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# FEDERAL REGISTER

Vol. 76 Monday,

No. 233 December 5, 2011

Pages 75771–76020

OFFICE OF THE FEDERAL REGISTER

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# Contents

**Federal Register**

Vol. 76, No. 233

Monday, December 5, 2011

**Actuaries, Joint Board for Enrollment**
*See* Joint Board for Enrollment of Actuaries

**Agriculture Department**
*See* Federal Crop Insurance Corporation
*See* Food Safety and Inspection Service
*See* Forest Service
*See* Rural Business-Cooperative Service

**Alcohol and Tobacco Tax and Trade Bureau**
PROPOSED RULES
Proposed Establishment of the Inwood Valley Viticultural Area, 75830–75836
Revisions to Distilled Spirits Plant Operations Reports and Regulations, 75836–75840

**Architectural and Transportation Barriers Compliance Board**
PROPOSED RULES
Accessibility Guidelines for Pedestrian Facilities in the Public Right-of-Way, 75844–75845

**Bureau of Consumer Financial Protection**
PROPOSED RULES
Streamlining Inherited Regulations, 75825–75829

**Bureau of Safety and Environmental Enforcement**
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Pipelines and Pipeline Rights-of-Way, 75894–75897

**Census Bureau**
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Current Population Survey Fertility Supplement, 75869–75870

**Centers for Disease Control and Prevention**
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 75885–75886

**Commerce Department**
*See* Census Bureau
*See* Foreign-Trade Zones Board
*See* International Trade Administration
*See* National Oceanic and Atmospheric Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
National Saltwater Angler Registry and State Exemption Program, 75868–75869

**Commodity Futures Trading Commission**
NOTICES
Meetings:
Technology Advisory Committee, 75874–75875

**Defense Acquisition Regulations System**
NOTICES
Meetings:
Open Source Software, 75875

**Defense Department**
*See* Defense Acquisition Regulations System

**Department of Transportation**
*See* Pipeline and Hazardous Materials Safety Administration

**Energy Department**
*See* Energy Efficiency and Renewable Energy Office
*See* Western Area Power Administration
PROPOSED RULES
Reducing Regulatory Burden, 75798–75799
NOTICES
Plan for Conduct of 2012 Electric Transmission Congestion Study; Correction, 75875–75876

**Energy Efficiency and Renewable Energy Office**
NOTICES
Meetings:
State Energy Advisory Board, 75876

**Environmental Protection Agency**
RULES
California State Implementation Plan; Revisions:
Placer County Air Pollution Control District, 75795–75797
Significant New Use Rules on Certain Chemical Substances; Withdrawal of Two Chemical Substances, 75794–75795
Transportation Conformity Rule:
MOVES Regional Grace Period Extension, 75797
PROPOSED RULES
Approval and Promulgation of Implementation Plans:
Georgia; Infrastructure Requirements for the 1997 8-Hour Ozone National Ambient Air Quality Standards, 75849–75857
State of Tennessee; Prevention of Significant Deterioration and Nonattainment New Source Review Rules, etc., 75845–75849
California State Implementation Plan; Revisions:
Placer County Air Pollution Control District, 75857

**Executive Office of the President**
*See* Science and Technology Policy Office

**Farm Credit Administration**
NOTICES
Meetings; Sunshine Act, 75878

**Federal Aviation Administration**
RULES
Airworthiness Directives:
Eurocopter France Model EC 120B Helicopters, 75772–75774

**Federal Communications Commission**
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 75878–75881

**Federal Crop Insurance Corporation**
**PROPOSED RULES**
Common Crop Insurance:
Prune Crop Insurance Provisions, 75805–75809
General Administrative Regulations:
Mutual Consent Cancellation; Food Security Act of 1985, Implementation; etc., 75799–75805

**Federal Deposit Insurance Corporation**
**NOTICES**
Meetings; Sunshine Act, 75881

**Federal Maritime Commission**
**NOTICES**
Meetings; Sunshine Act, 75881–75882

**Federal Motor Carrier Safety Administration**
**NOTICES**
Qualification of Drivers; Exemption Applications; Vision, 75940–75945

**Federal Railroad Administration**
**NOTICES**
Safety Advisories:
Bridge Walkway Hazards, 75945–75948

**Federal Reserve System**
**NOTICES**
Changes in Bank Control:
Acquisitions of Shares of a Bank or Bank Holding Company, 75882
Acquisitions of Shares of a Savings and Loan Holding Company, 75882
Formations of, Acquisitions by, and Mergers of Bank Holding Companies, 75882–75883

**Federal Trade Commission**
**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals; Correction, 75883
Analysis of Proposed Consent Order To Aid Public Comment:
Facebook, Inc., 75883–75885

**Fish and Wildlife Service**
**PROPOSED RULES**
Endangered and Threatened Wildlife and Plants:
6-Month Extension of Final Determination for the Proposed Listing of the Dunes Sagebrush Lizard, 75858–75859
**NOTICES**
Endangered and Threatened Species Permit Applications, 75897–75898
Meetings:
Sport Fishing and Boating Partnership Council; Teleconference, 75898

**Food and Drug Administration**
**NOTICES**
Determinations That Drug Products Were Not Withdrawn From Sale for Reasons of Safety or Effectiveness:
DEMULEN 1/50–28 (Ethinyl Estradiol; Ethynodiol Diacetate) Tablet and Four Other Drug Products, 75886–75887
SEDASYS Computer-Assisted Personalized Sedation System:
Ethicon Endo-Surgery, Inc. Petition for Review of Denial of Premarket Approval; Meeting Cancellation, 75887

**Food Safety and Inspection Service**
**PROPOSED RULES**
Prior Label Approval System; Generic Label Approval, 75809–75825

**Foreign-Trade Zones Board**
**NOTICES**
Approvals for Subzone Expansion and Expansion of Manufacturing Authority:
North American Shipbuilding, LLC, Foreign-Trade Subzone 124B, Larose, Houma, and Port Fourchon, LA, 75870

**Forest Service**
**NOTICES**
National Forest System Invasive Species Management Policy, 75860–75866
Newspapers Used for Publication of Legal Notices in the Southwestern Region, 75866–75868

**Health and Human Services Department**
*See* Centers for Disease Control and Prevention
*See* Food and Drug Administration
*See* National Institutes of Health
*See* Substance Abuse and Mental Health Services Administration

**Homeland Security Department**
*See* U.S. Citizenship and Immigration Services
*See* U.S. Customs and Border Protection
**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Solicitation of Proposal Information for Award of Public Contracts, 75890–75892

**Housing and Urban Development Department**
**RULES**
Homeless Emergency Assistance and Rapid Transition to Housing:
Defining 'Homeless', 75994–76019
Emergency Solutions Grants Program and Consolidated Plan Conforming Amendments, 75954–75994

**Indian Affairs Bureau**
**NOTICES**
Vacancy on the Osage Tribal Education Committee, 75899

**Interior Department**
*See* Bureau of Safety and Environmental Enforcement
*See* Fish and Wildlife Service
*See* Indian Affairs Bureau
*See* Land Management Bureau
*See* National Park Service

**Internal Revenue Service**
**RULES**
Targeted Populations Under Section 45D(e)(2), 75774–75781
Treasury Inflation-Protected Securities Issued at a Premium, 75781–75782
**PROPOSED RULES**
Treasury Inflation-Protected Securities Issued at a Premium, 75829–75830
**NOTICES**
Meetings:
Taxpayer Advocacy Panel; Cancellation, 75951–75952

**International Trade Administration**
NOTICES
Antidumping Duty Administrative Reviews; Results, Amendments, Extensions, etc.:
Polyethylene Terephthalate Film, Sheet, and Strip From Korea, 75870–75871
Stainless Steel Plate in Coils From Belgium, 75870
Antidumping Duty New Shipper Reviews; Results, Amendments, Extensions, etc.:
Certain Steel Nails From the People's Republic of China, 75871–75872
Antidumping Duty Orders; Continuation:
Certain Helical Spring Lock Washers From Taiwan and the People's Republic of China, 75873

**International Trade Commission**
NOTICES
Investigations; Terminations, Modifications and Rulings:
Certain Electronic Imaging Devices, 75910–75911
Certain Inkjet Ink Supplies and Components Thereof, 75910
Certain Video Game Systems and Controllers, 75911–75912
Meetings; Sunshine Act, 75912

**Joint Board for Enrollment of Actuaries**
NOTICES
Meetings:
Advisory Committee, 75912–75913

**Justice Department**
*See* Parole Commission
NOTICES
Lodging of Consent Decrees Under the Clean Water Act, 75913
Lodging of Modification of Consent Decree Under the Clean Water Act, 75913

**Labor Department**
*See* Occupational Safety and Health Administration

**Land Management Bureau**
NOTICES
Alaska Native Claims Selection, 75899–75900
Public Land Orders:
Oregon, 75900–75901
Wyoming, 75900

**Maritime Administration**
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 75948
Requests for Administrative Waiver of the Coastwise Trade Laws:
Vessel CHRYSALIS, 75948–75949
Vessel NAGA, 75949
Vessel PANGAEA, 75949–75950

**National Aeronautics and Space Administration**
NOTICES
Meetings:
Advisory Council Science Committee Planetary Science Subcommittee, 75914

**National Council on Disability**
NOTICES
Meetings; Sunshine Act, 75914

**National Credit Union Administration**
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 75914–75915

**National Institutes of Health**
NOTICES
Meetings:
National Cancer Institute; Amendment, 75888–75889
National Institute of Allergy and Infectious Diseases, 75887–75888
National Institute of Biomedical Imaging and Bioengineering, 75888

**National Oceanic and Atmospheric Administration**
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
West Coast Groundfish Trawl Economic Data, 75873–75874

**National Park Service**
NOTICES
Intent To Repatriate Cultural Items:
Kingman Museum, Inc., Battle Creek, MI, 75901–75902
Inventory Completions:
Minnesota Indian Affairs Council, Bemidji, MN, 75902–75910
University of California, San Diego, San Diego, CA, 75908–75909

**National Science Foundation**
NOTICES
Meetings:
Proposal Reviews, 75916
Meetings; Sunshine Act; Cancellations, 75916

**Nuclear Regulatory Commission**
RULES
Emergency Planning Guidance for Nuclear Power Plants, 75771–75772

**Occupational Safety and Health Administration**
RULES
Revising Standards Referenced in the Acetylene Standard, 75782–75786
PROPOSED RULES
Revising Standards Referenced in the Acetylene Standard, 75840–75844

**Parole Commission**
NOTICES
Meetings; Sunshine Act, 75913–75914

**Pipeline and Hazardous Materials Safety Administration**
NOTICES
Hazardous Materials:
Emergency Restriction/Prohibition Order, 75950–75951

**Postal Regulatory Commission**
NOTICES
Post Office Closings, 75916–75919

**Postal Service**
RULES
International Product and Price Changes, 75786–75794

**Rural Business-Cooperative Service**
**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 75868

**Science and Technology Policy Office**
**NOTICES**
Meetings:
President's Council of Advisors on Science and Technology, 75919–75920

**Securities and Exchange Commission**
**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 75920–75922
Applications:
AllianceBernstein Cap Fund, Inc., et al., 75922–75924
Meetings; Sunshine Act, 75924
Self-Regulatory Organizations; Proposed Rule Changes:
NASDAQ OMX PHLX LLC, 75924
NASDAQ Stock Market LLC, 75924–75926
NYSE Arca, Inc., 75926–75939
Suspension of Trading Orders:
ZipGlobal Holdings, Inc., et al., 75939

**Small Business Administration**
**NOTICES**
Revocation of License of Small Business Investment Company, 75939

**State Department**
**NOTICES**
Culturally Significant Objects Imported for Exhibition Determinations:
Works of Art Coming to the U.S. for Exhibition, 75939–75940

**Substance Abuse and Mental Health Services Administration**

**NOTICES**
List of Facilities Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies, 75889–75890

**Transportation Department**
*See* Federal Aviation Administration
*See* Federal Motor Carrier Safety Administration
*See* Federal Railroad Administration
*See* Maritime Administration
*See* Pipeline and Hazardous Materials Safety Administration

**Treasury Department**
*See* Alcohol and Tobacco Tax and Trade Bureau
*See* Internal Revenue Service

**U.S. Citizenship and Immigration Services**
**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 75892

**U.S. Customs and Border Protection**
**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Declaration of Owner and Declaration of Consignee When Entry Is Made by an Agent, 75893
Dominican Republic-Central America-U.S. Free Trade Agreement, 75893–75894

**Western Area Power Administration**
**NOTICES**
Records of Decision:
Modification of the Groton Generation Station Interconnection Agreement, 75876–75878

---

**Separate Parts In This Issue**

**Part II**
Housing and Urban Development Department, 75954–76019

---

**Reader Aids**
Consult the Reader Aids section at the end of this page for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

## CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.


**5 CFR**

**Proposed Rules:**
Ch. XXIII .....75798

**7 CFR**

**Proposed Rules:**
400.....75799
457.....75805

**9 CFR**

**Proposed Rules:**
316.....75809
317.....75809
320.....75809
331.....75809
354.....75809
355.....75809
381.....75809
412.....75809
424.....75809

**10 CFR**
50.....75771
52.....75771

**Proposed Rules:**
Ch. II.....75798
Ch. III.....75798
Ch. X.....75798

**12 CFR**

**Proposed Rules:**
Ch. X.....75825

**14 CFR**
39.....75772

**24 CFR**
91 (2 documents) .....75954, 75994
576.....75954
582.....75994
583.....75994

**26 CFR**
1 (2 documents) .....75774, 75781

**Proposed Rules:**
1.....75829

**27 CFR**

**Proposed Rules:**
9.....75830
19.....75836

**29 CFR**
1910.....75782

**Proposed Rules:**
1910.....75840

**36 CFR**

**Proposed Rules:**
1190.....75844

**39 CFR**
20.....75786

**40 CFR**
9.....75794
52.....75795
93.....75797
721.....75794

**Proposed Rules:**
52 (3 documents) .....75845, 75849, 75857

**50 CFR**

**Proposed Rules:**
17.....75858

# Rules and Regulations

Federal Register
Vol. 76, No. 233
Monday, December 5, 2011

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 50 and Part 52

**[NRC–2008–0122]**

**RIN 3150–AI10**

## Emergency Planning Guidance for Nuclear Power Plants

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Issuance of NUREG documents and interim staff guidance.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is issuing Supplement 3, ''Guidance for Protective Action Strategies,'' to NUREG–0654/FEMA–REP–1, Revision 1, ''Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants;'' NSIR/DPR–ISG–01, ''Interim Staff Guidance Emergency Planning for Nuclear Power Plants;'' and NUREG/CR–7002, ''Criteria for Development of Evacuation Time Estimate Studies;'' all dated November, 2011. These documents update implementation guidance regarding, and support recent changes to, the NRC's emergency preparedness regulations.

**DATES:** Effective December 5, 2011.

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

- *NRC's Public Document Room (PDR):* The public may examine and have copied, for a fee, publicly available documents at the NRC's PDR, O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* Publicly available documents created or received at the NRC are available online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html*. From this page, the public can gain entry into ADAMS, which provides text and image files of the NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–(800) 397–4209, (301) 415–4737, or by email to *pdr.resource@nrc.gov.* Supplement 3 of NUREG–0654/FEMA–REP–1, NSIR/DPR–ISG–01, and NUREG/CR–7002 are available in ADAMS under Accession Nos. ML113010596, ML113010523, and ML113010515 respectively.
- *Federal Rulemaking Web Site:* Public comments and supporting materials related to this action, including the final rule can be found at *http://www.regulations.gov* by searching on Docket ID NRC–2008–0122. Address questions about NRC dockets to Carol Gallagher, *telephone:* (301) 492–3668; *email: Carol.Gallagher@nrc.gov.*

**FOR FURTHER INFORMATION CONTACT:** For Supplement 3 to NUREG–0654 contact Randy Sullivan; *telephone:* (301) 415–1123, *email: Randy.Sullivan@nrc.gov.* For NSIR/DPR–ISG–01 contact Don Tailleart; *telephone:* (301) 415–2966, *email: Don.Tailleart@nrc.gov.* For NUREG/CR–7002 contact Jeff Laughlin; *telephone:* (301) 415–1113, *email: Jeff.Laughlin@nrc.gov.* All contacts are in the Division of Preparedness and Response, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

**SUPPLEMENTARY INFORMATION:**

### I. NSIR/DPR–ISG–01

The NSIR/DPR–ISG–01 will provide guidance for addressing new emergency planning (EP) requirements for nuclear power plants based on changes to EP regulations in Title 10 of the *Code of Federal Regulations* (10 CFR) Part 50, ''Domestic Licensing of Production and Utilization Facilities,'' specifically Section 50.47, ''Emergency Plans,'' and Appendix E, ''Emergency Planning and Preparedness for Production and Utilization Facilities'' that were published as a final rule in the **Federal Register** (FR) on November 23, 2011 (76 FR 72560). Additional guidance on one topic not directly related to the EP final rule (i.e., integrating offsite response methodologies with onsite EP programs) is also provided in this guidance. The NRC staff will incorporate the updated guidance information in NSIR/DPR–ISG–01 into future revisions of NUREG–0654/FEMA–REP–1 and other EP guidance documents.

The statement of considerations for the EP final rule discussed that rule's compliance with applicable backfitting provisions (76 FR 72560; November 23, 2011 at Page 72594). Portions of NSIR/DPR–ISG–01 present the NRC staff's first guidance addressing compliance with revised Part 50, Appendix E, Sections IV.A.7, IV.D.3, IV.E.8.a, IV.F.2.a, IV.F.2.b, IV.F.2.d, IV.F.2.f, and IV.F.2.g, and the newly-added Part 50, Appendix E, Sections IV.A.9, IV.C.2, IV.E.8.b, IV.E.8.c, IV.E.8.d, IV.F.2.c.(4), IV.F.2.c.(5), IV.F.2.i, IV.F.2.j, and IV.I. The first issuance of guidance on a changed rule provision (adopted in a rulemaking amending the rule provision) or newly-added provision of an existing rule does not constitute backfitting or raise issue finality concerns, inasmuch as the guidance must be consistent with the regulatory requirements in the newly-changed or newly-added rule provisions and the backfitting and issue finality considerations applicable to the newly-changed or newly-added rule provisions must logically apply to this guidance. Therefore, issuance of guidance addressing the newly-changed and newly-added provisions of the amended rule does not constitute issuance of ''changed'' or ''new'' guidance within the meaning of the definition of ''backfitting'' in 10 CFR 50.109(a)(1). Similarly, the issuance of the guidance addressing the newly-changed and newly-added provisions of the amended rule, by itself, does not constitute an action inconsistent with any of the issue finality provisions in 10 CFR part 52. Accordingly, no further consideration of backfitting or issue finality is needed as part of the issuance of this guidance addressing compliance with the newly-changed provisions of part 50, Appendix E, Sections IV.A.7, IV.D.3, IV.E.8.a, IV.F.2.a, IV.F.2.b, IV.F.2.d, IV.F.2.f, and IV.F.2.g, and the newly-added Part 50, Appendix E, Sections IV.A.9, IV.C.2, IV.E.8.b, IV.E.8.c, IV.E.8.d, IV.F.2.c.(4), IV.F.2.c.(5), IV.F.2.i, IV.F.2.j, and IV.I.

### II. NUREG/CR–7002

The NUREG/CR–7002 updates previous NRC guidance concerning the development of evacuation time

estimate (ETE) studies. This document provides guidance for addressing new EP requirements for nuclear power plants based on changes to EP regulations in 10 CFR 50.47 and Appendix E to Part 50 in the November 23, 2011, final rule. The NRC is issuing guidance for the development of ETEs that recommends that licensees analyze several scenarios that consider all directions and distances within the emergency planning zone, time of day, day of week, adverse and normal weather conditions, and peak population special events. The ETE updates will support offsite protective action decision-making and evacuation planning efforts.

The NUREG/CR–7002 presents the NRC staff's first guidance addressing compliance with the newly-changed and newly-added part 50, Appendix E, Section IV, paragraphs 2 and 4–7. The first issuance of guidance on a changed rule provision (adopted in a rulemaking amending the rule provision) or newly-added provision of an existing rule does not constitute backfitting or raise issue finality concerns, inasmuch as the guidance must be consistent with the regulatory requirements in the newly-changed or newly-added rule provisions and the backfitting and issue finality considerations applicable to the newly-changed or newly-added rule provisions must logically apply to this guidance (76 FR 72560; November 23, 2011 at Page 72594). Therefore, issuance of guidance addressing the newly-changed and newly-added provisions of the amended rule does not constitute issuance of ''changed'' or ''new'' guidance within the meaning of the definition of ''backfitting'' in 10 CFR 50.109(a)(1). Similarly, the issuance of the guidance addressing the newly-changed and newly-added provisions of the amended rule, by itself, does not constitute an action inconsistent with any of the issue finality provisions in 10 CFR part 52. Accordingly, no further consideration of backfitting or issue finality is needed as part of the issuance of this guidance addressing compliance with the newly-changed provisions of Part 50, Appendix E, Section IV, paragraphs 2 and 4–7.

## III. Supplement 3 of NUREG–0654/FEMA–REP–1

The NRC and the Federal Emergency Management Agency (FEMA) are updating protective action recommendation guidance by issuing Supplement 3 of NUREG–0654/FEMA–REP–1. The updated Supplement 3 reflects insights gained through a study of the efficacy of the protective action strategy documented in NUREG/CR–6953, ''Review of NUREG–0654, Supplement 3, 'Criteria for Protective Action Recommendations for Severe Accidents''' (see *http://www.nrc.gov/reading-rm/doc-collections/nuregs/contract/cr6953/)*. Supplement 3 of NUREG–0654/FEMA–REP–1 resulted from close coordination between FEMA and NRC staff as well as extensive input from stakeholders. The guidance incorporates the following elements:

1. Increased offsite response organization involvement in development of site specific protective action strategies;
2. Increased use of information from updated and current site specific evacuation time estimates;
3. Staged evacuation as the initial protective action at a General Emergency;
4. Increased use of shelter-in-place for certain scenarios; and
5. Guidance to improve communications with the public before and during an emergency.

Licensees should meet the requirements of Appendix E, Section IV, paragraph 3 as soon as practical following the 180-day period in Appendix E, Section IV, paragraphs 4 and 6.

Supplement 3 presents the NRC staff's first guidance addressing compliance with the newly-added part 50, Appendix E, Section IV, paragraph 3, which was part of the November 23, 2011, final rule. The first issuance of guidance on a newly-added provision of an existing rule does not constitute backfitting or raise issue finality concerns, inasmuch as the guidance must be consistent with the regulatory requirements in the newly-added rule provision and the backfitting and issue finality considerations applicable to the newly-added rule provision must logically apply to this guidance (76 FR 72560; November 23, 2011 at page 72594). Therefore, issuance of guidance addressing the newly-added provision of the amended rule does not constitute issuance of ''changed'' or ''new'' guidance within the meaning of the definition of ''backfitting'' in 10 CFR 50.109(a)(1). Similarly, the issuance of the guidance addressing the newly-added provision of the amended rule, by itself, does not constitute an action inconsistent with any of the issue finality provisions in 10 CFR Part 52. Accordingly, no further consideration of backfitting or issue finality is needed as part of the issuance of this guidance addressing compliance with the newly-added provision of Part 50, Appendix E, Section IV, paragraph 3.

Dated at Rockville, Maryland, this 23rd day of November, 2011.

For the Nuclear Regulatory Commission.

**Mark Thaggard,**

*Deputy Director for Emergency Preparedness, Division of Preparedness and Response, Office of Nuclear Security and Incident Response.*

[FR Doc. 2011–31012 Filed 12–2–11; 8:45 am]

**BILLING CODE 7590–01–P**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2011–0448; Directorate Identifier 2007–SW–51–AD; Amendment 39–16841; AD 2011–21–18]**

**RIN 2120–AA64**

## Airworthiness Directives; Eurocopter France Model EC 120B Helicopters

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

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) for the Eurocopter France Model EC 120B helicopters. This AD requires modifying the pilot cyclic control friction device by replacing a certain thrust washer with two thrust washers. This AD is prompted by an incident in which the pilot encountered a sudden restriction of the cyclic control movement during flight. The actions specified by this AD are intended to prevent jamming of a pilot cyclic control stick and subsequent loss of control of the helicopter.

