question should cover only controlled portfolio companies rather than all of the fund's portfolio companies, and the SEC has made this change. *See* ABA Committees Letter; *see also infra* discussion accompanying notes 324–327. This commenter also suggested that potential events of default that have not ripened into events of default should not require an affirmative response, and the SEC has modified the instructions to this address this comment.

[320] A ''financial industry portfolio company'' generally is defined as a nonbank financial company, as defined in the Dodd-Frank Act, or a bank, savings association, bank holding company, financial holding company, savings and loan holding company, credit union, or other similar company regulated by a federal, state or foreign banking regulator. *See* Glossary of Terms to Form PF. One commenter suggested this question should cover only controlled portfolio companies rather than all of the fund's portfolio companies, and the SEC has made this change. *See* ABA Committees Letter; *see also* IAA Letter; *see also infra* discussion accompanying notes 324–327. The SEC has added a requirement to report the gross asset value of each financial industry portfolio company to provide a measure of scale as context for interpreting the leverage ratio. This information should be readily available on portfolio company financial statements, so the SEC does not expect this addition to meaningfully increase the reporting burden.

[321] The SEC has modified the instructions to these questions to reflect clarifications suggested by a commenter. *See* Merkl February Letter. Question 78, which requires a geographical breakdown of investments in portfolio companies, has also been modified for reasons discussed above. *See supra* note 247 and accompanying text.

[322] *See* Merkl February Letter; PEGCC Letter.

[323] *See* section 113(a) of the Dodd-Frank Act.

This reporting is limited to *controlled* portfolio companies, rather than portfolio companies generally, to ensure that advisers are able to obtain the relevant information without incurring potentially substantial additional burdens. Several commenters suggested, however, that the proposed standard of ''control'' was too low, leaving advisers responsible for reporting information they may not be entitled to access.[324] The SEC is not persuaded that advisers are likely to have such difficulty obtaining the information required concerning controlled portfolio companies because the majority of this information is available from the financial statements of the portfolio companies or relates to the fund's own investments in the portfolio companies.[325] In addition, modifications from the proposal have replaced a requirement for information that may not have been available on portfolio company financial statements with a requirement for information that will appear on any audited portfolio company's financial statements.[326] Accordingly, the SEC is adopting the definition of ''controlled portfolio company'' substantially as proposed.[327]

Two commenters supported collecting the information proposed to be required in section 4.[328] However, they also argued that the required reporting should not be restricted to controlled portfolio companies but should extend to all of the fund's portfolio companies. In their view, the largest portfolio companies are the least likely to have a controlling shareholder and the most likely to pose systemic risk. The SEC is sensitive to this concern but believes at this time that requesting information regarding all portfolio companies would increase the difficulty of responding to section 4 without a sufficiently large corresponding increase in the value of the data collected.

5. Aggregation of Master-Feeder Arrangements, Parallel Fund Structures and Parallel Managed Accounts

For purposes of reporting information on Form PF, an adviser may provide information regarding master-feeder arrangements and parallel fund structures in the aggregate or separately, provided that it does so consistently throughout the Form.[329] For example, an adviser may complete either a single section 1b for all of the funds in a master-feeder arrangement or a separate section 1b for each fund in the arrangement. Any adviser choosing to aggregate funds in the reporting must check the ''yes'' box in Question 6 or Question 7, as applicable, and, in the case of Question 7, provide the additional information required with respect to the other funds in the parallel fund structure.[330] Advisers are not required to report information regarding parallel managed accounts other than to complete Question 11 in section 1b of the Form.[331]

These aggregation requirements have been modified from the proposal, which would have required advisers to report aggregated information regarding master-feeder arrangements and parallel managed accounts but separate information regarding parallel funds. One commenter recommended that ''the Commissions instead provide managers with flexibility to provide information about private funds in a manner that best represents the activities of their funds and is consistent with their internal reporting procedures, while providing complete information to regulators.'' [332] We are persuaded that requiring advisers to aggregate or disaggregate funds in a manner inconsistent with their internal recordkeeping and reporting may impose additional burdens and that, so long as the structure of those arrangements is adequately disclosed, a prescriptive approach to aggregation is not necessary.

With respect to parallel managed accounts, commenters encouraged us not to require aggregation for reporting purposes or at least limit the questions that require advisers to aggregate parallel managed accounts for reporting purposes.[333] In particular, these commenters argued that aggregating these funds for reporting purposes would be difficult and ''result in inconsistent and misleading data'' because their characteristics are often somewhat different from the funds with which they are managed.[334] We are persuaded that including parallel managed accounts in the reporting may reduce the quality of data while imposing additional burdens on advisers. As a result, the instructions have been revised so that advisers are not required to aggregate parallel managed accounts with their private funds for reporting purposes.[335] A question has, however, been added to the Form requiring advisers to report the total amount of parallel managed accounts related to each reporting fund.[336] This will allow FSOC to take into account the greater amount of assets an adviser may be managing using a given strategy for purposes of analyzing the data reported on Form PF.

*D. Confidentiality of Form PF Data*

Form PF elicits non-public information about private funds and their trading strategies, the public disclosure of which could adversely affect the funds and their investors. The SEC does not intend to make public Form PF information identifiable to any particular adviser or private fund, although the SEC may use Form PF information in an enforcement action. The Dodd-Frank Act amends the Advisers Act to preclude the SEC from being compelled to reveal this information except in very limited

[324] *See, e.g.,* ABA Committees Letter (suggesting instead ''a standard of majority voting control''); IAA Letter (asserting that an adviser may not have access to some of the required data ''even if the fund owns 50% or more of such portfolio company''); PEGCC Letter. *See supra* note 315 (discussing the definition of ''control.)''

[325] Advisers may not know the North American Industry Classification System, or NAICS, codes for its controlled portfolio companies, but this information should be readily obtainable from the company. The details regarding bridge loans required in Question 75 on the Form may not be available directly from a controlled portfolio company's financial statements, but it is likely either that the adviser was involved in arranging or consenting to the loans (because the loans were an important part of the fund's investment in the company or because they were incurred after the fund obtained a controlling interest in the company) or were the subject of the fund's due diligence prior to investing in the company.

[326] *See supra* note 317 and accompanying text.

[327] The SEC has, however, made one change to this definition, which clarifies that whether a group is a club or consortium for this purpose should be determined as of the reporting date. In other words, the adviser need not aggregate the control rights of another fund with those of its own solely because, at some point prior to the reporting date, such as the date of acquisition, they formed a club or consortium.

[328] *See* AFL–CIO Letter; AFR Letter.

[329] *See* Instructions 5 and 6 to Form PF. The aggregation requirements for reporting purposes differ from the aggregation requirements for determining whether the adviser or any fund meets a reporting threshold. *See supra* section II.A.5. A ''parallel fund structure'' is a structure in which one or more private funds pursues substantially the same investment objective and strategy and invests side by side in substantially the same positions as another private fund. *See* Glossary of Terms to Form PF. A ''master-feeder arrangement'' is an arrangement in which one or more funds (''feeder funds'') invest all or substantially all of their assets in a single private fund (''master fund'').

[330] *See also supra* note 193 and accompanying text.

[331] *See* Instructions 5 and 6 to Form PF. *See also supra* note 197.

[332] MFA Letter.

[333] *See, e.g.,* IAA Letter; TCW Letter. One commenter agreed that the proposal appropriately required reporting on parallel managed accounts. *See* AIMA General Letter. For the reasons discussed below, however, we are persuaded that the better approach is not to require aggregation of these accounts for reporting purposes.

[334] IAA Letter. *See also* MFA Letter.

[335] *See* Instructions 5 and 6 to Form PF. The approach we are adopting is also similar to the approach used in the FSA Survey, which asks for only limited information regarding ''strategy assets.'' *See* IAA Letter.

[336] *See* question 12 of Form PF.

circumstances.[337] Similarly, the Dodd-Frank Act exempts the CFTC from being compelled under FOIA to disclose to the public any information collected through Form PF and requires that the CFTC maintain the confidentiality of that information consistent with the level of confidentiality established for the SEC in section 204(b) of the Advisers Act.[338] The Commissions will make information collected through Form PF available to FSOC, as the Dodd-Frank Act requires, subject to the confidentiality provisions of the Dodd-Frank Act.[339]

The Dodd-Frank Act contemplates that Form PF data may also be shared with other Federal departments or agencies or with self-regulatory organizations, in addition to the CFTC and FSOC, for purposes within the scope of their jurisdiction.[340] In each case, any such department, agency or self-regulatory organization would be exempt from being compelled under FOIA to disclose to the public any information collected through Form PF and must maintain the confidentiality of that information consistent with the level of confidentiality established for the SEC in section 204(b) of the Advisers Act.[341] Prior to sharing any Form PF data, the SEC also intends to require that any such department, agency or self-regulatory organization represent to us that it has in place controls designed to ensure the use and handling of Form PF data in a manner consistent with the protections established in the Dodd-Frank Act.[342]

Certain aspects of the Form PF reporting requirements also help to mitigate the potential risk of inadvertent or improper disclosure. For instance, because data on Form PF generally could not, on its own, be used to identify individual investment positions, the ability of a competitor to use Form PF data to replicate a trading strategy or trade against an adviser is limited.[343] In addition, the deadlines for filing Form PF have, in most cases, been significantly extended from the proposal.[344] Some commenters supported these extensions in part because filings will, as a result, generally contain less current, and therefore less sensitive, data.[345]

In addition, our staff is working to design controls and systems for the use and handling of Form PF data in a manner that reflects the sensitivity of this data and is consistent with the confidentiality protections established in the Dodd-Frank Act. As discussed below, this will include programming the Form PF filing system with appropriate confidentiality protections.[346] For instance, SEC staff is studying whether multiple access levels can be established so that SEC employees are allowed only as much access as is reasonably needed in connection with their duties.

Several commenters confirmed that the information collected on Form PF is competitively sensitive or proprietary and emphasized the importance of controls for safekeeping.[347] These commenters also made several recommendations for protecting the data, including: (1) Storing identifying information using a code;[348] (2) limiting the ability to transfer Form PF data by email or portable media;[349] (3) limiting access to personnel who ''need to know'';[350] (4) extending filing deadlines so the data contains less current information;[351] and (5) sharing the data with other regulators only in aggregated and anonymous form.[352] As discussed above, the deadlines for filing Form PF have, in most cases, been significantly extended from the proposal.[353] SEC staff is also carefully considering the other recommendations of commenters in designing controls and systems for Form PF.

In advance of the compliance date for Form PF, SEC staff will review the controls and systems in place for the use and handling of Form PF data.[354] Depending on the progress at that time toward the development and deployment of these controls and systems, the SEC will consider whether to delay the compliance date for Form PF.

*E. Filing Fees and Format for Reporting*

Under Advisers Act rule 204(b)–1(b), Form PF must be filed through an electronic system designated by the SEC for this purpose. On September 30, 2011, the SEC issued notice of its determination that the Financial Industry Regulatory Authority (''FINRA'') will develop and maintain the filing system for Form PF as an extension of the existing Investment Adviser Registration Depository (''IARD'').[355] This filing system will have certain features, including being programmed to reflect the heightened confidentiality protections created for Form PF filing information under the Dodd-Frank Act and allow for secure access by FSOC and other regulators as permitted under the Dodd-Frank Act.

Under the Advisers Act rule 204(b)–1, advisers required to file Form PF must pay to the operator of the Form PF filing system fees that the SEC has approved.[356] The SEC in a separate order has approved filing fees that reflect the costs reasonably associated with these filings and the development and maintenance of the filing system.[357]

We are working with FINRA to allow advisers to file Form PF either through a fillable form on the system Web site or through a batch filing process utilizing the eXtensible Markup Language (''XML'') tagged data format. In connection with the batch filing process, we anticipate publishing a taxonomy of XML data tags in advance of the compliance date for Form PF. We believe that certain advisers may prefer to report in XML format because it allows them to automate aspects of their reporting and thus minimize burdens and generate efficiencies for the adviser.

[337] *See* Proposing Release, *supra* note 12, at n.39.

[338] Form PF data is filed with the SEC, and made available to the CFTC, pursuant to section 204(b) of the Advisers Act, making this data subject to the confidentiality protections applicable to data required to be filed under that section.

[339] *See* section 204(b) of the Advisers Act.

[340] *See* section 204(b)(8)(B)(i) of the Advisers Act.

[341] *See* sections 204(b)(9) and (10) of the Advisers Act.

[342] This would be consistent with the SEC's current practice of requiring that it receive, prior to sharing nonpublic information with other regulators, ''such assurances of confidentiality as the [SEC] deems appropriate.'' *See* section 24(c) of the Exchange Act and rule 24c–1 thereunder.

[343] Questions 26, 30, 35 and 57 on Form PF ask about exposures of the reporting fund but require only that the adviser identify the exposure within broad asset classes, not the individual investment position. Large private equity advisers must identify any financial industry portfolio companies in which the reporting fund has a controlling interest, but these investments are likely to be in private companies whose securities are not widely traded (and, therefore, do not raise the same trading concerns) or in public companies about which information regarding significant beneficial owners is already made public under sections 13(d) and 13(g) of the Exchange Act.

[344] *See supra* section II.B.2 of this Release (discussing filing deadlines).

[345] *See infra* note 351 and accompanying text.

[346] *See infra* section II.E of this Release.

[347] *See, e.g.,* ABA Committees Letter; AIMA General Letter; CPIC Letter; MFA Letter; SIFMA Letter.

[348] ABA Committees Letter; Kleinberg General Letter; Seward Letter.

[349] ABA Committees Letter.

[350] *Id.*

[351] AIMA General Letter; Kleinberg General Letter.

[352] AIMA General Letter; Seward Letter.

[353] *See supra* notes 344–345 and accompanying text.

[354] *See infra* section III of this Release (discussing the compliance date for Form PF).

[355] *See Approval of Filing Fees for Exempt Reporting Advisers and Private Fund Advisers,* Investment Advisers Act Release No. IA–3297 (Sept. 30, 2011), 76 FR 62100 (Oct. 6, 2011).

[356] *See* Advisers Act rule 204(b)–1(d); section 204(c) of the Advisers Act.

[357] *See Order Approving Filing Fees for Exempt Reporting Advisers and Private Fund Advisers,* Investment Advisers Act Release No. IA–3305 (Oct. 24, 2011).

Commenters who addressed this aspect of the proposal supported having FINRA develop the reporting system as an extension of the IARD platform.[358] Commenters also supported a batch filing capability, with one specifically agreeing that ''[a]utomated submission of information via the IARD or other electronic system to [utilize] the eXtensible Markup Language (XML) tagged data format or similar format is likely to be an important time saver for a large number of firms.'' [359]

## III. Effective and Compliance Dates

The effective date for CEA rule 4.27, Advisers Act rule 204(b)–1 and Form PF is March 31, 2012.

The Commissions are adopting a two-stage phase-in period for compliance with Form PF filing requirements. For the following advisers, the compliance date for CEA rule 4.27 and Advisers Act rule 204(b)–1 is June 15, 2012:

- Any adviser having at least $5 billion in assets under management attributable to hedge funds as of the last day of the fiscal quarter most recently completed prior to June 15, 2012; [360]
- Any adviser managing a liquidity fund and having at least $5 billion in combined assets under management attributable to liquidity funds and registered money market funds as of the last day of the fiscal quarter most recently completed prior to June 15, 2012; [361] and
- Any adviser having at least $5 billion in assets under management attributable to private equity funds as of the last day of its first fiscal year to end on or after June 15, 2012.[362]

For instance, an adviser with $5 billion in hedge fund assets under management as of March 31, 2012, must file its first Form PF within 60 days following June 30, 2012.[363] In addition, an adviser having a June 30 fiscal year end and $5 billion in private equity fund assets under management as of June 30, 2012, must file its first Form PF within 120 days following June 30, 2012.[364]

For all other advisers, the compliance date for CEA rule 4.27 and Advisers Act rule 204(b)–1 is December 15, 2012. As a result, most advisers must file their first Form PF based on information as of December 31, 2012.

This timing provides most private fund advisers with a significant amount of time to prepare for filing, requiring only the largest advisers, whose resources and systems should better position them to begin reporting, to report in less than a year following adoption of Form PF. This approach is designed to balance the need for regulators to begin collecting and analyzing data regarding the private fund industry with the ability of advisers to efficiently prepare for filing. We currently anticipate that this timeframe will also give the SEC sufficient time to create and program a system to accept filings of Form PF.[365]

We are adopting compliance dates that significantly extend the proposed compliance date of December 15, 2011. We are taking this approach, in part, because we are adopting these rules later than originally expected. The revised approach is also intended to respond to commenters who recommended a later compliance date. These commenters argued that the proposed compliance date would have provided advisers insufficient ''time to identify the information to be included, establish automated systems and procedures to collect and calculate the information, and develop procedures to review, complete and verify the Form.'' [366] A majority of these commenters suggested extending compliance to at least nine months after publication of the final Form, though some argued for a year or more.[367] In support of an extended compliance date, commenters emphasized that, without sufficient time to prepare for the initial filing, the reporting process will be manually intensive or require costly system enhancements.[368] As explained above, our revised approach is designed to provide the largest advisers, whose resources and systems should better position them to begin reporting, at least eight months before they start filing Form PF, and the vast majority of advisers will have over a year before their first Form PF is due.

## IV. Paperwork Reduction Act

SEC:

Section 204(b) of the Advisers Act directs the SEC to require private fund advisers to file reports containing such information as the SEC deems necessary and appropriate in the public interest and for investor protection or for the assessment of systemic risk. Rule 204(b)–1 and Form PF under the Advisers Act implement this requirement. Form PF contains a new ''collection of information'' within the meaning of the Paperwork Reduction Act (''PRA'').[369] The title for the new collection of information is: ''Form PF under the Investment Advisers Act of 1940, reporting by investment advisers to private funds.'' For purposes of this PRA analysis, the paperwork burden associated with the requirements of rule 204(b)–1 is included in the collection of information burden associated with Form PF and thus does not entail a separate collection of information. The SEC is submitting this collection of information to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Form PF is intended to provide FSOC with information that will assist it in fulfilling its obligations under the Dodd-Frank Act relating to nonbank financial companies and systemic risk monitoring.[370] The SEC may also use the information in connection with its regulatory and examination programs.

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[358] *See* AIMA General Letter (agreeing that using the IARD and FINRA is a ''sensible solution.''); MFA Letter. We explained in the Form PF Proposing Release that the filing system would need to be programmed with special confidentiality protections designed to ensure the heightened confidentiality protections created for Form PF filing information under the Dodd-Frank Act. *See* Proposing Release, *supra* note 12, at n. 9 and accompanying text and section II.E. These commenters expressed the view that maintaining the confidentiality of Form PF data is an important consideration in developing the filing system. Our staffs are working closely with FINRA in designing controls and systems to ensure that Form PF data is handled and used in a manner consistent with the protections established in the Dodd-Frank Act, and as noted above, we are carefully considering recommendations from commenters in designing controls and systems for the use and handling of Form PF data.

[359] AIMA General Letter. *See also* Kleinberg General Letter.

[360] For this purpose, advisers must calculate the value of assets under management pursuant to the instructions in Form ADV and aggregate assets under management in the same manner as they would when determining whether they satisfy reporting thresholds under Form PF. *See supra* section II.A.5 of this Release.

[361] *Id.*

[362] *Id.*

[363] This assumes the adviser's fiscal quarters are based on calendar quarters. Of course, if the adviser also exceeds the threshold for liquidity fund advisers, its filing would be due within 15 days.

[364] This assumes the adviser does not also exceed the $5 billion threshold for hedge fund or liquidity fund advisers.

[365] The SEC is working closely with FINRA to create and program a system for Form PF filings, and FINRA expects to be able to accept Form PF filings in this timeframe.

[366] MFA Letter. *See also infra* note 367.

[367] *See, e.g.,* AIMA General Letter (nine months); BlackRock Letter (nine months); CPIC Letter (one year); Fidelity Letter (one year); IAA Letter (nine months); Kleinberg General Letter (one year); MFA Letter (nine months); PEGCC Letter (one year); TCW Letter (nine months); Seward Letter (two years); SIFMA Letter (nine months); USCC Letter (270 days).

[368] *See* AIMA General Letter; Kleinberg General Letter.

[369] 44 U.S.C. 3501–3521.

[370] *See supra* section I.A of this Release; *see also* of the Proposing Release, *supra* note 12, at section II.A.

The respondents to Form PF are private fund advisers.[371] Compliance with Form PF is mandatory for any private fund adviser that had at least $150 million in regulatory assets under management attributable to private funds as of the end of its most recently completed fiscal year.

Specifically, smaller private fund advisers must report annually and provide only basic information regarding their operations and the private funds they advise. Large private equity advisers also must report on an annual basis but are required to provide additional information with respect to the private equity funds they manage. Finally, large hedge fund advisers and large liquidity fund advisers must report on a quarterly basis and provide more information than other private fund advisers.[372] The PRA analysis set forth below takes into account the difference in filing frequencies among different categories of private fund adviser. It also reflects the fact that the additional information Form PF requires large hedge fund advisers to report is more extensive than the additional information required from large liquidity fund advisers, which in turn is more extensive than that required from large private equity advisers.

As discussed in section II of this Release, the SEC has sought to minimize the reporting burden on private fund advisers to the extent appropriate. In particular, the SEC has taken into account an adviser's size and the types of private funds it manages in designing scaled reporting requirements. In addition, where practical, the SEC has permitted advisers to rely on their existing practices and methodologies to report information on Form PF.[373]

Advisers must file Form PF through the Form PF filing system on the IARD.[374] Responses to the information collections will be kept confidential to the extent permitted by law.[375]

*A. Burden Estimates for Annual Reporting by Smaller Private Fund Advisers*

In the Implementing Adopting Release, the SEC estimated that there will be approximately 4,270 SEC-registered advisers managing private funds after taking into account recent changes to the Advisers Act and a year of normal growth in the population of registered advisers.[376] The SEC estimates that approximately 700 of these advisers will not be required to file Form PF because they have less than $150 million in private fund assets under management.[377] Accordingly, the SEC anticipates that, when advisers begin reporting on Form PF, a total of approximately 3,570 advisers will be required to file all or part of the Form.[378] Out of this total number, the SEC estimates that approximately 3,070 will be smaller private fund advisers, not meeting the thresholds as Large Private Fund Advisers.[379] Commenters did not address the SEC's estimates of the total number of respondents or the number of smaller private fund advisers.[380]

Smaller private fund advisers must complete all or portions of section 1 of Form PF and file on an annual basis. As discussed in greater detail above, section 1 requires basic data regarding the reporting adviser's identity and certain information about the private funds it manages, such as performance, leverage and investor data.[381] If the reporting adviser manages any hedge funds, section 1 also requires basic information regarding those funds, including their investment strategies, counterparty exposures and trading and clearing practices.

The SEC estimates that smaller private fund advisers will require an average of approximately 40 burden hours to compile, review and electronically file the required information in section 1 of Form PF for the initial filing and an average of approximately 15 burden hours for subsequent filings.[382] These estimates reflect an increase compared to the proposal from 10 to 40 hours for the initial filing and from 3 to 15 hours for subsequent filings.

The SEC has increased these estimates to reflect comments suggesting that the estimates included in the proposal were too low.[383] Commenters did not provide alternative estimates for these burdens. However, commenters addressing the

[371] The requirement to file the Form applies to any investment adviser registered, or required to register, with the SEC that advises one or more private funds and had at least $150 million in regulatory assets under management attributable to private funds as of the end of its most recently completed fiscal year. *See* Advisers Act rule 204(b)–1(a). It does not apply to state-registered investment advisers or exempt reporting advisers.

[372] *See* section II.A of this Release (describing who must file Form PF), section II.B of this Release (discussing the frequency with which private fund advisers must file Form PF), section II.C.2 of this Release (describing the information that large hedge fund advisers must report on Form PF), and sections II.C.3 and II.C.4 of this Release (describing the information that large liquidity and private equity fund advisers must report on Form PF). *See also* Instruction 9 to Form PF (discussing the frequency with which private fund advisers must file Form PF).

[373] The SEC also believes that private fund advisers already collect or calculate some of the information required on the Form at least as often as they must file the Form. *See supra* note 146.

[374] *See* section II.E of this Release.

[375] *See* section II.D. of this Release.

[376] Specifically, the SEC estimated that (1) 3,320 private fund advisers that are currently registered with the SEC will remain registered after certain advisers make the switch to state registration prompted by the Dodd-Frank Act's amendments to section 203A of the Advisers Act, (2) 750 advisers to private funds will register with the Commission as a result of the Dodd-Frank Act's elimination of the private adviser exemption and (3) 200 additional advisers to private funds will register in the next year. *See* Implementing Adopting Release, *supra* note 11, at n.637 and accompanying text. Estimates of registered private fund advisers are based in part on the number of advisers that reported a fund in Section 7.B of Schedule D to the version of Form ADV in use prior to the date of this release. Because these responses included funds that the adviser's related persons manage as well as those the adviser itself manages, these data may over-estimate the total number of private fund advisers.

[377] Based on IARD data as of October 1, 2011. *See supra* section II.A of this Release for a discussion of the minimum reporting threshold.

[378] 4,270 total private fund advisers − 700 with less than $150 million in private fund assets under management = 3,570 advisers. The SEC notes, however, that if a private fund is advised by both an adviser and one or more subadvisers, only one of these advisers is required to complete Form PF. *See* section II.A.6 of this Release. As a result, it is likely that some portion of these advisers either will not be required to file Form PF or will be subject to a reporting burden lower than is estimated for purposes of this PRA analysis. The SEC has not attempted to adjust the burden estimates downward for this purpose because the SEC does not currently have reliable data with which to estimate the number of funds that have subadvisers.

[379] Based on the estimated total number of registered private fund advisers that would not meet the thresholds to be considered Large Private Fund Advisers. (3,570 estimated registered private fund advisers − 250 large hedge fund advisers − 80 large liquidity fund advisers − 170 large private equity fund advisers = 3,070 smaller private fund advisers.)

[380] The SEC has updated these estimates to reflect: (1) Updated data from IARD, (2) the addition of a minimum reporting threshold of $150 million in private fund assets, which reduces the number of advisers subject to the reporting requirements, and (3) the revised estimates of large hedge fund advisers and large private equity advisers discussed in section II.A.4 of this Release. *See supra* section II.A of this Release and notes 88 and 89.

[381] *See supra* section II.C.1.

[382] These estimates are based, in part, on the SEC's understanding that much of the information in sections 1a and 1b of Form PF is currently maintained by most private fund advisers in the ordinary course of business. *See supra* note 146. In addition, the SEC expects the time required to determine the amount of the adviser's assets under management that relate to private funds of various types to be largely included in the approved burden associated with the SEC's Form ADV. As a result, responding to questions on Form PF that relate to assets under management and determining whether an adviser is a Large Private Fund Adviser should impose little or no additional burden on private fund advisers. Of course, not all questions on Form PF impose the same burden, and the burden of responding to questions may vary substantially from adviser to adviser. These estimates are intended to reflect *averages* for compiling, reviewing and filing the Form, do not indicate the time that may be spent on specific questions and may not reflect the time spent by an individual adviser.

[383] *See, e.g.,* AIMA General Letter; IAA Letter; SIFMA Letter.

large hedge fund adviser burdens did provide alternative estimates.[384] As discussed below, the SEC is also increasing its hour burden estimates with respect to large hedge fund advisers based on, among other things, the estimates these commenters provided.[385] In the absence of specific commenter estimates for the smaller adviser reporting burden, the SEC has, therefore, scaled these estimates in proportion to the increases it is making to its burden hour estimates for large hedge fund advisers.

Although the SEC has increased these estimates, it has also taken into account changes from the proposal that it expects, on the whole, to mitigate the burden of reporting the information required in section 1. For instance, we have modified the requirement to report performance by allowing advisers to report monthly and quarterly results only if such results are already calculated for the fund.[386] In addition, we have removed from section 1b a question requiring identification of significant creditors and substantially reduced the amount of information required with respect to trading and clearing practices in section 1c.[387] We have also made several global changes to the Form that we anticipate will reduce the burden of reporting. These include the removal of the certification, the increased ability of advisers to rely on their existing methodologies and recordkeeping practices and allowing advisers to omit information regarding parallel managed accounts from their responses to the Form.[388] We have also added four new questions in section 1b that will increase the burden of completing that portion of the Form, but the SEC expects the other changes described above to result in a net reduction in the burden of completing the Form relative to the proposal.[389]

Based on the foregoing, the SEC estimates that the amortized average annual burden of periodic filings will be 23 hours per smaller private fund adviser for each of the first three years,[390] and the amortized aggregate annual burden of periodic filings for smaller private fund advisers will be 70,600 hours for each of the first three years.[391]

*B. Burden Estimates for Large Hedge Fund Advisers*

The SEC estimates that 250 advisers will be classified as large hedge fund advisers.[392] As discussed above, large hedge fund advisers must complete section 1 of the Form and provide additional information regarding the hedge funds they manage in section 2 of the Form. These advisers must report information regarding the hedge funds they manage on a quarterly basis.

Because large hedge fund advisers generally must report more information on Form PF than other private fund advisers, the SEC estimates that these advisers will require, on average, more hours than other Large Private Fund Advisers to configure systems and to compile, review and electronically file the required information. Accordingly, the SEC estimates that large hedge fund advisers will require an average of approximately 300 burden hours for an initial filing and 140 burden hours for each subsequent filing.[393]

These estimates reflect an increase compared to the proposal from 75 to 300 hours for the initial filing and from 35 to 140 hours for subsequent filings. The SEC has increased these estimates to reflect comments suggesting that the estimates included in the proposal were too low.[394] One industry group reported that some members attempted to complete the proposed version of Form PF for one or more funds and, ''[b]ased on their experience, and recognizing that efficiencies will develop over time, [this group estimated] that large managers on average will expend 150–300 hours to submit the initial Form.'' [395] The SEC has revised its

[384] *See, e.g.,* MFA Letter.

[385] *See infra* section IV.B of this Release.

[386] Several commenters argued that carrying out valuations to report monthly and quarterly performance for private equity funds would result in significant cost burdens and require significantly more time than was estimated. *See, e.g.,* comment letter of Atlas Holdings (March 9, 2011) (''Atlas Letter''); PEGCC Letter. We have, however, modified the reporting requirements so that advisers only need to provide monthly and quarterly performance results to the extent already calculated. *See supra* notes 198–202 and accompanying text. In other words, because advisers will have always already calculated the required performance data for purposes other than reporting on Form PF, the burden of reporting it on the Form is essentially one of data entry.

[387] One commenter suggested the question we removed would have been ''very burdensome.'' *See* PEGCC Letter.

[388] *See, e.g., supra* section II.C.5 of this Release and notes 183–188 and accompanying text.