**DATES:** Effective December 20, 2011.

**ADDRESSES:** You may get the service information identified in this AD from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527.

*Examining the Docket:* You may examine the docket that contains this AD, any comments, and other information on the Internet at *http://www.regulations.gov* or at the Docket Operations office, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Gary Roach, Aviation Safety Engineer, Regulations and Policy Group, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5130, fax (817) 222–5961.

**SUPPLEMENTARY INFORMATION:**

## Discussion

On April 27, 2011, we issued a Notice of Proposed Rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to Eurocopter France Model EC 120B helicopters. That NPRM was published in the **Federal Register** on May 13, 2011 (76 FR 27952). That NPRM proposed to modify the pilot cyclic control friction device by replacing a certain thrust washer with two thrust washers. The proposed AD was prompted by an incident in which the pilot encountered a sudden restriction of the cyclic control movement during flight.

The Direction Generale de l'Aviation Civile France (DGAC), which is the aviation authority for France, has issued French AD No. F–2005–175, dated October 26, 2005, on behalf of the European Aviation Safety Agency (EASA), the Airworthiness Authority of the State of Design for the affected helicopters, to correct an unsafe condition for the Eurocopter France Model EC 120B helicopters.

## Related Service Information

Eurocopter has issued Alert Service Bulletin No. 67A011, Revision 1, dated October 24, 2005 (ASB), which specifies a modification to preclude the risk that the pilot cyclic control stick will jam. The modification consists of replacing the existing single-piece thrust washer, part number (P/N) C671A1006201, with two thrust washers, P/N C671A1018201 and P/N C671A1019201. The DGAC classified this alert service bulletin as mandatory and issued AD No. F–2005–175, dated October 26, 2005, to ensure the continued airworthiness of these helicopters.

## FAA's Evaluation and Unsafe Condition Determination

This product has been approved by the aviation authority of France and is approved for operation in the United States. Pursuant to our bilateral agreement with France, the DGAC, on behalf of the EASA, their technical representative, has notified us of the unsafe condition described in the DGAC AD. We are issuing this AD because we evaluated all information provided by the DGAC and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design. This AD requires replacing a single-piece thrust washer, P/N C671A1006201, with two thrust washers, P/N C671A1018201 and P/N C671A1019201, to prevent the jamming of the pilot cyclic control stick.

## Differences Between This AD and the DGAC AD

The DGAC AD requires compliance with the ASB no later than December 31, 2005. Our AD requires compliance within 30 days after the effective date of the AD.

## Comments

By publishing the NPRM (76 FR 27952, May 13, 2011), we gave the public an opportunity to participate in developing this AD. However, we received no comment on the NPRM or on our determination of the cost to the public. Therefore, based on our review and evaluation of the available data, we have determined that air safety and the public interest require adopting the AD as proposed.

## Costs of Compliance

We estimate that this AD affects 114 helicopters of U.S. registry and the required actions will take approximately 3 work hours per helicopter to accomplish at an average labor rate of $85 per work hour. Required parts cost approximately $50 per helicopter. Based on these figures, we estimate the total cost impact of this AD on U.S. operators to be $34,770 for the entire fleet, or $305 per helicopter, to replace the single thrust washer with two thrust washers.

## Regulatory Findings

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

*For the reasons discussed above, I certify that the regulation:*

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. We prepared an economic evaluation of the estimated costs to comply with this AD. See the AD docket to examine the economic evaluation.

## Authority for This Rulemaking

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

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

## List of Subjects in 14 CFR Part 39

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

## Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

■ 2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

**2011–21–18 Eurocopter France:** Amendment 39–16841; Docket No. FAA–2011–0448; Directorate Identifier 2007–SW–51–AD.

*Applicability:* Model EC 120B helicopters, serial numbers up to and including 1385, with a thrust washer, part number (P/N) C671A1006201, installed on the pilot cyclic control stick friction device; and a pilot cyclic stick, P/N C671A1007101, P/N C671A1007102, or C671A1003102, installed, certificated in any category.

*Compliance:* Required within 30 days, unless accomplished previously.

To prevent jamming of a pilot cyclic control stick and subsequent loss of control of the helicopter, accomplish the following:

(a) Remove the pilot cyclic control stick; replace the thrust washer, P/N C671A1006201, with two thrust washers, P/N C671A1018201 and P/N C671A1019201; reinstall the pilot cyclic control stick; and perform a functional test of the cyclic control.

(b) To request a different method of compliance or a different compliance time

for this AD, follow the procedures in 14 CFR 39.19. Contact the Manager, Safety Management Group, Rotorcraft Directorate, FAA, ATTN: Gary Roach, Aviation Safety Engineer, Regulations and Policy Group, ASW–111, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5130, fax (817) 222–5961, for information about previously approved alternative methods of compliance.

(c) The Joint Aircraft System/Component (JASC) Code is 2700: Flight Control System.

(d) This amendment becomes effective on December 20, 2011.

**Note:** The subject of this AD is addressed in Direction Generale de l'Aviation Civile (France) AD No. F–2005–175, dated October 26, 2005, and Eurocopter Alert Service Bulletin No. 67A011, Revision 1, dated October 24, 2005.

Issued in Fort Worth, Texas, on October 5, 2011.

**Kim Smith,**

*Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 2011–30939 Filed 12–2–11; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TREASURY

### Internal Revenue Service

### 26 CFR Part 1

**[TD 9560]**

**RIN 1545–BE89**

## Targeted Populations Under Section 45D(e)(2)

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulations.

**SUMMARY:** This document contains final regulations relating to how an entity serving certain targeted populations can meet the requirements to be a qualified active low-income community business for the new markets tax credit. The regulations reflect changes to the law made by the American Jobs Creation Act of 2004. The regulations will affect certain taxpayers claiming the new markets tax credit.

**DATES:** *Effective Date:* These regulations are effective on December 5, 2011.

*Applicability Dates:* For dates of applicability, see § 1.45D–1(h)(3).

**FOR FURTHER INFORMATION CONTACT:** Julie Hanlon Bolton, (202) 622–3040 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

### Background

This document amends 26 CFR part 1 to provide rules relating to certain targeted populations under section 45D(e)(2). On May 24, 2005, the Community Development Financial Institutions Fund published an advance notice of proposed rulemaking (ANPRM) (70 FR 29658) to seek comments from the public with respect to how targeted populations may be treated as eligible low-income communities under section 45D(e)(2). In response to the ANPRM, the IRS received various suggestions relating to the definition of the term *targeted populations* and proposing amendments to the requirements to be a qualified active low-income community business under § 1.45D–1. On June 30, 2006, the IRS and Treasury Department released Notice 2006–60 (2006–2 CB 82), which announced that § 1.45D–1 would be amended to provide rules relating to how an entity meets the requirements to be a qualified active low-income community business when its activities involve certain targeted populations under section 45D(e)(2). On September 24, 2008, a notice of proposed rulemaking (NPRM) (REG–142339–05) was published in the **Federal Register** (73 FR 54990). Written and electronic comments responding to the proposed regulations were received and a public hearing was held on January 22, 2009. After consideration of all the comments, the proposed regulations are adopted as amended by this Treasury decision.

*General Overview*

Section 45D(a)(1) provides a new markets tax credit on certain credit allowance dates described in section 45D(a)(3) with respect to a qualified equity investment in a qualified community development entity (CDE) described in section 45D(c).

Section 45D(b)(1) provides that an equity investment in a CDE is a *qualified equity investment* if, among other requirements: (A) The investment is acquired by the taxpayer at its original issue (directly or through an underwriter) solely in exchange for cash; (B) substantially all of the cash is used by the CDE to make qualified low-income community investments; and (C) the investment is designated for purposes of section 45D by the CDE.

Under section 45D(b)(2), the maximum amount of equity investments issued by a CDE that may be designated by the CDE as qualified equity investments shall not exceed the portion of the new markets tax credit limitation set forth in section 45D(f)(1) that is allocated to the CDE by the Secretary under section 45D(f)(2).

Section 45D(c)(1) provides that an entity is a CDE if, among other requirements, the entity is certified by the Secretary as a CDE.

Section 45D(d)(1) provides that the term *qualified low-income community investment* means: (A) Any capital or equity investment in, or loan to, any qualified active low-income community business (as defined in section 45D(d)(2)); (B) the purchase from another CDE of any loan made by the entity that is a qualified low-income community investment; (C) financial counseling and other services specified in regulations prescribed by the Secretary to businesses located in, and residents of, low-income communities; and (D) any equity investment in, or loan to, any CDE.

Under section 45D(d)(2)(A), a qualified active low-income community business is any corporation (including a nonprofit corporation) or partnership if for such year, among other requirements, (i) At least 50 percent of the total gross income of the entity is derived from the active conduct of a qualified business within any low-income community, (ii) a substantial portion of the use of the tangible property of the entity (whether owned or leased) is within any low-income community, and (iii) a substantial portion of the services performed for the entity by its employees are performed in any low-income community.

Under section 45D(d)(3), with certain exceptions, a qualified business is any trade or business. The rental to others of real property is a qualified business only if, among other requirements, the real property is located in a low-income community.

Section 221(a) of the American Jobs Creation Act of 2004 (Act) (Pub. L. 108–357, 118 Stat. 1418) amended section 45D(e)(2) to provide that the Secretary shall prescribe regulations under which one or more targeted populations (within the meaning of section 103(20) of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4702(20))) may be treated as low-income communities. The regulations shall include procedures for determining which entities are qualified active low-income community businesses with respect to those populations. Section 221(c)(1) of the Act provides that the amendment made by section 221(a) of the Act shall apply to designations made by the Secretary of the Treasury after October 22, 2004, the date of enactment of the Act.

The term *targeted population,* as defined in 12 U.S.C. 4702(20) and 12 CFR 1805.201, means individuals, or an identifiable group of individuals, including an Indian tribe, who (A) are low-income persons; or (B) otherwise lack adequate access to loans or equity

investments. Under 12 U.S.C. 4702(17) as interpreted by 12 CFR 1805.104, the term *low-income* means having an income, adjusted for family size, of not more than (A) for metropolitan areas, 80 percent of the area median family income; and (B) for non-metropolitan areas, the greater of (i) 80 percent of the area median family income; or (ii) 80 percent of the statewide nonmetropolitan area median family income.

Section 101(a) of the Gulf Opportunity Zone Act of 2005 (Pub. L. 109–135, 119 Stat. 2577) added new sections 1400M and 1400N to the Code. Section 1400M(1) provides that the Gulf Opportunity Zone (GO Zone) is that portion of the Hurricane Katrina disaster area determined by the President to warrant individual or individual and public assistance from the Federal Government under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (the Act) by reason of Hurricane Katrina.

Section 1400M(2) provides that the Hurricane Katrina disaster area is an area with respect to which a major disaster has been declared by the President before September 14, 2005, under section 401 of the Act by reason of Hurricane Katrina. After determination by the President that a disaster area warrants assistance pursuant to the Act, the Federal Emergency Management Agency (FEMA) makes damage assessments. The categories for damage assessment in the wake of a hurricane are: flooded area, saturated area, limited damage, moderate damage, extensive damage, and catastrophic damage.

Under section 1400N(m)(1), a CDE shall be eligible for an allocation under section 45D(f)(2) of the increase in the new markets tax credit limitation described in section 1400N(m)(2) only if a significant mission of the CDE is the recovery and redevelopment of the GO Zone. Section 1400N(m)(2) provides that the new markets tax credit limitation otherwise determined under section 45D(f)(1) shall be increased by an amount equal to $300,000,000 for 2005 and 2006 and $400,000,000 for 2007, to be allocated among CDEs to make qualified low-income community investments within the GO Zone.

Under section 45D(b)(1), a qualified equity investment does not include any equity investment issued by a CDE more than 5 years after the date the entity receives an allocation under section 45D(f). Under section 45D(f)(3), if the new markets tax credit limitation for any calendar year exceeds the aggregate amount allocated under section 45D(f)(2) for the year, then the limitation for the succeeding calendar year is increased by the amount of the excess. However, no amount may be carried to any calendar year after 2016.

## Summary of Comments and Explanation of Provisions

### *Ownership Requirement and Non-Profit Businesses*

Generally, the proposed regulations provide that an entity will not be treated as a qualified active low-income community business for low-income targeted populations unless (*i*) At least 50 percent of the entity's total gross income for any taxable year is derived from sales, rentals, services, or other transactions with individuals who are low-income persons for purposes of section 45D(e)(2) (the 50-percent gross-income requirement), (*ii*) at least 40 percent of the entity's employees are individuals who are low-income persons for purposes of section 45D(e)(2), or (*iii*) at least 50 percent of the entity is owned by individuals who are low-income persons for purposes of section 45D(e)(2).

Commentators recommended that the ownership requirement for being treated as a qualified active low-income community business for low-income targeted populations under the proposed regulations be amended to accommodate non-profit businesses that are not individually owned. Commentators suggested that if a non-profit business can document that at least 20 percent of its board, with a minimum of two board members, are low-income persons or represent low-income targeted populations, then the non-profit business should be treated as satisfying the ownership requirement.

The final regulations do not adopt this recommendation because, if a non-profit business does not derive at least 50 percent of its gross income from sales, rentals, services, or other transactions with low-income persons, or if at least 40 percent of the non-profit business' employees are not low-income persons, then the non-profit business is not adequately serving targeted populations solely because 20 percent or more of its board members are low-income persons.

### *Start-Up or Expanding Businesses*

Commentators requested that, in order to accommodate start-up entities, the final regulations should provide a rule allowing an entity to meet the requirements to be a qualified active low-income community business for low-income targeted populations if the CDE reasonably expects that the entity will generate revenues within three years after the date the CDE makes the investment in, or loan to, that entity. If an entity serving targeted populations chooses to apply the 50-percent gross-income requirement rather than the employee requirement or the ownership requirement, then the commentators' suggestion could potentially allow an entity to be a qualified active low-income community business for three years without having to meet any requirement. As stated in the preamble of the proposed regulations, this result is clearly inappropriate. Therefore, the final regulations do not adopt the commentators' suggestion. In addition, the final regulations clarify that the three-year active conduct of a trade or business safe harbor in § 1.45D–1(d)(4)(iv)(A) does not apply to the 50-percent gross-income requirement.

### *Documenting Low-Income Persons*

The IRS and Treasury Department specifically requested comments on what measure of income should be used to determine an individual's income for purposes of the definition of low-income persons found in the proposed regulations. The proposed regulations asked whether the measure of income should be the same as the measure of income used by the U.S. Census Bureau, the measure of income on the Form 1040, or the measure of income in 24 CFR part 5, which is used for certain Department of Housing and Urban Development (HUD) programs and other Federal programs.

Two commentators recommended that the IRS and Treasury Department accept as a proxy for income documentation proof of an individual's participation in other federal programs targeted specifically to low-income individuals and families. The final regulations do not adopt the commentators' recommendation because, as stated in the proposed regulations, the IRS and Treasury Department have not analyzed other Federal programs to determine whether they meet the statutory requirements under section 45D(e), and whether the programs currently meeting the requirements will continue to do so in the future.

Another commentator recommended that the IRS and Treasury Department allow an entity to measure income using any reasonable method including measures of income by the U.S. Census Bureau, Form 1040, or the HUD rules in 24 CFR part 5. If one measure must be used, the commentator recommended using the HUD rules because they are consistent with low-income determinations used for the Section 8 rental voucher program and the low-income housing tax credit under section

42. The final regulations adopt this commentator's recommendation that an entity may use any of the three stated methods. Specifically, the final regulations allow an individual's family income to be determined using household income as measured by the U.S. Census Bureau or HUD, or using the individual's total family income as reported on Form(s) 1040. An individual's family income includes the income of any member of the individual's family (as defined in section 267(c)(4)) if the family member resides with the individual regardless of whether the family member files a separate return. Lastly, the final regulations incorporate the preamble language in the proposed regulations that provides additional detail on what estimates may be relied upon in determining the applicable income limitation for *area median family income.*

*Items Included in Gross Income*

A commentator requested that the final regulations conclude that the term *derived from* in the proposed regulations includes gross income derived from payments made directly by low-income persons to an entity and amounts and contributions of property or services provided to the entity for the benefit of low-income persons. Another commentator recommended that only operating revenue should be included for the purpose of meeting the 50-percent gross-income requirement.

The final regulations adopt the first commentator's recommendation that the term *derived from* includes gross income derived from both payments made directly by low-income persons to the entity and money and the fair market value of contributions of property or services provided to the entity primarily for the benefit of low-income persons. However, persons providing the money and contributions cannot receive a direct benefit from the entity (notably, a contribution that benefits the general public is not a direct benefit). Accordingly, an entity's total gross income derived from transactions with low-income persons for purposes of section 45D(e)(2) can include Federal, state, or local grants, charitable donations, or in-kind contributions, as well as collected fees, insurance reimbursements, and other sources of income as long as these payments and contributions are provided for the benefit of low-income persons on an individual basis or as a class of individuals. If an entity receiving such payments can document that those amounts are legally required to be paid on behalf of individuals that meet the definition of low-income persons, the amounts may be treated as derived from transactions with low-income persons. The second commentator's suggestion to limit a gross income consideration to operating revenue is too restrictive because any money, property, or services provided to the entity may be provided to the entity for the benefit of low-income persons.

*Owners*

The proposed regulations provide that the determination of whether an owner is a low-income person must be made at the time the qualified low-income community investment is made. If an owner is a low-income person at the time the qualified low-income community investment is made, that owner is considered a low-income person for purposes of section 45D(e)(2) throughout the time the ownership interest is held by that owner. A commentator suggested that the rule locking in an owner's status as a low-income person as of the time of investment should be similarly applied to low-income persons who acquire an ownership interest after the time the qualified low-income community investment is made. The final regulations adopt this suggestion by locking in the status of an owner as a low-income person at the time the qualified low-income community investment is made or at the time the ownership interest is acquired by the owner, whichever is later.

*Rental to Others of Real Property*

Commentators requested clarification on the 50-percent gross-income requirement under the proposed regulations for an entity whose sole business is the rental to others of real property. Because an entity whose sole business is the rental to others of real property will often not have employees, the entity will have to satisfy the 50-percent gross-income requirement or the ownership requirement for low-income targeted populations. To satisfy the 50-percent gross-income requirement, the proposed regulations require that the entity must derive gross income solely from low-income individuals. However, in the case of an entity engaged solely in the rental of property, the entity's gross income would only be derived from rents, and in many instances, the tenants are not individuals as required under the proposed regulations. Thus, commentators recommend that the 50-percent gross-income requirement be deemed satisfied if at least 50 percent of gross rental income is derived from tenants that are low-income individuals and entities that are qualified active low-income community businesses for low-income targeted populations. The final regulations adopt a rule similar to this recommendation by providing a special rule that generally treats an entity whose sole business is the rental to others of real property as satisfying the 50-percent gross-income requirement if the entity is treated as being located in a low-income community.

*Gross Income—Fair Market Value of Sales, Rentals, Services, or Other Transactions*

The IRS and Treasury Department specifically requested comments in the proposed regulations on the question of whether the 50-percent gross-income requirement should be modified to include the fair market value of goods and services provided to low-income persons at reduced fees. Commentators responded by stating that a CDE should have the option to include the fair market value of goods and services provided to low-income persons for purposes of the 50-percent gross-income requirement. The final regulations adopt the commentator's suggestion but limit the rule to an entity with gross income that is derived from sales, rentals, services, or other transactions with both non low-income persons and low-income persons. The entity may treat the value of the sales, rentals, services, or other transactions with low-income persons at fair market value even if the low-income persons do not pay fair market value.

*Individuals or Groups That Otherwise Lack Adequate Access to Loans or Equity Investments*

Commentators have asked that the IRS and the Treasury Department consider defining particular individuals or groups of individuals as lacking adequate access to loans or equity investments. Although the IRS and the Treasury Department cannot include new rules describing additional targeted populations in these final regulations, taxpayers are hereby invited to submit comments: (1) Identifying individuals or groups that may be considered to lack adequate access to loans or equity investments, (2) describing the reasons such individuals or group of individuals qualify as lacking adequate access to loans or equity investments, and (3) suggesting ways for additional targeted populations rules to appropriately limit the definition of such individuals or group of individuals to ensure that the purposes of the targeted populations provision are not abused. Send submissions to:

Submissions to the Service submitted by U.S. mail: Internal Revenue Service, *Attn:* Julie Hanlon Bolton, CC:PSI:5, Room 5111, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

Submissions to the Service submitted by a private delivery service: Internal Revenue Service, *Attn:* Julie Hanlon Bolton, CC:PSI:5, Room 5111, 1111 Constitution Ave. NW., Washington, DC 20224.

**Effect on Other Documents**

Notice 2006–60 (2006–1 CB 82) is obsolete for taxable years ending on or after December 5, 2011.

**Special Analyses**

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that the final regulations provide a benefit to small entities in low-income communities from the proceeds of a tax credit because, consistent with legislative intent, the final regulations allow a tax credit to be claimed in situations where it was previously unavailable without the Secretary providing for such situations in final regulations. Accordingly, a Regulatory Flexibility Analysis under the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

**Drafting Information**

The principal author of these regulations is Julie Hanlon Bolton with the Office of the Associate Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

**List of Subjects in 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

**Adoption of Amendments to the Regulations**

Accordingly, 26 CFR part 1 is amended as follows:

## PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

**Authority:** 26 U.S.C. 7805 * * *

Section 1.45D–1 also issued under 26 U.S.C. 45D(e)(2) and (i); * * *

■ **Par. 2.** Section 1.45D–0 is added to read as follows:

### § 1.45D–0 Table of contents.

This section lists the paragraphs contained in § 1.45D–1.

(a) Current year credit.
(b) Allowance of credit.
(1) In general.
(2) Credit allowance date.
(3) Applicable percentage.
(4) Amount paid at original issue.
(c) Qualified equity investment.
(1) In general.
(2) Equity investment.
(3) Equity investments made prior to allocation.
(i) In general.
(ii) Exceptions.
(A) Allocation applications submitted by August 29, 2002.
(B) Other allocation applications.
(iii) Failure to receive allocation.
(iv) Initial investment date.
(4) Limitations.
(i) In general.
(ii) Allocation limitation.
(5) Substantially all.
(i) In general.
(ii) Direct-tracing calculation.
(iii) Safe harbor calculation.
(iv) Time limit for making investments.
(v) Reduced substantially-all percentage.
(vi) Examples.
(6) Aggregation of equity investments.
(7) Subsequent purchasers.
(d) Qualified low-income community investments.
(1) In general.
(i) Investment in a qualified active low-income community business.
(ii) Purchase of certain loans from CDEs.
(A) In general.
(B) Certain loans made before CDE certification.
(C) Intermediary CDEs.
(D) Examples.
(iii) Financial counseling and other services.
(iv) Investments in other CDEs.
(A) In general.
(B) Examples.
(2) Payments of, or for, capital, equity or principal.
(i) In general.
(ii) Subsequent reinvestments.
(iii) Special rule for loans.
(iv) Example.
(3) Special rule for reserves.
(4) Qualified active low-income community business.
(i) In general.
(A) Gross-income requirement.
(B) Use of tangible property.
(*1*) In general.
(*2*) Example.
(C) Services performed.
(D) Collectibles.
(E) Nonqualified financial property.
(*1*) In general.
(*2*) Construction of real property.
(ii) Proprietorships.
(iii) Portions of business.
(A) In general.
(B) Examples.
(iv) Active conduct of a trade or business.
(A) Special rule.
(B) Example.
(5) Qualified business.
(i) In general.
(ii) Rental of real property.
(iii) Exclusions.
(A) Trades or businesses involving intangibles.
(B) Certain other trades or businesses.
(C) Farming.
(6) Qualifications.
(i) In general.
(ii) Control.
(A) In general.
(B) Definition of control.
(C) Disregard of control.
(7) Financial counseling and other services.
(8) Special rule for certain loans.
(i) In general.
(ii) Example.
(9) Targeted populations.
(i) Low-income persons.
(A) Definition.
(*1*) In general.
(*2*) Area median family income.
(*3*) Individual's family income.
(B) Qualified active low-income community business requirements for low-income targeted populations.
(*1*) In general.
(*2*) Employee.
(*3*) Owner.
(*4*) Derived from.
(*5*) Fair market value of sales, rentals, services, or other transactions.
(C) 120-percent-income restriction.
(*1*) In general.
(*2*) Population census tract location.
(D) Rental of real property for low-income targeted populations.
(*1*) In general.
(*2*) Special rule for entities whose sole business is the rental to others of real property.

(ii) Individuals who otherwise lack adequate access to loans or equity investments.
(A) In general.
(B) GO Zone Targeted Population.
(C) Qualified active low-income community business requirements for the GO Zone Targeted Population.
(*1*) In general.
(*2*) Location.
(*i*) In general.
(*ii*) Determination.
(D) 200-percent-income restriction.
(*1*) In general.
(*2*) Population census tract location.
(E) Rental of real property for the GO Zone Targeted Population.
(e) Recapture.
(1) In general.
(2) Recapture event.
(3) Redemption.
(i) Equity investment in a C corporation.
(ii) Equity investment in an S corporation.
(iii) Capital interest in a partnership.
(4) Bankruptcy.
(5) Waiver of requirement or extension of time.
(i) In general.
(ii) Manner for requesting a waiver or extension.
(iii) Terms and conditions.
(6) Cure period.
(7) Example.
(f) Basis reduction.
(1) In general.
(2) Adjustment in basis of interest in partnership or S corporation.
(g) Other rules.
(1) Anti-abuse.
(2) Reporting requirements.
(i) Notification by CDE to taxpayer.
(A) Allowance of new markets tax credit.
(B) Recapture event.
(ii) CDE reporting requirements to Secretary.
(iii) Manner of claiming new markets tax credit.
(iv) Reporting recapture tax.
(3) Other Federal tax benefits.
(i) In general.
(ii) Low-income housing credit.
(4) Bankruptcy of CDE.
(h) Effective/applicability dates.
(1) In general.
(2) Exception for certain provisions.
(3) Targeted populations.

■ **Par. 3.** Section 1.45D–1 is amended by:
■ 1. Revising paragraph (a).
■ 2. Revising the first sentence in paragraph (b)(1).
■ 3. Revising paragraph (d)(4)(i) introductory text.
■ 4. Adding a new sentence to the end of paragraph (d)(4)(i)(A).
■ 5. Adding a new sentence to the end of paragraph (d)(4)(i)(B)(*1*).
■ 6. Adding a new sentence to the end of paragraph (d)(4)(i)(C).
■ 7. Adding a new sentence at the end of paragraph (d)(4)(iv)(A).
■ 8. Adding new paragraph (d)(9).
■ 9. Revising the heading for paragraph (h) and adding new paragraph (h)(3).

The additions and revisions read as follows:

**§ 1.45D–1 New markets tax credit.**

(a) *Current year credit.* The current year general business credit under section 38(b)(13) includes the new markets tax credit under section 45D(a).

(b) * * * (1) * * * A taxpayer holding a qualified equity investment on a credit allowance date which occurs during the taxable year may claim the new markets tax credit determined under section 45D(a) and this section for such taxable year in an amount equal to the applicable percentage of the amount paid to a qualified community development entity (CDE) for such investment at its original issue. * * *

* * * * *

(d) * * *

(4) * * *

(i) *In general.* The term *qualified active low-income community business* means, with respect to any taxable year, a corporation (including a nonprofit corporation) or a partnership engaged in the active conduct of a qualified business (as defined in paragraph (d)(5) of this section), if the requirements of paragraphs (d)(4)(i)(A), (B), (C), (D), and (E) of this section are met (or in the case of an entity serving targeted populations, if the requirements of paragraphs (d)(4)(i)(D), (E), and (d)(9)(i) or (ii) of this section are met). Solely for purposes of this section, a nonprofit corporation will be deemed to be engaged in the active conduct of a trade or business if it is engaged in an activity that furthers its purpose as a nonprofit corporation.

(A) * * * See paragraph (d)(9) of this section for rules relating to targeted populations.

(B) * * *

(*1*) * * * See paragraph (d)(9) of this section for rules relating to targeted populations.

* * * * *

(C) * * * See paragraph (d)(9) of this section for rules relating to targeted populations.

* * * * *

(iv) *Active conduct of a trade or business*—(A) * * * This paragraph (d)(4)(iv) applies only for purposes of determining whether an entity is engaged in the active conduct of a trade or business and does not apply for purposes of determining whether the gross-income requirement under paragraph (d)(4)(i)(A), (d)(9)(i)(B)(*1*)(*i*), or (d)(9)(ii)(C)(*1*)(*i*) of this section is satisfied.

* * * * *

(9) *Targeted populations.* For purposes of section 45D(e)(2), targeted populations that will be treated as a low-income community are individuals, or an identifiable group of individuals, including an Indian tribe, who are low-income persons as defined in paragraph (d)(9)(i) of this section or who are individuals who otherwise lack adequate access to loans or equity investments as defined in paragraph (d)(9)(ii) of this section.

(i) *Low-income persons*—(A) *Definition*—(*1*) *In general.* For purposes of section 45D(e)(2) and this paragraph (d)(9), an individual shall be considered to be low-income if the individual's family income, adjusted for family size, is not more than—

(*i*) For metropolitan areas, 80 percent of the area median family income; and

(*ii*) For non-metropolitan areas, the greater of 80 percent of the area median family income, or 80 percent of the statewide non-metropolitan area median family income.

(*2*) *Area median family income.* For purposes of paragraph (d)(9)(i)(A)(*1*) of this section, *area median family income* is determined in a manner consistent with the determinations of median family income under section 8 of the Housing Act of 1937, as amended. Taxpayers must use the annual estimates of median family income released by the Department of Housing and Urban Development (HUD) and may rely on those figures until 45 days after HUD releases a new list of income limits, or until HUD's effective date for the new list, whichever is later.

(*3*) *Individual's family income.* For purposes of paragraph (d)(9)(i)(A)(*1*) of this section, an individual's family income is determined using any one of the following three methods for measuring family income:

(*i*) Household income as measured by the U.S. Census Bureau,

(*ii*) Adjusted gross income under section 62 as reported on Internal Revenue Service Form 1040. Adjusted gross income must include the adjusted gross income of any member of the individual's family (as defined in section 267(c)(4)) if the family member resides with the individual regardless of whether the family member files a separate return,

(*iii*) Household income determined under section 8 of the Housing Act of 1937, as amended.

(B) *Qualified active low-income community business requirements for low-income targeted populations*—(*1*) *In general.* An entity will not be treated as a qualified active low-income community business for low-income targeted populations unless—

(*i*) Except as provided in paragraph (d)(9)(i)(D)(*2*) of this section, at least 50 percent of the entity's total gross income for any taxable year is derived from sales, rentals, services, or other transactions with individuals who are low-income persons for purposes of section 45D(e)(2) and this paragraph (d)(9);

(*ii*) At least 40 percent of the entity's employees are individuals who are low-income persons for purposes of section 45D(e)(2) and this paragraph (d)(9); or

(*iii*) At least 50 percent of the entity is owned by individuals who are low-income persons for purposes of section 45D(e)(2) and this paragraph (d)(9).

(*2*) *Employee.* The determination of whether an employee is a low-income person must be made at the time the employee is hired. If the employee is a low-income person at the time of hire, that employee is considered a low-income person for purposes of section 45D(e)(2) and this paragraph (d)(9) throughout the time of employment, without regard to any increase in the employee's income after the time of hire.

(*3*) *Owner.* The determination of whether an owner is a low-income person must be made at the time the qualified low-income community investment is made, or at the time the ownership interest is acquired by the owner, whichever is later. If an owner is a low-income person at the time the qualified low-income community investment is made or at the time the ownership interest is acquired by the owner, whichever is later, that owner is considered a low-income person for purposes of section 45D(e)(2) and this paragraph (d)(9) throughout the time the ownership interest is held by that owner.

(*4*) *Derived from.* For purposes of paragraph (d)(9)(i)(B)(*1*)(*i*) of this section, the term *derived from* includes gross income derived from:

(*i*) Payments made directly by low-income persons to the entity; and

(*ii*) Money and the fair market value of property or services provided to the entity primarily for the benefit of low-income persons, but only if the persons providing the money, property, or services do not receive a direct benefit from the entity (for this purpose, a contribution that benefits the general public is not a direct benefit).

(*5*) *Fair market value of sales, rentals, services, or other transactions.* For purposes of paragraph (d)(9)(i)(B)(*1*)(*i*) of this section, an entity with gross income that is derived from sales, rentals, services, or other transactions with both non low-income persons and low-income persons may treat the gross income derived from the sales, rentals, services, or other transactions with low-income persons as including the full fair market value even if the low-income persons do not pay fair market value.

(C) *120-percent-income restriction*—(*1*) *In general*—(*i*) In no case will an entity be treated as a qualified active low-income community business under paragraph (d)(9)(i) of this section if the entity is located in a population census tract for which the median family income exceeds 120 percent of, in the case of a tract not located within a metropolitan area, the statewide median family income, or in the case of a tract located within a metropolitan area, the greater of statewide median family income or metropolitan area median family income (120-percent-income restriction).

(*ii*) The 120-percent-income restriction shall not apply to an entity located within a population census tract with a population of less than 2,000 if such tract is not located in a metropolitan area.

(*iii*) The 120-percent-income restriction shall not apply to an entity located within a population census tract with a population of less than 2,000 if such tract is located in a metropolitan area and more than 75 percent of the tract is zoned for commercial or industrial use. For this purpose, the 75 percent calculation should be made using the area of the population census tract. For purposes of this paragraph (d)(9)(i)(C)(*1*)(*iii*), property for which commercial or industrial use is a permissible zoning use will be treated as zoned for commercial or industrial use.

(*2*) *Population census tract location*—(*i*) For purposes of the 120-percent-income restriction, an entity will be considered to be located in a population census tract for which the median family income exceeds 120 percent of the applicable median family income under paragraph (d)(9)(i)(C)(*1*)(*i*) of this section (non-qualifying population census tract) if at least 50 percent of the total gross income of the entity is derived from the active conduct of a qualified business (as defined in paragraph (d)(5) of this section) within one or more non-qualifying population census tracts (non-qualifying gross income amount); at least 40 percent of the use of the tangible property of the entity (whether owned or leased) is within one or more non-qualifying population census tracts (non-qualifying tangible property usage); and at least 40 percent of the services performed for the entity by its employees are performed in one or more non-qualifying population census tracts (non-qualifying services performance).

(*ii*) The entity is considered to have the non-qualifying gross income amount if the entity has non-qualifying tangible property usage or non-qualifying services performance of at least 50 percent instead of 40 percent.

(*iii*) If the entity has no employees, the entity is considered to have the non-qualifying gross income amount and non-qualifying services performance if at least 85 percent of the use of the tangible property of the entity (whether owned or leased) is within one or more non-qualifying population census tracts.

(D) *Rental of real property for low-income targeted populations*—(*1*) *In general.* An entity that rents to others real property for low-income targeted populations and that otherwise satisfies the requirements to be a qualified business under paragraph (d)(5) of this section will be treated as located in a low-income community for purposes of paragraph (d)(5)(ii) of this section if at least 50 percent of the entity's total gross income is derived from rentals to individuals who are low-income persons for purposes of section 45D(e)(2) and this paragraph (d)(9) or rentals to a qualified active low-income community business that meets the requirements for low-income targeted populations under paragraphs (d)(9)(i)(B)(*1*)(*i*) or (*ii*) and (d)(9)(i)(B)(*2*) of this section.

(*2*) *Special rule for entities whose sole business is the rental to others of real property.* If an entity's sole business is the rental to others of real property under paragraph (d)(9)(i)(D)(*1*) of this section, then the gross income requirement in paragraph (d)(9)(i)(B)(*1*)(*i*) of this section will be considered satisfied if the entity is treated as being located in a low-income community under paragraph (d)(9)(i)(D)(*1*) of this section.

(ii) *Individuals who otherwise lack adequate access to loans or equity investments*—(A) *In general.* Paragraph (d)(9)(ii) of this section may be applied only with regard to qualified low-income community investments made under the increase in the new markets tax credit limitation pursuant to section 1400N(m)(2). Therefore, only CDEs with a significant mission of recovery and redevelopment of the Gulf Opportunity Zone (GO Zone) that receive an allocation from the increase described in section 1400N(m)(2) may make

qualified low-income community investments from that allocation pursuant to the rules in paragraph (d)(9)(ii) of this section.

(B) *GO Zone Targeted Population.* For purposes of the targeted populations rules under section 45D(e)(2), an individual otherwise lacks adequate access to loans or equity investments only if the individual was displaced from his or her principal residence as a result of Hurricane Katrina or the individual lost his or her principal source of employment as a result of Hurricane Katrina (GO Zone Targeted Population). In order to meet this definition, the individual's principal residence or principal source of employment, as applicable, must have been located in a population census tract within the GO Zone that contains one or more areas designated by the Federal Emergency Management Agency (FEMA) as flooded, having sustained extensive damage, or having sustained catastrophic damage as a result of Hurricane Katrina.

(C) *Qualified active low-income community business requirements for the GO Zone Targeted Population*—(*1*) *In general.* An entity will not be treated as a qualified active low-income community business for the GO Zone Targeted Population unless—

(*i*) At least 50 percent of the entity's total gross income for any taxable year is derived from sales, rentals, services, or other transactions with the GO Zone Targeted Population, low-income persons as defined in paragraph (d)(9)(i) of this section, or some combination thereof;

(*ii*) At least 40 percent of the entity's employees consist of the GO Zone Targeted Population, low-income persons as defined in paragraph (d)(9)(i) of this section, or some combination thereof; or

(*iii*) At least 50 percent of the entity is owned by the GO Zone Targeted Population, low-income persons as defined in paragraph (d)(9)(i) of this section, or some combination thereof.

(*2*) *Location*—(*i*) *In general.* In order to be a qualified active low-income community business under paragraph (d)(9)(ii)(C) of this section, the entity must be located in a population census tract within the GO Zone that contains one or more areas designated by FEMA as flooded, having sustained extensive damage, or having sustained catastrophic damage as a result of Hurricane Katrina (qualifying population census tract).

(*ii*) *Determination*—For purposes of the preceding paragraph, an entity will be considered to be located in a qualifying population census tract if at least 50 percent of the total gross income of the entity is derived from the active conduct of a qualified business (as defined in paragraph (d)(5) of this section) within one or more qualifying population census tracts (gross income requirement); at least 40 percent of the use of the tangible property of the entity (whether owned or leased) is within one or more qualifying population census tracts (use of tangible property requirement); and at least 40 percent of the services performed for the entity by its employees are performed in one or more qualifying population census tracts (services performed requirement). The entity is deemed to satisfy the gross income requirement if the entity satisfies the use of tangible property requirement or the services performed requirement on the basis of at least 50 percent instead of 40 percent. If the entity has no employees, the entity is deemed to satisfy the services performed requirement and the gross income requirement if at least 85 percent of the use of the tangible property of the entity (whether owned or leased) is within one or more qualifying population census tracts.

(D) *200-percent-income restriction*—(*1*) *In general*—(*i*) In no case will an entity be treated as a qualified active low-income community business under paragraph (d)(9)(ii) of this section if the entity is located in a population census tract for which the median family income exceeds 200 percent of, in the case of a tract not located within a metropolitan area, the statewide median family income, or, in the case of a tract located within a metropolitan area, the greater of statewide median family income or metropolitan area median family income (200-percent-income restriction).

(*ii*) The 200-percent-income restriction shall not apply to an entity located within a population census tract with a population of less than 2,000 if such tract is not located in a metropolitan area.

(*iii*) The 200-percent-income restriction shall not apply to an entity located within a population census tract with a population of less than 2,000 if such tract is located in a metropolitan area and more than 75 percent of the tract is zoned for commercial or industrial use. For this purpose, the 75 percent calculation should be made using the area of the population census tract. For purposes of this paragraph (d)(9)(ii)(D)(*1*)(*iii*), property for which commercial or industrial use is a permissible zoning use will be treated as zoned for commercial or industrial use.

(*2*) *Population census tract location*—(*i*) For purposes of the 200-percent-income restriction, an entity will be considered to be located in a population census tract for which the median family income exceeds 200 percent of the applicable median family income under paragraph (d)(9)(ii)(D)(*1*)(*i*) of this section (non-qualifying population census tract) if—at least 50 percent of the total gross income of the entity is derived from the active conduct of a qualified business (as defined in paragraph (d)(5) of this section) within one or more non-qualifying population census tracts (non-qualifying gross income amount); at least 40 percent of the use of the tangible property of the entity (whether owned or leased) is within one or more non-qualifying population census tracts (non-qualifying tangible property usage); and at least 40 percent of the services performed for the entity by its employees are performed in one or more non-qualifying population census tracts (non-qualifying services performance).

(*ii*) The entity is considered to have the non-qualifying gross income amount if the entity has non-qualifying tangible property usage or non-qualifying services performance of at least 50 percent instead of 40 percent.

(*iii*) If the entity has no employees, the entity is considered to have the non-qualifying gross income amount and non-qualifying services performance if at least 85 percent of the use of the tangible property of the entity (whether owned or leased) is within one or more non-qualifying population census tracts.

(E) *Rental of real property for the GO Zone Targeted Population.* The rental to others of real property for the GO Zone Targeted Population that otherwise satisfies the requirements to be a qualified business under paragraph (d)(5) of this section will be treated as located in a low-income community for purposes of paragraph (d)(5)(ii) of this section if at least 50 percent of the entity's total gross income is derived from rentals to the GO Zone Targeted Population, rentals to low-income persons as defined in paragraph (d)(9)(i) of this section, or rentals to a qualified active low-income community business that meets the requirements for the GO Zone Targeted Population under paragraph (d)(9)(ii)(C)(*1*)(*i*) or (*ii*) of this section.

* * * * *

(h) *Effective/applicability dates.*

* * * * *

(3) *Targeted populations.* The rules in paragraph (d)(9) of this section and the last sentence in paragraph (d)(4)(iv)(A) of this section apply to taxable years ending on or after December 5, 2011. A taxpayer may apply the rules in

paragraph (d)(9) of this section to taxable years ending before December 5, 2011 for designations made by the Secretary after October 22, 2004.

Approved: November 22, 2011.

**Steven T. Miller,**

*Deputy Commissioner for Services and Enforcement.*

**Emily S. McMahon,**

*Acting Assistant Secretary of the Treasury (Tax Policy).*

[FR Doc. 2011–31169 Filed 12–2–11; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## 26 CFR Part 1

**[TD 9561]**

**RIN 1545–BK46**

## Treasury Inflation-Protected Securities Issued at a Premium

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Temporary regulations.

**SUMMARY:** This document contains temporary regulations that provide guidance on the tax treatment of Treasury Inflation-Protected Securities issued with more than a de minimis amount of premium. The text of these temporary regulations also serves as the text of the proposed regulations (REG–130777–11) set forth in the Proposed Rules section in this issue of the **Federal Register**.

**DATES:** *Effective Date:* These regulations are effective on December 5, 2011.

*Applicability Date:* For the date of applicability, see § 1.1275–7T(k).

**FOR FURTHER INFORMATION CONTACT:** William E. Blanchard, (202) 622–3950 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

### Background

Treasury Inflation-Protected Securities (TIPS) are securities issued by the Department of the Treasury. The principal amount of a TIPS is adjusted for any inflation or deflation that occurs over the term of the security. The rules for the taxation of inflation-indexed debt instruments, including TIPS, are contained in § 1.1275–7 of the Income Tax Regulations. *See also* § 1.171–3(b) (rules for inflation-indexed debt instruments with bond premium).

The coupon bond method described in § 1.1275–7(d) has applied to TIPS rather than the more complex discount bond method described in § 1.1275–7(e). Under § 1.1275–7(d)(2)(i), however, the coupon bond method is not available with respect to inflation-indexed debt instruments that are issued with more than a de minimis amount of premium (that is, an amount greater than .0025 times the stated principal amount of the security times the number of complete years to the security's maturity).

In Notice 2011–21 (2011–19 IRB 761), to provide a more uniform method for the federal income taxation of TIPS, the Department of the Treasury and the Internal Revenue Service announced that regulations would be issued to provide that taxpayers must use the coupon bond method described in § 1.1275–7(d) for TIPS issued with more than a de minimis amount of premium. As a result, the discount bond method described in § 1.1275–7(e) would not apply to TIPS issued with more than a de minimis amount of premium. Notice 2011–21 provided that the regulations would be effective for TIPS issued on or after April 8, 2011.

### Explanation of Provisions

The temporary regulations in this document contain the rules described in Notice 2011–21. Under the temporary regulations, a taxpayer must use the coupon bond method described in § 1.1275–7(d) for a TIPS that is issued with more than a de minimis amount of premium. The temporary regulations contain an example of how to apply the coupon bond method to a TIPS issued with more than a de minimis amount of premium. As stated in Notice 2011–21, the temporary regulations apply to TIPS issued on or after April 8, 2011. See § 601.601(d)(2)(ii)(b).

### Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

### Drafting Information

The principal author of these regulations is William E. Blanchard, Office of Associate Chief Counsel (Financial Institutions and Products). However, other personnel from the IRS and the Treasury Department participated in their development.

### List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

### Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

## PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 * * *

Section 1.1275–7T also issued under 26 U.S.C. 1275(d). * * *

■ **Par. 2.** Section 1.1275–7T is added to read as follows:

**§ 1.1275–7T Inflation-indexed debt instruments (temporary).**

(a) through (h) [Reserved]. For further guidance, see § 1.1275–7(a) through (h).

(i) [Reserved]

(j) *Treasury Inflation-Protected Securities issued with more than a de minimis amount of premium*—(1) *Coupon bond method.* Notwithstanding § 1.1275–7(d)(2)(i), the coupon bond method described in § 1.1275–7(d) applies to Treasury Inflation-Protected Securities (TIPS) issued with more than a de minimis amount of premium. For this purpose, the de minimis amount is determined using the principles of § 1.1273–1(d).

(2) *Example.* The following example illustrates the application of the bond premium rules to a TIPS issued with bond premium:

*Example.* (i) *Facts.* X, a calendar year taxpayer, purchases at original issuance TIPS with a stated principal amount of $100,000 and a stated interest rate of .125 percent, compounded semiannually. For purposes of this example, assume that the TIPS are issued in Year 1 on January 1, stated interest is payable on June 30 and December 31 of each year, and that the TIPS mature on December 31, Year 5. X pays $102,000 for the TIPS, which is the issue price for the TIPS as determined under § 1.1275–2(d)(1). Assume that the inflation-adjusted principal amount for the first coupon in Year 1 is $101,225 (resulting in an interest payment of $63.27) and for the second coupon in Year 1 is $102,500 (resulting in an interest payment of $64.06). X elects to amortize bond premium under § 1.171–4. (For simplicity, contrary to actual practice, the TIPS in this example were issued on the date with respect to which the calculation of the first coupon began.)

(ii) *Bond premium.* The stated interest on the TIPS is qualified stated interest under § 1.1273–1(c). X acquired the TIPS with bond premium of $2,000 (basis of $102,000 minus

the TIPS' stated principal amount of $100,000). *See* §§ 1.171–1(d), 1.171–3(b), and 1.1275–7(f)(3). The $2,000 is more than the de minimis amount of premium for the TIPS of $1,250 (.0025 times the stated principal amount of the TIPS ($100,000) times the number of complete years to the TIPS' maturity (5 years)). Under paragraph (j)(1) of this section, X must use the coupon bond method to determine X's income from the TIPS.

(iii) *Allocation of bond premium.* Under § 1.171–3(b), the bond premium of $2,000 is allocable to each semiannual accrual period by assuming that there will be no inflation or deflation over the term of the TIPS. Moreover, for purposes of § 1.171–2, the yield of the securities is determined by assuming that there will be no inflation or deflation over their term. Based on this assumption, for purposes of section 171, the TIPS provide for semiannual interest payments of $62.50 and a $100,000 payment at maturity. As a result, the yield of the securities for purposes of section 171 is −0.2720 percent, compounded semiannually. Under § 1.171–2, the bond premium allocable to an accrual period is the excess of the qualified stated interest allocable to the accrual period ($62.50 for each accrual period) over the product of the taxpayer's adjusted acquisition price at the beginning of the accrual period (determined without regard to any inflation or deflation) and the taxpayer's yield. Therefore, the $2,000 of bond premium is allocable to each semiannual accrual period in Year 1 as follows: $201.22 to the accrual period ending on June 30, Year 1 (the excess of the stated interest of $62.50 over ($102,000 × −0.002720/2)); and $200.95 to the accrual period ending on December 31, Year 1 (the excess of the stated interest of $62.50 over ($101,798.78 × −0.002720/2)). The adjusted acquisition price at the beginning of the accrual period ending on December 31, Year 1 is $101,798.78 (the adjusted acquisition price of $102,000 at the beginning of the accrual period ending on June 30, Year 1 reduced by the $201.22 of premium allocable to that accrual period).