[389] *See supra* section II.C.1 of this Release. The SEC originally proposed one of the new questions on Form ADV, and it requires that advisers report the assets and liabilities of each fund broken down using categories that are based on the fair value hierarchy established under GAAP. For advisers obtaining fund audits in accordance with GAAP or a similar international accounting standard, the burden of this question is simply that of entering the data on the Form. In the Implementing Adopting Release, the SEC estimated that approximately 3% of registered advisers have at least one private fund client that may not be audited. *See* Implementing Adopting Release, *supra* note 11, at nn. 634–636 and accompanying text. For this sub-group of advisers, the cost and hour burdens of determining fair values for the funds' assets have already been accounted for in connection with Form ADV because advisers are required to report regulatory assets under management in that form using the fair value of private fund assets. *See* Implementing Adopting Release, *supra* note 11, at section VI and nn. 632–641 and 723 and accompanying text. The question does not require advisers to determine the fair value of liabilities for which they do not already make such determination, so this sub-group of advisers would not incur an incremental cost to fair value liabilities in order to respond to this question. This sub-group of advisers may incur an additional hours burden to determine the categories applicable to the fund's assets and liabilities, and in determining to increase its average hour burden estimates for both smaller private fund advisers and Large Private Fund Advisers, the SEC has taken into account the contribution of this additional hours burden.

[390] The SEC estimates that a smaller private fund adviser will make 3 annual filings in three years, for an amortized average annual burden of 23 hours (1 initial filing × 40 hours + 2 subsequent filings × 15 hours = 70 hours; and 70 hours ÷ 3 years = approximately 23 hours). After the first three years, filers generally will not incur the start-up burdens applicable to the first filing.

[391] 23 burden hours on average per year x 3,070 smaller private fund advisers = 70,600 burden hours per year.

[392] *See supra* note 88.

[393] The estimates of hour burdens and costs for large hedge fund advisers provided in the Paperwork Reduction Act and cost-benefit analyses are based, in part, on burden data that advisers provided in response to the FSA Survey and on the experience of SEC staff. These estimates also assume that some Large Private Fund Advisers will find it efficient to automate some portion of the reporting process, which will increase the burden of the initial filing but reduce the burden of subsequent filings. This efficiency gain is reflected in our burden estimates, which are higher for the first report than subsequent reports, and certain of the anticipated automation costs are accounted for in our cost estimates. *See infra* note 435 and accompanying text. Of course, not all questions on Form PF impose the same burden, and the burden of responding to questions may vary substantially from adviser to adviser. These estimates are intended to reflect *averages* for compiling, reviewing and filing the Form, do not indicate the time that may be spent on specific questions and may not reflect the time spent by an individual adviser.

[394] *See, e.g.,* AIMA Letter; IAA Letter; Kleinberg General Letter; MFA Letter; TCW Letter.

[395] MFA Letter. This commenter referred to ''large managers'' generally, but based on the context, this comment appears to relate to large hedge fund advisers specifically. This commenter went on to state that ''managers with more complex strategies will expend considerably more time.'' Other commenters addressing these estimates did not provide alternative estimates, though one indicated that some clients had already exceeded the Proposing Release's estimates in preparing to report on the proposed Form and another commenter, itself one of the largest private fund advisers in the United States, argued that the estimates were understated by ''orders of magnitude.'' *See* BlackRock Letter; *see also* Kleinberg General Letter. In addition, advisers that manage many funds may incur higher costs than advisers that manage fewer funds even if they manage similar amounts of assets. The SEC's estimates are intended to reflect *average* burdens, and it recognizes that particular advisers may, based on their circumstances, incur burdens substantially greater than or less than the

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estimates in this PRA analysis based on the top end of this range, which represents a conservative interpretation of this commenter's estimate. This approach appears justified in this case based on other comments suggesting that the hours burden imposed on these advisers could be significantly higher than the SEC estimated in the Proposing Release.[396]

The SEC notes, however, that this commenter's estimates were based on the Form as proposed and we have made a number of changes from the proposal that we expect, on the whole, to mitigate significantly the reporting burden. For example, we have modified a number of questions to reduce the amount of detail required or to allow advisers to rely more on their existing methodologies or recordkeeping practices, including questions regarding trading and clearing practices, interest rate sensitivities, geographical concentrations, turnover, collateral practices, CCP exposures and sensitivities to changes in specified market factors.[397] We have also made several global changes to the Form that we anticipate will reduce the burden of reporting. These include allowing large hedge fund advisers to report only annually on funds that are not hedge funds, the removal of the certification, expanding the ability to disregard funds of funds and allowing advisers to omit information regarding parallel managed accounts from their responses to the Form.[398] We have also added four new questions in section 1b, which will increase the burden of completing that portion of the Form.[399] The SEC believes, however, that the increased burden attributable to these new questions is less than the reduced burden attributable to other changes to the Form because the new questions require limited information that, in many cases, will be readily available to advisers while some of the SEC's modifications to reduce the reporting burdens are intended to address areas of the Form that commenters identified as particularly burdensome. In light of these changes, the SEC believes that the commenter estimates, which were based on the proposed Form, likely represent an upper bound of the average burden to large hedge fund advisers.

Based on the foregoing, the SEC estimates that the amortized average annual burden of periodic filings will be 610 hours per large hedge fund adviser for each of the first three years.[400] In the aggregate, the amortized annual burden of periodic filings will then be 153,000 hours for large hedge fund advisers for each of the first three years.[401]

*C. Burden Estimates for Large Liquidity Fund Advisers*

The SEC estimates that 80 advisers will be classified as large liquidity fund advisers.[402] Commenters did not address this estimate. As discussed above, large liquidity fund advisers must complete section 1 of the Form and provide additional information regarding the liquidity funds they manage in section 3 of the Form. In addition, these advisers must report information regarding the liquidity funds they manage on a quarterly basis.

Large liquidity fund advisers generally must report less information on Form PF than large hedge fund advisers but more information than large private equity advisers and smaller private fund advisers. Accordingly, the SEC estimates that large liquidity fund advisers will require, on average, fewer hours than large hedge fund advisers but more hours than other advisers to configure systems and to compile, review and electronically file the required information. Specifically, the SEC estimates these advisers will require an average of approximately 140 burden hours for an initial filing and 65 burden hours for each subsequent filing.[403]

These estimates reflect an increase compared to the proposal from 35 to 140 hours for the initial filing and from 16 to 65 hours for subsequent filings. The SEC has increased these estimates to reflect comments suggesting that the estimates included in the proposal were too low.[404] Commenters did not provide alternative estimates for these burdens. However, commenters addressing the large hedge fund adviser burdens did provide alternative estimates.[405] As discussed above, the SEC is also increasing its hour burden estimates with respect to large hedge fund advisers based on, among other things, the estimates these commenters provided.[406] In the absence of specific commenter estimates for the large liquidity fund adviser reporting burden, the SEC has, therefore, scaled these estimates in proportion to the increases it is making to its burden hour estimates for large hedge fund advisers.

Although the SEC has increased these estimates, it has also taken into account changes from the proposal that it expects, on the whole, to mitigate the burden of reporting for large liquidity fund advisers. For instance, we have eliminated from section 1b a question requiring identification of significant creditors.[407] We have also made several global changes that we anticipate will reduce the burden of reporting. These include allowing large liquidity fund advisers to report only annually on funds that are not liquidity funds, removing the certification, expanding the ability to disregard funds of funds, the increased ability of advisers to rely on their existing methodologies and recordkeeping practices and allowing advisers to omit information regarding parallel managed accounts from their responses to the Form.[408] We have also

estimated averages. In addition, we have based our estimates in part on data that advisers provided in response to the FSA Survey regarding the time required to complete that survey. Although Form PF generally requires more information regarding hedge funds than the FSA Survey, the SEC believes, based on this data and based on the MFA comment letter, that the *average* burden of completing Form PF is very unlikely to be in the thousands or tens of thousands of hours.

[396] *See supra* note 394 and accompanying text.

[397] *See supra* section II.C.1 and II.C.2 of this Release.

[398] *See, e.g., supra* sections II.B.1 and II.C.5 of this Release and notes 129 and 183–188 and accompanying text.

[399] *See supra* section II.C.1.

[400] The SEC estimates that a large hedge fund adviser will make 12 quarterly filings in three years, for an amortized average annual burden of 610 hours (1 initial filing × 300 hours + 11 subsequent filings × 140 hours = 1,840 hours; and 1,840 hours ÷ 3 years = approximately 610 hours). After the first three years, filers generally will not incur the start-up burdens applicable to the first filing.

[401] 610 burden hours on average per year × 250 large hedge fund advisers = 153,000 hours.

[402] *See supra* note 88.

[403] The estimates of hour burdens and costs for large liquidity fund advisers provided in the Paperwork Reduction Act and cost-benefit analyses are based, in part, on a comparison to the requirements and estimated burden for large hedge fund advisers (which estimates, in turn, are based in part on burden data that advisers provided in response to the FSA Survey) and on the experience of SEC staff. These estimates also assume that some Large Private Fund Advisers will find it efficient to automate some portion of the reporting process, which will increase the burden of the initial filing but reduce the burden of subsequent filings. This efficiency gain is reflected in our burden estimates, which are higher for the first report than subsequent reports, and certain of the anticipated automation costs are accounted for in our cost estimates. *See infra* note 435 and accompanying text. Of course, not all questions on Form PF impose the same burden, and the burden of responding to questions may vary substantially from adviser to adviser. These estimates are intended to reflect *averages* for compiling, reviewing and filing the Form, do not indicate the time that may be spent on specific questions and may not reflect the time spent by an individual adviser.

[404] *See, e.g.,* AIMA Letter; IAA Letter; BlackRock Letter. No commenters specifically addressed the burden estimates for liquidity fund advisers, though several commented on the burden estimates generally.

[405] *See, e.g.,* MFA Letter.

[406] *See supra* section IV.B of this Release.

[407] *See supra* section II.C.1 of this Release. One commenter suggested the question we removed would have been ''very burdensome.'' *See* PEGCC Letter.

[408] *See, e.g., supra* sections II.B.1 and II.C.5 of this Release and notes 129 and 183–188 and accompanying text.

added four new questions in section 1b that will increase the burden of completing that portion of the Form, but the SEC expects the other changes described above to result in a net reduction in the burden of completing the Form relative to the proposal.[409]

Based on the foregoing, the SEC estimates that the amortized average annual burden of periodic filings will be 290 hours per large liquidity fund adviser for each of the first three years.[410] In the aggregate, the amortized annual burden of periodic filings will then be 23,200 hours for large liquidity fund advisers for each of the first three years.[411]

*D. Burden Estimates for Large Private Equity Advisers*

The SEC estimates that 170 advisers will be classified as large private equity advisers.[412] As discussed above, large private equity advisers must complete section 1 of the Form and provide additional information regarding the private equity funds they manage in section 4 of the Form. These advisers are only required to report on an annual basis.

Large private equity advisers generally must report less information on Form PF than other Large Private Fund Advisers but more information than smaller private fund advisers. Accordingly, the SEC estimates that large private equity advisers will require, on average, fewer hours than large hedge fund advisers and large liquidity fund advisers but more hours than other advisers to configure systems and to compile, review and electronically file the required information. Specifically, the SEC estimates these advisers will require an average of approximately 100 burden hours for an initial filing and 50 burden hours for each subsequent filing.[413]

These estimates reflect an increase compared to the proposal from 25 to 100 hours for the initial filing and from 12 to 50 hours for subsequent filings. The SEC has increased these estimates to reflect comments suggesting that the estimates included in the proposal were too low.[414] Commenters did not provide alternative estimates for these burdens. However, commenters addressing the large hedge fund adviser burdens did provide alternative estimates.[415] As discussed above, the SEC is also increasing its hour burden estimates with respect to large hedge fund advisers based on, among other things, the estimates these commenters provided.[416] In the absence of specific commenter estimates for the large private equity adviser reporting burden, the SEC has, therefore, scaled these estimates in proportion to the increases it is making to its burden hour estimates for large hedge fund advisers.

Although the SEC has increased these estimates, it has also taken into account changes from the proposal that it expects, on the whole, to mitigate the burden of reporting for large private equity advisers. For instance, we have modified the requirement to report performance by allowing advisers to report monthly and quarterly results only if such results are already calculated for the fund.[417] In addition, we have eliminated from section 1b a question requiring identification of significant creditors and have revised questions in section 4 requiring information regarding portfolio company leverage to align the information required more closely with information available on the balance sheets of those companies.[418] We have also made several global changes to the Form that we anticipate will reduce the burden of reporting. These include requiring only annual (rather than quarterly) reporting, removing the certification, expanding the ability to disregard funds of funds, increasing the ability of advisers to rely on their existing methodologies and recordkeeping practices and allowing advisers to omit information regarding parallel managed accounts from their responses to the Form.[419] We have also added four new questions in section 1b that will increase the burden of completing that portion of the Form, but the SEC expects the other changes described above to result in a net reduction in the burden of completing the Form relative to the proposal.[420]

Based on the foregoing, the SEC estimates that the amortized average annual burden of periodic filings will be 67 hours per large private equity adviser for each of the first three years.[421] In the aggregate, the amortized annual burden of periodic filings will then be 11,400 hours for large private equity advisers for each of the first three years.[422]

*E. Burden Estimates for Transition Filings, Final Filings and Temporary Hardship Exemption Requests*

In addition to periodic filings, a private fund adviser must file very limited information on Form PF in three situations.

First, any adviser that transitions from quarterly to annual filing because it has ceased to be a large hedge fund or large liquidity fund adviser must file a Form PF indicating that it is no longer obligated to report on a quarterly basis. The SEC estimates that approximately 9 percent of quarterly filers will need to make a transition filing each year with a burden of 0.25 hours, or a total of 7 burden hours per year for all private fund advisers.[423] No commenters addressed these estimates. The SEC has not changed its estimates of the rate of transition filings and the burden hours per filing from the proposal, but it has reduced its estimate of the total burden hours per year because fewer filers will

[409] *See supra* section II.C.1 of this Release.

[410] The SEC estimates that a large liquidity fund adviser will make 12 quarterly filings in three years, for an amortized average annual burden of 290 hours (1 initial filing × 140 hours + 11 subsequent filings × 65 hours = 855 hours; and 855 hours ÷ 3 years = approximately 290 hours). After the first three years, filers generally will not incur the start-up burdens applicable to the first filing.

[411] 290 burden hours on average per year × 80 large hedge fund advisers = 23,200 hours.

[412] *See supra* note 89.

[413] The estimates of hour burdens and costs for large private equity advisers provided in the Paperwork Reduction Act and cost-benefit analyses are based, in part, on a comparison to the requirements and estimated burden for large hedge fund advisers (which estimates, in turn, are based in part on burden data that advisers provided in response to the FSA Survey) and on the experience of SEC staff. These estimates also assume that some Large Private Fund Advisers will find it efficient to automate some portion of the reporting process, which will increase the burden of the initial filing but reduce the burden of subsequent filings. This efficiency gain is reflected in our burden estimates, which are higher for the first report than subsequent reports, and certain of the anticipated automation costs are accounted for in our cost estimates. *See infra* note 435 and accompanying text. Of course, not all questions on Form PF impose the same burden, and the burden of responding to questions may vary substantially from adviser to adviser. These estimates are intended to reflect *averages* for compiling, reviewing and filing the Form, do not indicate the time that may be spent on specific questions and may not reflect the time spent by an individual adviser.

[414] *See, e.g.,* Atlas Letter; PEGCC Letter; USCC Letter.

[415] *See, e.g.,* MFA Letter.

[416] *See supra* section IV.B of this Release.

[417] *See supra* note 386.

[418] *See supra* sections II.C.1 and II.C.4 of this Release. One commenter suggested the question we removed would have been ''very burdensome.'' *See* PEGCC Letter.

[419] *See, e.g., supra* sections II.B.1 and II.C.5 of this Release and notes 129 and 183–188 and accompanying text.

[420] *See supra* section II.C.1 of this Release.

[421] The SEC estimates that a large private equity adviser will make 3 annual filings in three years, for an amortized average annual burden of 67 hours (1 initial filing × 100 hours + 2 subsequent filings × 50 hours = 200 hours; and 200 hours ÷ 3 years = approximately 67 hours). After the first three years, filers generally will not incur the start-up burdens applicable to the first filing.

[422] 67 burden hours on average per year × 170 large private equity advisers = 11,400 hours.

[423] This estimate is based on IARD data on the frequency of advisers to one or more private funds ceasing to have assets under management sufficient to cause them to be large hedge fund or large liquidity fund advisers. ((80 large liquidity fund advisers + 250 large hedge fund advisers) × 0.09 × 0.25 hours = 7 hours.)

be required to report on a quarterly basis.[424]

Second, filers who are no longer subject to Form PF's periodic reporting requirements must file a final report indicating that fact. The SEC estimates that approximately 8 percent of the advisers required to file Form PF will have to file such a report each year with a burden of 0.25 of an hour, or a total of 71 burden hours per year for all private fund advisers.[425] No commenters addressed these estimates. The SEC has not changed its estimates of the rate of final filings and the burden hours per filing from the proposal, but it has reduced its estimate of the total burden hours per year because the addition of a minimum reporting threshold will result in fewer filers reporting on Form PF.[426]

Finally, an adviser experiencing technical difficulties in submitting Form PF may request a temporary hardship exemption by filing portions of Form PF in paper format.[427] The information that must be filed is comparable to the information that Form ADV filers provide on Form ADV–H when requesting a temporary hardship exemption relating to that form. In the case of Form ADV–H, the SEC has estimated that the average burden of filing is 1 hour and that approximately 1 in every 1,000 advisers will file annually.[428] Assuming that Form PF filers request hardship exemptions at the same rate and that the applications impose the same burden per filing, the SEC expects approximately 4 filers to request a temporary hardship exemption each year[429] for a total of 4 burden hours.[430] No commenters addressed these estimates, and they remain unchanged from the proposal.

*F. Aggregate Hour Burden Estimates*

Based on the foregoing, the SEC estimates that Form PF would result in an aggregate of 258,000 burden hours per year for all private fund advisers for each of the first three years, or 72 burden hours per year on average for each private fund adviser over the same period.[431]

*G. Cost Burden*

In addition to the hour burdens identified above, advisers subject to the Form PF reporting requirements will incur cost burdens. Firms required to file Form PF must also pay filing fees. In a separate order, the SEC has established filing fees for the Form PF filing system of $150 per annual filing and $150 per quarterly filing.[432] We estimate that this will result in advisers paying aggregate filing fees of approximately $684,000 per year.[433]

Several commenters suggested that advisers would also need to modify existing systems or deploy new systems to support Form PF reporting.[434] As discussed in the Proposing Release and below, the SEC acknowledges that advisers may incur costs to develop systems and expects that Large Private Fund Advisers, in particular, may find it efficient to automate some portion of the reporting process, which will increase the burden of the initial filing but reduce the burden of subsequent filings.[435] The SEC has assumed that some of the hours that it estimates advisers will spend on preparing their initial filings on Form PF will be attributable to programmers preparing systems for the reporting.[436] The SEC understands that some advisers may outsource all or a portion of these systems requirements to software consultants, vendors, filing agents or other third-party service providers and believes that the emergence of such service providers may serve to make filing on Form PF more efficient than is reflected in its estimates.[437]

Advisers may also incur costs associated with the acquisition or use of hardware needed to perform computations or otherwise process the data required on Form PF.[438] Smaller private fund advisers are unlikely to bear these costs because the information they are required to provide is limited and will, in many cases, already be maintained in the ordinary course of business.[439] Even among Large Private Fund Advisers, these costs are likely to vary significantly. For instance, the cost to any Large Private Fund Adviser may depend on how many funds or the types of funds it manages, the state of its existing systems and the complexity of its business. In addition, large hedge fund and large liquidity fund advisers must file Form PF more frequently, on shorter deadlines and generally with more information than large private equity advisers, increasing the likelihood that filings will compete with other demands for computing resources and that additional resources will be required.

Commenters did not provide estimates for the costs of acquiring or using hardware for purposes of Form PF. SEC staff contacted several organizations, including self-regulatory organizations, prime brokers and fund service providers, to help develop an estimate for these costs. Although these organizations generally were not able to provide such estimates, some expressed the view that the hardware costs would be small relative to the human capital costs and, for Large Private Fund Advisers, software development costs that Form PF imposes.[440] The SEC estimates, based in part on these conversations and the factors discussed above, that these costs will fall across a broad range for Large Private Fund Advisers. Those who are required to file less information, less frequently and on longer deadlines, who have excess capacity in their existing systems or whose business is relatively simple, may incur no incremental hardware costs. On the other hand, some Large Private Fund Advisers may need to acquire (or obtain the use of) computing resources equivalent to an additional server, which the SEC estimates would

[424] Under the proposal, large private equity advisers would also have been required to file on a quarterly basis. *See supra* section II.B.1 of this Release.

[425] Estimate is based on IARD data on the frequency of advisers to one or more private funds withdrawing from SEC registration. (3,570 private fund advisers × 0.08 × 0.25 hours = 71 hours.)

[426] *See supra* section II.A of this Release.

[427] *See* Advisers Act rule 204(b)–1(f). The rule requires that the adviser complete and file Item A of Section 1a and Section 5 of Form PF, checking the box in Section 1a indicating that the filing is a request for a temporary hardship exemption.

[428] *See* Implementing Adopting Release, *supra* note 11, at section VI.F.

[429] 3,570 private fund advisers × 1 request per 1,000 advisers = approximately 4 advisers.

[430] 4 advisers × 1 hour per response = 4 hours.

[431] 70,600 hours for periodic filings by smaller advisers + 153,000 hours for periodic filings by large hedge fund advisers + 23,200 hours for periodic filings by large liquidity fund advisers + 11,400 hours for periodic filings by large private equity fund advisers + 7 hours per year for transition filings + 71 hours per year for final filings + 4 hours per year for temporary hardship requests = approximately 258,000 hours per year. 258,000 hours per year ÷ 3,570 total advisers = 72 hours per year on average.

[432] *See supra* section II.E of this Release.

[433] ((3,070 smaller private fund advisers + 170 large private equity advisers) × $150 per annual filing) + ((250 large hedge fund advisers + 80 large private equity advisers) × $150 per quarterly filing × 4 quarterly filings per year) = $684,000 per year.

[434] *See, e.g.,* BlackRock Letter; IAA Letter; Kleinberg General Letter; PEGCC Letter; SIFMA Letter.

[435] *See infra* section V.B of this Release, especially nn. 511–515; Proposing Release, *supra* note 11, at section V.B.

[436] *See infra* notes 511, 513 and 515.

[437] The SEC has based its estimates on the use of internal resources, for which some cost data is available, because it believes that an adviser would engage third-party service providers only if the external costs were comparable, or less than, the estimated internal costs of compiling, reviewing and filing the Form PF. As a result, the SEC's estimates of hour and cost burdens in this PRA analysis, and of costs in section V.B of this Release, may overstate the actual burdens and costs that will be incurred once third-party services become available.

[438] *See supra* note 272.

[439] *See supra* note 382.

[440] *See supra* notes 435–436 and accompanying text.

cost approximately $50,000 fully deployed. This suggests an aggregate incremental cost in the first year of reporting between $0 and $25,000,000, though the actual cost is likely to fall in between these two end-points.[441]

*CFTC:*

As adopted, CEA rule 4.27 does not impose any additional burden upon registered CPOs and CTAs that are dually registered as investment advisers with the SEC. By filing the Form PF with the SEC, these dual registrants would be deemed to have satisfied certain of their filing obligations with the CFTC should the CFTC adopt such requirements, and the CFTC is not imposing any additional burdens herein. Therefore, any burden imposed by Form PF through CEA rule 4.27 on entities registered with both the CFTC and the SEC has been accounted for within the SEC's calculations regarding the impact of this collection of information under the PRA or, to the extent the reporting may relate to commodity pools that are not private funds, the CFTC anticipates that it would account for this burden should it adopt a future rulemaking establishing reporting requirements with respect to those commodity pools.[442]

## V. Economic Analysis

As discussed above, the Dodd-Frank Act amended the Advisers Act to, among other things, authorize the SEC to promulgate reporting requirements for private fund advisers. The Dodd-Frank Act also directs the SEC and CFTC to jointly issue, after consultation with FSOC, rules establishing the form and content of any reports to be filed under this new authority.[443] In enacting Sections 404 and 406 of the Dodd-Frank Act, Congress determined to require that private fund advisers file reports with the SEC and specified certain types of information that should be subject to reporting and/or recordkeeping requirements, but Congress left to the SEC the determination of the specific information to be maintained or reported. When determining the form and content of such reports, the Dodd-Frank Act authorizes the SEC to require that private fund advisers file such information ''as necessary and appropriate in the public interest and for the protection of investors, or for the assessment of system risk by [FSOC].'' [444]

The SEC is adopting Advisers Act rule 204(b)–1 and Form PF, and the CFTC is adopting CEA rule 4.27 and sections 1 and 2 of Form PF, to implement the private fund adviser reporting requirements that the Dodd-Frank Act directs the Commissions to promulgate. Under these new rules, private fund advisers having at least $150 million in private fund assets under management must file with the SEC information responsive to all or portions of Form PF on a periodic basis. The scope of the required information and the frequency of the reporting is related to the amount of private fund assets that each private fund adviser manages and the types of private fund to which those assets relate.[445] Specifically, smaller private fund advisers must report annually and provide only basic information regarding their operations and the private funds they advise. Large private equity advisers also must report on an annual basis but are required to provide additional information with respect to the private equity funds they manage. Finally, large hedge fund advisers and large liquidity fund advisers must report on a quarterly basis and provide more information than other private fund advisers.

The Advisers Act directs the SEC, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition and capital formation.[446] The Commissions are sensitive to the costs and benefits of their respective rules and have carefully considered the costs and benefits of this rulemaking. The SEC's consideration of the costs and benefits of this rulemaking has included whether this rulemaking will promote efficiency, competition and capital formation. In the proposal, the Commissions identified certain costs and benefits of Advisers Act rule 204(b)–1, CEA rule 4.27 and Form PF and requested comment on all aspects of their cost-benefit analyses. The comments the Commissions received on those analyses are discussed below.

In considering the benefits and costs of this rulemaking, we have also considered alternatives to the requirements we are adopting. All of these alternatives would require at least some registered private fund advisers to report at least some information because Congress directed the SEC to adopt such reporting requirements. Among the alternatives that we considered were requirements that varied along the following five dimensions: (1) Requiring more or less information; (2) requiring more or fewer advisers to complete the Form; (3) allowing advisers to rely more on their existing methodologies and recordkeeping practices in completing the Form (or, alternatively, requiring more standardized responses); (4) requiring more or less frequent reporting; and (5) allowing advisers more or less time to complete and file the Form.

Alternatives along each of these dimensions have advantages and disadvantages. Obtaining more standardized information from more advisers more often and more quickly would likely improve the value of the Form PF data to FSOC and other regulators, and several commenters supported alternatives along one or more of these dimensions.[447] The Commissions are concerned, however, that the costs of such changes may, in general, increase more quickly than the benefits.[448] On the other hand, the Commissions have considered, and are adopting changes from the proposal, that allow advisers more time to file the Form,[449] permit large private equity advisers to file less frequently,[450] generally reduce the amount of information required,[451] reduce the number of advisers required to file the Form[452] and allow advisers to rely more on their existing methodologies and recordkeeping practices.[453] A number of commenters supported these changes and, in some cases, would have preferred that we further reduce the reporting burdens.[454] We believe, however, that the approach we are adopting strikes an appropriate balance between the benefits of the information to be collected and the costs to advisers

[441] $50,000 × 500 Large Private Fund Advisers = $25,000,000.

[442] 44 U.S.C. 3501–3521.

[443] *See* section 211(e) of the Advisers Act.

[444] *See* section 204(b)(1)(A) of the Advisers Act.

[445] *See* section II.A of this Release (describing who must file Form PF); *see also* section II.B of this Release (discussing the frequency with which private fund advisers must file Form PF); section II.C of this Release (describing the information that private fund advisers must report on Form PF). *See also* proposed Instruction 9 to Form PF for information regarding the frequency with which private fund advisers must file Form PF.

[446] *See* section 202(c) of the Advisers Act.

[447] *See, e.g.,* AFL–CIO Letter; AFR Letter. *See also* CII Letter; MSCI Letter.

[448] *See, e.g., supra* discussion following notes 101 and 158 and text accompanying note 256. We believe, however, that there are some exceptions, such as the additional information it has determined to request in section 1b of the Form. *See supra* section II.C.1 of this Release.

[449] *See supra* section II.B.2 of this Release.

[450] *See supra* section II.B.1 of this Release.

[451] *See supra* section II.C of this Release.

[452] *See supra* section II.A of this Release.

[453] *See supra* section II.C of this Release.

[454] *See, e.g.,* IAA Letter; MFA Letter; PEGCC Letter; SIFMA Letter.

of providing it. These benefits and costs are discussed in greater detail below.

*A. Benefits*

We believe that Form PF will create two principal classes of benefits. First, the information collected will facilitate FSOC's understanding and monitoring of systemic risk in the private fund industry and assist FSOC in determining whether and how to deploy its regulatory tools with respect to nonbank financial companies. Second, we expect this information to enhance the Commissions' ability to evaluate and develop regulatory policies and improve the efficiency and effectiveness of our efforts to protect investors and maintain fair, orderly and efficient markets.

Congress passed the Dodd-Frank Act in the wake of what some have called ''the greatest financial crisis since the Great Depression.'' [455] The crisis imposed immense costs on individuals and businesses, with millions of jobs disappearing from the U.S. economy, large numbers of families losing their homes to foreclosure, nearly $11 trillion in household wealth lost, including retirement accounts and life savings, and many businesses, large and small, facing serious challenges.[456] Congress responded to the crisis, in part, by establishing FSOC as the center of a framework intended ''to prevent a recurrence or mitigate the impact of financial crises that could cripple financial markets and damage the economy.'' [457] The goal of this framework, in other words, is the avoidance of significant harm to the U.S. economy from future financial crises.

Under the Dodd-Frank Act, FSOC must ''monitor emerging risks to U.S. financial stability'' and employ its regulatory tools to address those risks.[458] For this purpose, the Dodd-Frank Act granted FSOC the ability to determine that a nonbank financial company will be subject to the supervision of the FRB if the company may pose risks to U.S. financial stability as a result of its activities or in the event of its material financial distress. FSOC may also recommend to the FRB heightened prudential standards for designated nonbank financial companies.[459] In addition, the Dodd-Frank Act authorizes FSOC to issue recommendations to primary financial regulators for more stringent regulation of financial activities that it determines may create or increase systemic risk.[460]

Congress recognized that FSOC would need information from private fund advisers to carry out its duties and to determine whether and how to exercise these regulatory authorities. For instance, a Senate committee report noted that ''no precise data regarding the size and scope of hedge fund activities are available[, and while] hedge funds are generally not thought to have caused the current financial crisis, information regarding their size, strategies, and positions could be crucial to regulatory attempts to deal with a future crisis.'' [461] To that end, Congress mandated that the Commissions, as the primary regulators of private fund advisers, gather information from these advisers for FSOC's use. The Commissions have designed Form PF, in consultation with staff representing FSOC's members, to implement this mandate.[462]

Recent releases from FSOC illuminate how Form PF will serve an essential role in FSOC's monitoring of, and exercise of regulatory authority over, the private fund industry. For instance, in one release, FSOC confirmed that the information reported on Form PF is important not only to conducting an assessment of systemic risk among private fund advisers but also to determining how that assessment should be made.[463] Guidance in this FSOC release also suggests the role Form PF data will play in the process of determining whether a private fund adviser or the funds it manages will be subject to FRB supervision.[464] More specifically, the Dodd-Frank Act identifies certain factors that FSOC must consider in making a determination to designate a nonbank financial company for FRB supervision, and FSOC's recent guidance organizes those factors into categories, including size, interconnectedness, use of leverage, liquidity risk and maturity mismatch and concentration.[465] As discussed in detail throughout section II.C of this Release, the information reported on Form PF is designed, in part, to provide FSOC with data to assess these factors in a manner that is relevant to the particular type of fund about which the adviser is reporting.[466] Finally, we expect that FSOC will use Form PF data to supplement the data that it collects regarding other financial market participants and gain a broader view of the financial system than is currently available to regulators.[467] In this manner, we believe that the information collected through Form PF could play an important role in FSOC's monitoring of systemic risk, both in the private fund industry and in the financial markets more broadly.