(iv) *Income determined by applying the coupon bond method and the bond premium rules.* Under § 1.1275–7(d)(4), the application of the coupon bond method to the TIPS results in a positive inflation adjustment in Year 1 of $2,500, which is includible in X's income for Year 1. However, because X acquired the TIPS at a premium and elected to amortize the premium, the premium allocable to Year 1 will offset the income on the TIPS as follows: The premium allocable to the first accrual period of $201.22 first offsets the interest payable for that period of $63.27. The remaining $137.95 of premium is treated as a deflation adjustment that offsets the positive inflation adjustment. *See* § 1.171–3(b). The premium allocable to the second accrual period of $200.95 first offsets the interest payable for that period of $64.06. The remaining $136.89 of premium is treated as a deflation adjustment that further offsets the positive inflation adjustment. As a result, X does not include in income any of the stated interest received in Year 1 and includes in Year 1 income only $2,225.16 of the positive inflation adjustment for Year 1 ($2,500 − $137.94 − $136.89).

(k) *Effective/applicability date.* Notwithstanding § 1.1275–7(h), this section applies to Treasury Inflation-Protected Securities issued on or after April 8, 2011.

(l) *Expiration date.* The applicability of this section expires on or before December 2, 2014.

Approved: November 21, 2011.

**Steven T. Miller,**

*Deputy Commissioner for Services and Enforcement.*

**Emily S. McMahon,**

*Acting Assistant Secretary of the Treasury (Tax Policy).*

[FR Doc. 2011–31179 Filed 12–2–11; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

### 29 CFR Part 1910

**[Docket No. OSHA–2011–0183]**

**RIN 1218–AC64**

## Revising Standards Referenced in the Acetylene Standard

**AGENCY:** Occupational Safety and Health Administration (OSHA), Department of Labor.

**ACTION:** Direct final rule; request for comments.

**SUMMARY:** In this direct final rule, the Agency is revising its Acetylene Standard for general industry by updating a reference to a standard published by a standards-developing organization (''SDO standards''). This rulemaking is a continuation of OSHA's ongoing effort to update references to SDO standards used throughout its rules.

**DATES:** This direct final rule will become effective on March 5, 2012 unless OSHA receives significant adverse comment by January 4, 2012. If OSHA receives adverse comment, it will publish a timely withdrawal of the rule in the **Federal Register**. Submit comments to this direct final rule (including comments to the information-collection (paperwork) determination described under the section titled Procedural Determinations), hearing requests, and other information by January 4, 2012. All submissions must bear a postmark or provide other evidence of the submission date. (The following section titled **ADDRESSES** describes methods available for making submissions.)

The Director of the Federal Register approved the incorporation by reference of specific publications listed in this direct final rule as of March 5, 2012.

**ADDRESSES:** Submit comments, hearing requests, and other information as follows:

- *Electronic:* Submit comments electronically to *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.
- *Facsimile:* OSHA allows facsimile transmission of comments and hearing requests that are 10 pages or fewer in length (including attachments). Send these documents to the OSHA Docket Office at (202) 693–1648; OSHA does not require hard copies of these documents. Instead of transmitting facsimile copies of attachments that supplement these documents (*e.g.,* studies, journal articles), commenters must submit these attachments to the OSHA Docket Office, Technical Data Center, Room N–2625, OSHA, U.S. Department of Labor, 200 Constitution Ave. NW., Washington, DC 20210. These attachments must clearly identify the sender's name, date, subject, and docket number (OSHA–2011–0183) so that the Agency can attach them to the appropriate document.
- *Regular mail, express delivery, hand (courier) delivery, and messenger service:* Submit comments and any additional material (*e.g.,* studies, journal articles) to the OSHA Docket Office, Docket No. OSHA–2011–0183 or Regulation Identification Number (RIN) 1218–AC08, Technical Data Center, Room N–2625, OSHA, U.S. Department of Labor, 200 Constitution Ave. NW., Washington, DC 20210; telephone: (202) 693–2350. (OSHA's TTY number is (877) 889–5627.) Note that security-related procedures may result in significant delays in receiving comments and other written materials by regular mail. Please contact the OSHA Docket Office for information about security procedures concerning delivery of materials by express delivery, hand delivery, and messenger service. The hours of operation for the OSHA Docket Office are 8:15 a.m. to 4:45 p.m., e.t.
- *Instructions:* All submissions must include the Agency name and the OSHA docket number (OSHA–2011–0183). OSHA will place comments and other material, including any personal information, in the public docket without revision, and these materials will be available online at *http://*

*www.regulations.gov.* Therefore, the Agency cautions commenters about submitting statements they do not want made available to the public, or submitting comments that contain personal information (either about themselves or others) such as Social Security numbers, birth dates, and medical data.

• *Docket:* The electronic docket for this direct final rule established at *http://www.regulations.gov* lists most of the documents in the docket. However, some information (*e.g.,* copyrighted material) is not publicly available to read or download through this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Contact the OSHA Docket Office for assistance in locating docket submissions.

**FOR FURTHER INFORMATION CONTACT:**

*Press inquiries:* Contact Frank Meilinger, OSHA Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–1999.

*General and technical information:* Contact Ted Twardowski, Office of Safety Systems, Directorate of Standards and Guidance, Room N–3609, OSHA, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–2255; fax: (202) 693–1663.

**SUPPLEMENTARY INFORMATION:**

*Copies of this Federal Register notice:* 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, also are available at OSHA's Web page at *http://www.osha.gov.*

*Availability of Incorporated Standards:* OSHA is incorporating by reference into this section the standard published by the Compressed Gas Association required in § 1910.102(a) with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than the editions specified in § 1910.102(a), OSHA must publish a notice of change in the **Federal Register**, and the material must be available to the public. All approved material is available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, telephone (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* Also, the material is available for inspection at any OSHA Regional Office or the OSHA Docket Office (U.S. Department of Labor, 200 Constitution Avenue NW., Room N–2625, Washington, DC 20210; telephone (202) 693–2350 (TTY number: (877) 889–5627)).

**Table of Contents**

I. Background
II. Direct Final Rulemaking
A. General
B. Relationship Between this Direct Final Rule and the Companion Proposed Rule
C. Request for Comment
III. Summary and Explanation of Revisions to the Acetylene Standard
IV. Procedural Determinations
A. Legal Considerations
B. Final Economic Analysis and Regulatory Flexibility Act Certification
C. OMB Review Under the Paperwork Reduction Act of 1995
D. Federalism
E. State Plan States
F. Unfunded Mandates Reform Act of 1995
G. Public Participation
V. Authority and Signature

## I. Background

This action is part of a rulemaking project instituted by the Occupational Safety and Health Administration (''OSHA'' or ''the Agency'') to update OSHA standards that reference or include language from outdated standards published by standards developing organizations (''SDO standards'') (69 FR 68283). A SDO standard referenced in OSHA's Acetylene Standard (29 CFR 1910.102) is among the SDO standards that the Agency identified for revision.

OSHA adopted the original Acetylene Standard in 1974 pursuant to Section 6(a) of the Occupational Safety and Health Act of 1970 (OSH Act; 29 U.S.C. 651, 655). This section allowed OSHA, during the first two years after passage of the OSH Act, to adopt existing Federal and national consensus standards as OSHA safety and health standards, including the Acetylene Standard.

On August 11, 2009, OSHA published a direct final rule (DFR) and accompanying notice of proposed rulemaking that updated references to recognize the latest edition of the Compressed Gas Association standard, CGA G–1–2003, in the Acetylene Standard. *See* 74 FR 40442 and 74 FR 40450, respectively. OSHA received no adverse comments on the DFR, and it became effective on November 9, 2009. *See* 74 FR 57883.

The Compressed Gas Association published a new edition of CGA G–1 in June 2009. OSHA did not include CGA G–1–2009 in the DFR because that edition was not available to OSHA prior to publication of the DFR. However, three of the eight comments received on the DFR (Exs. OSHA–2008–0034–0017, –0010, and –0022) recommended that the Agency reference CGA G–1–2009 instead. OSHA did not include the 2009 edition of CGA G–1 in the DFR because that edition was not available to OSHA prior to publication of the DFR. This rulemaking is removing CGA G–1–2003 from the existing Acetylene Standard and replacing it with CGA G–1–2009.

## II. Direct Final Rulemaking

### *A. General*

In a direct final rulemaking, an agency publishes a DFR in the **Federal Register** along with a statement that the rule will become effective unless the agency receives significant adverse comment within a specified period. An agency uses direct final rulemaking when it anticipates the rule will be non-controversial. The agency concurrently publishes a proposed rule that is essentially identical to the DFR. If, however, the agency receives significant adverse comment within the specified period, the agency withdraws the DFR and treats the comments as submissions on the proposed rule.

OSHA is using a DFR for this rulemaking because it expects the rule to: be noncontroversial; provide protection to employees that is at least equivalent to the protection afforded to them by the outdated standard; and impose no significant new compliance costs on employers (69 FR 68283, 68285). OSHA used DFRs previously to update or, when appropriate, revoke references to outdated national SDO standards in OSHA rules (*see, e.g.,* 69 FR 68283, 70 FR 76979, and 71 FR 80843).

For purposes of this direct final rulemaking, a significant adverse comment is one that explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach. In determining whether a comment necessitates withdrawal of the DFR, OSHA will consider whether the comment raises an issue serious enough to warrant a substantive response in a notice-and-comment process. OSHA will not consider a comment recommending an addition to the rule to be a significant adverse comment unless the comment states why the DFR would be ineffective without the addition. If OSHA receives a timely significant adverse comment, the Agency will publish a **Federal Register** notice withdrawing the DFR no later than February 3, 2012.

OSHA determined that updating and replacing the SDO standard in the Acetylene Standard is appropriate for

direct final rulemaking. First, the revision made to the Acetylene Standard by this DFR does not compromise the safety of employees, and instead enhances employee protection. As described below, the revision will make the requirements of OSHA's Acetylene Standard consistent with current industry practices, thereby eliminating confusion and clarifying employer obligations, which will increase employee safety by encouraging compliance. Furthermore, bringing the Acetylene Standard in line with industry practice will not produce additional costs for employers, and may reduce compliance costs. Finally, the revision is non-controversial because it merely updates the SDO standard referenced in the rule to the most current version of that standard.

*B. Relationship Between This Direct Final Rule and the Companion Proposed Rule*

This direct final rule is the companion document to a notice of proposed rulemaking also published in the ''Proposed Rules'' section of today's **Federal Register**. If OSHA receives no significant adverse comment on this direct final rule, it will publish a **Federal Register** document confirming the effective date of this direct final rule and withdrawing the companion proposed rule. The confirmation may include minor stylistic or technical corrections to the document. For the purpose of judicial review, OSHA considers the date that it confirms the effective date of the direct final rule to be the date of issuance. However, if OSHA receives significant adverse comment on the direct final rule, it will publish a timely withdrawal of this direct final rule and proceed with the proposed rule, which addresses the same revisions to the Acetylene Standard.

*C. Request for Comment*

OSHA requests comments on all issues related to this direct final rulemaking, including economic or other regulatory impacts of this action on the regulated community. OSHA will consider all of the comments, and the comments will become part of the record.

## III. Summary and Explanation of Revisions to the Acetylene Standard

This DFR updates the SDO standard referenced in paragraph 1910.102(a) of the Acetylene Standard. To ensure that employers have access to the latest safety requirements for managing acetylene, this rulemaking is adopting the requirements specified in the most recent, 2009, edition of the SDO standard, CGA G–1–2009. The following discussion provides a summary of the revisions OSHA is making to paragraph (a) of the Acetylene Standard.

For paragraph (a) of § 1910.102 (Cylinders), this DFR is replacing the reference to the 2003 edition of CGA Pamphlet G–1 (''Acetylene'') (Ex. OSHA–2008–0034–0006) with the most recent *(i.e.,* 2009) edition of that standard, also entitled ''Acetylene'' (Ex. OSHA–2011–0183–0003). In reviewing CGA G1–2009, the Agency prepared a side-by-side comparison of the 2009 and 2003 editions (Ex. OSHA–2011–0183–0004). OSHA found minor changes to the titles of CGA reports referenced in paragraph 4 of section 3.2 (Physical and chemical properties) and section 4.2 (Valves); these changes are not substantive. In section 4.5 (Marking and labeling), CGA also provides additional guidance clarifying Department of Transportation labeling regulations, and labeling requirements for transporting acetylene in Canada. The Agency determined that this information provides guidance only, and, therefore, imposes no additional burden on employers. Finally, OSHA identified an addition to the note in section 5.2 (Rules for storing acetylene) that designates as ''in service'' single cylinders of acetylene and oxygen located at a work station (*e.g.,* chained to a wall or building column, secured on a cylinder cart). The Agency determined that this change is consistent with current industry practice, and, consequently, does not increase employers' burden.[1]

OSHA believes that the provisions of CGA G–1–2009 are consistent with the usual and customary practice of employers in the industry, and determined that incorporating CGA G–1–2009 into paragraph (a) of § 1910.102 does not add compliance burden for employers. OSHA invites the public to comment on whether the revisions made to the Acetylene Standard represent current industry practice.

## IV. Procedural Determinations

*A. Legal Considerations*

The purpose of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 *et seq.*), is ''to assure so far as possible every working man and woman in the nation safe and healthful working conditions and to preserve our human resources.'' 29 U.S.C. 651(b). To achieve this goal, Congress authorized the Secretary of Labor to promulgate and enforce occupational safety and health standards. 29 U.S.C. 655(b), 654(b). A safety or health standard is a standard ''which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment or places of employment.'' 29 U.S.C. 652(8). A standard is reasonably necessary or appropriate within the meaning of Section 652(8) when a significant risk of material harm exists in the workplace and the standard would substantially reduce or eliminate that workplace risk.

This DFR will not reduce the employee protections put into place by the standard OSHA is updating under this rulemaking. Instead, this rulemaking likely will enhance employee safety by clarifying employer obligations. Therefore, it is unnecessary to determine significant risk, or the extent to which this rule would reduce that risk, as typically is required by *Industrial Union Department, AFL–CIO* v. *American Petroleum Institute* (448 U.S. 607 (1980)).

*B. Final Economic Analysis and Regulatory Flexibility Act Certification*

This DFR is not ''economically significant'' as specified by Executive Order 12866, or a ''major rule'' under Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA''; 5 U.S.C. 804). The DFR does not impose significant additional costs on any private-sector or public-sector entity, and does not meet any of the criteria for an economically significant or major rule specified by Executive Order 12866 and the relevant statutes. OSHA developed the rule with attention to the approaches to rulemaking outlined in Executive Orders 12866 and 13563.

This DFR simply updates a reference to an outdated SDO standard in OSHA's Acetylene Standard. The Agency concludes that the revisions will not impose any additional costs on employers because it believes that the updated SDO standard represents the usual and customary practice of employers in the industry. Consequently, the DFR imposes no costs on employers. Therefore, OSHA certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities. Accordingly, the Agency is not preparing a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

[1] In its comments to the 2009 DFR revising OSHA's Acetylene Standard, CGA made the following statement regarding the addition to this note: ''CGA does not envision a hardship or economic burden on the industry nor any reduction in industrial safety as a result of this change.''

*C. OMB Review Under the Paperwork Reduction Act of 1995*

Neither the existing nor updated SDO standard addressed by this DFR contain collection of information requirements. Therefore, this DFR does not impose or remove any information-collection requirements for purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* and 5 CFR 1320. Accordingly, the Agency does not have to prepare an Information Collection Request in association with this rulemaking.

Members of the public may respond to this paperwork determination by sending their written comments to the Office of Information and Regulatory Affairs, Attn: OSHA Desk Officer (RIN 1218–AC08), Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503. The Agency encourages commenters to submit these comments to the rulemaking docket, along with their comments on other parts of the DFR. For instructions on submitting these comments and accessing the docket, see the sections of this **Federal Register** notice titled **DATES** and **ADDRESSES**. However, OSHA will not consider any comment received on this paperwork determination to be a ''significant adverse comment'' as specified under Section II (''Direct Final Rulemaking'') of this notice.

To make inquiries, or to request other information, contact Mr. Todd Owen, Directorate of Standards and Guidance, OSHA, Room N–3609, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2222.

*D. Federalism*

OSHA reviewed this DFR in accordance with the Executive Order on Federalism (Executive Order 13132, 64 FR 43255, August 10, 1999), which requires that Federal agencies, to the extent possible, refrain from limiting State policy options, consult with States prior to taking any actions that would restrict State policy options, and take such actions only when clear constitutional authority exists and the problem is national in scope.

Under Section 18 of the Occupational Safety and Health Act of 1970 (''OSH Act''; U.S.C. 651 *et seq.*), Congress expressly provides that States may adopt, with Federal approval, a plan for the development and enforcement of occupational safety and health standards; OSHA refers to States that obtain Federal approval for such a plan as ''State Plan States.'' 29 U.S.C. 667. Occupational safety and health standards developed by State Plan States must be at least as effective in providing safe and healthful employment and places of employment as the Federal standards. Subject to these requirements, State Plan States are free to develop and enforce their own requirements for occupational safety and health standards. While OSHA drafted this DFR to protect employees in every State, Section 18(c)(2) of the Act permits State Plan States and Territories to develop and enforce their own standards for acetylene operations provided these requirements are at least as effective in providing safe and healthful employment and places of employment as the requirements specified in this DFR.

In summary, this DFR complies with Executive Order 13132. In States without OSHA-approved State Plans, any standard developed from this DFR would limit State policy options in the same manner as every standard promulgated by OSHA. In States with OSHA-approved State Plans, this rulemaking would not significantly limit State policy options.

*E. State Plan States*

When Federal OSHA promulgates a new standard or a more stringent amendment to an existing standard, the 27 States or U.S. Territories with their own OSHA-approved occupational safety and health plans (''State Plan States'') must amend their standards to reflect the new standard or amendment, or show OSHA why such action is unnecessary (*e.g.,* if an existing State standard covering this area is already ''at least as effective'' as the new Federal standard or amendment). 29 CFR 1953.5(a). The State standard must be ''at least as effective'' as the final Federal rule, and must be completed within six months of the publication date of the final Federal rule. 29 CFR 1953.5(a). When OSHA promulgates a new standard or amendment that does not impose additional or more stringent requirements than the existing standard, State Plan States are not required to amend their standards, although OSHA may encourage them to do so.

While this DFR does not impose any additional or more stringent requirements on employers than the existing Acetylene Standard, OSHA believes that the provisions of this DFR will provide employers with critical, updated information and methods that will help protect their employees from the hazards found in workplaces engaged in acetylene operations. Therefore, OSHA encourages the State Plan States to adopt provisions comparable to the provisions in this DFR within six months after the promulgation date of the rule. The 27 States and territories with OSHA-approved State Plans are: Alaska, Arizona, California, Connecticut, Hawaii, Illinois, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, New Jersey, New York, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, and Wyoming. Connecticut, Illinois, New Jersey, New York, and the Virgin Islands have OSHA-approved State Plans that apply to State and local government employees only.

*F. Unfunded Mandates Reform Act of 1995*

OSHA reviewed this DFR in accordance with the Unfunded Mandates Reform Act of 1995 (''UMRA''; 2 U.S.C. 1501 *et seq.*) and Executive Order 12875 (56 FR 58093). As discussed above in Section IV.B (''Final Economic Analysis and Regulatory Flexibility Act Certification'') of this notice, the Agency determined that this DFR will not impose additional costs on any private-sector or public-sector entity. Accordingly, this DFR requires no additional expenditures by either public or private employers.

As noted above under Section IV.E (''State Plan States'') of this notice, the Agency's standards do not apply to State and local governments except in States that have elected voluntarily to adopt a State Plan approved by the Agency. Consequently, this DFR does not meet the definition of a ''Federal intergovernmental mandate'' (*see* Section 421(5) of the UMRA (2 U.S.C. 658(5)). Therefore, for the purposes of the UMRA, the Agency certifies that this DFR does not mandate that State, local, or tribal governments adopt new, unfunded regulatory obligations, or increase expenditures by the private sector of more than $100 million in any year.

*G. Public Participation*

OSHA requests comments on all issues concerning this DFR. The Agency also welcomes comments on its determination that this DFR has no negative economic impacts on employers, and will increase employee protection. If OSHA receives no significant adverse comment, it will publish a **Federal Register** document confirming the effective date of this direct final rule and withdrawing the companion proposed rule. Such confirmation may include minor stylistic or technical corrections to the

document. For a full discussion of what constitutes a significant adverse comment, see Section II (''Direct Final Rulemaking'') of this notice.

The Agency will withdraw this DFR if it receives significant adverse comment on the amendments contained in it, and proceed with the companion proposed rule by addressing the comment(s) and publishing a new final rule. The comment period for this DFR runs concurrently with that of the companion proposed rule. Therefore, OSHA will treat any comments received under this DFR as comments regarding the companion proposed rule. Similarly, OSHA will consider a significant adverse comment submitted to this DFR as a comment to the companion proposed rule; the Agency will consider such a comment in developing a subsequent final rule.

OSHA will post comments received without revision to *http://www.regulations.gov*, including any personal information provided. Accordingly, OSHA cautions commenters about submitting personal information such as Social Security numbers and birth dates.

**List of Subjects in 29 CFR Part 1910**

Acetylene, General industry, Incorporation by reference, Occupational safety and health, Safety.

**V. Authority and Signature**

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, authorized the preparation of this notice. The Agency is issuing this notice under Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), Secretary of Labor's Order 4–2010 (75 FR 55355), and 29 CFR part 1911.

Signed at Washington, DC, on November 22, 2011.

**David Michaels,**

*Assistant Secretary of Labor for Occupational Safety and Health.*

**Amendments to the Standard**

For the reasons discussed in the preamble, the Occupational Safety and Health Administration is amending 29 CFR part 1910 as set forth below:

## PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

### Subpart A—[Amended]

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

**Authority:** Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 3–2000 (65 FR 50017), 5–2002 (67 FR 65008), 5–2007 (72 FR 31159), and 4–2010 (75 FR 55355), as applicable.

Sections 1910.6, 1910.7, 1910.8 and 1910.9 also issued under 29 CFR part 1911. Section 1910.7(f) also issued under 31 U.S.C. 9701, 29 U.S.C. 9a, 5 U.S.C. 553; Pub. L. 106–113 (113 Stat. 1501A–222); Pub. L. 111–8 and 111–317; and OMB Circular A–25 (dated July 8, 1993) (58 FR 38142, July 15, 1993).

■ 2. Amend § 1910.6 by revising paragraph (k)(3) to read as follows:

**§ 1910.6 Incorporation by reference.**

* * * * *

(k) * * *

(3) CGA G–1–2009 Acetylene, Twelfth Edition, IBR approved for § 1910.102(a). Copies of CGA Pamphlet G–1–2009 are available for purchase from the: Compressed Gas Association, Inc., 4221 Walney Road, 5th Floor, Chantilly, VA 20151; telephone: (703) 788–2700; fax: (703) 961–1831; email: *cga@cganet.com.*

* * * * *

### Subpart H—[Amended]

■ 3. Revise the authority citation for subpart H to read as follows:

**Authority:** 29 U.S.C. 653, 655, 657; Secretary of Labor's Orders Nos. 12–71(36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 3–2000 (65 FR 50017), 5–2002 (67 FR 65008), 5–2007 (72 FR 31159), or 4–2010 (75 FR 55355), as applicable; and 29 CFR part 11.

Sections 1910.103, 1910.106 through 1910.111, and 1910.119, 1910.120, and 1910.122 through 1910.126 also issued under 29 CFR part 1911.

Section 1910.119 also issued under Section 304, Clean Air Act Amendments of 1990 (Pub. L. 101–549), reprinted at 29 U.S.C. 655 Note.