In addition to the content of the Form, the reporting frequency, filing deadlines and reporting thresholds have been designed to provide FSOC the information it needs to monitor systemic risk across the private fund industry while balancing the burdens these reporting requirements will impose on advisers. For instance, although most advisers will only report annually on Form PF, large hedge fund and large liquidity fund advisers will report quarterly because we understand, based on our staffs' consultations with staff representing FSOC's members, that this will provide FSOC with timely data that it may use to identify emerging trends in systemic risk.[468] The filing deadlines are, similarly, designed to provide FSOC with timely data so that it may understand and monitor systemic risk on a reasonably current basis.[469] Moreover, as discussed above, the reporting thresholds are designed to provide FSOC with a broad picture of the private fund industry while relieving smaller advisers from much of the costs associated with the more detailed reporting.[470] We understand that obtaining this broad picture will help FSOC to contextualize its analysis and assess whether systemic risk may exist across the private fund industry and to identify areas where OFR may

[455] *The Financial Crisis Inquiry Report: Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States,* Financial Crisis Inquiry Commission (Jan. 2011) (''Financial Crisis Inquiry Report'') at xv.

[456] *See id.,* at xv–xvi. *See also* Senate Committee Report, *supra* note 5, at 39.

[457] *Id.*

[458] *See id.,* at 2. *See also supra* note 6 and accompanying text.

[459] *See supra* note 7 and accompanying text.

[460] *See supra* note 8 and accompanying text.

[461] *See* Senate Committee Report, *supra* note 5, at 38.

[462] *See* section II.C of this Release (describing the information that private fund advisers must report on Form PF).

[463] *See supra* note 21 and accompanying text.

[464] In the proposed three-stage process for making such determinations, the first and second stages would utilize publicly available data and data that, like Form PF, is collected by other regulators. A third stage of screening would generally involve OFR collecting additional, targeted information directly from these firms, which FSOC would analyze along with Form PF data and other data used in the first two stages. *See supra* notes 45–46 and accompanying text.

[465] *See* FSOC Second Notice, *supra* note 6.

[466] *See, e.g., supra* notes 192, 228, 266, 282, 284, 298 and 323 and accompanying text.

[467] *See, e.g.,* Proposing Release, *supra* note 12, at n. 120 and accompanying text.

[468] *See supra* section II.B.1 of this Release (discussing reporting frequency and comments on the proposed reporting frequency).

[469] *See supra* section II.B.2 of this Release (discussing reporting deadlines and comments on the proposed deadlines).

[470] *See supra* section II.A.4.a of this Release (discussing large adviser thresholds and comments on the proposed thresholds). *See also* section II.A of this Release (discussing the minimum reporting thresholds).

want to obtain additional information.[471]

Certain publications from international groups and researchers have suggested that data like that collected on Form PF will be valuable to the regulation of systemic risk. For instance, as discussed above, several international groups have continued working to close information gaps by increasing the disclosures provided to regulators.[472] These groups have emphasized the importance, in their view, of designing and collecting better information to support the identification and modeling of systemic risk.[473] In addition, research papers have suggested that information regarding private funds should play an important role in monitoring systemic risk, and one study argues that more direct measures of systemic risk would be possible with information from the majority of funds in the industry.[474] Another recent research paper argues that expanding the FRB's flow of funds data to include more detailed quarterly information regarding the holding and transfer of financial instruments, including information regarding the portfolios of hedge funds, ''would have been of material value to U.S. regulators in ameliorating the recent financial crisis and could be of aid in understanding the potential vulnerabilities of an innovative financial system in the future.'' [475] Others have commented on hedge fund reporting specifically, stating that ''[t]ransparency to regulators can help them measure and manage possible systemic risk and is relatively costless.'' [476]

Other academics and economists, while supporting regulatory efforts to assess and mitigate systemic risk, have cautioned that achieving the goal of substantially reducing systemic risk may prove difficult. For example, while the authors of one recent work support establishing ''early warning indicators'' for financial crises, they argue that the most significant challenge is not the design of a framework for systemic risk analysis but rather:

> the well-entrenched tendency of policy makers and market participants to treat the signals as irrelevant archaic residuals of an outdated framework, assuming that old rules of valuation no longer apply. If the past * * * is any guide, these signals will be dismissed more often than not.[477]

Accordingly, although collecting information on Form PF will increase the transparency of the private fund industry to regulators (an important prerequisite to understanding and monitoring systemic risk), transparency alone may not be sufficient to address systemic risk.[478]

Some commenters agreed that Form PF data will ''facilitate FSOC's ability to promote the soundness of the U.S. financial system.'' [479] One commenter characterized Form PF as determining the extent to which FSOC and the SEC have access to ''data essential to monitoring systemic risks that, as we saw in 2007 and 2008, cause substantial damage to the financial markets and the broader economy when they go unchecked.'' [480] Another commenter stated that Form PF data could aid in the assessment of ''systemic risks due to connectivity and contagion.'' [481] One commenter who expressed reservations regarding specific aspects of the proposal nonetheless supported ''the approach proposed by the SEC and CFTC to collect information from registered private fund managers through periodic, confidential reports on Form PF'' and agreed that gathering data ''from different types of market participants, including investment advisers and the funds they manage, * * *is a critical component of effective systemic risk monitoring and regulation.'' [482]

Some commenters, however, doubted that Form PF would be beneficial for monitoring systemic risk.[483] One commenter, for instance, argued that ''Form PF requires firms to calculate and disclose information with uncertain benefits to regulators, and the broad scope of private funds subject to this burden has not been justified.'' [484] Others argued that particular types of funds, such as private equity funds, should be excluded from the reporting because they do not, in their view, have the potential to pose systemic risk or that certain of the proposed questions on Form PF would not prove beneficial for systemic risk analysis.[485] As discussed above, based on SEC staff's consultation with staff representing FSOC's members, we continue to believe that targeted information regarding the leverage practices of private equity funds will provide information that FSOC may use to monitor activities and trends in this industry that are of potential systemic importance.[486] In addition, we have made a number of changes from the proposal intended to address the specific concerns of these commenters and believe that Form PF, as adopted, will be an important source of information for FSOC as it carries out its duties as they relate to the private fund industry.[487]

We cannot predict today what the scope of the next financial crisis will be, and Form PF is only one part of a broader framework established under the Dodd-Frank Act to monitor and address systemic risk.[488] Other measures contemplated by the Dodd-Frank Act, including the so-called ''Volcker rule,'' enhanced regulation of swaps and the FRB's oversight of systemically important financial

[471] *Id.*

[472] *See supra* notes 28–29 and accompanying text.

[473] *Id.*

[474] *See, e.g.,* Nicholas Chan, Mila Getmansky, Shane Haas and Andrew Lo, *Systemic Risk and Hedge Funds,* in The Risks of Financial Institutions (Mark Carey and Rene Stulz, eds., 2007) at 238; Monica Billio, Mila Getmansky, Andrew Lo and Loriana Pelizzon, *Econometric Measures of Systemic Risk in the Finance and Insurance Sectors,* National Bureau of Economic Research (July 2010).

[475] Leonard Nakamura, *Durable Financial Regulation: Monitoring Financial Instruments as a Counterpart to Regulating Financial Institutions,* National Bureau of Economic Research (May 2011) at 1.

[476] Stephen Brown, *et al., Hedge Funds, Mutual Funds, and ETFs,* in Regulating Wall Street: The Dodd-Frank Act and the New Architecture of Global Finance 360 (Viral V. Acharya, *et al.,* eds., 2011) (supporting ''regular and timely'' reporting of asset positions and leverage levels). *See also* Ferran, *supra* note 307, at 28.

[477] Carmen M. Reinhart and Kenneth S. Rogoff, *This Time is Different: Eight Centuries of Financial Folly* (2009) (''Reinhart and Rogoff'') at 277, 280 and 281 (after observing this tendency to disregard signals of systemic risk, the authors conclude that this ''is why we also need to think about improving institutions,'' which may be important to reducing this risk).

[478] *See also* FSOC 2011 Annual Report, supra note 19, at ii (explaining that identifying and mitigating potential threats to financial stability ''is an inherently difficult exercise. No financial crisis emerges in exactly the same way as its predecessors, and the most significant future threats will often be the ones that are hardest to diagnose and preempt'' but going on to state that, ''[n]onetheless, there is a strong case for improving the quality of information available to the public, supervisors, and regulators about risks in financial institutions and markets.'')

[479] CII Letter. *See also, e.g.,* AFL–CIO Letter; AFR Letter.

[480] AFL–CIO Letter.

[481] MSCI Letter (though also noting that they ''see less potential benefit from this exercise to track the formation of asset class bubbles'' and that certain of the requested information would be difficult to aggregate for purposes of industry-wide analysis; *see* section II.C for a discussion of some of this commenter's observations regarding use of particular data collected on Form PF).

[482] MFA Letter.

[483] *See, e.g.,* Fidelity Letter; PEGCC Letter; TCW Letter; USCC Letter.

[484] CCMR Letter; *see also* USCC Letter (acknowledging, however, that ''greater access to comprehensive market and industry information will assist [FSOC] in identifying emerging threats to the stability of the U.S. financial system.''); BlackRock Letter; SIFMA Letter.

[485] *See, e.g.,* PEGCC Letter. *See also supra* section II.C of this Release.

[486] *See supra* notes 307–308 and accompanying text.

[487] *See supra* section II of this Release (discussing changes from the proposal).

[488] *See supra* note 457 and accompanying text.

institutions may be critical to identifying and mitigating the next financial crisis. We anticipate, however, that Form PF will improve the information available to regulators as they seek to prevent or mitigate the effects of future financial crises, and if this information helps to avoid even a small portion of the costs of a financial crisis like the most recent one, the benefits of Form PF will be very significant.

Reporting on Form PF will also benefit investors and other market participants by improving the information available to the Commissions regarding the private fund industry and how it interacts with markets. Today, regulators have little reliable data regarding this rapidly growing sector and frequently have to rely on data from other sources, which when available may be incomplete. The SEC recently adopted amendments to Form ADV that will require the reporting of important information regarding private funds, but this includes little or no information regarding, for instance, performance, leverage or the riskiness of a fund's financial activities.[489] As discussed above, the data collected through Form PF, which will be more reliable than existing data regarding the industry and significantly extend the data available through the revised Form ADV, will assist FSOC in identifying and addressing risks to U.S. financial stability. This may, in turn, protect investors and other market participants from significant losses.

In addition, this data will provide the Commissions with a more complete view of the financial markets in general and the private fund industry in particular. This broader perspective and more reliable data may enhance the Commissions' ability to develop and frame regulatory policies regarding the private fund industry, its advisers and the markets in which they participate, and to more effectively evaluate the outcomes of regulatory policies and programs directed at this sector, including for the protection of private fund investors. For instance, Form PF data may help the Commissions to discern relationships between regulatory actions and private fund results or activities.

We also expect the Form PF data to improve the efficiency and effectiveness of the Commissions' oversight of private fund advisers by enabling staff to manage and analyze information related to the risks that private funds pose more quickly, more effectively and at a lower cost than is currently possible. This will allow the Commissions to more efficiently and effectively target their examination programs. The Commissions will be able to use Form PF information to generate reports on the industry, its characteristics and trends. We expect that these reports will help the Commissions to anticipate regulatory problems, allocate and reallocate resources, and more fully evaluate and anticipate the implications of various regulatory actions the Commissions may consider taking. This will increase both the efficiency and effectiveness of the Commissions' programs and, thereby, increase investor protection. Form PF data will also help the Commissions better understand the investment activities of private funds and the scope of their potential effect on investors and the markets that the Commissions regulate.

Commenters generally focused on the benefits of Form PF as they relate to systemic risk rather than investor protection. However, one supporter, who represents twelve million workers and sponsors pension and employee benefit plans holding almost half a trillion dollars in assets, agreed that ''[c]omprehensive disclosure requirements for private funds will provide important protections for [its] members' retirement savings.'' [490] On the other hand, some commenters who questioned Form PF's merits expressed skepticism regarding the Form's benefits generally, not just with respect to the monitoring of systemic risk.[491] As discussed in detail above, we have made a number of changes from the proposal designed to address commenter concerns regarding certain aspects of the proposed reporting requirements.[492] However, we continue to believe that Form PF, as adopted, will increase the amount and quality of information available regarding a previously opaque area of investment activity and, thereby, enhance the ability of regulators to protect investors and maintain fair, orderly and efficient markets.

The Commissions believe that private fund advisers, investors in private funds and the companies in which private funds may invest will also enjoy certain benefits related to Form PF. For example, we identified above two principal classes of benefits—assistance to FSOC in carrying out its mission and improvements to the ability of regulators to protect investors and oversee markets—in which these groups will share, including indirectly as participants in the U.S. financial system. With respect to hedge fund advisers, for instance, data indicate that the number of funds shut down each year increased significantly during the recent financial crisis, suggesting that these advisers may benefit if a future financial crisis is averted or mitigated.[493] Private fund investors and private fund advisers will also benefit if reporting on Form PF, by requiring advisers to review their fund's portfolios, trading practices and risk profiles, causes advisers to improve their risk management practices or internal controls.

Reporting on Form PF may also result in a positive effect on capital formation. Although Form PF data generally will be non-public, Form PF will increase transparency to regulators.[494] The SEC believes that private fund advisers may, as a result, assess more carefully the risks associated with particular investments and, in the aggregate, allocate capital to investments with a higher value to the economy as a whole. To the extent that changes in investment allocations lead to improved economic outcomes in the aggregate, Form PF reporting may result in a positive effect on capital available for investment.

Should the CFTC adopt certain of its proposed systemic risk reporting requirements, the coordination between the CFTC and SEC on this rulemaking would result in significant efficiencies for any private fund adviser that is also registered as a CPO or CTA with the CFTC. This is because, under CEA rule 4.27, filing Form PF would satisfy both SEC and CFTC reporting obligations with respect to commodity pools that are ''private funds'' and CPOs and CTAs would have the option of reporting on Form PF regarding commodity pools that are not private funds to satisfy certain other CFTC reporting obligations, in each case should the CFTC adopt such reporting obligations.

As discussed in section I.B of this Release, we have also coordinated with foreign financial regulators regarding the reporting of systemic risk information regarding private funds and

[489] *See* Implementing Adopting Release, *supra* note 11. Information reported on Form ADV is made available to the public, while Form PF data generally will not be. *See supra* section II.D (discussing confidentiality of Form PF data). This has informed the SEC's determination to require certain private fund information on Form ADV and other private fund information on Form PF.

[490] AFL–CIO Letter. *See also* AFR Letter.

[491] *See, e.g., supra* note 484.

[492] *See supra* section II of this Release (discussing changes from the proposal).

[493] *See HedgeFund Intelligence Global Review 2011,* HFI (Spring 2011) (''HFI 2011 Global Review'').

[494] *See supra* section II.D (discussing confidentiality of Form PF data).

anticipate that this coordination, as reflected in Form PF, will result in greater efficiencies in private fund reporting, as well as information sharing and private fund monitoring among foreign financial regulators. Ongoing work among various international organizations has emphasized the importance of filling gaps in the data regarding financial market participants, and one goal of this coordination is to collect comparable information regarding private funds, which will aid in the assessment of systemic risk on a global basis.[495] Several commenters agreed that international coordination in connection with private fund reporting is important and encouraged us to take an approach consistent with international precedents.[496] We have made several changes from the proposal intended to more closely align Form PF with international precedent.[497]

As discussed above, we also believe that private fund advisers already collect or calculate some of the information required on the Form at least as often as they must file the Form, creating efficiencies for, and benefiting, advisers in satisfying their reporting requirements.[498]

*B. Costs*

Reporting on Form PF will also impose certain costs on private fund advisers and, potentially, other market participants. For the most part, these are the same costs discussed in the PRA analysis above because that analysis must account for the burdens of responding to the Commissions' reporting requirements. In order to minimize these direct costs, the reporting requirements are scaled to the adviser's size, the size of funds and the types of private funds each adviser manages. For instance, smaller private fund advisers and large private equity advisers generally must report less information and less frequently than large hedge fund advisers and large liquidity fund advisers.[499] This scaled approach is intended to provide FSOC with a broad picture of the private fund industry while relieving smaller advisers from much of the costs associated with the more detailed reporting. It is also designed to reflect the different implications for systemic risk that may be presented by different investment strategies, and thus seeks to adjust the costs of the reporting in proportion to the differing potential benefits of the information reported with respect to these strategies.

We expect that the costs Form PF imposes will be most significant for the first report that a private fund adviser is required to file because the adviser will need to familiarize itself with the new reporting form and may need to configure its systems in order to efficiently gather the required information. We also anticipate that the initial report will require more attention from senior personnel, including compliance managers and senior risk management specialists, than will subsequent reports. In addition, we expect that some Large Private Fund Advisers will find it efficient to automate some portion of the reporting process, which will increase the burden of the initial filing but reduce the burden of subsequent filings.

Several commenters addressed the cost estimates included in the Proposing Release. These commenters generally viewed these estimates as understated and, in several cases, argued that the costs of the initial report, in particular, would be greater than assumed.[500] These commenters offered two common explanations for the higher than estimated costs: (1) ''[m]any of the requested items on Form PF are not tracked by advisory firms on the frequency, by the category or on a fund-by-fund basis in the manner requested by the proposed Form,'' meaning that advisers would need to develop systems for the reporting or engage in a manual process of gathering and compiling data;[501] and (2) completing the Form will require gathering information from many different internal and external parties and systems.[502]

We have carefully considered comments suggesting that the reporting requirements would be more burdensome than estimated in the Proposing Release, and the SEC has substantially increased its estimates of the hour burdens included in this PRA analysis, which flow through to these estimates of costs.[503] We have, however, also taken these comments into consideration in making a number of changes from the proposal that are intended to reduce the burdens of reporting on Form PF. These include global changes to the Form, such as allowing most advisers more time to file following the end of a fiscal period (reducing the likelihood that Form PF will compete with other priorities for advisers' resources or require employment of additional personnel), extending the compliance date, allowing large private equity advisers to report annually rather than quarterly, increasing the threshold for large private equity advisers and permitting greater reliance on advisers' existing methodologies and recordkeeping practices. We have also modified specific questions in response to comments so that responding to the Form is less burdensome.[504] We expect, on the whole, that these changes will mitigate the cost of reporting.[505] In addition, we have added a minimum reporting threshold, which will not reduce the burden to any particular filer of reporting but will reduce the aggregate burden that Form PF imposes because fewer advisers will be required to report.

After filing their initial reports, we anticipate that advisers will incur significantly lower costs because much of the work involved in the initial report is non-recurring and because of efficiencies realized from system configuration and reporting automation efforts accounted for in the initial reporting period. In addition, we estimate that senior personnel will bear less of the reporting burden in subsequent reporting periods, reducing costs though not necessarily reducing the burden hours.

One commenter agreed that efficiencies will be realized over time,[506] but another stated that, at least for private real estate funds, they would not.[507] Having considered these comments, we continue to believe that, for the average adviser (and particularly for those with more liquid portfolios and greater systems capabilities), efficiencies will be realized over time.

[495] *See supra* note 29 and accompanying text.

[496] *See supra* note 30 and accompanying text.

[497] *See supra* note 35 and accompanying text.

[498] *See supra* note 382; Proposing Release, *supra* note 12, at n.105; *but see supra* note 146.

[499] *See* section II.A of this Release (describing who must file Form PF); section II.B of this Release (discussing the frequency with which private fund advisers must file Form PF); section II.C of this Release (describing the information that private fund advisers must report on Form PF). *See also* Instruction 9 to Form PF (discussing information regarding the frequency with which private fund advisers must file Form PF).

[500] *See, e.g.,* AIMA Letter; IAA Letter; Kleinberg General Letter; MFA Letter; PEGCC Letter; Seward Letter.

[501] TCW Letter; but *see also supra* note 146.

[502] *See, e.g.,* Kleinberg General Letter; MFA Letter; PEGCC Letter.

[503] *See supra* notes 383, 394–395, 404 and 414 and accompanying text.

[504] *See supra* section II.C of this Release.

[505] *See supra* notes 388–389, 397–398, 407–409 and 418–420 and accompanying text. We also note that the original cost estimates, as well as the revised estimates included in this Release, include allocations for systems development among Large Private Fund Advisers (who are most likely to find automation cost effective) and assume that information would need to be gathered from many sources, both internal and external. *See supra* note 435 and accompanying text.

[506] *See* MFA Letter.

[507] *See* comment letter of The National Association of Real Estate Investment Managers (Mar. 24, 2011).

We have, however, also increased the cost estimates for subsequent filings in recognition of concerns regarding the overall burden of the reporting and the possibility that efficiencies are not the same for all types of private fund adviser.

Based on the foregoing, we estimate [508] that the periodic filing requirements under Form PF (including configuring systems and compiling, automating, reviewing and electronically filing the report) will impose:

(1) 40 burden hours at a cost of $13,600 [509] per smaller private fund adviser for the initial annual report;

(2) 15 burden hours at a cost of $4,200 [510] per smaller private fund adviser for each subsequent annual report;

(3) 100 burden hours at a cost of $31,000 [511] per large private equity fund adviser for the initial annual report;

(4) 50 burden hours at a cost of $13,900 [512] per large private equity fund adviser for each subsequent annual report;

(5) 300 burden hours at a cost of $93,100 [513] per large hedge fund adviser for the initial quarterly report;

(6) 140 burden hours at a cost of $38,800 [514] per large hedge fund adviser for each subsequent quarterly report;

(7) 140 burden hours at a cost of $43,500 [515] per large liquidity fund adviser for the initial quarterly report; and

(8) 65 burden hours at a cost of $18,000 [516] per large liquidity fund adviser for each subsequent quarterly report.

Assuming that there are 3,070 smaller private fund advisers, 250 large hedge fund advisers, 80 large liquidity fund advisers, and 170 large private equity fund advisers, the foregoing estimates suggest an annual cost of $107,000,000 [517] for all private fund advisers in the first year of reporting and an annual cost of $59,800,000 in subsequent years.[518]

The cost estimates above assume that risk and compliance personnel (and, in the case of Large Private Fund Advisers filing an initial report, programmers) will carry out the work of reporting on Form PF. Some commenters suggested that employees in portfolio management as well as legal, controller and other back office functions may also be involved in compiling, reviewing and filing Form PF.[519] These commenters did not provide estimates for how the reporting burdens would be allocated among these groups of employees, and we believe the allocation is likely to vary significantly among advisers depending on the size and complexity of their operations. Based on available wage data, we do not believe that variations in the allocation of these responsibilities among the functions that we and commenters identified

[508] We understand that some advisers may outsource all or a portion of their Form PF reporting responsibilities to software consultants, vendors, filing agents or other third-party service providers. We have based our estimates on the use of internal resources, for which some cost data is available, because we believe that an adviser would engage third-party service providers only if the external costs were comparable, or less than, the estimated internal costs of compiling, reviewing and filing the Form PF. The hourly wage data used in this Economic Analysis section of the Release is based on the Securities Industry and Financial Markets Association's *Report on Management & Professional Earnings in the Securities Industry 2010* and *Office Salaries in the Securities Industry 2010* (''SIFMA Earnings Reports''). This data has been modified to account for an 1,800-hour work-year and multiplied by 5.35 for management and professional employees and by 2.93 for general and compliance clerks to account for bonuses, firm size, employee benefits and overhead.

[509] We expect that for the initial report these activities will most likely be performed equally by a compliance manager at a cost of $273 per hour and a senior risk management specialist at a cost of $409 per hour and that, because of the limited scope of information required from smaller private fund advisers, these advisers generally would not realize significant benefits from or incur significant costs for system configuration or automation. ($273/hour × 0.5 + $409/hour × 0.5) × 40 hours = approximately $13,600.

[510] We expect that for subsequent reports senior personnel will bear less of the reporting burden. As a result, we estimate that these activities will most likely be performed equally by a compliance manager at a cost of $273 per hour, a senior compliance examiner at a cost of $235 per hour, a senior risk management specialist at a cost of $409 per hour and a risk management specialist at a cost of $192 per hour. ($273/hour × 0.25 + $235/hour × 0.25 + $409/hour × 0.25 + $192/hour × 0.25) × 15 hours = approximately $4,200.

[511] The SEC expects that for the initial report, of a total estimated burden of 100 hours, approximately 60 hours will most likely be performed by compliance professionals and 40 hours will most likely be performed by programmers working on system configuration and reporting automation. Of the work performed by compliance professionals, the SEC anticipates that it will be performed equally by a compliance manager at a cost of $273 per hour and a senior risk management specialist at a cost of $409 per hour. Of the work performed by programmers, the SEC anticipates that it will be performed equally by a senior programmer at a cost of $304 per hour and a programmer analyst at a cost of $224 per hour. ($273/hour × 0.5 + $409/hour × 0.5) × 60 hours + ($304/hour × 0.5 + $224/hour × 0.5) × 40 hours = approximately $31,000.

[512] The SEC expects that for subsequent reports senior personnel will bear less of the reporting burden and that significant system configuration and reporting automation costs will not be incurred. As a result, the SEC estimates that these activities will most likely be performed equally by a compliance manager at a cost of $273 per hour, a senior compliance examiner at a cost of $235 per hour, a senior risk management specialist at a cost of $409 per hour and a risk management specialist at a cost of $192 per hour. ($273/hour × 0.25 + $235/hour × 0.25 + $409/hour × 0.25 + $192/hour × 0.25) × 50 hours = approximately $13,900.

[513] We expect that for the initial report, of a total estimated burden of 300 hours, approximately 180 hours will most likely be performed by compliance professionals and 120 hours will most likely be performed by programmers working on system configuration and reporting automation. Of the work performed by compliance professionals, we anticipate that it will be performed equally by a compliance manager at a cost of $273 per hour and a senior risk management specialist at a cost of $409 per hour. Of the work performed by programmers, we anticipate that it will be performed equally by a senior programmer at a cost of $304 per hour and a programmer analyst at a cost of $224 per hour. ($273/hour × 0.5 + $409/hour × 0.5) × 180 hours + ($304/hour × 0.5 + $224/hour × 0.5) × 120 hours = approximately $93,100.

[514] We expect that for subsequent reports senior personnel will bear less of the reporting burden and that significant system configuration and reporting automation costs will not be incurred. As a result, we estimate that these activities will most likely be performed equally by a compliance manager at a cost of $273 per hour, a senior compliance examiner at a cost of $235 per hour, a senior risk management specialist at a cost of $409 per hour and a risk management specialist at a cost of $192 per hour. ($273/hour × 0.25 + $235/hour × 0.25 + $409/hour × 0.25 + $192/hour × 0.25) × 140 hours = approximately $38,800.

[515] The SEC expects that for the initial report, of a total estimated burden of 140 hours, approximately 85 hours will most likely be performed by compliance professionals and 55 hours will most likely be performed by programmers working on system configuration and reporting automation. Of the work performed by compliance professionals, the SEC anticipates that it will be performed equally by a compliance manager at a cost of $273 per hour and a senior risk management specialist at a cost of $409 per hour. Of the work performed by programmers, the SEC anticipates that it will be performed equally by a senior programmer at a cost of $304 per hour and a programmer analyst at a cost of $224 per hour. ($273/hour × 0.5 + $409/hour × 0.5) × 85 hours + ($304/hour × 0.5 + $224/hour × 0.5) × 55 hours = approximately $43,500.

[516] The SEC expects that for subsequent reports senior personnel will bear less of the reporting burden and that significant system configuration and reporting automation costs will not be incurred. As a result, the SEC estimates that these activities will most likely be performed equally by a compliance manager at a cost of $273 per hour, a senior compliance examiner at a cost of $235 per hour, a senior risk management specialist at a cost of $409 per hour and a risk management specialist at a cost of $192 per hour. ($273/hour × 0.25 + $235/hour × 0.25 + $409/hour × 0.25 + $192/hour × 0.25) × 65 hours = approximately $18,000.

[517] (3,070 smaller private fund advisers × $13,600 per initial annual report) + (170 large private equity fund advisers × $31,000 per initial annual report) + (250 large hedge fund advisers × $93,100 per initial quarterly report) + (250 large hedge fund advisers × 3 quarterly reports × $38,800 per subsequent quarterly report) + (80 large liquidity fund advisers × $43,500 per initial quarterly report) + (80 large liquidity fund advisers × 3 quarterly reports × $18,000 per subsequent quarterly report) = approximately $107,000,000.

[518] (3,070 smaller private fund advisers × $4,200 per subsequent annual report) + (170 large private equity fund advisers × $13,900 per subsequent annual report) + (250 large hedge fund advisers × 4 quarterly reports × $38,800 per subsequent quarterly report) + (80 large liquidity fund advisers × 4 quarterly reports × $18,000 per subsequent quarterly report) = approximately $59,800,000.

[519] *See, e.g.,* Kleinberg General Letter; MFA Letter.

would result in significantly different aggregate cost estimates.[520]

In addition, as discussed above, a private fund adviser must file very limited information on Form PF if it needs to transition from quarterly to annual filing, if it is no longer subject to the reporting requirements of Form PF or if it requires a temporary hardship exemption under rule 204(b)–1(f). We estimate that transition and final filings will, collectively, cost private fund advisers as a whole approximately $5,200 per year.[521] We further estimate that hardship exemption requests will cost private fund advisers as a whole approximately $760 per year.[522] No commenters addressed these estimates. The estimate with respect to hardship exemptions is unchanged from the proposal. The estimate with respect to transition and final filings have been reduced because fewer filers will be required to report on a quarterly basis and the addition of a minimum reporting threshold means that fewer advisers will report in total.[523]

Advisers may also incur costs related to the modification or deployment of systems to support their reporting obligations under Form PF.[524] As discussed above, certain of the anticipated costs to Large Private Fund Advisers of automating Form PF reporting are accounted for in our cost estimates.[525] In addition, Large Private Fund Advisers may incur costs associated with the acquisition or use of hardware needed to perform computations or otherwise process the data required on Form PF.[526] Commenters did not provide estimates for these costs. However, as discussed above, we estimate that these costs, which are likely to vary significantly among advisers, will range from $0 to $25,000,000 in the aggregate for the first year of reporting, with the actual costs likely to fall in between these two end-points.[527]

Based on the foregoing estimates, we estimate that the aggregate annual costs of Form PF, other than for hardware costs, are approximately $108,000,000 in the first year and $60,500,000 in subsequent years.[528] In addition, we estimate that hardware costs will add between $0 and $25,000,000 in the first year.[529]

Reporting requirements can also impose costs beyond the direct costs associated with compiling and submitting data, and advisers subject to the Form PF reporting requirements may incur costs that are more difficult to quantify. One commenter, for instance, suggested an adviser may incur indirect ''costs associated with the risk of disclosure of highly sensitive proprietary information.'' [530] As discussed above, Form PF elicits non-public information about private funds and their trading strategies, the public disclosure of which could adversely affect the funds and their investors.[531] We are, however, working to establish controls designed to protect this sensitive information from improper or inadvertent disclosure and believe that the risk of such disclosure is low.[532] If an adviser's Form PF data were disclosed despite the controls intended to maintain its confidentiality, there is some risk that a competitor may be able to use an adviser's data to replicate the adviser's trading strategy or trade against the adviser, thereby potentially harming the profitability of the strategy to that adviser. However, because data on Form PF generally could not, on its own, be used to identify individual investment positions, the ability of a competitor to use Form PF data in this manner is limited.[533] In addition, the deadlines for filing Form PF have, in most cases, been significantly extended from the proposal, meaning that the filings will generally contain less current, and therefore less sensitive, data.[534] In the very unlikely event that improper or inadvertent disclosures of Form PF data occurred frequently, the disclosures could discourage advisers from investing the time and other resources required to develop novel strategies, potentially reducing the range of options available to investors and inhibiting financial innovation.

We do not expect this rulemaking to have a significant negative effect on competition because the information generally will be non-public and similar types of SEC-registered advisers will have comparable burdens under the Form.[535] In addition, the SEC does not expect this rulemaking to have a significant negative effect on capital formation, again because the information collected generally will be non-public and, therefore, should not affect private fund advisers' ability to raise capital.

Although Form PF data generally will be non-public, Form PF will increase transparency to regulators.[536] As discussed above, this may result in a positive effect on capital formation because advisers may, as a result, assess more carefully the risks associated with particular investments and, in the aggregate, allocate capital to investments with a higher value to the economy as a whole.[537] However, this increased transparency could also have a negative effect on capital formation if it increases advisers' aversion to risk and, as a result, reduces investment in projects that may be risky but beneficial to the economy as a whole. To the extent that changes in investment allocations lead to reduced economic outcomes in the aggregate, Form PF reporting may result in a negative effect on capital available for investment.

The SEC also recognizes that the direct costs of completing and filing Form PF may reduce the amount of

[520] For example, our estimates assume that the work is performed by compliance managers at $273 per hour, senior compliance examiners at $235 per hour, senior risk management specialists at $409 per hour, risk management specialists at $192 per hour and, in the case of Large Private Fund Advisers filing an initial report, programmers ranging from $304 to $224 per hour. Based on the SIFMA Earnings Reports, indicative costs in the other functions that commenters identified are: $287 per hour for a senior portfolio manager; $211 per hour for an intermediate portfolio manager; $430 per hour for an assistant general counsel; $165 per hour for a fund senior accountant; $194 per hour for an intermediate business analyst; and $154 per hour for an operations specialist. An adviser's chief compliance officer (at a cost of $423 per hour) or controller (at a cost of $433 per hour) may also review the filing, though we would expect that in most cases their involvement would be more limited than that of more junior employees.

[521] The SEC estimates that, for the purposes of the PRA, transition filings will impose 7 burden hours per year on private fund advisers in the aggregate and that final filings will impose 71 burden hours per year on private fund advisers in the aggregate. The SEC anticipates that this work will most likely be performed by a compliance clerk at a cost of $67 per hour. (7 burden hours + 71 burden hours) × $67/hour = approximately $5,200.

[522] The SEC estimates that, for the purposes of the PRA, requests for temporary hardship exemptions will impose 4 burden hours per year on private fund advisers in the aggregate. The SEC anticipants that five-eighths of this work will most likely be performed by a compliance manager at a cost of $273 per hour and that three-eighths of this work will most likely be performed by a general clerk at a cost of $50 per hour. (($273 per hour × 5/8 of an hour) + ($50 per hour × 3/8 of an hour)) × 4 hours = approximately $760.

[523] *See supra* note 424.

[524] *See supra* section IV.G of this Release.

[525] *See supra* note 438 and accompanying text.

[526] *See supra* notes 434–441 and accompanying text.

[527] *Id.*

[528] $107,000,000 (for periodic reporting in the first year) + $5,200 (for transition and final filings) + $760 (for hardship requests) + $684,000 (for filing fees) = approximately $108,000,000. $59,800,000 (for periodic reporting in subsequent years) + $5,200 (for transition and final filings) + $760 (for hardship requests) + $684,000 (for filing fees) = approximately $60,500,000.

[529] *See supra* notes 440–441 and accompanying text.

[530] CCMR Letter.

[531] *See supra* section II.D of this Release.

[532] *See supra* sections II.D and II.E of this Release.

[533] *See supra* note 343.

[534] *See supra* notes 351 and 344 and accompanying text.

[535] *See supra* section II.D of this Release for a discussion of confidentiality of Form PF data.

[536] *See supra* section II.D of this Release for a discussion of confidentiality of Form PF data.

[537] *See supra* note 494 and accompanying text.

capital that funds have available for investment or, if the costs are passed on to fund investors, reduce the amount of capital investors have available for investment. This could, in turn, affect capital formation.[538] However, the direct costs of reporting on Form PF will, to some extent, only transfer capital from private fund advisers to other market participants, such as employees or service providers paid to complete the Form. Because private fund advisers may have different investment opportunities than these other market participants, this transfer may negatively affect aggregate economic outcomes. However, some of this transferred capital will be invested or spent and will not represent an aggregate loss to the economy. In addition, the direct costs of Form PF are, on average, small compared to other economic incentives that motivate private funds and their advisers to invest and grow.[539]

One commenter expressed concern that this rulemaking could cause advisers, private funds or investors to seek investment opportunities outside the U.S. as a result of, for instance, increased costs.[540] This rulemaking could impose costs on U.S. private fund advisers that non-U.S. private fund advisers would not bear unless they are subject to the Advisers Act and the Form PF reporting requirements. However, advisers generally would not be able to avoid these reporting obligations by simply organizing the fund in a third country because regulatory jurisdiction for Form PF does not depend solely on where the fund is formed.[541] In addition, as noted above, ESMA has proposed a reporting regime similar to Form PF for alternative investment fund managers subject to the EU Directive. If that regime is adopted, we understand most such alternative investment managers would bear reporting costs similar to those that Form PF imposes. Accordingly, we believe the competitive impact of this difference in operating costs will be limited. We also do not expect that private funds will, to any significant extent, seek to avoid these regulatory burdens by foregoing participation in the U.S. capital markets because of the depth and liquidity of these markets and the stability afforded by the legal structures in the U.S.

This commenter also suggested that some fund advisers may determine not to form a new private fund if the costs of Form PF outweigh the marginal benefits the adviser expects to obtain by forming the fund.[542] Reduced fund formation could diminish competition and the number of choices available to investors. The SEC does not, however, believe the cost of reporting on Form PF will have a substantial negative effect on fund formation. An adviser with no existing private funds considering whether to form its first fund is likely to face little or no costs as a result of Form PF because it is unlikely to leap past a Large Private Fund Adviser Threshold and may not even exceed the minimum reporting threshold of $150 million in private fund assets under management.[543] For an existing private fund adviser, forming a new private fund would increase the cost of reporting on Form PF, but the adviser would be able to leverage its experience and existing systems, making the incremental reporting more efficient than for an adviser first becoming subject to Form PF reporting requirements.[544] In the case of either an adviser newly managing private funds or an adviser with existing private funds, the SEC believes that Form PF reporting costs are unlikely to discourage the formation of many funds because the costs of either becoming subject to Form PF as a smaller private fund adviser or reporting incrementally more information on Form PF are small when compared to possible management and performance fees. For example, the SEC estimates that the cost to smaller private fund advisers of completing and filing Form PF will average less than $14,000 per initial annual filing and $5,000 per subsequent annual filing—or less than 0.01% of assets under management for the smallest adviser subject to Form PF reporting requirements—compared to annual management and performance fees that, at least among hedge fund advisers, average approximately 1.5% of assets under management and 20% of excess returns, respectively.[545]

In addition, this commenter expressed concern that the Large Private Fund Adviser thresholds may encourage some private fund advisers with assets under management near but below the thresholds to attempt to staunch growth in their funds, either by refusing to admit new investors or by managing the investments of the funds, to remain below the thresholds.[546] Similarly, this commenter suggested that some funds may even shut down to avoid Form PF reporting costs.[547] The SEC believes, however, that substantial economic incentives will likely counter such behavior, including private fund performance fees that incentivize the private fund adviser to continue advising its funds and maximize fund appreciation and return. For example, a hedge fund with an initial value of $1.5 billion that experiences a 1% excess return will net $3 million in performance fees, and a 1% growth in assets under management will net an additional $225,000 per year in management fees, compared to an estimated cost of between $210,000 and $260,000 in the first year of reporting.[548] In addition, we believe the cost to an adviser of reporting will decline over time as the adviser becomes more familiar with the Form and realizes efficiencies while, at the same time, the adviser will continue to charge management fee and potentially collect performance fees each year. With

[538] One commenter expressed concern regarding the possible effects of Form PF reporting on economic growth, investors, investment opportunities, companies, markets, market liquidity and tax revenue as well as ''the cost in terms of jobs and capital.'' Issa Letter. This commenter suggested that these potential negative effects could flow from several sources, including: (1) The possibility that advisers will locate funds outside the United States as a result of, or to avoid, Form PF compliance costs or that these costs will be passed on to investors, causing them to seek investment opportunities outside the United States; and (2) the possibility that advisers will form fewer funds, slow the growth of their funds or shut down existing funds as a result of, or to avoid, Form PF compliance costs. We address these possible sources of indirect costs below.

[539] *See infra* notes 545 and 548 and accompanying text.

[540] *See* Issa Letter.

[541] *See supra* note 134 and accompanying text.

[542] *See* Issa Letter.

[543] According to HFI data, even among the top 25 hedge fund launches reported in 2010, the average fund size was approximately $750 million, and existing advisers launched the majority of those funds in any case. This data also shows that, out of 135 total hedge fund launches reported in 2010 exceeding $50 million, at least 110 of them raised under $300 million. HFI does not report in their annual global review hedge fund launches under $50 million. *See* HFI 2011 Global Review, *supra* note 493. *See also supra* sections IV.A and IV.G of this Release (discussing estimates of Form PF reporting costs for smaller private fund advisers).

[544] In addition, in the case of large hedge fund advisers, the more detailed information they must file in section 2b of the Form only applies to qualifying hedge funds that have at least $500 million in net assets.

[545] *See* Ibbotson, *et al., supra* note 95, at 15 (finding a management fee of 1.5% of assets under management and a 20% performance fee to be the median fee structure in the TASS hedge fund database). $14,000/$150,000,000 = approximately 0.009%.

[546] *See* Issa Letter.

[547] *Id.*

[548] The calculations assume a management fee of 1.5% of assets under management and a 20% performance fee. *See supra* note 545. $93,100 for the initial quarterly report + $38,800 for each subsequent quarterly reporting × 3 quarterly reports = approximately $210,000 for the first year of reporting. *See supra* notes 513–514. In addition, the SEC has estimated that a Large Private Fund Adviser may incur between $0 and $50,000 in costs for the acquisition or use of hardware in the first year of reporting. *See supra* note 441 and accompanying text.

respect to the large adviser threshold specifically, we anticipate that business relations with investors that may be damaged if the adviser turns away investor assets may also motivate advisers to continue to permit the size of their funds to increase as a result of new investment.

As discussed above, we believe that private fund advisers, investors in private funds and the companies in which private funds may invest will enjoy certain benefits related to Form PF.[549] We recognize, however, that many of Form PF's benefits will be widely distributed across the financial system while its costs will be concentrated. Private fund advisers will bear most of these costs, though they may also pass some of these costs on to fund investors, and to the extent that capital available for investment is reduced, the companies in which private funds would otherwise invest may also bear costs. In addition, the costs of Form PF to an individual adviser will vary depending on factors such as the state of its existing systems and the complexity of its business. As a result, the costs and benefits of Form PF to particular advisers, particular investors, particular companies and individual American citizens will not be evenly distributed. For certain individuals and entities, the costs of Form PF may even exceed the benefits to them. However, we believe that the aggregate benefits of this rulemaking will be substantial. Moreover, the uneven distribution of the benefits and costs of Form PF reflects the potential for an uneven distribution of the costs and benefits of engaging in risky financial activities that may impose negative externalities.[550]

*C. CFTC Statutory Findings*

Rule 4.27, as finalized, would deem a CPO registered with the CFTC that is dually registered as a private fund adviser with the SEC to have satisfied certain reporting requirements that the CFTC may adopt by filing Form PF with the SEC. The CPOs and CTAs that are dually registered as private fund advisers would be required to provide annually a limited amount of basic information on Form PF about the operations of their private funds. Only large CPOs and CTAs that are also registered as private fund advisers with the SEC would have to submit on a quarterly basis the full complement of systemic risk related information required by Form PF.[551] As noted above, the Dodd-Frank Act tasks FSOC with monitoring the financial services marketplace in order to identify potential threats to the financial stability of the United States.[552] The Dodd-Frank Act also requires FSOC to collect information from member agencies—like the SEC and the CFTC—to support its functions.[553] The CFTC and the SEC are jointly adopting sections 1 and 2 of Form PF as a means to collect the information necessary to permit FSOC to fulfill its obligation to monitor private funds, and in order to identify any potential systemic threats arising from their activities. The CFTC and the SEC do not currently collect the information that is covered in proposed sections 1 and 2 of Form PF.

Section 15(a) of the CEA requires that the CFTC, before promulgating a regulation under the Act or issuing an order, consider the costs and benefits of its action. By its terms, CEA Section 15(a) does not require the CFTC to quantify the costs and benefits of a new regulation or determine whether the benefits of the regulation outweigh its costs. Rather, CEA section 15(a) simply requires the CFTC to ''consider the costs and benefits'' of its action. CEA section 15(a)(2) specifies that costs and benefits shall be evaluated in light of the following considerations: (1) Protection of market participants and the public; (2) efficiency, competitiveness and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations.[554] Accordingly, the CFTC could, in its discretion, give greater weight to any of the five considerations and could, in its discretion, determine that, notwithstanding its costs, a particular regulation was necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the Act.

Before promulgating these final rules, the CFTC sought public comment on the rules themselves, including the cost-benefit considerations of section 1 and 2 of Form PF.[555] The CFTC also specifically invited commenters to submit ''any data or other information that they may have quantifying or qualifying the perceived costs and benefits of this proposed rule with their comment letters.''[556] As noted above, the CFTC and the SEC received comments on the cost and benefits of the proposed regulations and the estimates of costs included in the Proposing Release, and they have carefully considered those comments. CEA Rule 4.27 does not impose any additional burdens or costs upon registered CPOs and CTAs that are dually registered as investment advisers with the SEC. By filing Form PF with the SEC, these dual registrants would be deemed to have satisfied certain reporting obligations with the CFTC, should the CFTC adopt such requirements.

1. General Costs and Benefits

With respect to costs, the CFTC has determined that: (1) Without the reporting requirements imposed by this rulemaking, FSOC will not have sufficient information to identify and address potential threats to the financial stability of the United States (such as the near collapse of Long Term Capital Management); (2) the reporting requirements, once finalized, will provide the CFTC with better information regarding the business operations, creditworthiness, use of leverage, and other material information of certain registered CPOs and CTAs that are also registered as investment advisers with the SEC; and (3) while they are necessary to U.S. financial stability, the reporting requirements will create additional compliance costs for these registrants, as discussed in the foregoing portions of the Economic Analysis as well as in the PRA section of this Release.

The CFTC has determined that the proposed reporting requirements will provide a benefit to all investors and

[549] *See supra* section V.A of this Release.

[550] *See, e.g.,* Iman Anabtawi and Steven L. Schwarcz, *Regulating Systemic Risk: Towards an Analytical Framework,* 86 Notre Dame L. Rev. 4, 27 (2011) (arguing that financial market participants will not expend sufficient effort to identify and avoid conditions giving rise to systemic risk and explaining that one factor contributing to this behavior is that ''the benefits of exploiting finite capital resources accrue to individual market participants, each of whom is motivated to maximize use of the resource, whereas the costs of exploitation are distributed more widely.* * * The root of the commons problem in financial markets is the asymmetry in the distribution of gains and losses associated with investment decisions.* * * In the case of a positive outcome, the firm captures the full benefits of the investment's success. In the case of a negative outcome, however, the firm may not suffer the full consequences of the poor investment. Rather, if the firm fails or merely defaults, those consequences will impact financial market participants that rely on the soundness of the firm's financial condition. Furthermore, if the firm is deemed too systemically significant to fail, its loss may be absorbed by government as a lender of last resort. In either case, the uninternalized costs associated with risk-taking by financial firms leads them to overexploit scarce capital resources in the form of socially excessive risk-taking.'').

[551] See 5 U.S.C. 801(a)(1)(B)(i).

[552] See section 112(a)(2)(C) of the Dodd-Frank Act.

[553] See section 112(d)(1) of the Dodd-Frank Act.

[554] 7 U.S.C. 19(a).

[555] *See generally,* CFTC Proposing Release, *supra* note 16, at 76 FR 8068, 8087 (for CFTC's request for comment on the cost-benefit considerations).

[556] *See generally,* CFTC Proposing Release, *supra* note 16, at 76 FR 8068, 8087.

market participants by providing the CFTC and other policy makers with more complete information about these registrants and the potential risk their activities may pose to the U.S. financial system. In turn, this information will enhance the CFTC's ability to appropriately tailor its regulatory policies to the commodity pool industry and its operators and advisors. As mentioned above, the CFTC and the SEC do not have access to this information today and have instead been made to use information from other, less reliable sources.

2. Section 15(a) Determination

As stated above, section 15(a) of the CEA requires the CFTC to consider the costs and benefits of its actions in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations.

a. Protection of Market Participants and the Public

Should the CFTC adopt certain of its proposed systemic risk reporting requirements, the coordination between the CFTC and SEC on this rulemaking would result in significant efficiencies for any private fund adviser that is also registered as a CPO or CTA with the CFTC. This is because, under CEA rule 4.27, filling Form PF would satisfy both SEC and CFTC reporting obligations with respect to commodity pools that are ''private funds'' and may satisfy CFTC reporting obligations with respect to commodity pools that are not ''private funds,'' in each case should the CFTC adopt such reporting obligations. As noted above, the CFTC has determined that this coordination will protect such participants from duplicative reporting while still providing FSOC with needed information to fulfill its mission to protect the public from potential threats to the financial stability of the United States.

Commodity pools that fall within the definition of private funds and will be filing Form PF represent a sector of collective investment vehicles that have experienced a substantial growth and have been the subject of international concern regarding their size in juxtaposition with the markets as a whole. This concern has led to several countries instituting similar data collection efforts and it is well recognized that the U.S. contingent of these funds represents a sizable portion of all trading by this type of entity. Thus, this combined SEC/CFTC effort will contribute substantially to a better understanding of the impact of private investment vehicles on both the U.S. and international markets and provide the information necessary to intelligently develop regulatory efforts and oversight programs to provide adequate protection of market participants and the public at large.

Finally, the CFTC agrees with the SEC that Form PF, as adopted, will increase the amount and quality of information available regarding a previously opaque area of investment activity and, thereby, enhance the ability of regulators to protect investors and oversee the markets that they regulate.

b. Efficiency, Competitiveness, and Financial Integrity of Futures Markets

Although the CFTC does not believe this rule relates directly to the efficiency or competitiveness of futures markets, the CFTC does recognize that the interconnectedness of the United States financial system is such that the integrity of futures markets depends on the financial stability of the entire financial system. To the extent that the information collected by Form PF assists the Commissions and FSOC to identify threats that may damage the United States financial system, the regulations herein indirectly protect the integrity of futures markets.

c. Price Discovery

The CFTC has not identified a specific effect on price discovery as a result of Form PF or related regulations.

d. Sound Risk Management

The Dodd-Frank Act tasks FSOC and its member agencies (including both the SEC and the CFTC) with mitigating risks to the financial stability the United States. The CFTC believes these regulations are necessary to fulfill that obligation. Risk management is provided by these regulations in two main ways: (1) Assisting FSOC in fulfilling its mission of protecting the systemic financial stability of the United States; and (2) improving the ability of regulators to oversee markets. These benefits are shared by market participants, at least indirectly, as a part of the United States financial system. In addition, CPOs and CTAs that are dually registered as investment advisers will benefit from these regulations to the extent that reporting on Form PF requires such entities to review their firms' portfolios, trading practices, and risk profiles; thus, the CFTC believes that these regulations may improve the sound risk management practices within their internal risk management systems.

e. Other Public Interest Considerations

The CFTC has not identified other public interest considerations related to the costs and benefits of these regulations.

## VI. Final Regulatory Flexibility Analysis

SEC:

The SEC has prepared the following Final Regulatory Flexibility Analysis (''FRFA'') regarding Advisers Act rule 204(b)–1 in accordance with section 4(a) of the Regulatory Flexibility Act (''RFA'').[557] The SEC prepared the Initial Regulatory Flexibility Analysis (''IRFA'') in conjunction with the Proposing Release in January 2011.[558]

### *A. Need for and Objectives of the New Rule*

New Advisers Act rule 204(b)–1 and Form PF implement provisions of the Dodd-Frank Act by specifying information that private fund advisers must disclose confidentially to the SEC, which information the SEC will provide to FSOC for systemic risk assessment purposes. Under the new rule, private fund advisers must file information responsive to all or portions of Form PF on a periodic basis. The scope of the required information and the frequency of the reporting is related to the amount of private fund assets that each private fund adviser manages and the type of private fund to which those assets relate. Specifically, smaller private fund advisers and large private equity advisers must report annually, while large hedge fund and liquidity fund advisers must report quarterly and provide additional information regarding the hedge funds and liquidity funds, respectively, that they manage.[559]

### *B. Significant Issues Raised by Public Comment*

In the Proposing Release, we requested comment on the IRFA. In particular, we sought comment on the number of small entities, particularly small advisers, to which the new Advisers Act rule and reporting requirements would apply and the effect

[557] 5 U.S.C. 603(a).

[558] *See* Proposing Release, *supra* note 12, at section VI.

[559] *See* section II.A of this Release (describing who must file Form PF), section II.B of this Release (discussing the frequency with which private fund advisers must file Form PF), and section II.C of this Release (describing the information that private fund advisers must report on Form PF). *See also* proposed Instruction 9 to Form PF for information regarding the frequency with which private fund advisers must file Form PF.

on those entities, including whether the effects would be economically significant. None of the comment letters we received addressed the IRFA or the effect of the proposal on small entities, as that term was used in the IRFA.

*C. Small Entities Subject to the Rule*

Under SEC rules, for the purposes of the Advisers Act and the Regulatory Flexibility Act, an investment adviser generally is a small entity if it: (i) Has assets under management having a total value of less than $25 million; (ii) did not have total assets of $5 million or more on the last day of its most recent fiscal year; and (iii) does not control, is not controlled by, and is not under common control with another investment adviser that has assets under management of $25 million or more, or any person (other than a natural person) that had total assets of $5 million or more on the last day of its most recent fiscal year.[560]

Advisers Act rule 204(b)–1 requires an investment adviser registered with the SEC to file certain information on Form PF if it manages one or more private funds and had at least $150 million in regulatory assets under management attributable to private funds as of the end of its most recently completed fiscal year. Under section 203A of the Advisers Act, most advisers qualifying as small entities are prohibited from registering with the SEC and are instead registered with state regulators. Therefore, few small advisers will meet the registration criterion. Fewer still are likely to meet the minimum reporting threshold of $150 million in regulatory assets under management attributable to private funds. By definition, no small entities will, on their own, meet this threshold, which the SEC did not include in the proposal but has added in response to commenter concerns.[561] Advisers are, however, required to determine whether they exceed this threshold by aggregating their private fund assets under management with those of their related persons (other than separately operated related persons), with the result that some small entities may be subject to Form PF reporting requirements.[562] The SEC does not have a precise count of the number of advisers that may satisfy the minimum reporting threshold based on the aggregate private fund assets that it and its related persons manage because such advisers file separate reports on Form ADV. However, because of the new minimum reporting threshold, the group of small entities subject to the rule as adopted will be a subset of the group that would have been subject to the proposed rule. In the Proposing Release, the SEC estimated that approximately 50 small entities were registered with the SEC and advised one or more private funds.[563] Accordingly, the SEC estimates that no more than 50 small entities are likely to become subject to Form PF reporting obligations under the final rule.

*D. Projected Reporting, Recordkeeping and Other Compliance Requirements*

Advisers Act rule 204(b)–1 and Form PF impose certain reporting and compliance requirements on advisers, including small advisers. A small adviser that is subject to the rule must complete all or part of section 1 of the Form. As discussed above, the SEC estimates that completing, reviewing and filing Form PF will cost approximately $13,600 for each small adviser in its first year of reporting and $4,200 per year for each subsequent year.[564] In addition, small entities must pay a filing fee of $150 per annual filing.[565]

*E. Agency Action To Minimize Effect on Small Entities*

The Regulatory Flexibility Act directs the SEC to consider significant alternatives that would accomplish the stated objective, while minimizing any significant impact on small entities. In connection with the proposed rules and amendments, the SEC considered the following alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

Regarding the first and fourth alternatives, the SEC is adopting a minimum reporting threshold of $150 million as well as reporting requirements and timetables that differ for entities of smaller sizes. A small entity adviser that is subject to the rule only needs to file Form PF annually and complete applicable portions of section 1 of the form.[566] Large Private Fund Advisers must file additional information, and large hedge fund or large liquidity fund advisers must file more frequently. In addition, the filing fees that a smaller adviser must pay in a given year are lower than those that a large hedge fund or large liquidity fund advisers must pay over the same period. Regarding the second alternative, the information that a small entity subject to the rule must provide under section 1 of Form PF is much simpler than the information required of large hedge fund or large liquidity fund advisers and is consolidated in one section of the form. Regarding the third alternative, the SEC has, in a number of cases, permitted advisers to rely on their own methodologies in providing the information that the Form requires, though the use of performance standards is limited by the need to obtain comparable information from all filers.

*CFTC:*

Under CEA rule 4.27, the CFTC would not impose any additional burden upon registered CPOs and CTAs that are dually registered as investment advisers with the SEC because such entities are only required to file Form PF with the SEC. Further, certain CPOs registered with the CFTC that are also registered with the SEC would be deemed to have satisfied certain CFTC-related filing requirements, should the CFTC adopt such requirements, by completing and filing the applicable sections of Form PF with the SEC. Therefore, any burden imposed by Form PF through rule 4.27 on small entities registered with both the CFTC and the SEC has been accounted for within the SEC's calculations regarding the impact of this collection of information under the RFA or, to the extent the reporting may relate to commodity pools that are not private funds, the CFTC anticipates that it would account for this burden should it adopt a future rulemaking establishing

[560] *See* Advisers Act rule 0–7(a).

[561] *See supra* note 56–59 and accompanying text.

[562] *See supra* section II.A.5 of this Release. The SEC notes that related persons are permitted to file on a single Form PF. As a result, even in the case that a larger related person causes a small entity to exceed the minimum reporting threshold, the small entity may not ultimately bear the reporting burden. *See supra* section II.A.6 of this Release. In addition, under Advisers Act rule 0–7(a)(3), an adviser with affiliates exceeding the other small entity thresholds under that rule would not be regarded as a small entity, suggesting that it may not be possible both to qualify as a small entity under that rule and to satisfy the criteria that would subject an adviser to Form PF reporting obligations.

[563] *See* Proposing Release, *supra* note 12, at n.212 and accompanying text.

[564] *See supra* notes 509–510 and accompanying text.

[565] *See supra* note 432 and accompanying text.

[566] If the adviser has no hedge fund assets under management, it need not complete section 1.C of the Form. Advisers that manage a significant amount of both registered money market fund and liquidity fund assets must complete section 3 of Form PF, but there are no small entities that manage a registered money market fund.

reporting requirements with respect to those commodity pools. Accordingly, the Chairman, on behalf of the CFTC, hereby certifies pursuant to 5 U.S.C. 605(b) that the rules as adopted will not have a significant impact on a substantial number of small entities.

**VII. Statutory Authority**

*CFTC:*

The CFTC is adopting rule 4.27 [17 CFR 4.27] pursuant to its authority set forth in section 4n of the Commodity Exchange Act [7 U.S.C. 6n].

*SEC:*

The SEC is adopting rule 204(b)–1 [17 CFR 275.204(b)–1] pursuant to its authority set forth in sections 204(b) and 211(e) of the Advisers Act [15 U.S.C. 80b–4 and 15 U.S.C. 80b–11], respectively.

The SEC is adopting rule 279.9 pursuant to its authority set forth in sections 204(b) and 211(e) of the Advisers Act [15 U.S.C. 80b–4 and 15 U.S.C. 80b–11], respectively.

**List of Subjects**

*17 CFR Part 4*

Advertising, Brokers, Commodity futures, Commodity pool operators, Commodity trading advisors, Consumer protection, Reporting and recordkeeping requirements.

*17 CFR Parts 275 and 279*

Reporting and recordkeeping requirements, Securities.

**Text of Final Rules**

*Commodity Futures Trading Commission*

For the reasons set out in the preamble, the CFTC is amending Title 17, Chapter I of the Code of Federal Regulations as follows:

## PART 4—COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS

■ 1. The authority citation for part 4 is revised to read as follows:

**Authority:** 7 U.S.C. 1a, 2, 4, 6(c), 6b, 6c, 6l, 6m, 6n, 6o, 12a, and 23.

■ 2. Add § 4.27 to subpart B to read as follows:

### § 4.27 Additional reporting by advisors of commodity pools.

Except as otherwise expressly provided in this section, CPOs and CTAs that are dually registered with the Securities and Exchange Commission and are required to file Form PF pursuant to the rules promulgated under the Investment Advisers Act of 1940, shall file Form PF with the Securities and Exchange Commission in lieu of filing such other reports with respect to private funds as may be required under this section. In addition, except as otherwise expressly provided in this section, CPOs and CTAs that are dually registered with the Securities and Exchange Commission and are required to file Form PF pursuant to the rules promulgated under the Investment Advisers Act of 1940, may file Form PF with the Securities and Exchange Commission in lieu of filing such other reports with respect to commodity pools that are not private funds as may be required under this section. Dually registered CPOs and CTAs that file Form PF with the Securities and Exchange Commission will be deemed to have filed Form PF with the Commission for purposes of any enforcement action regarding any false or misleading statement of a material fact in Form PF.

**Securities and Exchange Commission**

For the reasons set out in the preamble, the SEC is amending Title 17, Chapter II of the Code of Federal Regulations as follows:

## PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

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

**Authority:** 15 U.S.C. 80b–2(a)(11)(G), 80b–2(a)(17), 80b–3, 80b–4, 80b–4a, 80b–6(4), 80b–6a, and 80b–11, unless otherwise noted.

* * * * *

■ 4. Section 275.204(b)–1 is added to read as follows:

### § 275.204(b)–1 Reporting by investment advisers to private funds.

(a) *Reporting by investment advisers to private funds on Form PF.* If you are an investment adviser registered or required to be registered under section 203 of the Act (15 U.S.C. 80b–3), you act as an investment adviser to one or more private funds and, as of the end of your most recently completed fiscal year, you managed private fund assets of at least $150 million, you must complete and file a report on Form PF (17 CFR 279.9) by following the instructions in the Form, which specify the information that an investment adviser must provide. Your initial report on Form PF is due no later than the last day on which your next update would be timely in accordance with paragraph (e) if you had previously filed the Form; provided that you are not required to file Form PF with respect to any fiscal quarter or fiscal year ending prior to the date on which your registration becomes effective.