Section 1910.120 also issued under 29 U.S.C. 655 Note, and 5 U.S.C. 553.

■ 4. Amend § 1910.102 by revising paragraph (a) to read as follows:

**§ 1910.102 Acetylene.**

(a) *Cylinders.* Employers must ensure that the in-plant transfer, handling, storage, and use of acetylene in cylinders comply with the provisions of CGA Pamphlet G–1–2009 (''Acetylene'') (incorporated by reference, see § 1910.6).

* * * * *

[FR Doc. 2011–30653 Filed 12–2–11; 8:45 am]

BILLING CODE 4510–26–P

## POSTAL SERVICE

## 39 CFR Part 20

## International Product and Price Changes

**AGENCY:** Postal Service™.

**ACTION:** Final rule.

**SUMMARY:** The Postal Service is revising *Mailing Standards of the United States Postal Service,* International Mail Manual (IMM®), to reflect the prices, product features, and classification changes to Competitive Services, as established by the Governors of the Postal Service.

**DATES:** *Effective Date:* January 22, 2012.

**FOR FURTHER INFORMATION CONTACT:** Rick Klutts at (813) 877–0372.

**SUPPLEMENTARY INFORMATION:** New prices are available under Docket Number CP2012–2 on the Postal Regulatory Commission's Web site at *http://www.prc.gov.*

This final rule describes the international price and classification changes and the corresponding mailing standards changes for the following Competitive Services:

- Global Express Guaranteed® (GXG®)
- Express Mail International® (EMI)
- Priority Mail International® (PMI)
- International Priority Airmail™ (IPA®)
- International Surface Air Lift® (ISAL®)
- Direct Sacks of Printed Matter to One Addressee (M-bags)
- International Extra Services:
  - Certificate of Mailing
  - International Postal Money Orders and Money Order Inquiry Fee
  - International Insurance for EMI and PMI service
  - Customs Clearance and Delivery
  - Registered Mail™ Service
  - Restricted Delivery Service
  - Return Receipt Service
  - Pickup On Demand® Service

New prices are located on the Postal Explorer® Web site at *http://pe.usps.com.*

**Global Express Guaranteed**

Global Express Guaranteed (GXG) is an international expedited delivery service provided through an alliance with FedEx Express®. The price increase for retail GXG service averages 6.0 percent. In addition, the Postal Service is making the following product features and classification changes:

*Commercial Base Pricing*

The commercial base price for customers that prepare and pay for GXG shipments via permit imprint when

used in conjunction with Global Shipping Software (GSS), online at USPS.com®, or by registered end-users using an authorized PC Postage® vendor will be a variable discount (based on the item's weight and price group) of up to 10 percent below the retail price. Previously, an across-the-board discount of 10 percent applied regardless of weight or price group. As a result, we will remove the GXG price tables in the Individual Country Listing of the IMM and refer customers to Notice 123—Price List for the applicable commercial plus, commercial base or retail price for GXG service.

*Commercial Plus Pricing*

To provide additional options for customers, we are authorizing published commercial plus prices as a new price tier for GXG service. Mailers who qualify for this option will receive a variable discount (based on the item's weight and price group) of up to 17 percent below the retail price. To qualify for commercial plus pricing, customers must tender at least $100,000 per year of international expedited products. For this purpose, ''international expedited products'' includes any combination of Global Express Guaranteed, Express Mail International, or Priority Mail International items. Postage payment options for commercial plus pricing are permit imprint when used in conjunction with GSS and registered end-users using an authorized PC Postage vendor. As with commercial base prices, the commercial plus price is applied to each item but does not apply to any other charges or fees.

*Legal-Size Envelope*

To provide additional mailing options for customers, the Postal Service introduces a new legal-size GXG envelope. The new larger envelope, which measures 15 inches by 9½ inches, enables customers to ship legal-size documents without folding them. Like our other USPS®-produced GXG envelopes, the price will be based on the actual weight and price group of the mailpiece—the dimensional-weight price is not applicable when using this envelope.

**Express Mail International**

Express Mail International (EMI) service provides reliable, high-speed service to approximately 190 countries with a money-back, date-certain delivery guarantee to select destinations. The price increase for retail Express Mail International service averages 11.6 percent. In addition, the following product features and classification changes are made:

*Commercial Base Pricing*

The commercial base price for customers that prepare and pay for Express Mail International shipments via permit imprint when used in conjunction with GSS, online at USPS.com, or by registered end-users using an authorized PC Postage vendor will be a variable discount (based on the item's weight and price group) of up to 8 percent below the retail price. Previously, an across-the-board discount of 8 percent applied regardless of weight or price group. As a result, we will remove the Express Mail International price tables in the Individual Country Listing of the IMM and refer mailers to Notice 123—Price List for the applicable commercial plus, commercial base or retail price for Express Mail International service.

*Commercial Plus Pricing*

To provide additional options for customers we are authorizing published commercial plus prices as a new price tier for Express Mail International service. Mailers who qualify for this option will receive a variable discount (based on the item's weight and price group) up to 15 percent below the retail price. To qualify for commercial plus pricing, customers must tender at least $100,000 per year of international expedited products. For this purpose, ''international expedited products'' includes any combination of Global Express Guaranteed, Express Mail International, or Priority Mail International items. Postage payment options for commercial plus pricing are permit imprint when used in conjunction with GSS and registered end-users using an authorized PC Postage vendor. As with commercial base prices, the commercial plus price is applied to each item but does not apply to any other charges or fees.

*Permit Imprint—Retail Price Paid via a Permit Imprint*

To ensure compliance with various federal regulations, the current option to enter Express Mail International items at a Business Mail Entry Unit (BMEU) bearing a permit imprint (paid through an Express Mail corporate account), will no longer be available. The option for mailers to present Express Mail International items (paid through an Express Mail corporate account) to a retail facility for acceptance and processing remains available.

*Flat Rate Boxes*

Building on the success of current Priority Mail International Flat Rate packaging, we are introducing two versions of a new Express Mail International Flat Rate Box. Both boxes have the same cubic capacity of approximately ⅓ cubic foot and have a maximum weight allowance of 20 pounds. The top-loading box (EM–FRB1) has inside dimensions that measure 11 inches by 8½ inches by 5½ inches. Due to size constraints, postage payment options for the EM–FRB1 are limited to online postage payment methods, or a permit imprint (used in conjunction with GSS). The side-loading box (EM–FRB2) has inside dimensions that measure 13⅝ inches by 11⅞ inches by 3⅜ inches. All postage payment options are available for the side-loading box. These options include, postage stamps, USPS postage validation imprinter (PVI) labels, postage meter stamps, online postage payment methods, a permit imprint (used in conjunction with GSS), or through the use of an Express Mail corporate account (EMCA). Customers pay a flat rate of $59.95 to Canada and $74.95 for all other countries that accept Express Mail International.6

*Flat Rate Envelopes*

For consistency, we are updating the IMM to reflect a 20-pound maximum weight limit for the Express Mail International Flat Rate Envelopes to match the newly introduced Express Mail International Flat Rate Boxes.

*Tonga*

Via a formal request from the country of Tonga, we will offer Express Mail International service to this destination assigned to Price Group 6. The maximum weight is 66 pounds, and the maximum insurance limit is $5,000.

**Priority Mail International**

Priority Mail International (PMI) offers economical prices for reliable delivery of documents and merchandise, typically within 6 to 10 business days to many major destinations. The price increase for retail Priority Mail International service averages 8.7 percent. In addition, the following product features and classification changes are made:

*Commercial Base Pricing*

The commercial base price for customers that prepare and pay for Priority Mail International shipments via permit imprint when used in conjunction with GSS, online at USPS.com, or by registered end-users using an authorized PC Postage vendor

will receive a variable discount (based on the item's weight and price group) of up to 5 percent below the retail price. Previously, an across-the-board discount of 5 percent applied regardless of weight or price group. As a result, we will remove the Priority Mail International price tables in the Individual Country Listing of the IMM and refer customers to Notice 123—Price List for the applicable commercial plus, commercial base or retail price for Priority Mail International service.

*Commercial Plus Pricing*

To provide additional price options for customers, we are authorizing published commercial plus prices as a new price tier for Priority Mail service. Mailers who qualify for this option will receive a variable discount (based on the item's weight and price group) of up to 10 percent below the retail price. To qualify for commercial plus pricing, customers must tender at least $100,000 per year of international expedited products. For this purpose, ''international expedited products'' includes any combination of Global Express Guaranteed, Express Mail International, or Priority Mail International items. Postage payment options for commercial plus pricing are permit imprint when used in conjunction with GSS and registered end-users using an authorized PC Postage vendor. As with commercial base prices, the commercial plus price is applied to each item but does not apply to any other charges or fees.

*Permit Imprint—Retail Price Paid via a Permit Imprint*

To ensure compliance with various federal regulations, the current option to enter Priority Mail International items at a BMEU bearing a permit imprint as postage payment, will no longer be available. The option for mailers to present Priority Mail International items at a retail facility for acceptance and processing remains available. Payment can be paid at the retail facility with a postage validation imprinter (PVI) label, or the mailer can prepay postage with a postage meter stamp or postage stamps.

**International Priority Airmail**

International Priority Airmail (IPA) service, including IPA M-bags, is a commercial service designed for business mailers for volume mailings of all First-Class Mail International postcards, letters, large envelopes (flats), and packages (small packets) weighing up to 4 pounds. The overall price increase for IPA service averages 1.0 percent.

**International Surface Air Lift**

International Surface Air Lift (ISAL) service, including ISAL M-bags, is a commercial service, which provides expedited dispatch and transportation for mailers of volume mailings of all First-Class Mail International postcards, letters, large envelopes (flats), and packages (small packets) weighing up to 4 pounds. The overall price increase for ISAL service averages 13.7 percent.

**Direct Sacks of Printed Matter to One Addressee (M-bags)**

Airmail M-bags are direct sacks of printed matter sent to a single foreign addressee at a single address. The price increase for Airmail M-bags averages 3.5 percent.

**International Extra Services**

Depending on country destination and mail type, customers may continue to add a variety of extra services to their outbound shipments. The price increase for competitive extra services averages 5.0 percent.

For our competitive offerings, we revised the prices for the following international extra services:

- Express Mail International insurance
- Priority Mail International insurance
- Certificate of mailing
- International postal money orders
- Money order inquiry fee
- Customs clearance and delivery
- Registered Mail service
- Restricted delivery service,
- Return receipt service
- Pickup On Demand service

The Postal Service hereby adopts the following changes to *Mailing Standards of the United States Postal Service,* International Mail Manual (IMM), which is incorporated by reference in the *Code of Federal Regulations.* See 39 CFR 20.1.

**List of Subjects in 39 CFR Part 20**

Foreign relations, International postal services.

Accordingly, 39 CFR Part 20 is amended as follows:

## PART 20—[AMENDED]

■ 1. The authority citation for 39 CFR Part 20 continues to read as follows:

**Authority:** 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401, 403, 404, 407, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

■ 2. Revise the following sections of *Mailing Standards of the United States Postal Service,* International Mail Manual (IMM), as follows:

* * * * *

**2 Conditions for Mailing**

**210 Global Express Guaranteed**

* * * * *

**213 Prices and Postage Payment Methods**

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*[Revise the title and text of 213.6 to read as follows:]*

**213.6 Commercial Prices**

**213.61 Commercial Base Prices**

Global Express Guaranteed commercial base prices are generally less than Global Express Guaranteed retail prices when postage is paid using any of the online methods described in 213.7 or a permit imprint under 213.8. Commercial base pricing does not apply to participating retail Post Office locations. See Notice 123—Price List, for the applicable price.

**213.62 Commercial Plus Prices**

**213.621 General**

For approved mailers, Global Express Guaranteed commercial plus prices are generally less than Global Express Guaranteed commercial base prices when postage is paid by a registered end-user of a USPS-approved PC Postage product, or a permit imprint under 213.8. Commercial plus pricing does not apply to participating retail Post Office locations. See Notice 123-Price List, for the applicable price.

**213.622 Commercial Plus Pricing—Eligibility**

To qualify for commercial plus pricing, customers must agree to all terms and conditions in a standardized agreement with the Postal Service and tender at least $100,000 per year of international expedited products. For this purpose, ''international expedited products'' includes any combination of Global Express Guaranteed, Express Mail International, or Priority Mail International items.

**213.623 Commercial Plus Pricing—Approval**

Mailers meeting the minimum revenue thresholds under 213.622 must complete an agreement with the Postal Service by contacting their account manager, or USPS Global Business via email at *globalcpp@usps.gov* for a commitment agreement form or for additional information.

### 213.7 Online Postage Payment Method

### 213.71 Online Prices

*[Revise 213.71 to read as follows:]*

For selected destination countries, Global Express Guaranteed items qualify for discounted prices (equal to the commercial base price or commercial plus price) when mailers use one of the following online shipping methods:

a. Commercial Base Price: Click-N-Ship service; or registered end-users of USPS-approved PC Postage products.

b. Commercial Plus Price: Registered end-users of a USPS-approved PC Postage products.

The commercial base or commercial plus price is automatically applied to each shipment when using one of the postage payment methods above. The discount applies only to the postage portion of the Global Express Guaranteed price. It does not apply to any other charges or fees, such as fees for Pickup on Demand service, insurance, or shipments made under a customized agreement.

*[Renumber current 213.72 through 213.75 as new 213.73 through 213.76 and add new 213.72 to read as follows:]*

### 213.72 Markings Requirements

Global Express Guaranteed mailpieces claiming the commercial base or commercial plus price paid with PC Postage must bear the appropriate price marking, printed on the piece or produced as part of the PC Postage indicia. Mailers must place the applicable marking directly above, directly below, or to the left of the postage using one of the following formats:

a. Commercial Base Price, Commercial Base Pricing, or ComBasPrice.

b. Commercial Plus Price, Commercial Plus Pricing, or ComPlsPrice.

*[Revise the title and text of renumbered 213.73) to read as follows:]*

### 213.73 Determining Online Prices

For each addressed mailpiece, refer to Notice 123—Price List, for the applicable commercial base or commercial plus price.

* * * * *

### 213.8 Permit Imprint

### 213.81 Permit Imprint—General

*[Revise 213.81 to read as follows:]*

Global Express Guaranteed items paid with a permit imprint through an advance deposit account is permitted only when requirements for commercial base prices or commercial plus prices (see 213.82) are followed. Postage paid with a permit imprint is subject to the general conditions in IMM 152.4 and in DMM 604 and 705. See Notice 123—Price List, for the applicable prices.

*[Revise the title and introduction text of 213.82 to read as follows:]*

### 213.82 Permit Imprint—Commercial Base or Commercial Plus Prices

Global Express Guaranteed commercial base or commercial plus prices are generally less than Global Express Guaranteed retail prices when postage is paid using a permit imprint. The commercial base or commercial plus price applies only to the postage portion of Global Express Guaranteed prices. See Notice 123—Price List, for the applicable price. In addition, customers must meet the following requirements: * * *

* * * * *

## 220 Express Mail International

### 221 Description and Physical Characteristics

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*[Revise 221.3 to read as follows:]*

### 221.3 Express Mail International Flat Rate Envelopes

Only USPS-produced Express Mail International Flat Rate Envelopes are eligible for the Flat Rate price and are charged a flat rate regardless of destination. The maximum weight is 20 pounds. See the Individual Country Listings for countries that offer Express Mail International service.

*[Renumber current 221.4 as new 221.5 and insert new 221.4 to read as follows:]*

### 221.4 Express Mail International Flat Rate Boxes

Only USPS-produced Express Mail International Flat Rate Boxes are eligible for the Flat Rate price and are charged a flat rate regardless of destination. The maximum weight is 20 pounds. See the Individual Country Listings for countries that offer Express Mail International service.

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### 222 Eligibility

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*[Renumber current 222.4 through 222.7 as new 222.5 through 222.8 and insert new 222.4 as follows:]*

### 222.4 Express Mail International Flat Rate Boxes

Only USPS-produced Express Mail International Flat Rate Boxes are eligible for Flat Rate pricing as defined in Exhibit 222.4. The contents must fit securely and must be entirely confined within the box. The box flaps must be able to close within the prefabricated folds. Tape may be applied to the flap and seams for closure or reinforcement, provided the design of the container is not enlarged by opening the sides and taping or reconstructing the container in any way. All other Express Mail International standards and customs requirements apply.

**Note:** The USPS-produced Express Mail International Flat Rate Box, Item EM–FRB1, is nonmailable when paid at the retail price using shipping Label 11–B, *Express Mail Post Office to Addressee,* due to size constraints, and to ensure compliance with IMM 123.61b.This standard does not apply when payment is made using a permit imprint under 223.22, or online postage under 223.24.

*Exhibit 222.4*

**Eligible Express Mail International Flat Rate Boxes**

| Item | Inside dimensions (L–W–H) | Outside dimensions (L–W–H) | Item No. |
|---|---|---|---|
| Express Mail International Flat Rate Box | 11″ × 8½″ × 5½″ | 11¼″ × 8¾″ × 6″ | EM–FRB1* |
| Express Mail International Flat Rate Box | 13⅝″ × 11⅞″ × 3⅜″ | 14″ × 12″ × 3½″ | EM–FRB2 |

* Nonmailable when paid at the retail price using shipping Label 11–B, *Express Mail Post Office to Addressee.*

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## 223 Prices and Postage Payment Methods

*[Revise 223.1 to read as follows:]*

### 223.1 Prices

### 223.11 Availability and Price Application—General

Except under 223.14 and 223.15, Express Mail International shipments are charged postage for each addressed piece according to its weight and country price group. For shipments presented in Express Mail pouches under an Express Mail Custom Designed Service agreement, each pouch is considered an addressed piece. See the Individual Country Listings for

countries that offer Express Mail International service. Refer to Notice 123—Price List for applicable Express Mail International prices.

**223.12 Commercial Base Prices**

Express Mail International commercial base prices are generally less than Express Mail International retail prices when postage is paid using a permit imprint under 223.222 or the online methods described in 223.241.

**223.13 Commercial Plus Prices**

For approved mailers, Express Mail International commercial plus prices are generally less than Express Mail International commercial base prices when postage is paid by a registered end-user of a USPS-approved PC Postage product, or a permit imprint under 223.222.

**223.131 Commercial Plus Pricing—Eligibility**

To qualify for commercial plus pricing, customers must agree to all terms and conditions in a standardized agreement with the Postal Service and tender at least $100,000 per year of international expedited products. For this purpose, ''international expedited products'' includes any combination of Global Express Guaranteed, Express Mail International, or Priority Mail International items.

**223.132 Commercial Plus Pricing—Approval**

Mailers meeting the minimum revenue thresholds under 223.131 must complete an agreement with the Postal Service by contacting their account manager, or USPS Global Business via email at *globalcpp@usps.gov* for a commitment agreement form or for additional information.

**223.14 Express Mail International Flat Rate Envelope Prices**

Only USPS-produced Express Mail International Flat Rate Envelopes are eligible for a flat rate price regardless of the destination. The maximum weight is 20 pounds. Postage is required for each piece (see Notice 123—Price List). A domestic Express Mail Flat Rate Envelope with prepaid postage may also be used for an Express Mail International item provided that appropriate additional postage is added before mailing.

**223.15 Express Mail International Flat Rate Boxes Prices**

Only USPS-produced Express Mail International Flat Rate Boxes are eligible for a flat rate price regardless of the destination. The maximum weight is 20 pounds. Postage is required for each piece (see Notice 123—Price List).

**223.2 Postage Payment Methods**

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**223.22 Permit Imprint**

**223.221 Permit Imprint—General**

Payment for Express Mail International shipments paid with a permit imprint through an advance deposit account is permitted only when requirements for commercial base prices or commercial plus prices (see 223.222) are followed. Postage paid with a permit imprint is subject to the general conditions in IMM 152.4 and in DMM 604 and 705. See Notice 123—Price List, for the applicable prices.

*[Revise the title and introductory text of 223.222 to read as follows:]*

**223.222 Permit Imprint—Commercial Base or Commercial Plus Prices**

Express Mail International commercial base and commercial plus prices are generally less than Express Mail International retail prices when postage is paid using a permit imprint. The commercial base price applies only to the postage portion of Express Mail International prices. In addition, customers must meet the following requirements: * * *

*[Delete 223.223, Permit Imprint—Retail Price, in its entirety.]*

* * * * *

**223.24 Online Postage Payment Method**

**223.241 Online Prices**

*[Revise 223.241 to read as follows:]*

For selected destination countries, Express Mail International items qualify for discounted prices (equal to the commercial base price or commercial plus price) when mailers use one of the following online shipping methods:

a. Commercial Base Price: Click-N-Ship service; or registered end-users of USPS-approved PC Postage products.

b. Commercial Plus Price: Registered end-users of USPS-approved PC Postage products.

The commercial base or commercial plus price is automatically applied to each shipment when using one of the above postage payment methods. The discount applies only to the postage portion of the Express Mail International price. It does not apply to any other charges or fees, such as fees for Pickup on Demand service, insurance, or shipments made under a customized agreement.

*[Renumber current 223.242 as 223.243 and insert new 223.242 to as follows:]*

**223.242 Markings Requirements**

Express Mail International mailpieces claiming the commercial base or commercial plus price paid with PC Postage must bear the appropriate price marking, printed on the piece or produced as part of the PC Postage indicia. Mailers must place the applicable marking directly above, directly below, or to the left of the postage using one of the following formats:

a. Commercial Base Price, Commercial Base Pricing, or ComBasPrice.

b. Commercial Plus Price, Commercial Plus Pricing, or ComPlsPrice.

*[Revise the title and text of renumbered 223.243 to read as follows:]*

**223.243 Determining Online Prices**

For each addressed mailpiece, refer to Notice 123—Price List for the applicable commercial base or commercial plus price.

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**230 Priority Mail International**

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**232 Eligibility**

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**232.2 Eligible Priority Mail International Flat Rate Envelopes and Small Flat Rate Priced Boxes**

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*Exhibit 232.2b*

**Eligible Priority Mail International Small Flat Rate Priced Boxes**

*[Revise Exhibit 232.2b to read as follows:]*

| Item | Inside dimensions (L–W–H) | Outside dimensions (L–W–H) | Item No. |
|---|---|---|---|
| Priority Mail International Small Flat Rate Box | 8⅝″ x 5⅜″ x 1⅝″ | 8 11/16″ x 5 7/16″ x 1¾″ | SFBX |
| Priority Mail International DVD Box | 7 9/16″ x 5 7/16″ x 1⅛″ | 8¾″ x 5 9/16″ x 1½″ | O–DVDS |

| Item | Inside dimensions (L–W–H) | Outside dimensions (L–W–H) | Item No. |
|---|---|---|---|
| Priority Mail International Large Video Box | 9¼″ x 6¼″ x 2″ | 9⁹⁄₁₆″ x 6⁷⁄₁₆″ x 2³⁄₁₆″ | O–1096–L |

* * * * *

*[Renumber current 232.4 through 232.8 as new 232.5 through 232.9 and add new 232.4 to read as follows:]*

**232.4 Eligible Priority Mail International Medium and Large Flat Rate Boxes**

Only the items in Exhibit 232.4a and Exhibit 234.4b qualify for the Priority Mail International Medium and Large Flat Rate Box pricing.

*Exhibit 232.4a*

**Eligible Priority Mail Medium International Flat Rate Boxes**

| Item | Inside dimensions (L–W–H) | Outside dimensions (L–W–H) | Item No. |
|---|---|---|---|
| Priority Mail International Medium Flat Rate Box | 11″ x 8½″ x 5½″ | 11¼″ x 8¾″ x 6″ | O–FRB1 |
| Priority Mail International Medium Flat Rate Box | 13⅝″ x 11⅞″ x 3⅜″ | 14″ x 12″ x 3½″ | O–FRB2 |

*Exhibit 232.4b*

**Eligible Priority Mail International Large Flat Rate Boxes**

| Item | Inside dimensions (L–W–H) | Outside dimensions (L–W–H) | Item No. |
|---|---|---|---|
| Priority Mail International Large Flat Rate Box | 12″ x 12″ x 5½″ | 12¼″ x 12¼″ x 6″ | LFRB |
| Priority Mail International Board Game Large Flat Rate Box | 23¹¹⁄₁₆″ x 11¾″ x 3″ | 24¹⁄₁₆″ x 11⅞″ x 3-⅛″ | GBFRB |

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**233 Prices and Postage Payment Methods**

**233.1 Prices**

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*[Renumber current 233.12 through 233.14 as new 233.14 through 233.16 and insert new 233.12 and 233.13 to read as follows:]*

**233.12 Commercial Base Prices**

Priority Mail International commercial base prices are generally less than Priority Mail International retail prices when postage is paid using a permit imprint under 233.222 or the online methods described in 233.231. See Notice 123—Price List, for the applicable price.