(b) *Electronic filing.* You must file Form PF electronically with the Form PF filing system on the Investment Adviser Registration Depository (IARD).

**Note to paragraph (b):** Information on how to file Form PF is available on the Commission's Web site at *http://www.sec.gov/iard.*

(c) *When filed.* Each Form PF is considered filed with the Commission upon acceptance by the Form PF filing system.

(d) *Filing fees.* You must pay the operator of the Form PF filing system a filing fee as required by the instructions to Form PF. The Commission has approved the amount of the filing fee. No portion of the filing fee is refundable. Your completed Form PF will not be accepted by the operator of the Form PF filing system, and thus will not be considered filed with the Commission, until you have paid the filing fee.

(e) *Updates to Form PF.* You must file an updated Form PF:

(1) At least annually, no later than the date specified in the instructions to Form PF; and

(2) More frequently, if required by the instructions to Form PF. You must file all updated reports electronically with the Form PF filing system.

(f) *Temporary hardship exemption.*

(1) If you have unanticipated technical difficulties that prevent you from submitting Form PF on a timely basis through the Form PF filing system, you may request a temporary hardship exemption from the requirements of this section to file electronically.

(2) To request a temporary hardship exemption, you must:

(i) Complete and file in paper format, in accordance with the instructions to Form PF, Item A of Section 1a and Section 5 of Form PF, checking the box in Section 1a indicating that you are requesting a temporary hardship exemption, no later than one business day after the electronic Form PF filing was due; and

(ii) Submit the filing that is the subject of the Form PF paper filing in electronic format with the Form PF filing system no later than seven business days after the filing was due.

(3) The temporary hardship exemption will be granted when you file Item A of Section 1a and Section 5 of Form PF, checking the box in Section 1a indicating that you are requesting a temporary hardship exemption.

(4) The hardship exemptions available under § 275.203–3 do not apply to Form PF.

(g) *Definitions.* For purposes of this section:

(1) *Assets under management* means the regulatory assets under management as determined under Item 5.F of Form ADV (§ 279.1 of this chapter).

(2) *Private fund assets* means the investment adviser's assets under management attributable to private funds.

## PART 279—FORMS PRESCRIBED UNDER THE INVESTMENT ADVISERS ACT OF 1940

■ 5. The authority citation for Part 279 continues to read as follows:

**Authority:** 15 U.S.C. 80b–1, *et seq.*

■ 6. Section 279.9 is added to read as follows:

### § 279.9 Form PF, reporting by investment advisers to private funds.

This form shall be filed pursuant to Rule 204(b)–1 (§ 275.204(b)–1 of this chapter) by certain investment advisers registered or required to register under section 203 of the Act (15 U.S.C. 80b–3) that act as an investment adviser to one or more private funds.

**Note:** The text of the following Form PF will not appear in the Code of Federal Regulations.

# FORM PF (Paper Version)

**Reporting Form for Investment Advisers to Private Funds and Certain Commodity Pool Operators and Commodity Trading Advisors**

| OMB APPROVAL | |
|---|---|
| OMB Number: | 3235-0679 |
| Expires: | [ ] |
| Estimated average burden hours per response | [ ] |

**Form PF: General Instructions** **Page 1**

Read these instructions carefully before completing Form PF. Failure to follow these instructions, properly complete Form PF, or pay all required fees may result in your Form PF being delayed or rejected.

In these instructions and in Form PF, "you" means the *private fund adviser* completing or amending this Form PF. If you are a "separately identifiable department or division" (SID) of a bank, "you" means the SID rather than the bank (except as provided in Question 1(a)). Terms that appear in *italics* are defined in the Glossary of Terms to Form PF.

**1. Who must complete and file a Form PF?**

You must complete and file a Form PF, if:

A. You are registered or required to register with the *SEC* as an investment adviser;

*OR*

You are registered or required to register with the *CFTC* as a *CPO* or *CTA* and you are also registered or required to register with the *SEC* as an investment adviser;

*AND*

B. You manage one or more *private funds*.

*AND*

C. You and your *related persons*, collectively, had at least $150 million in *private fund assets under management* as of the last day of your most recently completed fiscal year.

Many *private fund advisers* meeting these criteria will be required to complete only Section 1 of Form PF and will need to file only on an annual basis. *Large private fund advisers*, however, will be required to provide additional data, and *large hedge fund advisers* and *large liquidity fund advisers* will need to file every quarter. See Instructions 3 and 9 below.

For purposes of determining whether you meet the reporting threshold, you are not required to include the *regulatory assets under management* of any *related person* that is *separately operated*. See Instruction 5 below for more detail.

If your *principal office and place of business* is outside the United States, for purposes of this Form PF you may disregard any *private fund* that, during your last fiscal year, was not a *United States person*, was not offered in the United States, and was not beneficially owned by any *United States person*.

**2. I have a *related person* who is required to file Form PF. May I and my *related person* file a single Form PF?**

*Related persons* may (but are not required to) report on a single Form PF information with respect to all such *related persons* and the *private funds* they advise. You must identify in your response

to Question 1 the *related persons* as to which you are reporting and, where information is requested about you or the *private funds* you advise, respond as though you and such *related persons* were one firm.

**3. How is Form PF organized?**

**Section 1 – All Form PF filers**

Section 1a All *private fund advisers* required to file Form PF must complete Section 1a. Section 1a asks general identifying information about you and the types of *private funds* you advise.

Section 1b All *private fund advisers* required to file Form PF must complete Section 1b. Section 1b asks for certain information regarding the *private funds* that you advise.

Section 1c All *private fund advisers* that are required to file Form PF and advise one or more *hedge funds* must complete Section 1c. Section 1c asks for certain information regarding the *hedge funds* that you advise.

**Section 2 – *Large hedge fund advisers***

Section 2a You are required to complete Section 2a if you and your *related persons*, collectively, had at least $1.5 billion in *hedge fund assets under management* as of the last day of any month in the fiscal quarter immediately preceding your most recently completed fiscal quarter. You are not required to include the *regulatory assets under management* of any *related person* that is *separately operated*.

Subject to Instruction 4, Section 2a requires information to be reported on an aggregate basis for all *hedge funds* that you advise.

Section 2b If you are required to complete Section 2a, you must complete a separate Section 2b with respect to each *qualifying hedge fund* that you advise.

However:

if you are reporting separately on the funds of a *parallel fund structure* that, in the aggregate, comprises a *qualifying hedge fund*, you must complete a separate Section 2b for each *parallel fund* that is part of that *parallel fund structure* (even if that *parallel fund* is not itself a *qualifying hedge fund*); and

if you report answers on an aggregated basis for any *master-feeder arrangement* or *parallel fund structure* in accordance with Instruction 5, you should only complete a separate Section 2b with respect to the *reporting fund* for such *master-feeder arrangement* or *parallel fund structure*.

**Section 3 – *Large liquidity fund advisers***

Section 3 You are required to complete Section 3 if (i) you advise one or more *liquidity funds* and (ii) as of the last day of any month in the fiscal quarter immediately preceding your most recently completed fiscal quarter, you and your *related*

*persons*, collectively, had at least $1 billion in *combined money market and liquidity fund assets under management*. You are not required to include the *regulatory assets under management* of any *related person* that is *separately operated*.

You must complete a separate Section 3 with respect to each *liquidity fund* that you advise.

However, if you report answers on an aggregated basis for any *master-feeder arrangement* or *parallel fund structure* in accordance with Instruction 5, you should only complete a separate Section 3 with respect to the *reporting fund* for such *master-feeder arrangement* or *parallel fund structure*.

**Section 4 – *Large private equity advisers***

Section 4 You are required to complete Section 4 if you and your *related persons*, collectively, had at least $2 billion in *private equity fund assets under management* as of the last day of your most recently completed fiscal year. You are not required to include the *regulatory assets under management* of any *related person* that is *separately operated*.

You must complete a separate Section 4 with respect to each *private equity fund* that you advise.

However, if you report answers on an aggregated basis for any *master-feeder arrangement* or *parallel fund structure* in accordance with Instruction 5, you should only complete a separate Section 4 with respect to the *reporting fund* for such *master-feeder arrangement* or *parallel fund structure*.

**Section 5 – Advisers requesting a temporary hardship exemption**

Section 5 See Instruction 13 for details.

**4. I am a subadviser or engage a subadviser for a *private fund*. Who is responsible for reporting information about that *private fund*?**

Only one *private fund adviser* should complete and file Form PF for each *private fund*. If the adviser that filed *Form ADV Section 7.B.1* with respect to any *private fund* is required to file Form PF, the same adviser must also complete and file Form PF for that *private fund*. If the adviser that filed *Form ADV Section 7.B.1* with respect to any *private fund* is not required to file Form PF (e.g., because it is an *exempt reporting adviser*) and one or more other advisers to the fund is required to file Form PF, another adviser must complete and file Form PF for that *private fund*.

Where a question requests aggregate information regarding the *private funds* that you advise, you should only include information regarding the *private funds* for which you are filing Section 1b of Form PF.

**5. When am I required to aggregate information regarding *parallel funds, parallel managed accounts, master-feeder arrangements* and funds managed by *related persons*?**

You are required to aggregate related funds and accounts differently depending on the purpose of the aggregation.

Reporting thresholds. For purposes of determining whether you meet any reporting threshold, you must aggregate *parallel funds, dependent parallel managed accounts* and master-feeder funds. In addition, you must treat any *private fund* or *parallel managed account* advised by any of your *related persons* as though it were advised by you. You are not required, however, to aggregate *private funds* or *parallel managed accounts* of any *related person* that is *separately operated.*

Responding to questions. When reporting on individual funds, you may provide information regarding *master-feeder arrangements* or *parallel fund structures* either in the aggregate or separately, provided that you do so consistently throughout the Form. (For example, you may complete either a single Section 1b for all of the funds in a *master-feeder arrangement* or a separate Section 1b for each fund in the arrangement, but you must then take the same approach when completing other applicable sections of the Form.) Where a question requests aggregate information regarding the *private funds* that you advise, you should only include information regarding the *private funds* for which you are filing Section 1b of Form PF. You are not required to report information regarding *parallel managed accounts* (except in Question 11). You should not report information for any *private fund* advised by any of your *related persons* unless you have identified that *related person* in Question 1(b) as a *related person* for which you are filing Form PF.

See the table below for additional details.

| For purposes of determining whether a *private fund* is a *qualifying hedge fund* | For purposes of reporting information in Sections 1b, 1c, 2b, 3 and 4 |
|---|---|
| • You must aggregate any *private funds* that are part of the same *master-feeder arrangement* (even if you did not, or were not permitted to, aggregate these *private funds* for purposes of *Form ADV Section 7.B.1*) | • You may, but are not required to, report answers on an aggregated basis for any *private funds* that are part of the same *master-feeder arrangement* (even if you did not, or were not permitted to, aggregate these *private funds* for purposes of *Form ADV Section 7.B.1*) |
| • You must aggregate any *private funds* that are part of the same *parallel fund structure* | • You may, but are not required to, report answers on an aggregated basis for any *private funds* that are part of the same *parallel fund structure* |
| • Any *dependent parallel managed account* must be aggregated with the largest *private fund* to which that *dependent parallel managed account* relates | • You are not required to report information regarding *parallel managed accounts* (except in Question 11) |

| | |
|---|---|
| • You must treat any *private fund* or *parallel managed account* advised by any of your *related persons* as though it were advised by you (including *related persons* that you have not identified in Question 1(b) as *related persons* for which you are filing Form PF, though you may exclude *related persons* that are *separately operated*) | • You should not report information for any *private fund* advised by any of your *related persons* unless you have identified that *related person* in Question 1(b) as a *related person* for which you are filing Form PF |

**6. I am required to aggregate funds or accounts to determine whether I meet a reporting threshold, or I am electing to aggregate funds for reporting purposes. How do I "aggregate" funds or accounts for these purposes?**

Where two or more *parallel funds* or master-feeder funds are aggregated in accordance with Instruction 5, you must treat the aggregated funds as if they were all one *private fund*. Investments that a *feeder fund* makes in a *master fund* should be disregarded but other investments of the *feeder fund* should be treated as though they were investments of the aggregated fund.

Where you are aggregating *dependent parallel managed accounts* to determine whether you meet a reporting threshold, assets held in the accounts should be treated as assets of the *private funds* with which they are aggregated.

*Example 1.* You advise a *master-feeder arrangement* with one *feeder fund*. The *feeder fund* has invested $500 in the *master fund* and holds a *foreign exchange derivative* with a notional value of $100. The *master fund* has used the $500 received from the *feeder fund* to invest in *corporate bonds*. Neither fund has any other assets or liabilities.

For purposes of determining whether the funds comprise a *qualifying hedge fund*, this *master-feeder arrangement* should be treated as a single *private fund* whose only investments are $500 in *corporate bonds* and a *foreign exchange derivative* with a notional value of $100. If you elect to aggregate the *master-feeder arrangement* for reporting purposes, the treatment would be the same.

*Example 2.* You advise a *parallel fund structure* consisting of two *hedge funds*, named *parallel fund* A and *parallel fund* B. You also advise a related *dependent parallel managed account*. The account and each fund have invested in *corporate bonds* of Company X and have no other assets or liabilities. The value of *parallel fund* A's investment is $400, the value of *parallel fund* B's investment is $300 and the value of the account's investment is $200.

For purposes of determining whether either of the *parallel funds* is a *qualifying hedge fund*, the entire *parallel fund structure* and the related *dependent parallel managed account* should be treated as a single *private fund* whose only asset is $900 of *corporate bonds* issued by Company X.

If you elect to aggregate the *parallel fund structure* for reporting purposes, you would disregard the *dependent parallel managed account*, so the result would be a single *private fund* whose only asset is $700 of *corporate bonds*

issued by Company X.

**7. I advise a *private fund* that invests in other *private funds* (e.g., a "fund of funds"). How should I treat these investments for purposes of Form PF?**

Investments in other *private funds* generally. For purposes of this Form PF, you may disregard any *private fund's* equity investments in other *private funds*. However, if you disregard these investments, you must do so consistently (e.g., do not include disregarded investments in the *net asset value* used for determining whether the fund is a "hedge fund"). For Question 17, even if you disregard these assets, you may report the performance of the entire fund and are not required to recalculate performance in order to exclude these investments. Do not disregard any liabilities, even if incurred in connection with these investments.

Funds that invest substantially all of their assets in other *private funds*. If you advise a *private fund* that (i) invests substantially all of its assets in the equity of *private funds* for which you are not an adviser and (ii) aside from such *private fund* investments, holds only *cash and cash equivalents* and instruments acquired for the purpose of hedging currency exposure, then you are only required to complete Section 1b for that fund. For all other purposes, you should disregard such fund. For example, where questions request aggregate information regarding the *private funds* you advise, do not include the assets or liabilities of any such fund.

Solely for purposes of this Instruction 7, you may treat as a *private fund* any issuer formed under the laws of a jurisdiction other than the United States that has not offered or sold its securities in the United States or to *United States persons* but that would be a *private fund* if it had engaged in such an offering or sale.

Notwithstanding the foregoing, you must include disregarded assets in responding to Question 10.

**8. I advise a *private fund* that invests in companies that are not *private funds*. How should I treat these investments for purposes of Form PF?**

Except as provided in Instruction 7, investments in funds should be included for all purposes under this Form PF. You are not, however, required to "look through" a fund's investments in any other entity unless the Form specifically requests information regarding that entity or the other entity's primary purpose is to hold assets or incur leverage as part of the *reporting fund's* investment activities.

**9. When am I required to update Form PF?**

You are required to update Form PF at the following times:

*Periodic filings (large hedge fund advisers)*

Within 60 calendar days after the end of your first, second and third fiscal quarters, you must file a *quarterly update* that updates the answers to all Items in this Form PF relating to the *hedge funds* that you advise.

Within 60 calendar days after the end of your fourth fiscal quarter, you must file a *quarterly update* that updates the answers to all Items in this Form PF. You may, however, submit an initial filing for the fourth quarter that updates information relating only to the *hedge funds* that you advise so long as you amend your Form PF within 120 calendar days after the end of the quarter to update information relating to any other *private funds* that you

advise. When you file such an amendment, you are not required to update information previously filed for such quarter.

*Periodic filings (large liquidity fund advisers)*

Within 15 calendar days after the end of your first, second and third fiscal quarters, you must file a *quarterly update* that updates the answers to all Items in this Form PF relating to the *liquidity funds* that you advise.

Within 15 calendar days after the end of your fourth fiscal quarter, you must file a *quarterly update* that updates the answers to all Items in this Form PF. You may, however, submit an initial filing for the fourth quarter that updates information relating only to the *liquidity funds* that you advise so long as you amend your Form PF within 120 calendar days after the end of the quarter to update information relating to any other *private funds* that you advise (subject to the next paragraph). When you file such an amendment, you are not required to update information previously filed for such quarter.

If you are both a *large liquidity fund adviser* and a *large hedge fund adviser*, you must file your *quarterly updates* with respect to the *liquidity funds* that you advise within 15 calendar days and with respect to the *hedge funds* you advise within 60 calendar days.

*Periodic filings (all other advisers)*

Within 120 calendar days after the end of your fiscal year, you must file an *annual update* that updates the answers to all Items in this Form PF.

*Large hedge fund advisers and large liquidity fund advisers* are not required to file *annual updates* but instead file *quarterly updates* for the fourth quarter.

*Transition filing*

If you are transitioning from quarterly to annual filing because you are no longer a *large hedge fund adviser* or *large liquidity fund adviser*, then you must complete and file Item A of Section 1a and check the box in Section 1a indicating that you are making your final quarterly filing. You must file your transition filing no later than the last day on which your next *quarterly update* would be timely.

*Final filing*

If you are no longer required to file Form PF, then you must complete and file Item A of Section 1a and check the box in Section 1a indicating that you are making your final filing. You must file your final filing no later than the last day on which your next Form PF update would be timely. This applies to all Form PF filers.

**Failure to update your Form PF as required by these instructions is a violation of *SEC* and, where applicable, *CFTC* rules and could lead to revocation of your registration.**

**10. How do I obtain *private fund* identification numbers for my *reporting funds*?**

Each *private fund* must have an identification number for purposes of reporting on *Form ADV* and Form PF. *Private fund* identification numbers can only be obtained by filing *Form ADV*.

If you need to obtain a *private fund* identification number and you are required to file a *quarterly update* of Form PF prior to your next annual update of *Form ADV*, then you must acquire the

identification number by filing an other-than-annual amendment to your *Form ADV* and following the instructions on Form ADV for generating a new number. When filing an other-than-annual amendment for this purpose, you must complete and file all of *Form ADV Section 7.B.1* for the new *private fund*.

See Instruction 6 to Part 1A of *Form ADV* for additional information regarding the acquisition and use of *private fund* identification numbers.

**11. Who must sign my Form PF or update?**

The individual who signs the Form PF depends upon your form of organization:

- For a sole proprietorship, the sole proprietor.
- For a partnership, a general partner.
- For a corporation, an authorized principal officer.
- For a limited liability company, a managing member or authorized person.
- For a SID, a principal officer of your bank who is directly engaged in the management, direction or supervision of your investment advisory activities.
- For all others, an authorized individual who participates in managing or directing your affairs.

The signature does not have to be notarized and should be a typed name.

If you and one or more of your *related persons* are filing a single Form PF, then Form PF may be signed by one or more individuals; however, the individual, or the individuals collectively, must have authority, as provided above, to sign both on your behalf and on behalf of all such *related persons*.

**12. How do I file my Form PF?**

You must file Form PF electronically through the Form PF filing system on the Investment Adviser Registration Depository website (www.iard.com), which contains detailed filing instructions. Questions regarding filing through the Form PF filing system should be addressed to the Financial Industry Regulatory Authority (FINRA) at 240-386-4848.

**13. Are there filing fees?**

Yes, you must pay a filing fee for your Form PF filings. The Form PF filing fee schedule is published at http://www.sec.gov/iard and http://www.iard.com.

**14. What if I am not able to file electronically?**

A temporary hardship exemption is available if you encounter unanticipated technical difficulties that prevent you from making a timely filing with the Form PF filing system, such as a computer malfunction or electrical outage. This exemption does not permit you to file on paper; instead, it extends the deadline for an electronic filing for seven "business days" (as such term is used in *SEC* rule 204(b)-1(f)).

To request a temporary hardship exemption, you must complete and file on paper Item A of Section 1a and Section 5 of Form PF, checking the box in Section 1a indicating that you are requesting a temporary hardship exemption. Mail one manually signed original and one copy of your exemption filing to: U.S. Securities and Exchange Commission, Branch of Regulations and

Examinations, Mail Stop 0-25, 100 F Street NE, Washington, DC 20549. You must preserve in your records a copy of any temporary hardship exemption filing. Any request for a temporary hardship exemption must be filed no later than one business day after the electronic Form PF filing was due. For more information, see *SEC* rule 204(b)-1(f).

**15. May I rely on my own methodologies in responding to Form PF? How should I enter requested information?**

You may respond to this Form using your own internal methodologies and the conventions of your service providers, provided the information is consistent with information that you report internally and to current and prospective investors. However, your methodologies must be consistently applied and your responses must be consistent with any instructions or other guidance relating to this Form. You may explain any of your methodologies, including related assumptions, in Question 4.

In responding to Questions on this Form, the following guidelines apply unless otherwise specifically indicated:

- provide the requested information as of the close of business on the *data reporting date*;
- if information is requested for any month or quarter, provide the requested information as of the close of business on the last calendar day of the month or quarter, respectively;
- if a question requests information expressed as a percentage, enter the response as a percentage (not a decimal) and round to the nearest one percent;
- if a question requests a monetary value, provide the information in U.S. dollars as of the *data reporting date*, rounded to the nearest thousand;
- if a question requests a numerical value other than a percentage or a dollar value, provide information rounded to the nearest whole number;
- if a question requests information regarding a "position" or "positions," you should determine whether a set of legal and contractual rights constitutes a "position" in a manner consistent with your internal recordkeeping and risk management procedures (e.g., some advisers may record as a single position two or more partially offsetting legs of a transaction entered into with the same counterparty under the same master agreement, while others may record these as separate positions);
- if a question requires you to distinguish long positions from short positions, classify positions in a manner consistent with your internal recordkeeping and risk management procedures (provided that, for *CDS*, *exotic CDS*, *index CDS*, and *single name CDS*, the protection seller should be viewed as long and the protection buyer should be viewed as short);
- do not net long and short positions;
- for derivatives (other than options), "value" means *gross notional value*; for options, "value" means delta adjusted notional value; for all other investments and for all *borrowings* where the reporting fund is the creditor, "value" means market value or, where there is not a readily available market value, fair value; for *borrowings* where the reporting fund is the debtor, "value" means the value you report internally and to current and prospective investors; and

- for questions 20, 21, 25, 28, 35 and 57, the numerator you use to determine the percentage of *net asset value* should be measured on the same basis as *gross asset value* and may result in responses that total more than 100%.

**16. How do I amend Form PF, for example, to make a correction?**

If you discover that information you filed on Form PF was not accurate at the time of filing, you may correct the information by re-filing and checking the box in Section 1a indicating that you are amending a previously submitted filing. You are not required to update information that you believe in good faith properly responded to Form PF on the date of filing even if that information is subsequently revised for purposes of your recordkeeping, risk management or investor reporting (such as estimates that are refined after completion of a subsequent audit).

*Large hedge fund advisers* and *large liquidity fund advisers* that comply with their fourth quarter filing obligations by submitting an initial filing followed by an amendment in accordance with Instruction 9 will not be viewed as affirming responses regarding one fund solely by providing updated information regarding another fund at a later date.

**17. How may I preserve on Form PF the anonymity of a *private fund* that I advise?**

If you seek to preserve the anonymity of a *private fund* that you advise by maintaining its identity in your books and records in numerical or alphabetical code, or similar designation, pursuant to rule 204-2(d), you may identify the *private fund* on Form PF using the same code or designation in place of the fund's name.

**18. May I report on Form PF regarding a *commodity pool* that is not a *private fund*? How should I treat the *commodity pool* for purposes of Form PF?**

If you are otherwise required to report on Form PF, you may report information regarding any *commodity pool* you advise on Form PF, even if it is not a *private fund*. Properly reporting on Form PF regarding the *commodity pool* will constitute substitute compliance with CFTC reporting requirements to the extent provided in *CEA* rule 4.27.

Commodity pools should be treated as *hedge funds* for purposes of Form PF. If you are reporting on Form PF regarding a *commodity pool* that is not a *private fund*, then treat it as a *private fund* for purposes of Form PF. However, such a *commodity pool* is not required to be included when determining whether you exceed one or more reporting thresholds. If such a *commodity pool* is a *qualifying hedge fund* and you are otherwise required to report information in section 2a of Form PF, then you must report regarding the *commodity pool* in section 2b of Form PF.

Federal Information Law and Requirements for a Collection of Information

Section 204(b) of the *Advisers Act* [15 U.S.C. § 80b-4(b)] authorizes the *SEC* to collect the information that Form PF requires. The information collected on Form PF is designed to facilitate the Financial Stability Oversight Council's ("FSOC") monitoring of systemic risk in the private fund industry and to assist FSOC in determining whether and how to deploy its regulatory tools with respect to nonbank financial companies. The *SEC* and *CFTC* may also use information collected on Form PF in their regulatory programs, including examinations, investigations and investor protection efforts relating to private fund advisers. Filing Form PF is mandatory for advisers that satisfy the criteria described in

Instruction 1 to the Form. *See also* 17 C.F.R. § 275.204(b)-1. The SEC does not intend to make public information reported on Form PF that is identifiable to any particular adviser or *private fund*, although the SEC may use Form PF information in an enforcement action. *See* Section 204(b) of the *Advisers Act*.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. The Office of Management and Budget has reviewed this collection of information under 44 U.S.C. § 3507. Any member of the public may direct any comments concerning the accuracy of the burden estimate and any suggestion for reducing this burden to: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

| Form PF Section 1a | Information about you and your *related persons* (to be completed by all Form PF filers) | Page 1 of 42 |
|---|---|---|

**Section 1a: Information about you and your *related persons***

Check the box that indicates what you would like to do:

A. If you are not a *large hedge fund adviser* or *large liquidity fund adviser*:

- ☐ Submit your first filing on Form PF
  for the period ended: _____
- ☐ Submit an *annual update*
  for the period ended: _____
- ☐ Amend a previously submitted filing
  for the period ended: _____
- ☐ Submit a final filing
- ☐ Request a temporary hardship exemption

B. If you are a *large hedge fund adviser* or *large liquidity fund adviser*:

- ☐ Submit your first filing on Form PF
  for the [1st, 2nd, 3rd, 4th] quarter, which ended: _____
- ☐ Submit a *quarterly update* (including fourth quarter updates)
  for the [1st, 2nd, 3rd, 4th] quarter, which ended: _____
- ☐ Amend a previously submitted filing
  for the [1st, 2nd, 3rd, 4th] quarter, which ended: _____
- ☐ Transition to annual reporting
- ☐ Submit a final filing
- ☐ Request a temporary hardship exemption

**Item A. Information about you**

1. (a) Provide your name and the other identifying information requested below.

*(This should be your full legal name. If you are a sole proprietor, this will be your last, first, and middle names. If you are a* SID, *enter the full legal name of your bank. Please use the same name that you use in your* Form ADV.*)*

| Legal name | SEC 801-Number | NFA ID Number, if any | Large trader ID, if any | Large trader ID suffix, if any |
|---|---|---|---|---|
| | | | | |

(b) Provide the following information for each of the *related persons*, if any, with respect to which you are reporting information on this Form PF:

| Legal name | SEC 801-Number | NFA ID Number, if any | Large trader ID, if any | Large trader ID suffix, if any |
|---|---|---|---|---|
| | | | | |
| | | | | |
| | | | | |

| Form PF Section 1a | Information about you and your *related persons* (to be completed by all Form PF filers) | Page 2 of 42 |
|---|---|---|

| | | | | |
|---|---|---|---|---|
| | | | | |

2. Signatures of sole proprietor or authorized representative *(see Instruction 11 to Form PF).*

Signature on behalf of the *firm* and its *related persons:*

I, the undersigned, sign this Form PF on behalf of, and with the authority of, the *firm.* In addition, I sign this Form PF on behalf of, and with the authority of, each of the *related persons* identified in Question 1(b) (other than any *related person* for which another individual has signed this Form PF below).

To the extent that Section 1 or 2 of this Form PF is filed in accordance with a regulatory obligation imposed by *CEA* rule 4.27, the *firm*, each *related person* for which I am signing this Form PF, and I all accept that any false or misleading statement of a material fact therein or material omission therefrom shall constitute a violation of section 6(c)(2) of the *CEA.*

| | |
|---|---|
| Name of individual: | |
| Signature: | |
| Title: | |
| Email address: | |
| Telephone contact number (include area code and, if outside the United States, country code): | |
| Date: | |

Signature on behalf of *related persons:*

I, the undersigned, sign this Form PF on behalf of, and with the authority of, the *related person(s)* identified below.

To the extent that Section 1 or 2 of this Form PF is filed in accordance with a regulatory obligation imposed by *CEA* rule 4.27, each *related person* identified below and I all accept that any false or misleading statement of a material fact therein or material omission therefrom shall constitute a violation of section 6(c)(2) of the *CEA.*

| | |
|---|---|
| Name of each *related person* on behalf of which this individual is signing: | |
| Name of individual: | |
| Signature: | |
| Title: | |
| Email address: | |
| Telephone contact number (include area code and, if outside the United States, country code): | |
| Date: | |

**Item B. Information about assets of *private funds* that you advise**

3. Provide a breakdown of your *regulatory assets under management* and your *net assets*

*under management* as follows:

*(If you are filing a* quarterly update *for your first, second or third fiscal quarter, you are only required to update row (a), in the case of a* large hedge fund adviser, *or row (b), in the case of a* large liquidity fund adviser.*)*

| | ***Regulatory assets under management*** | ***Net assets under management*** |
|---|---|---|
| (a) *Hedge funds* | | |
| (b) *Liquidity funds* | | |
| (c) *Private equity funds* | | |
| (d) *Real estate funds* | | |
| (e) *Securitized asset funds* | | |
| (f) *Venture capital funds* | | |
| (g) *Other private funds* | | |
| (h) Funds and accounts other than *private funds* (i.e., the remainder of your assets under management) | | |

**Item C. Miscellaneous**

4. You may use the space below to explain any assumptions that you made in responding to any question in this Form PF. Assumptions must be in addition to, or reasonably follow from, any instructions or other guidance relating to Form PF. If you are aware of any instructions or other guidance that may require a different assumption, provide a citation and explain why that assumption is not appropriate for this purpose.

| **Question number** | **Description** |
|---|---|
| | |
| | |

**Section 1b: Information about the *private funds* you advise**

Subject to Instruction 5, you must complete a separate Section 1b for each *private fund* that you advise.

**Item A. *Reporting fund* identifying information**

5. (a) Name of the *reporting fund* ..... [ ]
   (b) *Private fund* identification number of the *reporting fund* ..... [ ]
   (c) *NFA* identification number of the *reporting fund*, if applicable ..... [ ]
   (d) *LEI* of the *reporting fund*, if applicable ..... [ ]

6. Check "yes" below if the *reporting fund* is the *master fund* of a *master-feeder arrangement* and you are reporting for all of the funds in the *master-feeder arrangement* on an aggregated basis. Otherwise, check "no."

   *(See Instruction 5 for information regarding aggregation of* master-feeder arrangements. *If you respond "yes," do not complete a separate Section 1b, 1c, 2b, 3 or 4 with respect to any of the* feeder funds.*)*

   ☐ Yes ☐ No

7. (a) Check "yes" below if the *reporting fund* is the largest fund in a *parallel fund structure* and you are reporting for all of the funds in the structure on an aggregated basis. Otherwise, check "no."

   *(See Instruction 5 for information regarding aggregation of* parallel funds. *If you respond "yes," do not complete a separate Section 1b, 1c, 2b, 3 or 4 with respect to any of the other* parallel funds *in the structure.)*

   ☐ Yes ☐ No

   If you responded "yes" to Question 7(a), complete (b) through (e) below for each other *parallel fund* in the *parallel fund structure*.

   (b) Name of the *parallel fund* ..... [ ]
   (c) *Private fund* identification number of the *parallel fund* ..... [ ]
   (d) *NFA* identification number of the *parallel fund*, if applicable ..... [ ]
   (e) *LEI* of the *parallel fund*, if applicable ..... [ ]

**Item B. Assets, financing and investor concentration**

8. *Gross asset value* of *reporting fund* ..... [ ]

   *(This amount may differ from the amount you reported in response to question 11 of* Form ADV Section 7.B.1. *For instance, the amounts may not be the same if you are filing Form PF on a quarterly basis, if you are aggregating a* master-feeder arrangement *for purposes of this Form PF and you did not aggregate that* master-feeder arrangement *for purposes of* Form ADV Section 7.B.1. *or if you are aggregating* parallel funds *for purposes of this Form PF.)*

9. *Net asset value* of *reporting fund* ..... [ ]

| Form PF Section 1b | Information about the *private funds* you advise (to be completed by all Form PF filers) | Page 5 of 42 |
|---|---|---|

10. *Value* of *reporting fund's* investments in equity of other *private funds* .....

11. *Value* of all *parallel managed accounts* related to the *reporting fund* .....

*(If any of your* parallel managed accounts *relates to more than one of the* private funds *you advise, only report the value of the account once, in connection with the largest* private fund *to which it relates.)*

12. Provide the following information regarding the *value* of the *reporting fund's borrowings* and the types of creditors.

*(You are not required to respond to this question for any* reporting fund *with respect to which you are answering Question 43 in Section 2b. Do not net out amounts that the* reporting fund *loans to creditors or the value of collateral pledged to creditors.)*

*(The percentages borrowed from the specified types of creditors should add up to approximately 100%.)*

(a) Dollar amount of total *borrowings* .....

(b) Percentage borrowed from *U.S. financial institutions* .....

(c) Percentage borrowed from *non-U.S. financial institutions* .....

(d) Percentage borrowed from U.S. creditors that are not financial institutions.....

(e) Percentage borrowed from non-U.S. creditors that are not financial institutions ....

13. (a) Does the *reporting fund* have any outstanding derivatives positions?

☐ Yes ☐ No

(b) If you responded "yes" to Question 13(a), provide the aggregate *value* of all derivatives positions of the *reporting fund* .....

*(You are not required to respond to Question 13 for any* reporting fund *with respect to which you are answering Question 44 in Section 2b.)*

14. Provide a summary of the *reporting fund's* assets and liabilities categorized using the hierarchy below. For assets and liabilities that you report internally and to current and prospective investors as representing fair value, or for which you are required to determine fair value in order to report the *reporting fund's* regulatory assets under management on Form ADV, categorize them into the following categories based on the valuation assumptions utilized:

Level 1 – Quoted prices (unadjusted) in active markets for identical assets or liabilities.

Level 2 – Other than quoted prices included within Level 1 that are observable for the asset or liability, either directly or indirectly.

Level 3 – Unobservable inputs, such as your assumptions or the fund's assumptions used to determine the fair value of the asset or liability.

For any assets and liabilities that you report internally and to current and prospective investors as representing a measurement attribute other than fair value, and for which you are not required to determine fair value in order to report the *reporting fund's* regulatory assets under management on Form ADV, separately report these assets and liabilities in the "cost-based" measurement column.

*(If the fund's financial statements are prepared in accordance with U.S. generally accepted accounting principles ("U.S. GAAP") or another accounting standard that requires the*

*categorization of assets and liabilities using a fair value hierarchy similar to that established under U.S. GAAP, then respond to this question using the fair value hierarchy established under the applicable accounting standard.)*

*(This question requires the use of fair values and cost-based measurements, which may be different from the values contemplated by Instruction 15. You are only required to respond to this question if you are filing an* annual update *or a* quarterly update *for your fourth fiscal quarter.)*

| | Fair value | | | Cost-based |
|---|---|---|---|---|
| | Level 1 | Level 2 | Level 3 | |
| Assets | $ _____ | $ _____ | $ _____ | $ _____ |
| Liabilities | $ _____ | $ _____ | $ _____ | $ _____ |

15. Specify the approximate percentage of the *reporting fund's* equity that is beneficially owned by the five beneficial owners having the largest equity interests in the *reporting fund.* [ ]

*(For purposes of this question, if you know that two or more beneficial owners of the* reporting fund *are* affiliated *with each other, you should treat them as a single beneficial owner.)*

16. Specify the approximate percentage of the *reporting fund's* equity that is beneficially owned by the following groups of investors.

*(Include each investor in only one group. The total should add up to approximately 100%. With respect to beneficial interests outstanding prior to March 31, 2012, that have not been transferred on or after that date, you may respond to this question using good faith estimates based on data currently available to you.)*

(a) Individuals that are *United States persons* (including their trusts) ..... [ ]

(b) Individuals that are not *United States persons* (including their trusts) ..... [ ]

(c) Broker-dealers ..... [ ]

(d) Insurance companies ..... [ ]

(e) Investment companies registered with the *SEC* ..... [ ]

(f) *Private funds* ..... [ ]

(g) Non-profits ..... [ ]

(h) Pension plans (excluding governmental pension plans) ..... [ ]

(i) Banking or thrift institutions (proprietary) ..... [ ]

(j) State or municipal *government entities* (excluding governmental pension plans) ..... [ ]

(k) State or municipal governmental pension plans ..... [ ]

(l) Sovereign wealth funds and foreign official institutions ..... [ ]

(m) Investors that are not *United States persons* and about which the foregoing beneficial ownership information is not known and cannot reasonably be obtained because the beneficial interest is held through a chain involving one or more third-party intermediaries ..... [ ]

(n) Other ..... [ ]

**Item C. *Reporting fund* performance**

17. Provide the *reporting fund's* gross and net performance, as reported to current and prospective investors (or, if calculated for other purposes but not reported to investors, as so calculated). If the fund reports different performance results to different groups of investors, provide the most representative results. You are required to provide monthly and quarterly performance results only if such results are calculated for the *reporting fund* (whether for purposes of reporting to current or prospective investors or otherwise).

*(If your fiscal year is different from the* reporting fund's *fiscal year, then for any portion of the* reporting fund's *fiscal year that has not been completed as of the* data reporting date, *provide the relevant information from that portion of the* reporting fund's *preceding fiscal year.)*

*(Enter your responses as percentages rounded to the nearest one-hundredth of one percent. Performance results for monthly and quarterly periods should not be annualized. If any period precedes the date of the fund's formation, enter "NA". You are not required to include performance results for any period with respect to which you previously provided performance results for the* reporting fund *on Form PF.)*

| | Last day of fiscal period | Gross performance | Net of management fees and incentive fees and allocations |
|---|---|---|---|
| (a) 1st month of *reporting fund's* fiscal year | | | |
| (b) 2nd month of *reporting fund's* fiscal year | | | |
| (c) 3rd month of *reporting fund's* fiscal year | | | |
| (d) First quarter | | | |
| (e) 4th month of *reporting fund's* fiscal year | | | |
| (f) 5th month of *reporting fund's* fiscal year | | | |
| (g) 6th month of *reporting fund's* fiscal year | | | |
| (h) Second quarter | | | |
| (i) 7th month of *reporting fund's* fiscal year | | | |
| (j) 8th month of *reporting fund's* fiscal year | | | |
| (k) 9th month of *reporting fund's* fiscal year | | | |
| (l) Third quarter | | | |
| (m) 10th month of *reporting fund's* fiscal year | | | |
| (n) 11th month of *reporting fund's* fiscal year | | | |
| (o) 12th month of *reporting fund's* fiscal year | | | |
| (p) Fourth quarter | | | |
| (q) *Reporting fund's* most recently completed fiscal year | | | |

**Section 1c: Information about the *hedge funds* you advise**

Subject to Instruction 5, you must complete a separate Section 1c for each *hedge fund* that you advise.

**Item A. *Reporting fund* identifying information**

18. (a) Name of the *reporting fund* .....
    (b) *Private fund* identification number of the *reporting fund* .....

**Item B. Certain information regarding the *reporting fund***

19. Does the *reporting fund* have a single primary investment strategy or multiple strategies?

    ☐ Single primary strategy ☐ Multi-strategy

20. Indicate which of the investment strategies below best describe the *reporting fund's* strategies. For each strategy that you have selected, provide a good faith estimate of the percentage of the *reporting fund's net asset value* represented by that strategy. If, in your view, the *reporting fund's* allocation among strategies is appropriately represented by the percentage of deployed capital, you may also provide that information.

    *(Select the investment strategies that best describe the reporting fund's strategies, even if the descriptions below do not precisely match your characterization of those strategies; select "other" only if a strategy that the* reporting fund *uses is significantly different from any of the strategies identified below. You may refer to the* reporting fund's *use of these strategies as of the* data reporting date *or throughout the* reporting period, *but you must report using the same basis in future filings.)*

    *(The strategies listed below are mutually exclusive (i.e., do not report the same assets under multiple strategies). If providing percentages of capital, the total should add up to approximately 100%.)*

| Strategy | % of *NAV* (required) | % of capital (optional) |
|---|---|---|
| ☐ Equity, Market Neutral | | |
| ☐ Equity, Long/Short | | |
| ☐ Equity, Short Bias | | |
| ☐ Equity, Long Bias | | |
| ☐ Macro, Active Trading | | |
| ☐ Macro, Commodity | | |
| ☐ Macro, Currency | | |
| ☐ Macro, Global Macro | | |
| ☐ Relative Value, Fixed Income Asset Backed | | |

| Form PF Section 1c | **Information about the *hedge funds* you advise** (to be completed by all Form PF filers that advise *hedge funds*) | Page 9 of 42 |
|---|---|---|

| | | |
|---|---|---|
| ☐ Relative Value, Fixed Income Convertible Arbitrage | | |
| ☐ Relative Value, Fixed Income Corporate | | |
| ☐ Relative Value, Fixed Income Sovereign | | |
| ☐ Relative Value, Volatility Arbitrage | | |
| ☐ Event Driven, Distressed/Restructuring | | |
| ☐ Event Driven, Risk Arbitrage/Merger Arbitrage | | |
| ☐ Event Driven, Equity Special Situations | | |
| ☐ Credit, Long/Short | | |
| ☐ Credit, Asset Based Lending | | |
| ☐ Managed Futures/*CTA*, Fundamental | | |
| ☐ Managed Futures/*CTA*, Quantitative | | |
| ☐ Investment in other funds | | |
| ☐ Other: _____ | | |

21. During the *reporting period*, approximately what percentage of the *reporting fund's net asset value* was managed using high-frequency trading strategies?

*(In your response, please do not include strategies using algorithms solely for trade execution. This question concerns strategies that are substantially computer-driven, where decisions to place bids or offers, and to buy or sell, are primarily based on algorithmic responses to intraday price action in equities, futures and options, and where the total number of shares or contracts traded throughout the day is generally significantly larger than the net change in position from one day to the next.)*

☐ 0% ☐ less than 10% ☐ 10-25% ☐ 26-50%

☐ 51-75% ☐ 76-99% ☐ 100% or more

22. Identify the five counterparties to which the *reporting fund* has the greatest mark-to-market net counterparty credit exposure, measured as a percentage of the *reporting fund's net asset value*.

*(For purposes of this question, you should treat* affiliated *entities as a single group to the extent exposures may be contractually or legally set-off or netted across those entities and/or one affiliate guarantees or may otherwise be obligated to satisfy the obligations of another.* CCPs *should not be regarded as counterparties for purposes of this question.)*

*(In your response, you should take into account: (i) mark-to-market gains and losses on derivatives; and (ii) any loans or loan commitments.)*

*(However, you should not take into account: (i) margin posted by the counterparty; or (ii) holdings of debt or equity securities issued by the counterparty.)*

| Form PF Section 1c | Information about the *hedge funds* you advise (to be completed by all Form PF filers that advise *hedge funds*) | Page 10 of 42 |
|---|---|---|

| | Legal name of the counterparty (or, if multiple affiliated entities, counterparties) | Indicate below if the counterparty is affiliated with a major financial institution | Exposure (% of *reporting fund's net asset value*) |
|---|---|---|---|
| (a) | | [drop-down list of counterparty names]<br>Other: _____<br>[Not applicable] | |
| (b) | | [drop-down list of counterparty names]<br>Other: _____<br>[Not applicable] | |
| (c) | | [drop-down list of counterparty names]<br>Other: _____<br>[Not applicable] | |
| (d) | | [drop-down list of counterparty names]<br>Other: _____<br>[Not applicable] | |
| (e) | | [drop-down list of counterparty names]<br>Other: _____<br>[Not applicable] | |

23. Identify the five counterparties that have the greatest mark-to-market net counterparty credit exposure to the *reporting fund*, measured in U.S. dollars.

*(For purposes of this question, you should treat* affiliated *entities as a single group to the extent exposures may be contractually or legally set-off or netted across those entities and/or one affiliate guarantees or may otherwise be obligated to satisfy the obligations of another.* CCPs *should not be regarded as counterparties for purposes of this question.)*

*(In your response, you should take into account: (i) mark-to-market gains and losses on derivatives; and (ii) any loans or loan commitments.)*

*(However, you should not take into account: (i) margin posted to the counterparty; or (ii) holdings of debt or equity securities issued by the counterparty.)*

| | Legal name of the counterparty (or, if multiple affiliated entities, counterparties) | Indicate below if the counterparty is affiliated with a major financial institution | Exposure (in U.S. dollars) |
|---|---|---|---|
| (a) | | [drop-down list of counterparty names]<br>Other: _____<br>[Not applicable] | |
| (b) | | [drop-down list of counterparty names]<br>Other: _____<br>[Not applicable] | |
| (c) | | [drop-down list of counterparty names]<br>Other: _____<br>[Not applicable] | |
| (d) | | [drop-down list of counterparty names]<br>Other: _____<br>[Not applicable] | |
| (e) | | [drop-down list of counterparty names] | |

| Form PF Section 1c | **Information about the *hedge funds* you advise** (to be completed by all Form PF filers that advise *hedge funds*) | Page 11 of 42 |
|---|---|---|

| | Other: _____ [Not applicable] |
|---|---|

24. Provide the following information regarding your use of trading and clearing mechanisms during the *reporting period.*

*(Provide good faith estimates of the mode in which instruments were traded and cleared by the* reporting fund*, and not the market as a whole. For purposes of this question, a "trade" includes any transaction, whether entered into on a bilateral basis or through an exchange, trading facility or other system and whether long or short. With respect to clearing, transactions for which margin is held in a customer omnibus account at a* CCP *should be considered cleared by a* CCP*. Tri-party* repo *applies where* repo *collateral is held at a custodian (not including a* CCP*) that acts as a third party agent to both the* repo *buyer and the* repo *seller.)*

*(The total in each part of this question should add up to 100%. Enter "NA" in each part of this question for which the* reporting fund *engaged in no relevant trades.)*

| | % |
|---|---|
| (a) Estimated % (in terms of *value*) of securities (other than derivatives) that were traded by the *reporting fund*: | |
| On a regulated exchange | |
| *OTC* | |
| (b) Estimated % (in terms of trade volumes) of derivatives that were traded by the *reporting fund*: | |
| On a regulated exchange or swap execution facility | |
| *OTC* | |
| (c) Estimated % (in terms of trade volumes) of *derivatives* that were traded by the *reporting fund* and: | |
| Cleared by a *CCP* | |
| Bilaterally transacted (i.e., not cleared by a *CCP*) | |
| (d) Estimated % (in terms of *value*) of *repo* trades that were entered into by the *reporting fund* and: | |
| Cleared by a *CCP* | |
| Bilaterally transacted (i.e., not cleared by a *CCP*) | |
| Constitute a tri-party *repo* | |

25. What percentage of the *reporting fund's net asset value* relates to transactions that are not described in any of the categories listed in items (a) through (d) of Question 24?

| Form PF Section 2a | Aggregated information about *hedge funds* that you advise (to be completed by *large private fund advisers* only) | Page 12 of 42 |
|---|---|---|

**Section 2a: Aggregated information about *hedge funds* that you advise**

**Item A. Exposure of *hedge fund* assets**

26. Aggregate *hedge fund* exposures.

*(Give a dollar* value *for long and short positions as of the last day in each month of the* reporting period, *by* sub-asset class, *including all exposure whether held physically, synthetically or through derivatives. Enter "NA" in each space for which there are no relevant positions.)*

*(Include any closed out and* OTC *forward positions that have not yet expired/matured. Do not net positions within* sub-asset classes. *Positions held in side-pockets should be included as positions of the* hedge funds. *Provide the absolute value of short positions. Each position should only be included in a single* sub-asset class.*)*

*(Where "duration/WAT/10-year eq." is required, provide at least one of the following with respect to the position and indicate which measure is being used: bond duration, weighted average tenor or 10-year bond equivalent. Duration and weighted average tenor should be entered in terms of years to two decimal places.)*

| | 1st Month | | 2nd Month | | 3rd Month | |
|---|---|---|---|---|---|---|
| | *LV* | *SV* | *LV* | *SV* | *LV* | *SV* |
| *Listed equity* | | | | | | |
| Issued by financial institutions | | | | | | |
| Other *listed equity* | | | | | | |
| *Unlisted equity* | | | | | | |
| Issued by financial institutions | | | | | | |
| Other *unlisted equity* | | | | | | |
| *Listed equity derivatives* | | | | | | |
| Related to financial institutions | | | | | | |
| Other *listed equity derivatives* | | | | | | |
| *Derivative exposures to unlisted equities* | | | | | | |
| Related to financial institutions | | | | | | |
| Other *derivative exposures to unlisted equities* | | | | | | |
| *Corporate bonds* issued by financial institutions (other than *convertible bonds*) | | | | | | |
| *Investment grade* | | | | | | |
| ☐ Duration ☐ WAT ☐ 10-year eq. | | | | | | |
| *Non-investment grade* | | | | | | |
| ☐ Duration ☐ WAT ☐ 10-year eq. | | | | | | |

| Form PF Section 2a | Aggregated information about *hedge funds* that you advise (to be completed by *large private fund advisers* only) | Page 13 of 42 |
|---|---|---|

*Corporate bonds* not issued by financial institutions (other than *convertible bonds*)

*Investment grade* .....
☐ Duration ☐ WAT ☐ 10-year eq..
*Non-investment grade* .....
☐ Duration ☐ WAT ☐ 10-year eq..

*Convertible bonds* issued by financial institutions

*Investment grade* .....
☐ Duration ☐ WAT ☐ 10-year eq..
*Non-investment grade* .....
☐ Duration ☐ WAT ☐ 10-year eq..

*Convertible bonds* not issued by financial institutions

*Investment grade* .....
☐ Duration ☐ WAT ☐ 10-year eq..
*Non-investment grade* .....
☐ Duration ☐ WAT ☐ 10-year eq..

*Sovereign bonds* and municipal bonds

*U.S. treasury securities* .....
☐ Duration ☐ WAT ☐ 10-year eq..
*Agency securities* .....
☐ Duration ☐ WAT ☐ 10-year eq..
*GSE bonds* .....
☐ Duration ☐ WAT ☐ 10-year eq..
*Sovereign bonds* issued by *G10* countries other than the U.S. .....
☐ Duration ☐ WAT ☐ 10-year eq..
Other *sovereign bonds* (including supranational bonds) .....
☐ Duration ☐ WAT ☐ 10-year eq..
U.S. state and local bonds .....
☐ Duration ☐ WAT ☐ 10-year eq..

Loans

*Leveraged loans* .....

| Form PF Section 2a | Aggregated information about *hedge funds* that you advise (to be completed by *large private fund advisers* only) | Page 14 of 42 |
|---|---|---|

| | | | | | | |
|---|---|---|---|---|---|---|
| ☐ Duration ☐ WAT ☐ 10-year eq.. | | | | | | |
| *Other loans* (not including *repos*)..... | | | | | | |
| ☐ Duration ☐ WAT ☐ 10-year eq.. | | | | | | |
| *Repos*..... | | | | | | |
| ☐ Duration ☐ WAT ☐ 10-year eq. ..... | | | | | | |
| *ABS/structured products* | | | | | | |
| *MBS*..... | | | | | | |
| ☐ Duration ☐ WAT ☐ 10-year eq.. | | | | | | |
| *ABCP*..... | | | | | | |
| ☐ Duration ☐ WAT ☐ 10-year eq.. | | | | | | |
| *CDO/CLO*..... | | | | | | |
| ☐ Duration ☐ WAT ☐ 10-year eq.. | | | | | | |
| *Other ABS*..... | | | | | | |
| ☐ Duration ☐ WAT ☐ 10-year eq.. | | | | | | |
| *Other structured products* ..... | | | | | | |
| *Credit derivatives* | | | | | | |
| *Single name CDS* ..... | | | | | | |
| *Index CDS* ..... | | | | | | |
| *Exotic CDS*..... | | | | | | |
| *Foreign exchange derivatives* (investment)..... | | | | | | |
| *Foreign exchange derivatives* (hedging)..... | | | | | | |
| Non-U.S. currency holdings..... | | | | | | |
| *Interest rate derivatives*..... | | | | | | |
| *Commodities* (derivatives) | | | | | | |
| *Crude oil*..... | | | | | | |
| *Natural gas* ..... | | | | | | |
| *Gold*..... | | | | | | |
| *Power*..... | | | | | | |
| *Other commodities*..... | | | | | | |
| *Commodities* (physical) | | | | | | |
| *Crude oil*..... | | | | | | |
| *Natural gas* ..... | | | | | | |

| Form PF Section 2a | Aggregated information about *hedge funds* that you advise (to be completed by *large private fund advisers* only) | Page 15 of 42 |
|---|---|---|

| | | | | | | |
|---|---|---|---|---|---|---|
| *Gold* | | | | | | |
| *Power* | | | | | | |
| *Other commodities* | | | | | | |
| *Other derivatives* | | | | | | |
| Physical real estate | | | | | | |
| *Investments in internal private funds* | | | | | | |
| *Investments in external private funds* | | | | | | |
| *Investments in registered investment companies* | | | | | | |
| Cash and cash equivalents | | | | | | |
| Certificates of deposit | | | | | | |
| ☐ Duration ☐ WAT ☐ 10-year eq. | | | | | | |
| Other deposits | | | | | | |
| *Money market funds* | | | | | | |
| Other *cash and cash equivalents* (excluding government securities) | | | | | | |
| Investments in funds for cash management purposes (other than *money market funds*) | | | | | | |
| *Investments in other sub-asset classes* | | | | | | |

27. For each month of the *reporting period*, provide the *value* of turnover during the month in each of the asset classes listed below for the *hedge funds* that you advise.

*(The* value *of turnover should be the sum of the absolute* values *of transactions in the relevant asset class during the period.)*

| | 1st Month | 2nd Month | 3rd Month |
|---|---|---|---|
| *Listed equity* | | | |
| *Corporate bonds* (other than *convertible bonds*) | | | |
| *Convertible bonds* | | | |
| *Sovereign bonds* and municipal bonds | | | |
| *U.S. treasury securities* | | | |
| *Agency securities* | | | |
| *GSE bonds* | | | |
| *Sovereign bonds* issued by *G10* countries other than the U.S. | | | |
| Other *sovereign bonds* (including supranational bonds) | | | |

| | | | |
|---|---|---|---|
| U.S. state and local bonds | | | |
| Futures | | | |

28. (a) Provide a geographical breakdown of the investments held by the *hedge funds* that you advise (by percentage of the total *net asset value* of these *hedge funds*).

*(See Instruction 15 for information on calculating the numerator for purposes of this Question.)*

| | Region | % of *NAV* |
|---|---|---|
| (i) | Africa | |
| (ii) | Asia and Pacific (other than the Middle East) | |
| (iii) | Europe (*EEA*) | |
| (iv) | Europe (other than *EEA*) | |
| (v) | Middle East | |
| (vi) | North America | |
| (vii) | South America | |
| (viii) | Supranational | |

(b) Provide the value of investments in the following countries held by the *hedge funds* that you advise (by percentage of the total *net asset value* of these *hedge funds*).

*(See Instruction 15 for information on calculating the numerator for purposes of this Question.)*

| | Country | % of *NAV* |
|---|---|---|
| (i) | Brazil | |
| (ii) | China (including Hong Kong) | |
| (iii) | India | |
| (iv) | Japan | |
| (v) | Russia | |
| (vi) | United States | |

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**Section 2b: Information about *qualifying hedge funds* that you advise.**

You must complete a separate Section 2b for each *qualifying hedge fund* that you advise. However, with respect to *master-feeder arrangements* and *parallel fund structures* that collectively comprise *qualifying hedge funds*, you may report collectively or separately about the component funds as provided in the General Instructions.

**Item A. *Reporting fund* identifying information**

29. (a) Name of the *reporting fund* ..... [ ]

(b) *Private fund* identification number of the *reporting fund* ..... [ ]

**Item B. *Reporting fund* exposures and trading**

Check this box if you advise only one *hedge fund*. If you check this box, you may skip Question 30.
☐

30. *Reporting fund* exposures.

*(Give a dollar* value *for long and short positions as of the last day in each month of the* reporting period, *by* sub-asset class, *including all exposure whether held physically, synthetically or through derivatives. Enter "NA" in each space for which there are no relevant positions.)*

*(Include any closed out and* OTC *forward positions that have not yet expired/matured. Do not net positions within* sub-asset classes. *Positions held in side-pockets should be included as positions of the* hedge funds. *Provide the absolute value of short positions. Each position should only be included in a single* sub-asset class.*)*

*(Where "duration/WAT/10-year eq." is required, provide at least one of the following with respect to the position and indicate which measure is being used: bond duration, weighted average tenor or 10-year bond equivalent. Duration and weighted average tenor should be entered in terms of years to two decimal places.)*

| | 1st Month | | 2nd Month | | 3rd Month | |
|---|---|---|---|---|---|---|
| | *LV* | *SV* | *LV* | *SV* | *LV* | *SV* |
| *Listed equity* | | | | | | |
| Issued by financial institutions..... | | | | | | |
| Other *listed equity*..... | | | | | | |
| *Unlisted equity* | | | | | | |
| Issued by financial institutions..... | | | | | | |
| Other *unlisted equity*..... | | | | | | |
| *Listed equity derivatives* | | | | | | |

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| | | | | | | |
|---|---|---|---|---|---|---|
| Related to financial institutions | | | | | | |
| Other *listed equity derivatives* | | | | | | |
| *Derivative exposures to unlisted equities* | | | | | | |
| Related to financial institutions | | | | | | |
| Other *derivative exposures to unlisted equities* | | | | | | |
| *Corporate bonds* issued by financial institutions (other than *convertible bonds*) | | | | | | |
| *Investment grade* | | | | | | |
| ☐ Duration ☐ WAT ☐ 10-year eq. | | | | | | |
| *Non-investment grade* | | | | | | |
| ☐ Duration ☐ WAT ☐ 10-year eq. | | | | | | |
| *Corporate bonds* not issued by financial institutions (other than *convertible bonds*) | | | | | | |
| *Investment grade* | | | | | | |
| ☐ Duration ☐ WAT ☐ 10-year eq. | | | | | | |
| *Non-investment grade* | | | | | | |
| ☐ Duration ☐ WAT ☐ 10-year eq. | | | | | | |
| *Convertible bonds* issued by financial institutions | | | | | | |
| *Investment grade* | | | | | | |
| ☐ Duration ☐ WAT ☐ 10-year eq. | | | | | | |
| *Non-investment grade* | | | | | | |
| ☐ Duration ☐ WAT ☐ 10-year eq. | | | | | | |
| *Convertible bonds* not issued by financial institutions | | | | | | |
| *Investment grade* | | | | | | |
| ☐ Duration ☐ WAT ☐ 10-year eq. | | | | | | |
| *Non-investment grade* | | | | | | |
| ☐ Duration ☐ WAT ☐ 10-year eq. | | | | | | |
| *Sovereign bonds* and municipal bonds | | | | | | |
| *U.S. treasury securities* | | | | | | |
| ☐ Duration ☐ WAT ☐ 10-year eq. | | | | | | |
| *Agency securities* | | | | | | |
| ☐ Duration ☐ WAT ☐ 10-year eq. | | | | | | |

| Form PF Section 2b | **Information about *qualifying hedge funds* that you advise** (to be completed by *large private fund advisers* only) | Page 19 of 42 |
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| | | | | | | |
|---|---|---|---|---|---|---|
| *GSE bonds* | | | | | | |
| ☐ Duration ☐ WAT ☐ 10-year eq. | | | | | | |
| *Sovereign bonds* issued by *G10* countries other than the U.S. | | | | | | |
| ☐ Duration ☐ WAT ☐ 10-year eq. | | | | | | |
| Other *sovereign bonds* (including supranational bonds) | | | | | | |
| ☐ Duration ☐ WAT ☐ 10-year eq. | | | | | | |
| U.S. state and local bonds | | | | | | |
| ☐ Duration ☐ WAT ☐ 10-year eq. | | | | | | |
| Loans | | | | | | |
| *Leveraged loans* | | | | | | |
| ☐ Duration ☐ WAT ☐ 10-year eq. | | | | | | |
| *Other loans* (not including *repos*) | | | | | | |
| ☐ Duration ☐ WAT ☐ 10-year eq. | | | | | | |
| *Repos* | | | | | | |
| ☐ Duration ☐ WAT ☐ 10-year eq. | | | | | | |
| *ABS/structured products* | | | | | | |
| *MBS* | | | | | | |
| ☐ Duration ☐ WAT ☐ 10-year eq. | | | | | | |
| *ABCP* | | | | | | |
| ☐ Duration ☐ WAT ☐ 10-year eq. | | | | | | |
| *CDO/CLO* | | | | | | |
| ☐ Duration ☐ WAT ☐ 10-year eq. | | | | | | |
| *Other ABS* | | | | | | |
| ☐ Duration ☐ WAT ☐ 10-year eq. | | | | | | |
| *Other structured products* | | | | | | |
| *Credit derivatives* | | | | | | |
| *Single name CDS* | | | | | | |
| *Index CDS* | | | | | | |
| *Exotic CDS* | | | | | | |
| *Foreign exchange derivatives* (investment) | | | | | | |
| *Foreign exchange derivatives* (hedging) | | | | | | |
| Non-U.S. currency holdings | | | | | | |

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| | | | | | | |
|---|---|---|---|---|---|---|
| *Interest rate derivatives* | | | | | | |
| *Commodities* (derivatives) | | | | | | |
| *Crude oil* | | | | | | |
| *Natural gas* | | | | | | |
| *Gold* | | | | | | |
| *Power* | | | | | | |
| *Other commodities* | | | | | | |
| *Commodities* (physical) | | | | | | |
| *Crude oil* | | | | | | |
| *Natural gas* | | | | | | |
| *Gold* | | | | | | |
| *Power* | | | | | | |
| *Other commodities* | | | | | | |
| *Other derivatives* | | | | | | |
| Physical real estate | | | | | | |
| *Investments in internal private funds* | | | | | | |
| *Investments in external private funds* | | | | | | |
| *Investments in registered investment companies* | | | | | | |
| Cash and cash equivalents | | | | | | |
| Certificates of deposit | | | | | | |
| ☐ Duration ☐ WAT ☐ 10-year eq. | | | | | | |
| Other deposits | | | | | | |
| *Money market funds* | | | | | | |
| Other *cash and cash equivalents* (excluding government securities) | | | | | | |
| Investments in funds for cash management purposes (other than *money market funds*) | | | | | | |
| *Investments in other sub-asset classes* | | | | | | |

31. What is the *reporting fund's* base currency?
    [drop-down of currencies]
    Other: _____

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32. Provide the following information regarding the liquidity of the *reporting fund's* portfolio.