**233.13 Commercial Plus Prices**

For approved mailers, Priority Mail International commercial plus prices are generally less than Priority Mail International commercial base prices when postage is paid by a registered end-user of a USPS-approved PC Postage product, or a permit imprint under 233.222. See Notice 123—Price List, for the applicable price.

**233.131 Commercial Plus Pricing—Eligibility**

To qualify for commercial plus pricing, customers must agree to all terms and conditions in a standardized agreement with the Postal Service and tender at least $100,000 per year of international expedited products. For this purpose, ''international expedited products'' includes any combination of Global Express Guaranteed, Express Mail International, or Priority Mail International items.

**233.132 Commercial Plus Pricing—Approval**

Mailers meeting the minimum revenue thresholds under 233.131 must complete an agreement with the Postal Service, by contacting their account manager, or USPS Global Business via email at *globalcpp@usps.gov* for a commitment agreement form or for additional information.

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**233.2 Postage Payment Methods**

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**233.22 Permit Imprint**

**233.221 Permit Imprint—General**

Payment for Priority Mail International shipments paid with a permit imprint through an advance deposit account is permitted only when requirements for commercial base prices or commercial plus prices (see 233.222) are followed. Postage paid with a permit imprint is subject to the general conditions in IMM 152.4 and in DMM 604 and 705.

*[Revise the title and introductory text of 233.222 to read as follows:]*

**233.222 Permit Imprint—Commercial Base or Commercial Plus Prices**

Priority Mail International commercial base and commercial plus prices are generally less than Priority Mail International retail prices when postage is paid using a permit imprint. See Notice 123—Price List, for the applicable price. The commercial base price applies only to the postage portion of Priority Mail International prices. In addition, customers must meet the following requirements:

* * * * *

*[Delete 233.223, Permit Imprint—Retail Price, in its entirety.]*

* * * * *

**233.23 Online Postage Payment Method**

**233.231 Online Prices**

*[Revise 233.231 to read as follows:]*

For selected destination countries, Priority Mail International items qualify for discounted prices (equal to the commercial base price or commercial plus price) when mailers use one of the following online shipping methods:

a. Commercial Base Price: Click-N-Ship service; or registered end-users of an authorized PC Postage vendor.

b. Commercial Plus Price: Registered end-users of an authorized PC Postage vendor.

The commercial base or commercial plus price is automatically applied to each shipment when using one of the above postage payment methods. The discount applies only to the postage portion of the Priority Mail International price. It does not apply to any other charges or fees, such as fees for Pickup on Demand service, insurance, or shipments made under a customized agreement.

*[Renumber current 233.232 as new 233.233 and add new 233.232 to read as follows:]*

**233.232 Marking Requirements**

Priority Mail International mailpieces claiming the commercial base or commercial plus price paid with PC Postage must bear the appropriate price marking, printed on the piece or produced as part of the PC Postage indicia. Mailers must place the applicable marking directly above, directly below, or to the left of the postage using one of the following formats:

a. Commercial Base Price, Commercial Base Pricing, or ComBasPrice.

b. Commercial Plus Price, Commercial Plus Pricing, or ComPlsPrice.

*[Revise the title and text of renumbered 233.233 to read as follows:]*

**233.233 Determining Online Prices**

For each addressed mailpiece, refer to Notice 123—Price List, for the applicable commercial base or commercial plus price.

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**Country Price Groups and Weight Limits**

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*[Revise the listing for Tonga by adding Express Mail International service as follows:]*

| Country | Global express guaranteed | | Express mail international | | Priority mail international [1] | | First-class mail international | |
|---|---|---|---|---|---|---|---|---|
| | Price group | Max. wt. (lbs.) | Price group | Max. wt. (lbs.) | Price group | Max. wt. (lbs.) | Price group | Max. wt.[2] (ozs./lbs.) |
| * * | * | | * | | * | | * | |
| Tonga | 4 | 70 | 6 | 66 | 6 | 44 | 6 | 3.5/4 |
| * * | * | | * | | * | | * | |

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**Individual Country Listings**

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**Global Express Guaranteed (210)**

*[For each country that offers Global Express Guaranteed service, remove the price table. However, retain the country's Price Group designation (which appears in the ''Global Express Guaranteed'' heading) and any special standards or notes (which appear directly below the ''Global Express Guaranteed'' heading). In addition, retain the country's maximum weight limit from the bottom of the price table and insert it where indicated by the ''[x]'' in the following text.]*

The maximum weight is [x] pounds. Refer to Notice 123—Price List, for the applicable retail, commercial base, or commercial plus price.

* * * * *

**Express Mail International (*220*)**

*[For each country that offers Express Mail International service, remove the price table. However, retain the country's Price Group designation (which appears in the ''Express Mail International'' heading). In addition, retain the country's maximum weight limit from the bottom of the price table and insert it where indicated by the ''[x]'' in the following text.]*

The maximum weight is [x] pounds. Refer to Notice 123—Price List, for the applicable retail, commercial base, or commercial plus price.

*[For each country that offers Express Mail International service, revise the title and text of the Flat Rate section to read as follows:]*

**Express Mail International—Flat Rate Envelope and Flat Rate Boxes:**

*[For each country that offers Express Mail International, insert the following:]*

The maximum weight for the Express Mail International Flat Rate Envelope and the Express Mail International Flat Rate Boxes is 20 pounds. Refer to Notice 123-Price List, for the applicable retail, commercial base, or commercial plus price.

**Insurance (222.71)**

* * * * *

*[For each country that offers Express Mail International merchandise insurance, replace the fees to read as follows up to the applicable maximum amount available for each country:]*

| Insured amount not over | Fee | Insured amount not over | Fee |
|---|---|---|---|
| $100 | No Fee | For insurance coverage above $2,000, add $1.50 for each $500 or fraction thereof, up to a maximum of $5,000 per shipment. | |
| 200 | $0.85 | | |
| 500 | 2.35 | | |
| 1,000 | 3.85 | | |
| 1,500 | 5.35 | | |
| 2,000 | 6.85 | $5,000 max. | $15.85. |

* * * * *

**Priority Mail International (*230*)**

*[For each country that offers Priority Mail International service, remove the price table. However, retain the country's Price Group designation (which appears in the ''Priority Mail International'' heading). In addition, retain the country's maximum weight limit from the bottom of the price table and insert it where indicated by the ''[x]'' in the following text.]*

The maximum weight is [x] pounds. Refer to Notice 123—Price List, for the applicable retail, commercial base, or commercial plus price.

**Note:** Ordinary Priority Mail International includes indemnity at no cost based on weight. (See 230.)

**Priority Mail International—Flat Rate**

*[For each country except Ascension, Bolivia, Cuba, Falkland Islands, and North Korea, revise the lines of text for the Flat Rate priced items to read as follows:]*

Flat Rate Envelopes or Small Flat Rate Priced Boxes: The maximum weight is 4 pounds. Refer to Notice 123—Price List for the applicable retail, commercial base, or commercial plus price.

Flat Rate Boxes: Medium and Large: The maximum weight is 20 pounds, or the limit set by the individual country, whichever is less. Refer to Notice 123—Price List, for the retail, commercial base, or commercial plus price.

*[For Ascension, Bolivia, Cuba, and the Falkland Islands revise the text directly below the heading ''Available only for Priority Mail International Flat Rate Envelope and Small Flat Rate Priced Boxes'' to read as follows:]*

Flat Rate Envelopes or Small Flat Rate Priced Boxes: The maximum weight is 4 lbs. Refer to Notice 123—Price List, for the applicable retail, commercial base, or commercial plus price.

*[For North Korea, revise the directly below the heading ''Available only for Priority Mail International Flat Rate Envelope'' to read as follows:]*

Flat Rate Envelopes: May not contain dutiable items or merchandise. The maximum weight is 4 lbs. Refer to Notice 123—Price List, for the applicable retail, commercial base, or commercial plus price.

**Insurance 232.82**

* * * * *

*[For each country that offers Priority Mail International insurance, replace the table of fees to read as follows up to the applicable maximum amount available for each country:]*

| Insured amount not over | Fee | Insured amount not over | Fee |
|---|---|---|---|
| $50 | $2.45 | Add $1.15 for each additional $100 or fraction of insurance coverage. | |
| 100 | 3.60 | | |
| 200 | 4.75 | | |
| 300 | 5.90 | | |
| 400 | 7.05 | | |
| 500 | 8.20 | $5,000 max | $59.95. |

* * * * *

**First-Class Mail International (240)**

* * * * *

**Airmail M–bags (260)—Direct Sack to One Addressee**

*[For each country that offers Airmail M-bags, remove the price table. However, retain the country's Price Group designation (which appears in the ''Direct Sack to One Addressee'' heading). In addition, retain the country's maximum weight limit from the bottom of the price table and insert it where indicated by the ''[x]'' in the following text.]*

The maximum weight is [x] pounds. Refer to Notice 123—Price List, for the applicable price.

* * * * *

**International Postal Money Order (371)**

*[For each country that offers international postal money orders, revise the fee and money order inquiry fee as follows:]*

Fee: $4.45

Money Order Inquiry Fee: $5.50

* * * * *

**Tonga**

**Country Conditions for Mailing**

* * * * *

*[Revise the listing for Tonga by adding Express Mail International Service as follows:]*

Express Mail International (*220*) Price Group 6

**Express Mail International—Flat Rate Envelope and Flat Rate Boxes:**

The maximum weight for the Express Mail International Flat Rate Envelope and the Express Mail International Flat Rate Boxes is 20 pounds. Refer to Notice 123, *Price List,* for the applicable retail, commercial base, or commercial plus price.

**Insurance (222.71)**

Available for Express Mail International merchandise shipments only

| Insured amount not over | Fee | Insured amount not over | Fee |
|---|---|---|---|
| $100 | No Fee | For insurance coverage above $2,000, add $1.50 for each $500 or fraction thereof, up to a maximum of $5,000 per shipment. | |
| 200 | $0.85 | | |
| 500 | 2.35 | | |
| 1,000 | 3.85 | | |
| 1,500 | 5.35 | | |
| 2,000 | 6.85 | $5,000 max | $15.85. |

| Articles admitted | Required customs form/endorsement |
|---|---|
| Correspondence, business papers | PS Form 2976, Customs—*CN 22 and Sender's Declaration.* Endorse items clearly next to mailing label as BUSINESS PAPERS. |
| Merchandise samples without commercial value, microfilm, microfiche, and magnetic tapes and discs. | PS Form 2976, Customs—*CN 22 and Sender's Declaration.* |
| Merchandise and all articles subject to customs duty | PS Form 2976–A, *Customs Declaration and Dispatch Note CP 72,* inside a PS Form 2976–E, *Customs Declaration Envelope CP 91.* |

**Size Limits (221.42)**

Maximum length: 36 inches
Maximum length and girth combined: 79 inches

**Note:** Coins; banknotes; currency notes, including paper money; securities of any kind payable to bearer; traveler's checks; platinum, gold, and silver; precious stones; jewelry; watches; and other valuable articles are prohibited in Express Mail International shipments to Tonga.

Reciprocal Service Name: EMS
Country Code: TO
Areas Served: All

* * * * *

We will publish an appropriate amendment to 39 CFR part 20 to reflect these changes.

**Stanley F. Mires,**

*Attorney, Legal Policy & Legislative Advice.*

[FR Doc. 2011–31079 Filed 12–2–11; 8:45 am]

**BILLING CODE 7710–12–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 9 and 721

**[EPA–HQ–OPPT–2010–1075; FRL–9329–5]**

**RIN 2070–AB27**

## Significant New Use Rules on Certain Chemical Substances; Withdrawal of Two Chemical Substances

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

**ACTION:** Final rule.

**SUMMARY:** EPA is withdrawing two significant new use rules (SNURs) promulgated under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for chemical substances which were the subject of premanufacture notices (PMNs), i.e., rutile, tin zinc, calcium-doped (PMN P–06–36; CAS No. 389623–01–2) and rutile, tin zinc, sodium-doped (PMN P–06–37; CAS No. 389623–07–8). These chemical substances are subject to TSCA section 5(e) consent orders issued by EPA. EPA received a notice of intent to submit adverse comments on the direct final rule. Therefore, the Agency is withdrawing these SNURs, as required under the expedited SNUR rulemaking process. EPA intends to publish in the near future proposed SNURs for these two chemical substances under separate notice and comment procedures.

**DATES:** This final rule is effective December 5, 2011.

**FOR FURTHER INFORMATION CONTACT:** *For technical information contact:* Kenneth Moss, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–9232; email address: *moss.kenneth@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. Does this action apply to me?

A list of potentially affected entities is provided in the **Federal Register** issue of October 5, 2011 (76 FR 61566) (FRL–8880–2). If you have questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

### II. What rules are being withdrawn?

In the **Federal Register** issue of October 5, 2011, EPA issued several direct final SNURs, including SNURs for the two chemical substances that are the subject of this withdrawal. These direct final rules were issued pursuant to the procedures in 40 CFR part 721, subpart D. In accordance with § 721.160(c)(3)(ii), EPA is withdrawing the rules issued for rutile, tin zinc, calcium-doped (PMN P–06–36; CAS No. 389623–01–2) and rutile, tin zinc, sodium-doped (PMN P–06–37; CAS No. 389623–07–8) because the Agency received a notice of intent to submit adverse comments. For further information regarding EPA's expedited process for issuing SNURs, interested parties are directed to 40 CFR part 721, subpart D, and the **Federal Register** issue of July 27, 1989 (54 FR 31314). The docket for the direct final SNURs for these two chemical substances that are being withdrawn was established at EPA–HQ–OPPT–2010–1075. That docket includes information considered by the Agency in developing these direct final rules and the notice of intent to submit adverse comments. EPA intends to publish in the near future proposed SNURs for these two chemical substances under separate notice and comment procedures.

### III. How do I access the docket?

To access the electronic docket, please go to *http://www.regulations.gov* and follow the online instructions to access docket ID number EPA–HQ–OPPT–2010–1075. Additional information about the Docket Facility is provided under **ADDRESSES** in the **Federal Register** issue of October 5, 2011. If you have questions, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

### IV. What statutory and Executive Order reviews apply to this action?

This final rule removes an existing regulatory requirement and does not contain any new or amended requirements. As such, the Agency has determined that this withdrawal will not have any adverse impacts, economic or otherwise. The statutory and executive order review requirements applicable to the direct final rule were discussed in the **Federal Register** issue of October 5, 2011. Those review requirements do not apply to this action because it is a withdrawal and does not contain any new or amended requirements.

### V. 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 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 the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

**List of Subjects**

*40 CFR Part 9*

Environmental protection, Reporting and recordkeeping requirements.

*40 CFR Part 721*

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: November 29, 2011.

**Wendy C. Hamnett,**

*Director, Office of Pollution Prevention and Toxics.*

Therefore, 40 CFR parts 9 and 721 are amended as follows:

## PART 9—[AMENDED]

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

**Authority:** 7 U.S.C. 135 *et seq.,* 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.,* 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.,* 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

**§ 9.1 [Amended]**

■ 2. Remove from the table in § 9.1 under the undesignated center heading ''Significant New Uses of Chemical Substances,'' the entries for §§ 721.10230 and 721.10231.

## PART 721—[AMENDED]

■ 3. The authority citation for part 721 continues to read as follows:

**Authority:** 15 U.S.C. 2604, 2607, and 2625(c).

**§ 721.10230 [Removed]**

■ 4. Remove § 721.10230.

**§ 721.10231 [Removed]**

■ 5. Remove § 721.10231.

[FR Doc. 2011–31137 Filed 12–2–11; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

[EPA–R09–OAR–2011–0846; FRL–9493–2]

## Revisions to the California State Implementation Plan, Placer County Air Pollution Control District

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve revisions to the Placer County Air Pollution Control District (PCAPCD) portion of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from architectural coatings and automotive refinishing operations. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

**DATES:** This rule is effective on February 3, 2012 without further notice, unless EPA receives adverse comments by January 4, 2012. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

**ADDRESSES:** Submit comments, identified by docket number EPA–R09–OAR–2011–0846, by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions.
2. *Email: steckel.andrew@epa.gov.*
3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

*Instructions:* All comments will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *http://www.regulations.gov* or email. *http://www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send email directly to EPA, your email address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* Generally, documents in the docket for this action are available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at *http://www.regulations.gov,* some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material, large maps), and some may not be publicly available in either location (*e.g.,* CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** 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. The State's Submittal
A. What rules did the State submit?
B. Are there other versions of these rules?
C. What is the purpose of the submitted rules?
II. EPA's Evaluation and Action
A. How is EPA evaluating the rules?
B. Do the rules meet the evaluation criteria?
C. EPA Recommendations To Further Improve the Rules
D. Public Comment and Final Action
III. Statutory and Executive Order Reviews

## I. The State's Submittal

### *A. What rules did the State submit?*

Table 1 lists the rules we are approving with the dates that they were adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1—SUBMITTED RULES

| Local agency | Rule No. | Rule title | Amended/adopted | Submitted |
|---|---|---|---|---|
| PCAPCD | 218 | Architectural Coatings | Amended 10/14/10 | 4/5/11 |
| PCAPCD | 234 | Automotive Refinishing Operations | Adopted 11/3/94 | 4/5/11 |

TABLE 1—SUBMITTED RULES—Continued

| Local agency | Rule No. | Rule title | Amended/adopted | Submitted |
|---|---|---|---|---|
| | | | Amended 10/14/10. | |

On May 6, 2011 (218) and May 31, 2011 (234), EPA determined that the two submittals met the completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal EPA review.

*B. Are there other versions of these rules?*

We approved an earlier version of PCAPCD Rule 218 into the SIP on July 18, 1996 (61 FR 37390). The PCAPCD amended revisions to the SIP-approved version on October 14, 2010. There are no previous versions of PCAPCD Rule 234 in the SIP. CARB submitted both rules to us on April 5, 2011. While we can act on only the most recently submitted version, we have reviewed materials provided with previous submittals.

*C. What is the purpose of the submitted rules?*

VOCs help produce ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires States to submit regulations that control VOC emissions. PCAPCD Rule 218 and PCAPCD Rule 234 limit emissions of VOC from architectural coatings and from automotive refinishing operations. EPA's technical support documents (TSDs) have more information about these rules.

**II. EPA's Evaluation and Action**

*A. How is EPA evaluating the rules?*

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for each category of sources covered by a Control Techniques Guidelines (CTG) document as well as each major source in nonattainment areas (see sections 182(a)(2) and(b)(2)), and must not relax existing requirements (see sections 110(l) and 193). PCAPCD regulates an ozone nonattainment area (see 40 CFR part 81). Rule 218 is not subject to RACT requirements because it is applicable to sources that are too small to exceed the major source threshold of 25 tons per year (tpy), and no CTG is available for this category. However, PCAPCD Rule 234 must fulfill RACT.

Guidance and policy documents that we use to evaluate enforceability and RACT requirements consistently include the following:

1. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,'' EPA, May 25, 1988 (the Bluebook).
2. ''Guidance Document for Correcting Common VOC & Other Rule Deficiencies,'' EPA Region 9, August 21, 2001 (the Little Bluebook).
3. CARB's Consumer Products Regulation, Title 17, California Code of Regulations (CCR), Division 3, Chapter 1, Subchapter 8.5, Article 2, Sections 94507–94517.
4. EPA's model VOC rule guidance titled, ''Model Volatile Organic Compound Rules for Reasonably Available Control Technology'' (June 1992).

*B. Do the rules meet the evaluation criteria?*

We believe these rules are consistent with the relevant policy and guidance regarding enforceability, RACT and SIP relaxations. The TSDs have more information on our evaluation.

*C. EPA Recommendations To Further Improve the Rules*

The TSDs describe additional rule revisions that we recommend for the next time the local agency modifies the rules.

*D. Public Comment and Final Action*

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register,** we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by January 4, 2012, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on February 3, 2012. This will incorporate these rules into the federally enforceable SIP.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

**III. Statutory and Executive Order Reviews**

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

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

• Does not provide EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rules, 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).

Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the Proposed Rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

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

Environmental protection, Air pollution control, Incorporation by reference, 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 paragraphs (c)(388)(i)(E)(*3*) and (*4*) to read as follows:

**§ 52.220 Identification of plan.**

* * * * *

(c) * * *

(388) * * *

(i) * * *

(E) * * *

(*3*) Rule 218, ''Architectural Coatings,'' amended October 14, 2010.

(*4*) Rule 234, ''Automotive Refinishing Operations,'' adopted November 3, 1994 and amended October 14, 2010, effective July 1, 2011.

* * * * *

[FR Doc. 2011–30787 Filed 12–2–11; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 93

**[EPA–HQ–OAR–2011–0393; FRL–9499–1]**

**RIN 2060–AR03**

## Transportation Conformity Rule: MOVES Regional Grace Period Extension

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

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

**SUMMARY:** Because EPA received adverse comments, we are withdrawing the direct final rule extending the MOVES Regional Grace Period, published on October 13, 2011. The direct final rule would have extended the grace period to March 2013, before the Motor Vehicle Emission Simulator model (currently MOVES2010a) is required for regional emissions analyses for transportation conformity determinations (''regional conformity analyses'').

**DATES:** Effective December 5, 2011, EPA withdraws the direct final rule published at 76 FR 63554, on October 13, 2011.

**FOR FURTHER INFORMATION CONTACT:** Meg Patulski, State Measures and Transportation Planning Center, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; *telephone number:* (734) 214–4842; *fax number:* (734) 214–4052; *email address: patulski.meg@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Because EPA received adverse comments, we are withdrawing the direct final rule for extending the MOVES regional conformity grace period, published on October 13, 2011 (76 FR 63554). We stated in that direct final rule that if we received adverse comments, the direct final rule would not take effect and we would publish a timely withdrawal in the **Federal Register**. We subsequently received adverse comments on that direct final rule. We will address those comments in a subsequent final action, which will be based on the parallel proposed rule also published on October 13, 2011 (76 FR 63575). As stated in the direct final rule and the parallel proposed rule, we will not institute a second comment period on this action.

Dated: November 29, 2011.

**Gina McCarthy,**

*Assistant Administrator for the Office of Air and Radiation.*

Accordingly, the amendments to the rule published on October 13, 2011 (76 FR 63554) are withdrawn as of December 5, 2011.

[FR Doc. 2011–31130 Filed 12–2–11; 8:45 am]

BILLING CODE 6560–50–P

# Proposed Rules

Federal Register
Vol. 76, No. 233
Monday, December 5, 2011

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

## DEPARTMENT OF ENERGY

### 5 CFR Chapter XXIII

### 10 CFR Chapters II, III, X

### Reducing Regulatory Burden

**AGENCY:** Office of the General Counsel, Department of Energy.

**ACTION:** Request for information.

**SUMMARY:** As part of its implementation of Executive Order 13563, ''Improving Regulation and Regulatory Review,'' issued by the President on January 18, 2011, the Department of Energy (Department or DOE) is seeking comments and information from interested parties to assist DOE in reviewing its existing regulations to determine whether any such regulations should be modified, streamlined, expanded, or repealed. The purpose of DOE's review is to make the agency's regulatory program more effective and less burdensome in achieving its regulatory objectives.

**DATES:** Written comments and information are requested on or before January 4, 2012. Reply comments are requested on or before February 3, 2012.

**ADDRESSES:** Interested persons are encouraged to submit comments, identified by ''Regulatory Burden RFI,'' by any of the following methods:

*Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

*Email: Regulatory.Review@hq.doe.gov.* Include ''Regulatory Burden RFI'' in the subject line of the message.

*Mail:* U.S. Department of Energy, Office of the General Counsel, 1000 Independence Avenue SW., Room 6A245, Washington, DC 20585.