*(Specify the percentage by* value *of the* reporting fund's *positions that may be liquidated within each of the periods specified below. Each investment should be assigned to only one period and such assignment should be based on the shortest period during which you believe that such position could reasonably be liquidated at or near its carrying value. Use good faith estimates for liquidity based on market conditions over the* reporting period *and assuming no fire-sale discounting. In the event that individual positions are important contingent parts of the same trade, group all those positions under the liquidity period of the least liquid part (so, for example, in a convertible bond arbitrage trade, the liquidity of the short should be the same as the* convertible bond*). Exclude* cash and cash equivalents.*)*

*(The total should add up to approximately 100%.)*

| | **% of portfolio capable of being liquidated within** |
|---|---|
| 1 day or less | |
| 2 days – 7 days | |
| 8 days – 30 days | |
| 31 days – 90 days | |
| 91 days – 180 days | |
| 181 days – 365 days | |
| Longer than 365 days | |

| | **1st Month** | **2nd Month** | **3rd Month** |
|---|---|---|---|
| 33. *Value* of *reporting fund's unencumbered cash* | | | |
| 34. Total number of open positions (approximate), determined on the basis of each position and not the issuer or counterparty | | | |

35. For each open position of the *reporting fund* that represents 5% or more of the *reporting fund's net asset value*, provide the information requested below.

| | **% of *net asset value*** | ***Sub-asset class*** |
|---|---|---|
| (a) First month of the *reporting period* | | |
| (i) Position | | [drop-down of asset classes] |
| (ii) Position | | [drop-down of asset classes] |
| (b) Second month of the *reporting period* | | |
| (i) Position | | [drop-down of asset classes] |
| (ii) Position | | [drop-down of asset classes] |
| (c) Third month of the *reporting period* | | |

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| | | |
|---|---|---|
| (i) Position ..... | | [drop-down of asset classes] |
| (ii) Position ..... | | [drop-down of asset classes] |

36. For each of the top five counterparties listed in your response to Question 22 with respect to the *reporting fund*, provide the following information regarding the collateral and other credit support that the counterparty has posted to the *reporting fund*.

*(For purposes of Questions 36, 37 and 38, include as collateral assets purchased in connection with* repos *and collateral posted under an arrangement pursuant to which the secured party has loaned securities to the pledgor.* Repos *and* reverse-repos *with the same counterparty may be netted to the extent secured by the same type of collateral.)*

(a) Counterparty [1, 2, 3, 4, 5]:

| | |
|---|---|
| (i) *value* of collateral posted in the form of *cash and cash equivalents*..... | |
| (ii) *value* of collateral posted in the form of securities (other than *cash and cash equivalent* instruments)..... | |
| (iii) *value* of other collateral and credit support posted (including face amount of letters of credit and similar third party credit support) ..... | |

37. For each of the top five counterparties listed in your response to Question 23 with respect to the *reporting fund*, provide the following information regarding the collateral and other credit support that the *reporting fund* has posted to the counterparty.

(a) Counterparty [1, 2, 3, 4, 5]:

| | |
|---|---|
| (i) *value* of collateral posted in the form of *cash and cash equivalents*..... | |
| (ii) *value* of collateral posted in the form of securities (other than *cash and cash equivalent* instruments)..... | |
| (iii) *value* of other collateral and credit support posted (including face amount of letters of credit and similar third party credit support) ..... | |

38. (a) Of the total amount of collateral and other credit support that counterparties have posted to the *reporting fund*, what percentage:

| | |
|---|---|
| (i) may be rehypothecated? | |
| (ii) has the *reporting fund* rehypothecated? | |
| (b) Of the total amount of collateral and other credit support that the *reporting fund* has posted to counterparties, what percentage may be rehypothecated? | |

39. During the *reporting period*, did the *reporting fund* clear any transactions directly through a *CCP*?

☐ Yes ☐ No

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**Item C. *Reporting fund* risk metrics**

40. (a) During the *reporting period*, did you regularly calculate the *VaR* of the *reporting fund*?

*(Please respond without regard to whether you reported the result of this calculation internally or to investors.)*

☐ Yes ☐ No

(b) If you responded "yes" to Question 40(a), provide the following information.

*(If you regularly calculate the* VaR *of the* reporting fund *using multiple combinations of confidence interval, horizon and historical observation period, complete a separate response to this Question 40(b) for each such combination.)*

(i) Confidence interval used (e.g., 100%-alpha%) *(as a percentage)*..... ☐

(ii) Time horizon used *(in number of days)*..... ☐

(iii) What weighting method was used to calculate *VaR*?

☐ None ☐ Exponential ☐ Other: _____

(iv) If you responded "exponential" to Question 40(b)(iii), provide the weighting factor used *(as a decimal to two places)*..... ☐

(v) What method was used to calculate *VaR*?

☐ Historical simulation ☐ Monte Carlo simulation

☐ Parametric ☐ Other: _____

(vi) Historical lookback period used *(in number of years; enter "NA" if none used)*..... ☐

(vii) *VaR* at the end of the 1st month of the *reporting period (as a % of NAV)*..... ☐

(viii) *VaR* at the end of the 2nd month of the *reporting period (as a % of NAV)*..... ☐

(ix) *VaR* at the end of the 3rd month of the *reporting period (as a % of NAV)*..... ☐

41. Are there any risk metrics other than (or in addition to) *VaR* that you consider to be important to the *reporting fund's* risk management?

*(Select all that you consider relevant. Please respond without regard to whether you reported the metric internally or to investors. If none, "None.")*

[drop-down of risk metrics]

Other: _____

42. For each of the market factors identified below, determine the effect of the specified changes on the *reporting fund's* portfolio and provide the results.

*(You may omit a response to any market factor that you do not regularly consider in formal testing in connection with the* reporting fund's *risk management. If you omit any market factor, check either the box in the first column indicating that you believe that this market*

*factor is not relevant to the* reporting fund's *portfolio or the box in the second column indicating that this market factor is relevant but not formally tested. For this purpose, "formal testing" means that the adviser has models or other systems capable of simulating the effect of a market factor on the fund's portfolio, not that the specific assumptions outlined in the question were used in testing.)*

*(For each market factor, separate the effect on your portfolio into long and short components where (i) the long component represents the aggregate result of all positions whose valuation changes in the same direction as the market factor under a given stress scenario and (ii) the short component represents the aggregate result of all positions whose valuation changes in the opposite direction from the market factor under a given stress scenario.)*

*(Assume that changes in a market factor occur instantaneously and that all other factors are held constant. If the specified change in any market factor would make that factor less than zero, use zero instead.)*

*(Please note the following regarding the market factors identified below:*

*(i) A change in "equity prices" means that the prices of all equities move up or down by the specified amount, without regard to whether the equities are listed on any exchange or included in any index;*

*(ii) "Risk free interest rates" means rates of interest accruing on* sovereign bonds *issued by governments having the highest credit quality, such as* U.S. treasury securities*;*

*(iii) A change in "credit spreads" means that all spreads against risk free interest rates change by the specified amount;*

*(iv) A change in "currency rates" means that the values of all currencies move up or down by the specified amount relative to the* reporting fund's *base currency;*

*(v) A change in "commodity prices" means that the prices of all physical commodities move up or down by the specified amount;*

*(vi) A change in "option implied volatilities" means that the implied volatilities of all the options that the* reporting fund *holds increase or decrease by the specified number of percentage points; and*

*(vii) A change in "default rates" means that the rate at which debtors default on all instruments of the specified type increases or decreases by the specified number of percentage points.)*

| Not relevant | Relevant/not formally tested | Market factor – changes in market factor | Effect on long components of portfolio (as % of *NAV*) | Effect on short components of portfolio (as % of *NAV*) |
|---|---|---|---|---|
| ☐ | ☐ | Equity prices: | | |
| | | Equity prices increase 5% | | |
| | | Equity prices decrease 5% | | |
| | | Equity prices increase 20% | | |
| | | Equity prices decrease 20% | | |

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| | | | | |
|---|---|---|---|---|
| ☐ | ☐ | Risk free interest rates (changes represent a parallel shift in the yield curve): | | |
| | | Risk free interest rates increase 25*bp* | | |
| | | Risk free interest rates decrease 25*bp* | | |
| | | Risk free interest rates increase 75*bp* | | |
| | | Risk free interest rates decrease 75*bp* | | |
| ☐ | ☐ | Credit spreads: | | |
| | | Credit spreads increase 50*bp* | | |
| | | Credit spreads decrease 50*bp* | | |
| | | Credit spreads increase 250*bp* | | |
| | | Credit spreads decrease 250*bp* | | |
| ☐ | ☐ | Currency rates: | | |
| | | Currency rates increase 5% | | |
| | | Currency rates decrease 5% | | |
| | | Currency rates increase 20% | | |
| | | Currency rates decrease 20% | | |
| ☐ | ☐ | Commodity prices: | | |
| | | Commodity prices increase 10% | | |
| | | Commodity prices decrease 10% | | |
| | | Commodity prices increase 40% | | |
| | | Commodity prices decrease 40% | | |
| ☐ | ☐ | Option implied volatilities: | | |
| | | Implied volatilities increase 4 percentage points | | |
| | | Implied volatilities decrease 4 percentage points | | |
| | | Implied volatilities increase 10 percentage points | | |
| | | Implied volatilities decrease 10 percentage points | | |
| ☐ | ☐ | Default rates (*ABS*): | | |
| | | Default rates increase 1 percentage point | | |
| | | Default rates decrease 1 percentage point | | |
| | | Default rates increase 5 percentage points | | |
| | | Default rates decrease 5 percentage points | | |
| ☐ | ☐ | Default rates (*corporate bonds* and *CDS*): | | |
| | | Default rates increase 1 percentage point | | |
| | | Default rates decrease 1 percentage point | | |

| | | | | |
|---|---|---|---|---|
| | | Default rates increase 5 percentage points ..... | | |
| | | Default rates decrease 5 percentage points..... | | |

**Item D. Financing information**

43. For each month of the *reporting period*, provide the following information regarding the *value* of the *reporting fund's borrowings*, the types of creditors and the collateral posted to secure its *borrowings*.

*(For each type of* borrowing*, information is requested regarding the percentage borrowed from specified types of creditors. In each case, the total percentages allocated among these types of creditors should add up to 100%.)*

*(Do not net out amounts that the* reporting fund *loans to creditors or the value of collateral pledged to creditors.)*

| | 1st Month | 2nd Month | 3rd Month |
|---|---|---|---|
| (a) Dollar amount of *unsecured borrowing* ..... | | | |
| (i) Percentage borrowed from *U.S. financial institutions*..... | | | |
| (ii) Percentage borrowed from *non-U.S. financial institutions* ..... | | | |
| (iii) Percentage borrowed from U.S. creditors that are not financial institutions ..... | | | |
| (iv) Percentage borrowed from non-U.S. creditors that are not financial institutions ..... | | | |

(b) *Secured borrowing.*

*(Classify* secured borrowing *according to the legal agreement governing the borrowing (e.g., Global Master Repurchase Agreement for* reverse repo *and Prime Brokerage Agreement for prime brokerage). Please note that for* reverse repo borrowings*, the amount should be the net amount of cash borrowed (after taking into account any initial margin/independent amount, 'haircut' and repayments). Positions under a Global Master Repurchase Agreement should not be netted.)*

| | | | |
|---|---|---|---|
| (i) Dollar amount via prime brokerage..... | | | |
| (A) *value* of collateral posted in the form of *cash and cash equivalents* ..... | | | |
| (B) *value* of collateral posted in the form of securities (other than *cash and cash equivalent* instruments) .. | | | |
| (C) *value* of other collateral and credit support posted (including face amount of letters of credit and similar third party credit support)..... | | | |

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| | | | |
|---|---|---|---|
| (D) percentage borrowed from *U.S. financial institutions* | | | |
| (E) percentage borrowed from *non-U.S. financial institutions* | | | |
| (F) percentage borrowed from U.S. creditors that are not financial institutions | | | |
| (G) percentage borrowed from non-U.S. creditors that are not financial institutions | | | |
| (ii) Dollar amount via *reverse repo (for purposes of items (A) through (D) below, include as collateral any assets sold in connection with the* reverse repo *as well as any variation margin)* | | | |
| (A) *value* of collateral posted in the form of *cash and cash equivalents* | | | |
| (B) *value* of collateral posted in the form of securities (other than *cash and cash equivalent* instruments) | | | |
| (C) *value* of other collateral and credit support posted (including face amount of letters of credit and similar third party credit support) | | | |

| | | | |
|---|---|---|---|
| (D) percentage borrowed from *U.S. financial institutions* | | | |
| (E) percentage borrowed from *non-U.S. financial institutions* | | | |
| (F) percentage borrowed from U.S. creditors that are not financial institutions | | | |
| (G) percentage borrowed from non-U.S. creditors that are not financial institutions | | | |
| (iii) Dollar amount of other *secured borrowings* | | | |
| (A) *value* of collateral posted in the form of *cash and cash equivalents* | | | |
| (B) *value* of collateral posted in the form of securities (other than *cash and cash equivalent* instruments) | | | |
| (C) *value* of other collateral and credit support posted (including face amount of letters of credit and similar third party credit support) | | | |

| | | | |
|---|---|---|---|
| (D) percentage borrowed from *U.S. financial institutions* | | | |
| (E) percentage borrowed from *non-U.S. financial* | | | |

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| | | | |
|---|---|---|---|
| *institutions* | | | |
| (F) percentage borrowed from U.S. creditors that are not financial institutions | | | |
| (G) percentage borrowed from non-U.S. creditors that are not financial institutions | | | |

| | 1st Month | 2nd Month | 3rd Month |
|---|---|---|---|
| 44. For each month of the *reporting period*, provide the aggregate *value* of all derivatives positions of the *reporting fund (enter "NA" if no outstanding derivatives positions at the end of the relevant period)*.... | | | |

45. For each month of the *reporting period*, provide the following information regarding the *reporting fund's* derivative positions that were not cleared by a *CCP* and the collateral posted to secure those positions.

*(If the* reporting fund *is a net receiver of collateral, provide the collateral value as a negative number.)*

| | 1st Month | 2nd Month | 3rd Month |
|---|---|---|---|
| (a) Aggregate net mark-to-market value of all derivatives positions of the *reporting fund* that were not cleared by a *CCP (enter "NA" if no relevant derivatives positions outstanding at the end of the relevant period)* | | | |
| (b) Net *value* of collateral posted by or to the *reporting fund* in respect of these positions in the form of *cash and cash equivalents* | | | |
| (c) Net *value* of collateral posted by or to the *reporting fund* in respect of these positions in the form of securities (other than *cash and cash equivalent* instruments) | | | |
| (d) Net *value* of other collateral and credit support posted by or to the *reporting fund* in respect of these positions (including face amount of letters of credit and similar third party credit support) | | | |

46. Financing liquidity:

(a) Provide the aggregate dollar amount of *borrowing* by and cash financing available to the *reporting fund* (including all drawn and undrawn, committed and uncommitted lines of credit as well as any term financing) .....

(b) Divide the amount reported in response to Question 46(a) among the periods specified below depending on the longest period for which the creditor is contractually committed to provide such financing.

*(If a creditor (or syndicate or administrative/collateral agent) is permitted to vary unilaterally*

*the economic terms of the financing or to revalue posted collateral in its own discretion and demand additional collateral, then the financing should be deemed uncommitted for purposes of this question. Uncommitted financing should be included under "1 day or less.")*

*(The total should add up to 100%.)*

| | % of total financing |
|---|---|
| 1 day or less | |
| 2 days – 7 days | |
| 8 days – 30 days | |
| 31 days – 90 days | |
| 91 days – 180 days | |
| 181 days – 365 days | |
| Longer than 365 days | |

47. Identify each creditor, if any, to which the *reporting fund* owed an amount in respect of *borrowings* equal to or greater than 5% of the *reporting fund's net asset value* as of the *data reporting date*. For each such creditor, provide the amount owed to that creditor.

*(This question does not require the precise legal name of the creditor; if the creditor belongs to an* affiliated *group that is included in the list below, select that group and do not enter the creditor's name in the space for "other.")*

| Name of creditor | Dollar amount owed to each creditor |
|---|---|
| [drop-down list of creditor/counterparty names]<br>Other: _____ | |
| [repeat drop-down list of creditor/counterparty names]<br>Other: _____ | |
| [repeat drop-down list of creditor/counterparty names]<br>Other: _____ | |

## Item E. Investor information

48. (a) As of the *data reporting date*, what percentage of the *reporting fund's net asset value*, if any, is subject to a "side-pocket" arrangement? [ ]

*(This question relates to whether assets are currently in a side-pocket and not the potential for assets to be moved to a side-pocket.)*

(b) Have additional assets been placed in a side-pocket since the end of the prior

*reporting period*?

*(Check "NA" if you reported no assets under Question 48(a) in the current period and/or the prior period.)*

☐ Yes ☐ No ☐ NA

49. Provide the following information regarding the *reporting fund's* restrictions on investor withdrawals and redemptions.

*(For Questions 49 and 50, please note that the standards for imposing suspensions and restrictions on withdrawals/redemptions may vary among funds. Make a good faith determination of the provisions that would likely be triggered during conditions that you view as significant market stress.)*

(a) Does the *reporting fund* provide investors with withdrawal/redemption rights in the ordinary course?

☐ Yes ☐ No

*(If you responded "yes" to Question 49(a), then you must respond to Questions 49(b)-(e).)*

As of the *data reporting date*, what percentage of the *reporting fund's net asset value*, if any:

| | | |
|---|---|---|
| (b) | May be subjected to a suspension of investor withdrawals/redemptions by an adviser or fund governing body *(this question relates to an adviser's or governing body's right to suspend and not just whether a suspension is currently effective)* ..... | |
| (c) | May be subjected to material restrictions on investor withdrawals/redemptions (e.g., "gates") by an adviser or fund governing body *(this question relates to an adviser's or governing body's right to impose a restriction and not just whether a restriction has been imposed)* ..... | |
| (d) | Is subject to a suspension of investor withdrawals/redemptions *(this question relates to whether a suspension is currently effective and not just an adviser's or governing body's right to suspend)* ..... | |
| (e) | Is subject to a material restriction on investor withdrawals/redemptions (e.g., a "gate") *(this question relates to whether a restriction has been imposed and not just an adviser's or governing body's right to impose a restriction)* ..... | |

50. Investor liquidity (as a % of *net asset value*):

*(Divide the* reporting fund's net asset value *among the periods specified below depending on the shortest period within which investors are entitled, under the fund documents, to withdraw invested funds or receive redemption payments, as applicable. Assume that you would impose gates where applicable but that you would not completely suspend withdrawals/redemptions and that there are no redemption fees. Please base on the notice period before the valuation date rather than the date proceeds would be paid to investors.)*

*(The total should add up to approximately 100%.)*

**% of *NAV* locked for**

| Form PF Section 2b | Information about *qualifying hedge funds* that you advise (to be completed by *large private fund advisers* only) | Page 31 of 42 |
|---|---|---|

| | |
|---|---|
| 1 day or less | |
| 2 days – 7 days | |
| 8 days – 30 days | |
| 31 days – 90 days | |
| 91 days – 180 days | |
| 181 days – 365 days | |
| Longer than 365 days | |

**Section 3: Information about *liquidity funds* that you advise.**

You must complete a separate Section 3 for each *liquidity fund* that you advise. However, with respect to *master-feeder arrangements* and *parallel fund structures*, you may report collectively or separately about the component funds as provided in the General Instructions.

**Item A. *Reporting fund* identifying and operational information**

51. (a) Name of the *reporting fund*.....
    (b) *Private fund* identification number of the *reporting fund*.....

52. Does the *reporting fund* use the amortized cost method of valuation in computing its *net asset value*?
    ☐ Yes ☐ No

53. Does the *reporting fund* use the penny rounding method of pricing in computing its *net asset value*?
    ☐ Yes ☐ No

54. (a) Does the *reporting fund* have a policy of complying with the *risk limiting conditions* of *rule 2a-7*?
    ☐ Yes ☐ No
    (b) If you responded "no" to Question 54(a) above, does the *reporting fund* have a policy of complying with the following provisions of *rule 2a-7*:
    (i) the diversification conditions? ☐ Yes ☐ No
    (ii) the credit quality conditions? ☐ Yes ☐ No
    (iii) the liquidity conditions? ☐ Yes ☐ No
    (iv) the maturity conditions? ☐ Yes ☐ No

**Item B. *Reporting fund* assets**

55. Provide the following information for each month of the *reporting period*.

| | 1st Month | 2nd Month | 3rd Month |
|---|---|---|---|
| (a) Net asset value of *reporting fund* as reported to current and prospective investors..... | | | |
| (b) Net asset value per share of *reporting fund* as reported to current and prospective investors *(to the nearest hundredth of a cent)* ..... | | | |
| (c) *Net asset value per share* of *reporting fund (to the nearest hundredth of a cent; exclude the value of any capital support agreement or similar arrangement)*..... | | | |

| Form PF Section 3 | **Information about *liquidity funds* that you advise** (to be completed by *large private fund advisers* only) | Page 33 of 42 |
|---|---|---|

| | | | | |
|---|---|---|---|---|
| (d) | *WAM* of *reporting fund (in days)* | | | |
| (e) | *WAL* of *reporting fund (in days)* | | | |
| (f) | *7-day gross yield* of *reporting fund (to the nearest hundredth of one percent)* | | | |
| (g) | Dollar amount of the *reporting fund's* assets that are *daily liquid assets* | | | |
| (h) | Dollar amount of the *reporting fund's* assets that are *weekly liquid assets* | | | |
| (i) | Dollar amount of the *reporting fund's* assets that have a *maturity* greater than 397 days | | | |

56. Selected product exposures by *maturity* for *liquidity fund assets under management.*

*(Give the* value *of the* reporting fund's *positions as of the* data reporting date *in each of the following asset classes, divided by* maturity.*)*

*(Include all exposure whether held physically, synthetically or through derivatives. Include any closed out and* OTC *forward positions that have not yet expired/matured. Do not net positions within asset classes. Assets held in side-pockets should be included as assets of the* reporting fund. *Each asset should only be included in a single asset class.)*

| | ***Maturity*** | | | | |
|---|---|---|---|---|---|
| | **1 day or less** | **2 days to 7 days** | **8 days to 30 days** | **31 days to 397 days** | **Greater than 397 days** |
| ***Sovereign bonds* and municipal bonds** | | | | | |
| *U.S. treasury securities* | | | | | |
| *Agency securities* | | | | | |
| *GSE bonds* | | | | | |
| *Sovereign bonds* issued by *G10* countries other than the U.S. | | | | | |
| Other *sovereign bonds* (including supranational bonds) | | | | | |
| U.S. state and local bonds | | | | | |
| **Instruments issued by *U.S. financial institutions*** | | | | | |
| Unsecured commercial paper | | | | | |
| *ABCP* | | | | | |
| *ABS* and *structured products* other than *ABCP* | | | | | |
| Certificates of deposit | | | | | |
| Floating rate notes | | | | | |
| *Repos* | | | | | |
| Where assets purchased are *U.S. treasury securities* or *agency securities* | | | | | |

| Form PF Section 3 | Information about *liquidity funds* that you advise (to be completed by *large private fund advisers* only) | Page 34 of 42 |
|---|---|---|

| | | | | | |
|---|---|---|---|---|---|
| Where assets purchased are *corporate bonds* that are *investment grade* | | | | | |
| Where other assets are purchased | | | | | |

**Instruments issued by companies organized in the U.S. (other than *U.S. financial institutions*)**

| | | | | | |
|---|---|---|---|---|---|
| Unsecured commercial paper | | | | | |
| *Corporate bonds* (other than unsecured commercial paper), loans, *ABS*, *structured products* and *repos*, combined | | | | | |

**Instruments issued by *non-U.S. financial institutions***

| | | | | | |
|---|---|---|---|---|---|
| Unsecured commercial paper | | | | | |
| *ABCP* | | | | | |
| *ABS* and *structured products* other than *ABCP* | | | | | |
| Certificates of deposit | | | | | |
| Floating rate notes | | | | | |
| *Repos* | | | | | |
| Where assets purchased are *U.S. treasury securities* or *agency securities* | | | | | |
| Where assets purchased are *corporate bonds* that are *investment grade* | | | | | |
| Where other assets are purchased | | | | | |

**Instruments issued by companies organized outside the U.S. (other than *non-U.S. financial institutions*)**

| | | | | | |
|---|---|---|---|---|---|
| Unsecured commercial paper | | | | | |
| *Corporate bonds* (other than unsecured commercial paper), loans, *ABS*, *structured products* and *repos*, combined | | | | | |

**Other instruments**

| | | | | | |
|---|---|---|---|---|---|
| Investments in *money market funds* | | | | | |
| Investments in *liquidity funds* | | | | | |
| *Cash and cash equivalents* (other than instruments covered by another category above) | | | | | |

57. For each open position of the *reporting fund* that represents 5% or more of the *reporting fund's net asset value*, provide the information requested below.

| Form PF Section 3 | **Information about *liquidity funds* that you advise** (to be completed by *large private fund advisers* only) | Page 35 of 42 |
|---|---|---|

| | % of *net asset value* | *Sub-asset class* |
|---|---|---|
| (a) First month of the *reporting period* | | |
| (i) Position | | [drop-down of asset classes] |
| (ii) Position | | [drop-down of asset classes] |
| (b) Second month of the *reporting period* | | |
| (i) Position | | [drop-down of asset classes] |
| (ii) Position | | [drop-down of asset classes] |
| (c) Third month of the *reporting period* | | |
| (i) Position | | [drop-down of asset classes] |
| (ii) Position | | [drop-down of asset classes] |

## Item C. Financing information

58. (a) Is the amount of total *borrowing* reported in response to Question 12 equal to or greater than 5% of the *reporting fund's net asset value*?

☐ Yes ☐ No

(b) If you responded "yes" to Question 58(a) above, divide the dollar amount of total *borrowing* reported in response to Question 12 among the periods specified below depending on the type of *borrowing*, the type of creditor and the latest date on which the reporting fund may repay the principal amount of the *borrowing* without defaulting or incurring penalties or additional fees.

*(If a creditor (or syndicate or administrative/collateral agent) is permitted to vary unilaterally the economic terms of the financing or to revalue posted collateral in its own discretion and demand additional collateral, then the* borrowing *should be deemed to have a maturity of 1 day or less for purposes of this question. For amortizing loans, each amortization payment should be treated separately and grouped with other* borrowings *based on its payment date.)*

*(The total amount of* borrowings *reported below should equal approximately the total amount of* borrowing *reported in response to Question 12.)*

| | 1 day or less | 2 days to 7 days | 8 days to 30 days | 31 days to 397 days | Greater than 397 days |
|---|---|---|---|---|---|
| (i) *Unsecured borrowing* | | | | | |
| (A) *U.S. financial institutions* | | | | | |
| (B) *Non-U.S. financial institutions* | | | | | |
| (C) Other U.S. creditors | | | | | |
| (D) Other non-U.S. creditors | | | | | |
| (ii) *Secured borrowing* | | | | | |
| (A) *U.S. financial institutions* | | | | | |

| | | | | | |
|---|---|---|---|---|---|
| (B) *Non-U.S. financial institutions* | | | | | |
| (C) Other U.S. creditors | | | | | |
| (D) Other non-U.S. creditors | | | | | |

59. (a) Does the *reporting fund* have in place one or more committed liquidity facilities?

☐ Yes ☐ No

(b) If you responded "yes" to Question 59(a), provide the aggregate dollar amount of commitments under the liquidity facilities ..... [ ]

**Item D. Investor information**

60. Specify the number of outstanding shares or units of the *reporting fund's* stock or similar securities ..... [ ]

61. Provide the following information regarding investor concentration.

*(For purposes of this question, if you know that two or more beneficial owners of the* reporting fund *are* affiliated *with each other, you should treat them as a single beneficial owner.)*

(a) Specify the percentage of the *reporting fund's* equity that is beneficially owned by the beneficial owner having the largest equity interest in the *reporting fund* ..... [ ]

(b) How many investors beneficially own 5% or more of the *reporting fund's* equity? [ ]

62. Provide a good faith estimate, as of the *data reporting date*, of the percentage of the *reporting fund's* outstanding equity that was purchased using *securities lending collateral* ..... [ ]

63. Provide the following information regarding the restrictions on withdrawals and redemptions by investors in the *reporting fund.*

*(For Questions 63 and 64, please note that the standards for imposing suspensions and restrictions on withdrawals/redemptions may vary among funds. Make a good faith determination of the provisions that would likely be triggered during conditions that you view as significant market stress.)*

As of the *data reporting date*, what percentage of the *reporting fund's net asset value*, if any:

(a) May be subjected to a suspension of investor withdrawals/redemptions by an adviser or fund governing body *(this question relates to an adviser's or governing body's right to suspend and not just whether a suspension is currently effective)* ..... [ ]

(b) May be subjected to material restrictions on investor withdrawals/ redemptions (e.g., "gates") by an adviser or fund governing body *(this question relates to an adviser's or governing body's right to impose a restriction and not just whether a restriction has been imposed)* ..... [ ]

| Form PF Section 3 | **Information about *liquidity funds* that you advise** (to be completed by *large private fund advisers* only) | Page 37 of 42 |
|---|---|---|

| | |
|---|---|
| (c) Is subject to a suspension of investor withdrawals/redemptions *(this question relates to whether a suspension is currently effective and not just an adviser's or governing body's right to suspend)* ..... | |
| (d) Is subject to a material restriction on investor withdrawals/redemptions (e.g., a "gate") *(this question relates to whether a restriction has been imposed and not just an adviser's or governing body's right to impose a restriction)* ..... | |

64. Investor liquidity (as a % of *net asset value*):

*(Divide the* reporting fund's net asset value *among the periods specified below depending on the shortest period within which investors are entitled, under the fund documents, to withdraw invested funds or receive redemption payments, as applicable. Assume that you would impose gates where applicable but that you would not completely suspend withdrawals/redemptions and that there are no redemption fees. Please base on the notice period before the valuation date rather than the date proceeds would be paid to investors. The total should add up to 100%.)*

| | **% of *NAV* locked for** |
|---|---|
| 1 day or less ..... | |
| 2 days – 7 days ..... | |
| 8 days – 30 days ..... | |
| 31 days – 90 days ..... | |
| 91 days – 180 days ..... | |
| 181 days – 365 days ..... | |
| Longer than 365 days ..... | |

**Section 4: Information about *private equity funds* that you advise.**

You must complete a separate Section 4 for each *private equity fund* that you advise. However, with respect to *master-feeder arrangements* and *parallel fund structures*, you may report collectively or separately about the component funds as provided in the General Instructions.