*Docket:* For access to the docket to read background documents, or comments received, go to the Federal eRulemaking Portal at *http://www.regulations.gov.*

That Department's plan for retrospective review of its regulations can be accessed at *http://www.whitehouse.gov/21stcenturygov/actions/21st-century-regulatory-system.*

**FOR FURTHER INFORMATION CONTACT:** Daniel Cohen, Assistant General Counsel for Legislation, Regulation, and Energy Efficiency, U.S. Department of Energy, Office of the General Counsel, 1000 Independence Avenue SW., Washington, DC 20585. *Email: Regulatory.Review@hq.doe.gov.*

**SUPPLEMENTARY INFORMATION:** On January 18, 2011, the President issued Executive Order 13563, ''Improving Regulation and Regulatory Review,'' to ensure that Federal regulations seek more affordable, less intrusive means to achieve policy goals, and that agencies give careful consideration to the benefits and costs of those regulations. To that end, the Executive Order requires, among other things, that:

- Agencies propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs; and that agencies tailor regulations to impose the least burden on society, consistent with obtaining the regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; and that agencies, consistent with applicable law, 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).
- The regulatory process encourages public participation and an open exchange of views, with an opportunity for the public to comment.
- Agencies coordinate, simplify, and harmonize regulations to reduce costs and promote certainty for businesses and the public.
- Agencies consider low-cost approaches that reduce burdens and maintain flexibility.
- Regulations be guided by objective scientific evidence.

Additionally, the Executive Order directs agencies to consider how best to promote retrospective analyses of existing rules. Specifically, agencies were required to develop a plan under which the agency will periodically review existing regulations to determine which should be maintained, modified, strengthened, or repealed to increase the effectiveness and decrease the burdens of the agency's regulatory program.

At the time of issuance of the Executive Order, the Department took two immediate steps to launch its retrospective review of existing regulatory and reporting requirements. *First,* the Department issued a Request for Information (RFI) seeking public comment on how best to review its existing regulations and to identify whether any of its existing regulations should be modified, streamlined, expanded, or repealed. *Second,* the Department created a link on the Web page of DOE's Office of the General Counsel to an email in-box at *Regulatory.Review@hq.doe.gov,* which interested parties can use to identify to DOE—on a continuing basis—regulations that may be in need of review.

Additionally, and based on comments received through the RFI, the Department developed a plan for the periodic review of its existing regulations and reporting obligations. That plan was released in August 2011 and can be accessed at *http://www.whitehouse.gov/21stcenturygov/actions/21st-century-regulatory-system.*

The Department is committed to maintaining a consistent culture of retrospective review and analysis. Its plan sets forth a process for identifying significant rules that are obsolete, unnecessary, unjustified, excessively burdensome, or counterproductive. Once such rules have been identified, DOE will, after considering public input on any proposed change, determine what action is necessary or appropriate. Moreover, DOE's initial identification of rules meriting review does not represent the completion of the retrospective review process. Instead, DOE will continually engage in review of its rules to determine whether there are burdens on the public that can be avoided by amending or rescinding existing requirements. To that end, while the Department is always open to receiving information about the impact of its regulations, it is publishing today's RFI to solicit public input again.

While the Department promulgates rules in accordance with the law and to the best of its analytic capability, it is difficult to be certain of the consequences of a rule, including its costs and benefits, until it has been tested. Because knowledge about the

full effects of a rule is widely dispersed in society, members of the public are likely to have useful information and perspectives on the benefits and burdens of existing requirements and how regulatory obligations may be updated, streamlined, revised, or repealed to better achieve regulatory objectives, while minimizing regulatory burdens. Interested parties may also be well-positioned to identify those rules that are most in need of review and, thus, assist the Department in prioritizing and properly tailoring its retrospective review process. In short, engaging the public in an open, transparent process is a crucial step in DOE's review of its existing regulations.

**List of Questions for Commenters**

The following list of questions represents an attempt by the Department to assist in the formulation of comments and is not intended to restrict the issues that may be addressed. In addressing these questions or others, DOE requests that commenters identify with specificity the regulation or reporting requirement at issue, providing legal citation where available. The Department also requests that the submitter provide, in as much detail as possible, an explanation why a regulation or reporting requirement should be modified, streamlined, expanded, or repealed, as well as specific suggestions of ways the Department can better achieve its regulatory objectives.

(1) How can the Department best promote meaningful periodic reviews of its existing rules and how can it best identify those rules that might be modified, streamlined, expanded, or repealed?

(2) What factors should the agency consider in selecting and prioritizing rules and reporting requirements for review?

(3) Are there regulations that are or have become unnecessary, ineffective, or ill advised and, if so, what are they? Are there rules that can simply be repealed without impairing the Department's regulatory programs and, if so, what are they?

(4) Are there rules or reporting requirements that have become outdated and, if so, how can they be modernized to accomplish their regulatory objectives better?

(5) Are there rules that are still necessary, but have not operated as well as expected such that a modified, stronger, or slightly different approach is justified?

(6) Does the Department currently collect information that it does not need or use effectively to achieve regulatory objectives?

(7) Are there regulations, reporting requirements, or regulatory processes that are unnecessarily complicated or could be streamlined to achieve regulatory objectives in more efficient ways?

(8) Are there rules or reporting requirements that have been overtaken by technological developments? Can new technologies be leveraged to modify, streamline, or do away with existing regulatory or reporting requirements?

(9) How can the Department best obtain and consider accurate, objective information and data about the costs, burdens, and benefits of existing regulations? Are there existing sources of data the Department can use to evaluate the post-promulgation effects of regulations over time? We invite interested parties to provide data that may be in their possession that documents the costs, burdens, and benefits of existing requirements.

(10) Are there regulations that are working well that can be expanded or used as a model to fill gaps in other DOE regulatory programs?

The Department notes that this RFI is issued solely for information and program-planning purposes. While responses to this RFI do not bind DOE to any further actions related to the response, all submissions will be made publically available on *http://www.regulations.gov*.

Issued in Washington, DC, on November 28, 2011.

**Sean A. Lev,**

*Acting General Counsel, Department of Energy.*

[FR Doc. 2011–31115 Filed 12–2–11; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF AGRICULTURE

### Federal Crop Insurance Corporation

### 7 CFR Part 400

**[Docket No. FCIC–11–0009]**

**RIN 0563–AC26**

## General Administrative Regulations; Mutual Consent Cancellation; Food Security Act of 1985, Implementation; Denial of Benefits; and Ineligibility for Programs Under the Federal Crop Insurance Act

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) proposes to amend the General Administrative Regulations to revise Subpart U—Ineligibility for Programs under the Federal Crop Insurance Act to eliminate redundancies, improve clarity, remove or update obsolete references, and add references to other provisions regarding ineligibility for Federal crop insurance. In addition, FCIC proposes to remove Subpart C—General Administrative Regulations; Mutual Consent Cancellation and Subpart F—Food Security Act of 1985, Implementation; Denial of Benefits. The changes will apply for the 2013 and succeeding crop years.

**DATES:** Written comments and opinions on this proposed rule will be accepted until close of business February 3, 2012 and will be considered when the rule is to be made final. Comments on the information collection requirements must be received on or before February 3, 2012.

**ADDRESSES:** FCIC prefers that comments be submitted electronically through the Federal eRulemaking Portal. You may submit comments, identified by Docket ID No. FCIC–11–0009, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Director, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, P.O. Box 419205, Kansas City, MO 64133–6205.

All comments received, including those received by mail, will be posted without change to *http://www.regulations.gov*, including any personal information provided, and can be accessed by the public. All comments must include the agency name and docket number or Regulatory Information Number (RIN) for this rule. For detailed instructions on submitting comments and additional information, see *http://www.regulations.gov*. If you are submitting comments electronically through the Federal eRulemaking Portal and want to attach a document, we ask that it be in a text-based format. If you want to attach a document that is a scanned Adobe PDF file, it must be scanned as text and not as an image, thus allowing FCIC to search and copy certain portions of your submissions. For questions regarding attaching a document that is a scanned Adobe PDF file, please contact the Risk Management Agency (RMA) Web Content Team at (816) 823–4694 or by email at *rmaweb.content@rma.usda.gov*.

*Privacy Act:* Anyone is able to search the electronic form of all comments received for any dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the complete User Notice and Privacy Notice for Regulations.gov at *http://www.regulations.gov/#!privacyNotice*.

**FOR FURTHER INFORMATION CONTACT:** Director, Product Administration and Standards Division, at the Kansas City, MO, address listed above, telephone (816) 926–7387.

**SUPPLEMENTARY INFORMATION:**

**Executive Order 12866**

The Office of Management and Budget (OMB) has determined that this rule is non-significant for the purpose of Executive Order 12866 and, therefore, it has not been reviewed by OMB.

**Paperwork Reduction Act of 1995**

Pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information in this rule have been approved by OMB under control number 0563–0053 through March 31, 2012. However, FCIC is creating a new package for the information collection requirements necessary for administering 7 CFR, part 400, subpart U.

Accordingly, in accordance with the Paperwork Reduction Act of 1995, RMA is seeking comments from all interested individuals and organizations on a new information collection request associated with 7 CFR, part 400, subpart U—Ineligibility for Programs under the Federal Crop Insurance Act.

You may submit comments, identified by Docket ID No. FCIC–11–0009, by going to the Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.

*Title:* 7 CFR, part 400, subpart U—Ineligibility for Programs under the Federal Crop Insurance Act.

*OMB Control Number:* 0563—NEW.

*Type of Request:* New.

*Abstract:* The following mandates require FCIC to identify persons who are ineligible to participate in the Federal crop insurance program administered under the Federal Crop Insurance Act.

(1) Section 1764 of the Food Security Act of 1985 (Pub. L. 99–198);

(2) 21 U.S.C., Chapter 13;

(3) Section 14211 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246);

(4) Executive Order 12549; and

(5) 7 U.S.C. 1515.

The FCIC and Approved Insurance Providers (AIPs) use the information collected to determine whether persons seeking to obtain Federal crop insurance coverage are ineligible for such coverage according to the aforementioned mandates. The purpose of collecting the information is to ensure persons that are ineligible for benefits under the Federal crop insurance program are accurately identified as such and do not obtain benefits to which they are not eligible.

FCIC and RMA do not obtain information used to identify a person as ineligible for benefits under the Federal crop insurance program directly from the ineligible person. AIPs notify RMA of persons with a delinquent debt electronically through a secure automated system. RMA (1) Sends written notification to the person informing them they are ineligible for benefits under the Federal crop insurance program; and (2) places that person on the RMA Ineligible Tracking System until the person regains eligibility for such benefits.

RMAs Office of General Counsel notifies RMA in writing of persons convicted of controlled substance violations. RMA (1) Sends written notification to the person informing them they are ineligible for benefits under the Federal crop insurance program; and (2) places that person on RMAs Ineligible Tracking System until the person regains eligibility for such benefits.

Persons debarred, suspended or disqualified by RMA are (1) Notified, in writing, they are ineligible for benefits under the Federal crop insurance program; and (2) placed on RMAs Ineligible Tracking System until the person regains eligibility for such benefits.

Information identifying persons who are ineligible for benefits under the Federal crop insurance program is made available to all AIPs through RMAs Ineligible Tracking System. The Ineligible Tracking System is an electronic system, maintained by RMA, which identifies persons who are ineligible to participate in the Federal crop insurance program. The information must be made available to all AIPs to ensure ineligible persons cannot circumvent the mandates by switching from one AIP to another.

In addition, information identifying persons who are debarred, suspended or disqualified by RMA is provided to the General Services Administration to be included in the Excluded Parties List System, an electronic system maintained by the General Services Administration that provides current information about persons who are excluded or disqualified from covered transactions.

*Estimate of burden:* Reporting burden for the collection and transmission of information by AIPs is estimated to average 15 minutes per response.

*Respondents:* Approved Insurance Providers.

*Estimated number of respondents:* 16 AIPs.

*Estimated number of forms per respondent:* All information is obtained electronically from AIPs.

*Estimated total annual responses:* 5,792 total from all respondents.

*Estimated total annual respondent burden:* 1,448 total from all respondents.

We are requesting comments on all aspects of this information collection to help us to:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agencies, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of burden 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.

All comments in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the request for OMB approval.

**E-Government Act Compliance**

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

**Unfunded Mandates Reform Act of 1995**

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

**Executive Order 13132**

It has been determined under section 1(a) of Executive Order 13132,

Federalism, that this rule does not have sufficient implications to warrant consultation with the States. The provisions contained in this rule will not have a substantial direct effect on States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

**Executive Order 13175**

This rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation will not have substantial and direct effects on Tribal governments and will not have significant Tribal implications.

**Regulatory Flexibility Act**

FCIC certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Program requirements for the Federal crop insurance program are the same for all producers regardless of the size of their farming operation. However, FCIC does waive certain administrative fees for limited resource farmers to help ensure that small entities are given the same opportunities as large entities to obtain crop insurance. This regulation provides the rules regarding ineligibility for crop insurance under the Act based on actions or inactions of the producer, such as violations of the Controlled Substance Act, debarment from Federal Government programs, and failure to pay premiums and administrative fees when due. As such, all producers are treated equally under this regulation. A Regulatory Flexibility Analysis has not been prepared since this regulation does not have an unduly burdening impact on small entities, and therefore, this regulation is exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605).

**Federal Assistance Program**

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

**Executive Order 12372**

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

**Executive Order 12988**

This proposed rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith.

**Environmental Evaluation**

This action is not expected to have a significant economic impact on the quality of the human environment, health, or safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

**Background**

FCIC proposes to revise 7 CFR part 400 by revising subpart U—Ineligibility for Programs Under the Federal Crop Insurance Act to eliminate redundancies, improve clarity, remove or update obsolete references, and simplify the regulations regarding ineligibility for Federal crop insurance. The rule will also reflect the provisions of the Controlled Substances Act and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. The Controlled Substance Act provides that persons convicted of possession or trafficking of controlled substances are ineligible for certain Federal benefits, including crop insurance. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 provides that persons who are not a United States citizen, United States non-citizen national, or a qualified alien are ineligible for certain Federal benefits, including crop insurance.

The proposed rule also incorporates the provisions formally contained in 7 CFR part 400, subpart F into subpart U for efficiency and ease of use. Accordingly, subpart F will be removed and reserved.

Last, 7 CFR part 400, subpart C was promulgated in 1992 to allow certain crop insurance policies to be cancelled when producers applied for crop insurance believing they were required to obtain such crop insurance in order to participate in certain Commodity Credit Corporation disaster payment programs, but subsequently determined that such crop insurance was not a prerequisite. Amendments to the Federal Crop Insurance Act and the authorization and implementation of the Noninsured Crop Assistance Program have made the provisions of subpart C obsolete. Accordingly, this rule will remove and reserve subpart C. The provisions will be effective for the 2013 and succeeding crop years.

**List of Subjects in 7 CFR Part 400**

Administrative practice and procedure, Crop insurance, Reporting and recordkeeping requirements.

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation proposes to amend 7 CFR part 400 as follows:

## PART 400—GENERAL ADMINISTRATIVE REGULATIONS

1. The authority citation for 7 CFR part 400 continues to read as follows:

**Authority:** 7 U.S.C. 1506(1), 1506(o).

### Subpart C—[Removed and Reserved]

2. Remove and Reserve subpart C, General Administrative Regulations; Mutual Consent Cancellation.

### Subpart F—[Removed and Reserved]

3. Remove and Reserve subpart F, Food Security Act of 1985, Implementation; Denial of Benefits.

4. Revise subpart U, Ineligibility for Programs under the Federal Crop Insurance Act, to read as follows:

### Subpart U—Ineligibility for Programs Under the Federal Crop Insurance Act


400.675 Purpose.
400.676 [Reserved]
400.677 Definitions.
400.678 Applicability.
400.679 Criteria for ineligibility.
400.680 Controlled substance.
400.681 Written payment agreement.
400.682 Determination and notification.
400.683 Period of ineligibility.
400.684 Effect of ineligibility.
400.685 Criteria for regaining eligibility.
400.686 Administration and maintenance.


**§ 400.675 Purpose.**

This rule prescribes conditions under which a person may be determined to be ineligible to participate in any program administered under the authority of the Federal Crop Insurance Act. This rule also establishes the criteria for regaining eligibility.

**§ 400.676 [Reserved]**

**§ 400.677 Definitions.**

*Act* means the Federal Crop Insurance Act (7 U.S.C. 1501–1524).

*Applicant* means a person who has submitted an application for crop insurance coverage under the Act.

*Approved Insurance Provider (AIP)* means a legal entity which has entered into a Standard Reinsurance Agreement with FCIC for the applicable reinsurance year.

*Authorized person* means any current or past officer, employee, elected official, managing general agent, agent,

or contractor of an AIP, FCIC, or any other government agency whose duties require access to the ITS to administer the Act.

*Controlled substance* has the same meaning provided in 7 CFR 3021.610.

*Conviction* means (1) a judgment or any other determination of guilt of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or plea, including a plea of nolo contendere; or (2) any other resolution that is the functional equivalent of a judgment, including probation before judgment and deferred prosecution. A disposition without the participation of the court is the functional equivalent of a judgment only if it includes an admission of guilt.

*Date of delinquency* means (1) the termination date specified in the applicable policy for administrative fees and premiums owed for insurance issued under the authority of the Act, and any interest and penalties on those amounts, if applicable; (2) the due date specified in the notice to the person of the amount due for any other amounts due the AIP or FCIC for insurance issued under the authority of the Act, including but not limited to, indemnities, prevented planting payments, or replant payments found not to have been earned or that were overpaid, and any interest, administrative fees, and penalties on such amounts, if applicable. Payments postmarked or received before the date of delinquency by the AIP or its agent for debts owed to the AIP, or by FCIC for debts owed to FCIC, are not delinquent.

*Debt* means an amount of money that has been determined to be owed by any person to FCIC or an AIP, excluding money owed to an AIP's agent, under any program administered under the Act. The debt may have arisen from nonpayment of interest, penalties, premium, or administrative fee; overpayment of indemnity, prevented planting or replant payment; cost of collection; or other causes. A debt does not include debts discharged in bankruptcy or other debts which are legally barred from collection.

*Debtor* means a person who owes a debt and that debt is delinquent.

*Delinquent debt* means a debt that is not satisfied on or before the date of delinquency. To avoid delinquency, a debtor may enter into a written payment agreement acceptable to the AIP or FCIC to pay any such debt as long as all payments are made by the due dates specified in such written payment agreement. A delinquent debt does not include debts discharged in bankruptcy, other debts which are legally barred from collection, or any debt to an AIP's agent.

*Employer Identification Number (EIN)* means a Tax Identification Number issued by the Internal Revenue Service used to identify a business entity, and may also be referred to as a Federal Tax Identification Number.

*Excluded Parties List System (EPLS)* means a list maintained by the General Services Administration that provides a source of current information about persons who are excluded or disqualified from covered transactions, including the date the person was determined ineligible and the date the period of ineligibility ends.

*Federal Crop Insurance Corporation (FCIC)* means a wholly owned government corporation within the USDA.

*Ineligible person* means a person who is denied participation in any program administered under the authority of the Act.

*Ineligible Tracking System (ITS)* means an electronic system to identify persons who are ineligible to participate in any program pursuant to this subpart.

*Meaningful opportunity to contest* means the opportunity for the insured to resolve disagreements with a decision by the AIP through requesting a review of the decision by the AIP, mediation, arbitration, and judicial review, as applicable.

*Person* means an individual, partnership, association, corporation, estate, trust, or other legal entity, and wherever applicable, a State, political subdivision, or an agency of a State. ''Person'' does not include the United States Government or any agency thereof.

*Qualified alien* has the same meaning provided in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1641).

*Reinsurance year* means the period beginning July 1 and ending on June 30 of the following year and, for reference purposes, identified by reference to the year containing June.

*Settlement* means a signed written payment agreement between a debtor and FCIC or the AIP to resolve a dispute arising from a debt or other administrative determination.

*Social Security Number (SSN)* means an individual's Social Security Number as issued under the authority of the Social Security Act.

*Standard Reinsurance Agreement (SRA)* means a cooperative financial assistance agreement between FCIC and an AIP to deliver eligible crop insurance contracts under the authority of the Act and establishes the terms and conditions under which FCIC will provide subsidy and reinsurance on eligible crop insurance policies sold.

*Substantial beneficial interest* has the same meaning as contained in the applicable policy.

*USDA* means the United States Department of Agriculture.

*United States non-citizen national* has the same meaning provided in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1408).

*Written payment agreement* means a written document between a debtor and the AIP or FCIC that is signed and dated by all applicable parties to satisfy financial obligations of the debtor with scheduled installment payments under conditions that modify the terms of the original debt in accordance with § 400.681.

**§ 400.678 Applicability.**

This subpart applies to any program administered under the authority of the Act, including but not limited to:

(a) The catastrophic risk protection plan of insurance;

(b) The additional coverage plans of insurance as authorized under section 508(c) of the Act;

(c) Private insurance products authorized under section 508(h) or 523(d) of the Act and reinsured by FCIC; and

(d) Persons entering contracts or cooperative agreements under sections 506(l), 522(c), 522(d), or 524(a) of the Act.

**§ 400.679 Criteria for ineligibility.**

Except as otherwise provided, a person is ineligible to participate in any program administered under the authority of the Act if the person meets one or more of the following criteria:

(a) Has a delinquent debt.

(1) The existence and delinquency of the debt must be verifiable.

(2) The person has to be provided a meaningful opportunity to contest the debt.

(3) If the person contests the debt, such action does not delay or preclude:

(i) Determination or notification of ineligibility in accordance with § 400.682;

(ii) Effect of the determination of ineligibility;

(iii) Termination of the applicable crop insurance policies; or

(iv) Ineligible persons being reported in accordance with § 400.682 or the ineligible persons being recorded in the ITS.

(4) If the person is determined not to owe the debt, eligibility is reinstated retroactive to the date of the determination of ineligibility, any

applicable policies will be reinstated, and any applicable indemnity, prevented planting or replant payment earned may be paid provided the person has continued to comply with the terms of the policy.

(b) Has been convicted of a controlled substance violation according to § 400.680;

(c) Has been disqualified under section 515(h) of the Act or has been debarred or suspended under 7 CFR part 400 subpart R, or 7 CFR part 3017, or a successor regulation. Ineligibility determinations will not be stayed pending review. However, reversal of the determination of ineligibility will reinstate eligibility retroactive to the date of the determination of ineligibility, and any policies will be reinstated.

(d) Is not a United States citizen, United States non-citizen national, or a qualified alien. Such persons may not be recorded in the ITS; however, such persons are ineligible under the provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 8 U.S.C. 1611;

(e) Has been convicted of a felony for knowingly defrauding the United States in connection with any program administered by USDA; or

(f) Knowingly doing business with an ineligible person in accordance with 7 CFR part 3017.

**§ 400.680 Controlled substance.**

(a) This section implements section 1764 of the Food Security Act of 1985 (Pub. L. 99–198) and Chapter 13 of Title 21 requiring the denial of Federal Benefits, including crop insurance, to persons convicted of controlled substance violations in accordance with subsection (b).

(b) Notwithstanding any other provision of law, a person will be ineligible to participate in any program authorized under the Act, as provided in § 400.683, if the person is convicted under Federal or State law of:

(1) Planting, cultivating, growing, producing, harvesting, or storing a controlled substance in any crop year; or

(2) Possession of or trafficking in a controlled substance.

**§ 400.681 Written payment agreement.**

(a) Written payment agreements shall:

(1) Require scheduled installment payments that will allow for full repayment of the debt within the time frame allotted in paragraph (2);

(2) Not exceed two years in duration; and

(3) Not be modified, replaced, or consolidated after it has been executed in accordance with subsections (b).

(b) To avoid being determined to be ineligible through the execution of a written payment agreement:

(1) For a debt arising from any unpaid premium, administrative fees, or catastrophic risk protection fees:

(i) Only one written payment agreement is permitted per termination date. A written payment agreement may cover multiple crops provided they all have the same termination date; and

(ii) The written payment agreement must be signed by both parties, the debtor and the AIP or FCIC, as applicable, on or before the termination date specified in the applicable policy to prevent an ineligible determination for a delinquent debt.

(2) For all other debts, the written payment agreement must be signed by both parties, the debtor and the AIP or FCIC, as applicable, on or before the due date specified in the notice to the person of the amount due to prevent an ineligible determination for a delinquent debt.