**Item A. *Reporting fund* identifying information**

65. (a) Name of the *reporting fund* .....
    (b) *Private fund* identification number of the *reporting fund* .....

**Item B. *Reporting fund* financing and investments**

66. (a) Do you or any of your *related persons* guarantee, or are you or any of your *related persons* otherwise obligated to satisfy, the obligations of any portfolio company in which the *reporting fund* invests?

    *(You are not required to respond "yes" simply because a portfolio company is a primary obligor and is also your* related person.*)*

    ☐ Yes ☐ No

    (b) If you responded "yes" to Question 66(a) above, report the total dollar *value* of all such guarantees and other obligations.....

67. What is the weighted average debt-to-equity ratio of the *controlled portfolio companies* in which the *reporting fund* invests *(expressed as a decimal to the tenths place)*?

    *(Weighting should be based on gross assets of each* controlled portfolio company *as a percentage of the aggregate gross assets of the* reporting fund's controlled portfolio companies.*)*

68. What is the highest debt-to-equity ratio of any *controlled portfolio company* in which the reporting fund invests *(expressed as a decimal to the tenths place)*?

69. What is the lowest debt-to-equity ratio of any *controlled portfolio company* in which the reporting fund invests *(expressed as a decimal to the tenths place)*?

70. What is the aggregate gross asset value of the *reporting fund's controlled portfolio companies*?

71. What is the aggregate principal amount of *borrowings* categorized as current liabilities on the most recent balance sheets of the *reporting fund's controlled portfolio companies*?

72. What is the aggregate principal amount of *borrowings* categorized as long-term liabilities on the most recent balance sheets of the *reporting fund's controlled portfolio companies*?

| Form PF Section 4 | **Information about *private equity funds* that you advise** (to be completed by *large private fund advisers* only) | Page 39 of 42 |
|---|---|---|

73. What percentage of the aggregate *borrowings* of the *reporting fund's controlled portfolio companies* is payment-in-kind (PIK) or zero-coupon debt? ☐

74. During the *reporting period*, did the *reporting fund* or any of its *controlled portfolio companies* experience an event of default under any of its indentures, loan agreements or other instruments evidencing obligations for borrowed money?

*(Do not include a potential event of default (i.e., an event that would constitute an event of default with the giving of notice, the passage of time or otherwise) unless it has become an event of default.)*

☐ Yes ☐ No

75. (a) Does any *controlled portfolio company* of the *reporting fund* have in place one or more bridge loans or commitments (subject to customary conditions) for a bridge loan?

☐ Yes ☐ No

(b) If you responded "yes" to Question 75(a), identify each *person* that has provided all or part of any bridge loan or commitment to the relevant *controlled portfolio company*. For each such *person*, provide the applicable outstanding amount or commitment amount.

| Name | Outstanding amount of financing, if drawn | Amount of commitment, if undrawn |
|---|---|---|
| [repeat drop-down list of creditor/counterparty names]<br>Other: _____ | | |
| [repeat drop-down list of creditor/counterparty names]<br>Other: _____ | | |
| [repeat drop-down list of creditor/counterparty names]<br>Other: _____ | | |

76. (a) Is any of the *reporting fund's controlled portfolio companies* a *financial industry portfolio company*?

☐ Yes ☐ No

(b) If you responded "yes" to Question 76(a), then for each of the *reporting fund's controlled portfolio companies* that constitutes a *financial industry portfolio company*, provide the following information.

| Legal Name | Address of principal office (include city, state and country) | *NAICS code* | *LEI*, if any | Debt-to-equity ratio of portfolio company | Gross asset value of portfolio company | % of *reporting fund's* gross assets invested in this portfolio company | % of portfolio company beneficially owned by the *reporting fund* |
|---|---|---|---|---|---|---|---|
| | | | | | | | |

| Form PF Section 4 | **Information about *private equity funds* that you advise** (to be completed by *large private fund advisers* only) | Page 40 of 42 |
|---|---|---|

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |

77. Provide a breakdown of the *reporting fund's* investments in portfolio companies by industry, based on the *NAICS codes* of the companies.

*(The total should add up to 100%.)*

| *NAICS code* | **% of *reporting fund's* total portfolio company investments** |
|---|---|
| | |
| | |
| | |

78. (a) Provide a geographical breakdown of the gross value of the *reporting fund's* investments in portfolio companies (by percentage of the total gross value of the *reporting fund's* investments in portfolio companies).

*(The total should add up to approximately 100%.)*

| | **Region** | **%** |
|---|---|---|
| (i) | Africa | |
| (ii) | Asia and Pacific (other than the Middle East) | |
| (iii) | Europe (*EEA*) | |
| (iv) | Europe (other than *EEA*) | |
| (v) | Middle East | |
| (vi) | North America | |
| (vii) | South America | |
| (viii) | Supranational | |

(b) Provide the gross value of the *reporting fund's* investments in portfolio companies in the following countries (by percentage of the total gross value of the *reporting fund's* investments in portfolio companies).

*(The total may not add up to 100%.)*

| | **Country** | **%** |
|---|---|---|
| (i) | Brazil | |
| (ii) | China (including Hong Kong) | |
| (iii) | India | |
| (iv) | Japan | |
| (v) | Russia | |
| (vi) | United States | |

79. If you or any of your *related persons* (other than the *reporting fund*) invest in any companies that are portfolio companies of the *reporting fund*, provide the aggregate dollar amount of these investments.

| Form PF<br>Section 5 | **Request for temporary hardship exemption**<br>(to be completed by *private fund advisers* requesting exemption) | Page 42 of 42 |
|---|---|---|

**Section 5: Request for temporary hardship exemption.**

You must complete Section 5 if you are requesting a temporary hardship exemption pursuant to *SEC* rule 204(b)-1(f).

A. For which type of Form PF filing are you requesting a temporary hardship exemption?

1. If you are not a *large hedge fund adviser* or *large liquidity fund adviser*:
   - ☐ Initial filing
   - ☐ *Annual update*
   - ☐ Final filing
2. If you are a *large hedge fund adviser* or *large liquidity fund adviser*:
   - ☐ Initial filing
   - ☐ *Quarterly update*
   - ☐ Filing to transition to annual reporting
   - ☐ Final filing

B. Provide the following information regarding your request for a temporary hardship exemption (attach a separate page if additional space is needed).

1. Describe the nature and extent of the temporary technical difficulties when you attempt to submit the filing to the Form PF filing system on the IARD:

2. Describe the extent to which you previously have submitted documents in electronic format with the same hardware and software that you are unable to use to submit this filing:

3. Describe the burden and expense of employing alternative means (e.g., a service provider) to submit the filing in electronic format in a timely manner:

4. Provide any other reasons that a temporary hardship exemption is warranted:

## GLOSSARY OF TERMS

| | |
|---|---|
| *ABCP* | Asset backed commercial paper, including (but not limited to) structured investment vehicles, single-seller conduits and multi-seller conduit programs.<br>Do not include any positions held via *CDS* (these should be recorded in the *CDS* category). |
| *ABS* | Securities derived from the pooling and repackaging of cash flow producing financial assets. |
| *Advisers Act* | U.S. Investment Advisers Act of 1940, as amended. |
| *Affiliate* | With respect to any *person*, any other *person* that directly or indirectly *controls*, is *controlled* by or is under common *control* with such person. The term *affiliated* means that two or more *persons* are *affiliates*. |
| *Agency securities* | Any security issued by a *person* controlled or supervised by and acting as an instrumentality of the government of the United States pursuant to authority granted by the Congress of the United States and guaranteed as to principal or interest by the United States.<br>Include bond derivatives. |
| *Annual update* | An update of this Form PF with respect to any fiscal year. |
| *Borrowings* | *Secured borrowings* and *unsecured borrowings*, collectively. |
| *bp* | Basis points. |
| *Cash and cash equivalents* | Cash (including U.S. and non-U.S. currencies), cash equivalents and government securities. For purposes of this definition:<br>• cash equivalents are: (i) bank deposits, certificates of deposit, bankers acceptances and similar bank instruments held for investment purposes; (ii) the net cash surrender value of an insurance policy; and (iii) investments in *money market funds*; and<br>• government securities are: (i) *U.S. treasury securities*; (ii) *agency securities*; and (iii) any certificate of deposit for any of the foregoing. |
| *CCP* | Central clearing counterparties (or central clearing houses) (for example, CME Clearing, The Depository Trust & Clearing Corporation, Fedwire and LCH Clearnet Limited). |
| *CDO/CLO* | Collateralized debt obligations and collateralized loan obligations (including, in each case, cash flow and synthetic) other than *MBS*.<br>Do not include any positions held via *CDS* (these should be recorded in the *CDS* category). |
| *CDS* | Credit default swaps, including any *LCDS*. |
| *CEA* | U.S. Commodity Exchange Act, as amended. |
| *CFTC* | U.S. Commodity Futures Trading Commission. |
| *Combined money market and liquidity fund assets under management* | With respect to any adviser, the sum of: (i) such adviser's *liquidity fund assets under management*; and (ii) such adviser's *regulatory assets under management* that are attributable to *money market funds* that it advises. |

| | |
|---|---|
| *Committed capital* | Any commitment pursuant to which a *person* is obligated to acquire an interest in, or make capital contributions to, the *private fund*. |
| *Commodities* | Has the meaning provided in the *CEA*. Include *ETFs* that hold commodities.<br>For questions regarding *commodity* derivatives, provide the *value* of all exposure to *commodities* that you do not hold physically, whether held synthetically or through derivatives (whether cash or physically settled). |
| *Commodity pool* | A "commodity pool," as defined in section 1a(10) of the *CEA*. |
| *Control* | Has the meaning provided in *Form ADV*. The term *controlled* has a corresponding meaning. |
| *Controlled portfolio company* | With respect to any *private equity fund*, a portfolio company that is *controlled* by the *private equity fund*, either alone or together with the *private equity fund's affiliates* or other *persons* that are, as of the *data reporting date*, part of a club or consortium including the *private equity fund*. |
| *Convertible bonds* | Convertible *corporate bonds* (not yet converted into shares or cash).<br>Include bond derivatives, but do not include any positions held via *CDS* (these should be recorded in the *CDS* category). |
| *Corporate bonds* | Bonds, debentures and notes, including commercial paper, issued by corporations and other non-governmental entities.<br>Do not include preferred equities. Include bond derivatives, but do not include any positions held via *CDS* (these should be recorded in the *CDS* category). |
| *CPO* | A "commodity pool operator," as defined in section 1a(11) of the *CEA*. |
| *Credit derivatives* | *Single name CDS*, *index CDS* and *exotic CDS*. |
| *Crude oil* | For questions regarding crude oil derivatives, provide the *value* of all exposure to crude oil that you do not hold physically, whether held synthetically or through derivatives (whether cash or physically settled). |
| *CTA* | A "commodity trading advisor," as defined in section 1a(12) of the *CEA*. |
| *Daily liquid assets* | Has the meaning provided in *rule 2a-7*. |
| *Data reporting date* | In the case of an initial filing, the *data reporting date* is the last calendar day of your most recently completed fiscal year (or, if you are a *large hedge fund adviser* or *large liquidity fund adviser*, your most recently completed fiscal quarter).<br>In the case of an *annual update*, the *data reporting date* is the last calendar day of your most recently completed fiscal year.<br>In the case of a *quarterly update*, the *data reporting date* is the last calendar day of your most recently completed fiscal quarter. |
| *Dependent parallel managed account* | With respect to any *private fund*, any related *parallel managed account* other than a *parallel managed account* that individually (or together with other *parallel managed accounts* that pursue substantially the same investment objective and strategy and invest side by side in substantially the same positions) has a *gross asset value* greater than the *gross asset value* of such *private fund* (or, if such *private fund* is a *parallel fund*, the *gross asset value* of the *parallel fund structure* of which it is a part). |
| *Derivative* | All synthetic or derivative exposures to equities, including preferred equities, that |

| | |
|---|---|
| *exposures to unlisted equities* | are not listed on a regulated exchange. Include single stock futures, equity index futures, dividend swaps, total return swaps (contracts for difference), warrants and rights. |
| *EEA* | The European Economic Area. As of the effective date of this Form PF, the *EEA* is comprised of: (i) the European Union member states, which are Austria, Belgium, Bulgaria, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom; and (ii) Iceland, Liechtenstein and Norway. |
| *ETF* | Exchange-traded fund. |
| *Exempt reporting adviser* | Has the meaning provided in *Form ADV*. |
| *Exotic CDS* | *CDS*s referencing bespoke baskets or tranches of *CDOs*, *CLOs* and other structured investment vehicles, including credit default tranches. |
| *Feeder fund* | See *master-feeder arrangement*. |
| *Financial industry portfolio company* | Any of the following: (i) a nonbank financial company, as defined in the Financial Stability Act of 2010; or (ii) any bank, savings association, bank holding company, financial holding company, savings and loan holding company, credit union or other similar company regulated by a federal, state or foreign banking regulator, including the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the National Credit Union Administration or the Farm Credit Administration. |
| *Firm* | The *private fund adviser* completing or amending this Form PF. |
| *Foreign exchange derivative* | Any derivative whose underlying asset is a currency other than U.S. dollars or is an exchange rate. Cross-currency interest rate swaps should be included in *foreign exchange derivatives* and excluded from *interest rate derivatives*.<br>Only one currency side of every transaction should be counted. |
| *Form ADV* | Form ADV, as promulgated and amended by the *SEC*. |
| *Form ADV Section 7.B.1* | Section 7.B.1 of Schedule D to *Form ADV*. |
| *G10* | The Group of Ten. As of the effective date of this Form PF, the *G10* is comprised of: Belgium, Canada, France, Germany, Italy, Japan, the Netherlands, Sweden, Switzerland, the United Kingdom and the United States. |
| *Gold* | For questions regarding gold derivatives, provide the *value* of all exposure to gold that you do not hold physically, whether held synthetically or through derivatives (whether cash or physically settled). |
| *Government entity* | Has the meaning provided in *Form ADV*. |
| *Gross asset value* | Value of gross assets, calculated in accordance with Part 1A, Instruction 6.e(3) of *Form ADV*. |
| *Gross notional value* | The gross nominal or notional value of all transactions that have been entered into but not yet settled as of the *data reporting date*. For contracts with variable |

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| | nominal or notional principal amounts, the basis for reporting is the nominal or notional principal amounts as of the *data reporting date*. |
| *GSE bonds* | Notes, bonds and debentures issued by private entities sponsored by the U.S. federal government but not guaranteed as to principal and interest by the U.S. federal government.<br>Include bond derivatives, but do not include any positions held via *CDS* (these should be recorded in the *CDS* category). |
| *Hedge fund* | Any *private fund* (other than a *securitized asset fund*):<br>(a) with respect to which one or more investment advisers (or *related persons* of investment advisers) may be paid a performance fee or allocation calculated by taking into account unrealized gains (other than a fee or allocation the calculation of which may take into account unrealized gains solely for the purpose of reducing such fee or allocation to reflect net unrealized losses);<br>(b) that may borrow an amount in excess of one-half of its *net asset value* (including any *committed capital*) or may have gross notional exposure in excess of twice its *net asset value* (including any *committed capital*); or<br>(c) that may sell securities or other assets short or enter into similar transactions (other than for the purpose of hedging currency exposure or managing duration).<br>Solely for purposes of this Form PF, any *commodity pool* about which you are reporting or required to report on Form PF is categorized as a *hedge fund*.<br>For purposes of this definition, do not net long and short positions. Include any borrowings or notional exposure of another person that are guaranteed by the *private fund* or that the *private fund* may otherwise be obligated to satisfy. |
| *Hedge fund assets under management* | With respect to any adviser, *hedge fund assets under management* are the portion of such adviser's *regulatory assets under management* that are attributable to *hedge funds* that it advises. |
| *Index CDS* | *CDSs* referencing a standardized basket of credit entities, including *CDS* indices and indices referencing leveraged loans. |
| *Investment grade* | A security is *investment grade* if it is sufficiently liquid that it can be sold at or near its carrying value within a reasonably short period of time and is subject to no greater than moderate credit risk. |
| *Interest rate derivative* | Any derivative whose underlying asset is the obligation to pay or the right to receive a given amount of money accruing interest at a given rate. Cross-currency interest rate swaps should be included in *foreign exchange derivatives* and excluded from *interest rate derivatives*.<br>This information must be presented in terms of 10-year bond-equivalents. |
| *Investments in external private funds* | Investments in *private funds* that neither you nor your *related persons* advise (other than cash management funds). |
| *Investments in internal private funds* | Investments in *private funds* that you or any of your *related persons* advise (other than cash management funds). |
| *Investments in other* | Any investment not included in another *sub-asset class*. |

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| *sub-asset classes* | |
| *Investments in registered investment companies* | Investments in registered investment companies (other than cash management funds, such as money market funds, and *ETFs*).<br>*ETFs* should be categorized based on the assets that the fund holds and should not be included in this category. |
| *Large hedge fund adviser* | Any *private fund adviser* that is required to file Section 2a of Form PF.<br>See Instruction 3 to determine whether you are required to file this section. |
| *Large liquidity fund adviser* | Any *private fund adviser* that is required to file Section 3 of Form PF.<br>See Instruction 3 to determine whether you are required to file this section. |
| *Large private equity adviser* | Any *private fund adviser* that is required to file Section 4 of Form PF.<br>See Instruction 3 to determine whether you are required to file this section. |
| *Large private fund adviser* | Any *large hedge fund adviser*, *large liquidity fund adviser* or *large private equity adviser*. |
| *LEI* | With respect to any company, the "legal entity identifier" assigned by or on behalf of an internationally recognized standards setting body and required for reporting purposes by the U.S. Department of the Treasury's Office of Financial Research or a financial regulator. In the case of a financial institution, if a "legal entity identifier" has not been assigned, then provide the RSSD ID assigned by the National Information Center of the Board of Governors of the Federal Reserve System, if any. |
| *LCDS* | Loan credit default swaps. |
| *Leveraged loans* | Loans that are made to entities whose senior unsecured long term indebtedness is *non-investment grade*. This may include loans made in connection with the financing structure of a leveraged buyout.<br>Do not include any positions held via *LCDS* (these should be recorded in the *CDS* category). |
| *Liquidity fund* | Any *private fund* that seeks to generate income by investing in a portfolio of short term obligations in order to maintain a stable *net asset value* per unit or minimize principal volatility for investors. |
| *Liquidity fund assets under management* | With respect to any adviser, *liquidity fund assets under management* are the portion of such adviser's *regulatory assets under management* that are attributable to *liquidity funds* it advises (including *liquidity funds* that are also *hedge funds*). |
| *Listed equity* | Direct beneficial ownership of equities, including preferred equities, listed on a regulated exchange.<br>Do not include synthetic or derivative exposures to equities. *ETFs* should be categorized based on the assets that the fund holds and should only be included in *listed equities* if the fund holds *listed equities* (e.g., a commodities *ETF* should be categorized based on the commodities it holds). |
| *Listed equity derivatives* | All synthetic or derivative exposures to equities, including preferred equities, listed on a regulated exchange.<br>Include single stock futures, equity index futures, dividend swaps, total return swaps (contracts for difference), warrants and rights. |

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| *LV* | *Value* of long positions, measured as specified in Instruction 15. |
| *Master fund* | See *master-feeder arrangement*. |
| *Master-feeder arrangement* | An arrangement in which one or more funds ("*feeder funds*") invest all or substantially all of their assets in a single *private fund* ("*master fund*"). A fund would also be a *feeder fund* investing in a *master fund* for purposes of this definition if it issued multiple classes (or series) of shares or interests and each class (or series) invests substantially all of its assets in a single *master fund*. |
| *Maturity* | The maturity of the relevant asset, determined without reference to the maturity shortening provisions contained in paragraph (d) of *rule 2a-7* regarding interest rate readjustments. |
| *MBS* | Mortgage backed securities, including residential, commercial and agency.<br>Do not include any positions held via *CDS* (these should be recorded in the *CDS* category). |
| *Money market fund* | Has the meaning provided in *rule 2a-7*. |
| *NAICS code* | With respect to any company, the six-digit North American Industry Classification System code that best describes the company's primary business activity and principal source of revenue. If the company reports a business activity code to the U.S. Internal Revenue Service, you may rely on that code for this purpose. |
| *Natural gas* | For questions regarding natural gas derivatives, provide the *value* of all exposure to natural gas that you do not hold physically, whether held synthetically or through derivatives (whether cash or physically settled). |
| *Net assets under management* | *Net assets under management* are your *regulatory assets under management* minus any outstanding indebtedness or other accrued but unpaid liabilities. |
| *Net asset value* or *NAV* | With respect to any *reporting fund*, the gross assets reported in response to Question 8 minus any outstanding indebtedness or other accrued but unpaid liabilities. |
| *NFA* | The National Futures Association. |
| *Non-investment grade* | A security is *non-investment grade* if it is not an *investment grade* security. |
| *Non-U.S. financial institution* | Any of the following: (i) a financial institution chartered outside the United States; (ii) a financial institution that is separately incorporated or otherwise organized outside the United States but has a parent that is a financial institution chartered in the United States; or (iii) a branch or agency that resides in the United States but has a parent that is a financial institution chartered outside the United States. |
| *OTC* | With respect to any instrument, the trading of that instrument over the counter. |
| *Other ABS* | *ABS* products that are not covered by another *sub-asset class*.<br>Do not include any positions held via *CDS* (these should be recorded in the *CDS* category). |
| *Other commodities* | *Commodities* other than *crude oil*, *natural gas*, *gold* and *power*. All types of oil and energy products (aside from *crude oil* and *natural gas*), including (but not |

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| | limited to) ethanol, heating oil propane and gasoline, should be included in this category.<br>For questions regarding *other commodity* derivatives, provide the *value* of all exposure to *other commodities* that you do not hold physically, whether held synthetically or through derivatives (whether cash or physically settled). |
| *Other derivatives* | Any derivative not included in another *sub-asset class*. |
| *Other loans* | All loans other than *leveraged loans*. *Other loans* includes (but is not limited to) bilateral or syndicated loans to corporate entities.<br>Do not include any positions held via *LCDS* (these should be recorded in the *CDS* category) or certificates of deposit. |
| *Other private fund* | Any *private fund* that is not a *hedge fund, liquidity fund, private equity fund, real estate fund, securitized asset fund* or *venture capital fund*. |
| *Other structured products* | Any *structured products* not included in another *sub-asset class*.<br>Do not include any positions held via *CDS* (these should be recorded in the *CDS* category). |
| *Parallel fund* | See *parallel fund structure*. |
| *Parallel fund structure* | A structure in which one or more *private funds* (each, a "*parallel fund*") pursues substantially the same investment objective and strategy and invests side by side in substantially the same positions as another *private fund*. |
| *Parallel managed account* | With respect to any *private fund*, a *parallel managed account* is any managed account or other pool of assets that you advise and that pursues substantially the same investment objective and strategy and invests side by side in substantially the same positions as the identified *private fund*. |
| *Person* | Has the meaning provided in *Form ADV*. |
| *Power* | For questions regarding power derivatives, provide the *value* of all exposure to power that you do not hold physically, whether held synthetically or through derivatives (whether cash or physically settled). |
| *Principal office and place of business* | Has the meaning provided in *Form ADV*. |
| *Private equity fund* | Any *private fund* that is not a *hedge fund, liquidity fund, real estate fund, securitized asset fund* or *venture capital fund* and does not provide investors with redemption rights in the ordinary course. |
| *Private equity fund assets under management* | With respect to any adviser, *private equity fund assets under management* are the portion of such adviser's *regulatory assets under management* that are attributable to *private equity funds* it advises. |
| *Private fund* | Any issuer that would be an investment company as defined in section 3 of the Investment Company Act of 1940 but for section 3(c)(1) or 3(c)(7) of that Act.<br>If any *private fund* has issued two or more series (or classes) of equity interests whose values are determined with respect to separate portfolios of securities and other assets, then each such series (or class) should be regarded as a separate *private fund*. This only applies with respect to series (or classes) that you manage as if they were separate funds and not a fund's side pockets or similar arrangements. |

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| *Private fund adviser* | Any investment adviser that (i) is registered or required to register with the *SEC* (including any investment adviser that is also registered or required to register with the *CFTC* as a *CPO* or *CTA*) and (ii) advises one or more *private funds*. |
| *Private fund assets under management* | With respect to any adviser, *private fund assets under management* are the portion of such adviser's *regulatory assets under management* that are attributable to *private funds* it advises. |
| *Qualifying hedge fund* | Any *hedge fund* that has a *net asset value* (individually or in combination with any *feeder funds, parallel funds* and/or *dependent parallel managed accounts*) of at least $500 million as of the last day of any month in the fiscal quarter immediately preceding your most recently completed fiscal quarter. |
| *Quarterly update* | An update of this Form PF with respect to any fiscal quarter. |
| *Real estate fund* | Any *private fund* that is not a *hedge fund*, that does not provide investors with redemption rights in the ordinary course and that invests primarily in real estate and real estate related assets. |
| *Regulatory assets under management* | Regulatory assets under management, calculated in accordance with Part 1A, Instruction 5.b of *Form ADV*. |
| *Related person* | Has the meaning provided in *Form ADV*. |
| *Repo* | Any purchase of securities coupled with an agreement to sell the same (or similar) securities at a later date at an agreed upon price.<br>Do not include any positions held via *CDS* (these should be recorded in the *CDS* category). |
| *Reporting period* | With respect to an *annual update*, the twelve month period ending on the *data reporting date*.<br>With respect to a *quarterly update*, the three month period ending on the *data reporting date*. |
| *Reporting fund* | A *private fund* as to which you must report information on Form PF.<br>Typically, each *private fund* is a *reporting fund*. However, if you are reporting aggregate information for any *master-feeder arrangement* or *parallel fund structure*, only the *master fund* or the largest *parallel fund* in the structure (as applicable) should be identified as a *reporting fund*. See Instructions 3 and 5. |
| *Reverse repo* | Any sale of securities coupled with an agreement to repurchase the same (or similar) securities at a later date at an agreed upon price. |
| *Risk limiting conditions* | The conditions specified in paragraphs (c)(2) (maturity), (c)(3) (quality), (c)(4) (diversification), and (c)(5) (liquidity) of *rule 2a-7*. |
| *Rule 2a-7* | Rule 2a-7 promulgated by the *SEC* under the Investment Company Act of 1940. |
| *SEC* | U.S. Securities and Exchange Commission. |
| *Secured borrowing* | Obligations for borrowed money in respect of which the borrower has posted collateral or other credit support. For purposes of this definition, *reverse repos* are *secured borrowings*. |
| *Securities lending collateral* | Cash pledged to the *reporting fund's* beneficial owners as collateral in respect of securities lending arrangements. |
| *Securitized asset* | Any *private fund* whose primary purpose is to issue asset backed securities and |

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| *fund* | whose investors are primarily debt-holders. |
| *Separately operated* | For purposes of this Form, a *related person* is *separately operated* if you are not required to complete Section 7.A. of Schedule D to *Form ADV* with respect to that *related person.* |
| *7-day gross yield* | Based on the 7 days ended on the *data reporting date*, calculate the *liquidity fund*'s yield by determining the net change, exclusive of capital changes and income other than investment income, in the value of a hypothetical pre-existing account having a balance of one share at the beginning of the period and dividing the difference by the value of the account at the beginning of the base period to obtain the base period return, and then multiplying the base period return by (365/7) with the resulting yield figure carried to the nearest hundredth of one percent. The 7-day gross yield should not reflect a deduction of shareholders fees and fund operating expenses. |
| *Single name CDS* | *CDSs* referencing a single entity. |
| *Sovereign bonds* | Any notes, bonds and debentures issued by a national government (including central governments, other governments and central banks but excluding U.S. state and local governments), whether denominated in a local or foreign currency.<br>Include bond derivatives, but do not include any positions held via *CDS* (these should be recorded in the *CDS* category). |
| *Structured products* | Pre-packaged investment products, typically based on derivatives and including structured notes. |
| *Sub-asset class* | Each sub-asset class identified in Questions 26 and 30. |
| *SV* | *Value* of short positions, measured as specified in Instruction 15. |
| *Unlisted equity* | Direct beneficial ownership of equities, including preferred equities, that are not listed on a regulated exchange.<br>Do not include synthetic or derivative exposures to equities. |
| *U.S. financial institution* | Any of the following: (i) a financial institution chartered in the United States (whether federally-chartered or state-chartered); (ii) a financial institution that is separately incorporated or otherwise organized in the United States but has a parent that is a financial institution chartered outside the United States; or (iii) a branch or agency that resides outside the United States but has a parent that is a financial institution chartered in the United States. |
| *U.S. treasury securities* | Direct obligations of the U.S. Government.<br>Include *U.S. treasury security* derivatives. |
| *Unencumbered cash* | The fund's *cash and cash equivalents* plus the *value* of overnight *repos* used for liquidity management where the assets purchased are *U.S. treasury securities* or *agency securities* minus the sum of the following (without duplication): (i) *cash and cash equivalents* transferred to a collateral taker pursuant to a title transfer arrangement; and (ii) *cash and cash equivalents* subject to a security interest, lien or other encumbrance (this could include *cash and cash equivalents* in an account subject to a control agreement). |
| *Unfunded commitments* | *Committed capital* that has not yet been contributed to the *private equity fund* by investors. |

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| *United States person* | Has the meaning provided in rule 203(m)-1 under the Advisers Act, which includes any natural person that is resident in the United States. |
| *Unsecured borrowing* | Obligations for borrowed money in respect of which the borrower has not posted collateral or other credit support. |
| *Value* | See Instruction 15. |
| *VaR* | For a given portfolio, the loss over a target horizon that will not be exceeded at some specified confidence level. |
| *Venture capital fund* | Any *private fund* meeting the definition of venture capital fund in rule 203(l)-1 of the *Advisers Act*. |
| *WAL* | Weighted average portfolio maturity of a *liquidity fund* calculated taking into account the maturity shortening provisions contained in paragraph (d) of *rule 2a-7*, but determined without reference to the exceptions in paragraph (d) of *rule 2a-7* regarding interest rate readjustments. |
| *WAM* | Weighted average portfolio maturity of a *liquidity fund* calculated taking into account the maturity shortening provisions contained in paragraph (d) of *rule 2a-7*. |
| *Weekly liquid assets* | Has the meaning provided in *rule 2a-7*. |

By the Commodity Futures Trading Commission.

Dated: October 31, 2011.

**David A. Stawick,**

*Secretary.*

By the Securities and Exchange Commission.

Dated: October 31, 2011.

**Elizabeth M. Murphy,**

*Secretary .*

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