**§ 400.682 Determination and notification.**

(a) The AIP must send a written notice of the debt to the person, including the time frame in which the debt must be paid, and provide the person with a meaningful opportunity to contest the amount or existence of the debt.

(1) The AIP shall evaluate the person's response, if any, and determine if the debt is owed and delinquent.

(2) Upon request by FCIC, the AIP shall submit all documentation related to the debt to FCIC.

(b) If an AIP or any other person has evidence that a person meets any criteria set forth in § 400.679, they must immediately notify FCIC.

(c) After the AIP determines a person has met one or more of the criteria in § 400.679 and notifies FCIC, FCIC will issue and mail a Notice of Ineligibility to the person's last known address and to the AIP. Notices sent to such address will be conclusively presumed to have been received by that person.

(d) The Notice of Ineligibility will state the criteria upon which the determination of ineligibility has been based, a brief statement of the facts to support the determination, the time period of ineligibility, and the right to appeal the determination to be placed on the ITS in accordance with subsection (e).

(e) Within 30 days of receiving the Notice of Ineligibility, the ineligible person may appeal FCIC's determination to be placed on ITS to the National Appeals Division in accordance with 7 CFR part 11. The existence and amount of the debt is determined by the AIP, not FCIC; therefore, those determinations are not appealable to the National Appeals Division.

(f) If the person appeals FCIC's determination to be placed on ITS to the National Appeals Division, the AIP will be notified and provided with an opportunity to participate in the proceeding, if permitted by 7 CFR part 11.

**§ 400.683 Period of ineligibility.**

(a) The beginning of the period of ineligibility will be:

(1) For ineligibility as a result of a delinquent debt, beginning on the date stated in the applicable policy;

(2) For ineligibility as a result of a conviction of the controlled substance provisions, the beginning of the crop year in which the person is convicted;

(3) For ineligibility as a result of a disqualification, debarment, or suspension, the date the person was disqualified, debarred, or suspended by debarring official, Administrative Law Judge, or such other person authorized to take such action; and

(4) For ineligibility as a result of a felony conviction for knowingly defrauding the United States in connection with any program administered by USDA, the crop year in which the person is convicted.

(b) The duration of the period of ineligibility will be:

(1) For ineligibility as a result of a delinquent debt, until the debt has been paid in full, discharged in bankruptcy, or the person has executed a written payment agreement.

(2) For ineligibility as a result of a conviction of:

(i) Planting, cultivating, growing, producing, harvesting, or storing a controlled substance, for four crop years succeeding the crop year in which the person was convicted; and

(ii) Possession of a controlled substance or trafficking in a controlled substance, in addition to the time imposed in subparagraph (i), until the period of time imposed by a court has expired.

(3) For ineligibility as a result of a disqualification, debarment, or suspension until the period of time of disqualification, debarment, or suspension, as applicable, has expired.

(4) For ineligibility as a result of not being a United States citizen, United States non-citizen national, or a qualified alien, until the date such person becomes a United States citizen, United States non-citizen national, or a qualified alien.

(5) For ineligibility as a result of a felony conviction for knowingly defrauding the United States in connection with any program administered by USDA, permanent unless otherwise determined by the Secretary of Agriculture for a period of not less than 10 years.

**§ 400.684 Effect of ineligibility.**

(a) The effect of ineligibility depends on the basis for the determination.

(1) Persons who are ineligible as a result of a delinquent debt are ineligible for crop insurance authorized under the Act for a certain time period in accordance with § 400.683.

(2) Persons who are ineligible as a result of a suspension or debarment are precluded from:

(i) Participating in all programs authorized under the Act, including but not limited to:

(A) Obtaining crop insurance;

(B) Acting as an agent, loss adjuster, insurance provider, or other affiliate, as defined in the Standard Reinsurance Agreement;

(C) Entering into any contracts with FCIC under sections 506(l) and section 522(c) of the Act; and

(D) Entering into any cooperative agreements or partnerships under sections 506(l), 522(d) and 524(a) of the Act; and

(ii) Participating in any other covered transaction as specified in 7 CFR part 3017, or a successor regulation.

(3) Persons who are ineligible because of disqualification under section 515(h) of the Act are precluded from participating in all programs authorized under the Act, indicated in paragraph (2)(i), and those listed in section 515(h)(3)(B) and (C) of the Act.

(4) Persons who are ineligible because of violation of the controlled substance provisions or are not a United States citizen, United States non-citizen national, or a qualified alien are precluded from participating in any program authorized under the Act indicated in paragraph (2)(i).

(5) Persons who are ineligible as a result of a felony conviction for knowingly defrauding the United States in connection with any program administered by USDA, are precluded from participating in any program offered by USDA.

(b) Once a person has been determined to be ineligible:

(1) The person will be placed on the ITS and may be reported to other government agencies.

(2) If the ineligible person is an individual:

(i) All crop insurance policies in which the ineligible person is the sole insured will terminate and the person will remain ineligible for crop insurance for the applicable period specified in § 400.683.

(ii) The ineligible person must be reported on all policies in which the ineligible person has a substantial beneficial interest in the applicant or insured, and the insured share under such policy will be reduced commensurate with the ineligible person's substantial beneficial interest in the applicant or insured for as long as the ineligible person remains ineligible in accordance with § 400.683.

(iii) All crop insurance policies in which the ineligible person is insured as landlord/tenant will terminate on the next termination date. The other person(s) on such policy may submit a new application for crop insurance coverage on or before the applicable sales closing date to obtain insurance coverage for the crop, if they are otherwise eligible for such coverage.

(3) If the ineligible person is a general or limited liability partnership and is ineligible as a result of a delinquent debt, all partners of the ineligible general or limited liability partnership will be ineligible.

(i) All crop insurance policies in which the ineligible partnership or an ineligible partner of the partnership is the sole insured will terminate, and the ineligible partnership and all partners of the partnership will remain ineligible for crop insurance for the applicable period specified in § 400.683.

(ii) The ineligible partnership and all ineligible partners in the partnership must be reported on any other policy in which they have a substantial beneficial interest in the applicant or insured, and the insured share under such policies will be reduced commensurate with the ineligible partnership or partners' substantial beneficial interest in the applicant or insured for as long as the partnership or partners remain ineligible in accordance with § 400.683.

(4) If the ineligible person is a joint venture and is ineligible as a result of a delinquent debt, all members of the joint venture will be ineligible.

(i) All policies in which the joint venture or a member of the joint venture is the sole insured will terminate and the joint venture and all members of the joint venture will remain ineligible for crop insurance for the applicable period specified in § 400.683.

(ii) The joint venture and all members of the joint venture must be reported on any other policy in which they have a substantial beneficial interest in the applicant or insured, and the insured share under such policies will be reduced commensurate with the ineligible person's substantial beneficial interest in the applicant or insured for as long as the joint venture or members remain ineligible in accordance with § 400.683.

(5) If the ineligible person is an association, estate, trust, corporation, limited liability company, limited partnership, or other similar entity, and is ineligible as a result of a delinquent debt, any partners, members, shareholders, administrators, executors, trustees, or grantors may be individually ineligible if the delinquent debt occurred as a result of their actions or inactions, as determined by the AIP or FCIC.

(i) If determined ineligible, all policies in which such person is the sole insured will terminate, and the person will remain ineligible for crop insurance for the applicable period specified in § 400.683.

(ii) The ineligible person must be reported on any other policy in which they have a substantial beneficial interest in the applicant or insured, and the insured share under such policies will be reduced commensurate with the ineligible person's substantial beneficial interest in the applicant or insured for as long as the person remains ineligible in accordance with § 400.683.

(6) If an applicant or insured is a corporation, partnership, joint venture, trust, corporation, limited liability company, limited partnership, or other similar entity that was created to conceal the interest of an ineligible person or to evade the ineligibility determination of a person with a substantial beneficial interest in the applicant or insured, the policy will be void.

(b) The spouse and minor child of an individual insured is considered to be the same as the individual for purposes of this subpart and subject to the same ineligibility except when:

(1) The individual is ineligible due to a conviction of a controlled substance violation in accordance with § 400.680;

(2) The individual is ineligible as a result of a felony conviction for knowingly defrauding the United States in connection with any program administered by USDA;

(3) The individual is ineligible because they are not a United States citizen, United States non-citizen national, or a qualified alien;

(4) The individual is ineligible as a result of a disqualification, debarment, or suspension;

(5) The spouse can prove they are legally separated or otherwise legally separate under the applicable State dissolution of marriage laws; or

(6) The minor child has a separate legal interest in such person or is engaged in a separate farming operation from the individual.

(c) When a policy is terminated in accordance with this subpart:

(1) No indemnities or payments will be paid for the crop year in which the policy was terminated; and

(2) Any indemnities or payments already made for the crop year in which the policy was terminated will be declared overpayments and must be repaid in full.

(d) When the insured share of a policy is reduced in accordance with this subpart:

(1) Any indemnities or payments commensurate with the share reduced already made for the crop year in which the reduction occurred will be declared overpayments and must be repaid in full; and

(2) Any premiums paid by the insured commensurate with the share reduced will be refunded.

(e) Any insurance written by an AIP to any person who is ineligible under the provisions of this subpart is not eligible for reinsurance by FCIC. All premium subsidies, expenses, or other payments made by FCIC for insurance written for any person who is ineligible under the provisions of this subpart must be immediately refunded to FCIC.

**§ 400.685 Criteria for regaining eligibility.**

After the period of ineligibility as specified in § 400.683 has ended, the ineligible person is eligible to participate in programs authorized under the Act, provided the person meets all eligibility requirements.

(a) After a person regains eligibility for crop insurance, if their policy was terminated the person must submit a new application for crop insurance coverage on or before the applicable sales closing date to obtain insurance coverage for the crop. If the date of regaining eligibility occurs after the applicable sales closing date for the crop year, the person may not participate until the following crop year unless that crop policy allows for applications to be accepted after the sales closing date.

(b) If a person who was determined ineligible according to this subpart is subsequently determined to be an eligible person for crop insurance through mediation, arbitration, appeal, or judicial review, such person's policies will be reinstated effective at the beginning of the crop year for which the producer was determined ineligible, and such person will be entitled to all applicable benefits under such policies, provided the person meets all eligibility requirements and complies with the terms of the policy.

**§ 400.686 Administration and maintenance.**

(a) Ineligible producer data will be maintained in a system of records established and maintained by the Risk Management Agency in accordance with the Privacy Act (5 U.S.C. 552a).

(1) The ITS contains identifying information of the ineligible person, including but not limited to, name, address, telephone number, SSN or EIN, reason for ineligibility, and time period of ineligibility.

(2) Information in the ITS may be used by an authorized person. The information may be furnished to other users as may be appropriate or required by law or regulation, including but not limited to, FCIC contracted agencies, other government agencies, credit reporting agencies, and collection agencies, and in response to judicial orders in the course of litigation. The individual information may be made available in the form of various reports and notices.

(3) Supporting documentation regarding the determination of ineligibility and reinstatement or regaining of eligibility will be maintained by FCIC, or its contractors, AIPs, Federal agencies, and State agencies. This documentation will be maintained and retained consistent with the electronic information contained within the ITS.

(b) Information may be entered into the ITS by FCIC employees or contractors, or AIPs.

(c) All persons applying for crop insurance policies or with crop insurance policies continuing from a previous crop year, issued or reinsured by FCIC, will be subject to validation of their eligibility status against the ITS. Applications, transfers, or benefits approved and accepted are considered approved or accepted subject to review of eligibility status in accordance with this subpart.

(d) AIPs, partners, cooperators, and contracts must check to ensure that the persons with whom they are doing business are eligible to participate in the programs authorized under the Act. The ITS does not include all persons ineligible to receive government benefits, such as persons debarred, disqualified or suspended from receiving government benefits by an agency other than FCIC. Other sources, including but not limited to EPLS, provide data on persons ineligible to participate in programs authorized under the Act.

Signed in Washington, DC, on November 22, 2011.

**William J. Murphy,**

*Manager, Federal Crop Insurance Corporation.*

[FR Doc. 2011–31085 Filed 12–2–11; 8:45 am]

BILLING CODE 3410–08–P

## DEPARTMENT OF AGRICULTURE

### Federal Crop Insurance Corporation

### 7 CFR Part 457

**[Docket No. FCIC–11–0007]**

**RIN 0563–AC36**

## Common Crop Insurance Regulations; Prune Crop Insurance Provisions

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) proposes to amend the Common Crop Insurance Regulations, Prune Crop Insurance Provisions to remove the quality adjustment provisions for substandard prunes and to make other changes to clarify policy provisions. The intended effect of this action is to provide policy changes, to clarify existing policy provisions to better meet the needs of the producers, and to reduce vulnerability to program fraud, waste, and abuse. The changes will apply for the 2013 and succeeding crop years.

**DATES:** Written comments and opinions on this proposed rule will be accepted until close of business February 3, 2012 and will be considered when the rule is to be made final.

**ADDRESSES:** FCIC prefers that comments be submitted electronically through the Federal eRulemaking Portal. You may submit comments, identified by Docket ID No. FCIC–11–0007, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Director, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, P.O. Box 419205, Kansas City, MO 64133–6205.

All comments received, including those received by mail, will be posted without change to *http://www.regulations.gov,* including any personal information provided, and can be accessed by the public. All comments must include the agency name and docket number or Regulatory Information Number (RIN) for this rule. For detailed instructions on submitting

comments and additional information, see *http://www.regulations.gov.* If you are submitting comments electronically through the Federal eRulemaking Portal and want to attach a document, we ask that it be in a text-based format. If you want to attach a document that is a scanned Adobe PDF file, it must be scanned as text and not as an image, thus allowing FCIC to search and copy certain portions of your submissions. For questions regarding attaching a document that is a scanned Adobe PDF file, please contact the RMA Web Content Team at (816) 823–4694 or by email at *rmaweb.content@rma.usda.gov.*

*Privacy Act:* Anyone is able to search the electronic form of all comments received for any dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the complete User Notice and Privacy Notice for *Regulations.gov* at *http://www.regulations.gov/#!privacyNotice.*

**FOR FURTHER INFORMATION CONTACT:** Chief, Policy Administration Branch, Product Administration and Standards Division, Risk Management Agency, at the Kansas City, MO, address listed above, telephone at (816) 926–7730.

**SUPPLEMENTARY INFORMATION:**

**Executive Order 12866**

The Office of Management and Budget (OMB) has determined that this rule is non-significant for the purpose of Executive Order 12866 and, therefore, it has not been reviewed by OMB.

**Paperwork Reduction Act of 1995**

Pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information in this rule have been approved by OMB under control number 0563–0053.

**E-Government Act Compliance**

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

**Unfunded Mandates Reform Act of 1995**

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

**Executive Order 13132**

It has been determined under section 1(a) of Executive Order 13132, Federalism, that this rule does not have sufficient implications to warrant consultation with the States. The provisions contained in this rule will not have a substantial direct effect on States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

**Executive Order 13175**

This rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation will not have substantial and direct effects on Tribal governments and will not have significant Tribal implications.

**Regulatory Flexibility Act**

FCIC certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Program requirements for the Federal crop insurance program are the same for all producers regardless of the size of their farming operation. For instance, all producers are required to submit an application and acreage report to establish their insurance guarantees and compute premium amounts, and all producers are required to submit a notice of loss and production information to determine the amount of an indemnity payment in the event of an insured cause of crop loss. Whether a producer has 10 acres or 1000 acres, there is no difference in the kind of information collected. To ensure crop insurance is available to small entities, the Federal Crop Insurance Act authorizes FCIC to waive collection of administrative fees from limited resource farmers. FCIC believes this waiver helps to ensure that small entities are given the same opportunities as large entities to manage their risks through the use of crop insurance. A Regulatory Flexibility Analysis has not been prepared since this regulation does not have an impact on small entities, and therefore, this regulation is exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605).

**Federal Assistance Program**

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

**Executive Order 12372**

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

**Executive Order 12988**

This proposed rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. With respect to any direct action taken by FCIC or action by FCIC to require the insurance provider to take specific action under the terms of the crop insurance policy, the administrative appeal provisions published at 7 CFR part 11 or 7 CFR part 400, subpart J for the informal review process of good farming practices as applicable, must be exhausted before any action against FCIC may be brought.

**Environmental Evaluation**

This action is not expected to have a significant economic impact on the quality of the human environment, health, or safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

**Background**

FCIC proposes to revise 7 CFR part 457, Common Crop Insurance Regulations, by revising § 457.133, Prune Crop Insurance Provisions, to be effective for the 2013 and succeeding crop years. Several requests have been made for changes to improve the coverage offered, address program integrity issues, and improve clarity of the Prune Crop Insurance Provisions.

The proposed changes to § 457.133 are as follows:

1. FCIC proposes to remove the paragraph immediately preceding section 1 which refers to the order of priority in the event of a conflict. This same information is contained in the Basic Provisions. Therefore, it is duplicative and should be removed in the Crop Provisions.

2. Section 1—FCIC proposes to remove the definitions of ''market price for standard prunes'' and ''substandard prunes.'' These terms and definitions are no longer needed with the proposed

removal of quality adjustment for substandard prunes in section 11(e).

FCIC proposes to revise the definition of ''standard prunes'' to replace the phrase ''grading standards'' with the phrase ''grade standards.'' The term ''grade standards,'' rather than ''grading standards,'' is consistent with terminology in other Crop Provisions administered by FCIC and is a more accurate term.

3. Section 3—FCIC proposes to revise paragraphs (a) and (b) to remove the phrase ''varietal group'' and replace it with the word ''type'' everywhere it appears. Varietal groups are typically identified in the Special Provisions. However, prunes are not categorized by varietal group in the Special Provisions, rather they are categorized by type. Therefore, using the word ''type'' is more appropriate.

FCIC proposes to redesignate section 3(c) as section 3(d) and designate the undesignated paragraph following section 3(b) as section 3(c). FCIC proposes to revise newly designated section 3(c) to add provisions to specify how yields will be reduced if an event or action occurs that may reduce the yield potential based on when the situation is reported. The current provision states that the insurance provider will reduce the yield used to establish the insured's production guarantee, but does not tell when or how. The proposed section 3(c)(1) states that if a situation that may reduce the insured's yield is reported before the beginning of the insurance period, the yield used to establish the insured's production guarantee will be reduced for the current crop year regardless of whether the situation was due to an insured or uninsured cause of loss. The proposed section 3(c)(2) states that if a situation that may reduce the insured's yield is reported after the beginning of the insurance period and the insured notifies the insurance provider by the production reporting date, the yield used to establish the insured's production guarantee will be reduced for the current crop year only if the potential reduction in the yield used to establish the insured's production guarantee is due to an uninsured cause of loss. The proposed section 3(c)(3) states that if a situation that may reduce the insured's yield is reported after the beginning of the insurance period and the insured fails to notify the insurance provider by the production reporting date, an amount equal to the reduction in the yield will be added to the production to count calculated in section 11(c) due to uninsured causes and the insurance provider will reduce the yield used to establish the insured's production guarantee for the subsequent crop year.

FCIC also proposes to revise newly designated section 3(c) to remove the list of possible situations that affect yield and instead refer back to section 3(b), which contains the same information. This eliminates redundancy and is consistent with other perennial Crop Provisions, such as apples, grapes, and stonefruit.

4. Section 6—FCIC proposes to revise section 6(c) by removing the requirements for the insured crop to be grown on tree varieties that were commercially available at set out and tree varieties that are adapted to the area because these provisions have created confusion as to which varieties meet these requirements. FCIC proposes to add a requirement for the insured crop to be grown on trees that are listed in the Special Provisions. This provision will eliminate any confusion as to which varieties are insurable because insurable varieties will be listed in the Special Provisions. FCIC proposes to remove the requirement for trees to be irrigated because insurable practices are listed in the Special Provisions.

5. Section 8—FCIC proposes to revise section 8(a) to state that the year of application coverage begins on March 1. FCIC proposes to revise section 8(c) to remove the phrase ''Notwithstanding paragraph (a)(1) of this section.'' These changes will allow continuous coverage of the citrus fruit from year to year with no gaps in coverage. This proposed change is consistent with other perennial Crop Provisions, such as apples and grapes.

6. Section 9—FCIC proposes to add provisions in section 9(a) that allow insects and disease to be insurable causes of loss unless damage is due to insufficient or improper application of control measures. FCIC proposes to remove the provisions in section 9(b)(1) that excludes insects and disease from insurability unless adverse weather prevents the proper application of control measures or causes properly applied control measures to be ineffective or causes disease or insect infestation for which no effective control mechanism is available. This will make insects and disease a presumed insurable cause of loss unless one of the stated conditions exists as opposed to a presumed uninsurable cause of loss unless one of the stated conditions exists.

7. Section 10—FCIC proposes to add a new section 10(a) to clarify the insured must leave representative samples for appraisal purposes in accordance with the Basic Provisions. The rest of the provisions are proposed to be redesignated.

8. Section 11—FCIC proposes to revise section 11(b) to remove the phrase ''varietal group'' and replace it with the word ''type'' everywhere it appears. As stated above, varietal groups are typically identified in the Special Provisions. However, prunes are not categorized by varietal group in the Special Provisions, rather they are categorized by type. Therefore, using the word ''type'' is more appropriate.

FCIC proposes to revise the settlement of claim examples in section 11(b). FCIC proposes to revise the example by changing the term ''varietal group'' to ''type'' everywhere it appears in the example for reasons stated above. FCIC proposes to revise the example to illustrate the correct rounding of decimals and to identify units consistently. FCIC also proposes to revise the introductory paragraph of the second part of the example to clarify that information contained in the second part of the example is in addition to the information contained in the first part of the example. These changes are proposed to improve accuracy and readability of the example.

FCIC proposes to revise section 11(c) to replace the phrase ''grade substandard or better'' with the phrase ''meet the definition of standard prunes.'' The phrase ''grade substandard or better'' is no longer applicable with the proposed removal of quality adjustment for substandard prunes in section 11(e).

FCIC proposes to remove section 11(e) which removes the provisions regarding quality adjustment for substandard prunes. The calculation used to determine the quality adjustment factor was the value per ton of substandard prunes divided by the market price per ton for standard prunes. In addition, there was a statement on the Special Provisions that reduced the value per ton by the harvest cost per ton prior to calculating the quality adjustment factor. The value per ton of substandard prunes is a value published by the Prune Bargaining Association (PBA). In recent years, PBA has either not published a substandard price or has published a price that is near or below zero. In some instances, PBA's value per ton for substandard prunes was so low that when the harvest cost per ton specified in the Special Provisions was deducted from the value per ton, the result was less than zero. When the value of substandard prunes is less than or equal to zero, substandard prune production does not count as production to count for claims purposes. The quality adjustment

procedure was burdensome to the producer and the insurance provider who had to wait until the PBA published prices to settle claims and it generally had little to no effect on indemnities so the quality adjustment procedures are being removed from the policy. As proposed, only counting as production to count those prunes that meet the specified standards will take into consideration the quality of the prunes.

**List of Subjects in 7 CFR Part 457**

Crop insurance, Prunes, Reporting and recordkeeping requirements.

**Proposed Rule**

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation proposes to amend 7 CFR part 457 effective for the 2013 and succeeding crop years to read as follows:

## PART 457—COMMON CROP INSURANCE REGULATIONS

1. The authority citation for 7 CFR part 457 continues to read as follows:

**Authority:** 7 U.S.C. 1506(1), 1506(o).

2. Amend § 457.133 as follows:

a. Amend the introductory text by removing ''2001'' and adding ''2013'' in its place;

b. Remove the undesignated paragraph immediately preceding section 1;

c. Amend section 1 to:

i. Remove the definitions of ''market price for standard prunes'' and ''substandard prunes''; and

ii. Amend the definition of ''standard prunes'' by removing the word ''grading'' and replacing it with the word ''grade'' in paragraph (b);

d. Amend section 3 to:

i. Revise paragraph (a);

ii. Revise paragraph (b);

iii. Designate the undesignated paragraph following paragraph (b) as paragraph (c);

iv. Revise newly designated paragraph (c); and

v. Redesignate paragraph (c) as paragraph (d);

e. Amend section 6 to:

i. Revise paragraph (c); and

ii. Remove paragraphs (d) and (e);

f. Revise section 8(a)(1);

g. Amend section 8(c) by removing the phrase ''Notwithstanding paragraph (a)(1) of this section, for'' and replacing it with the word ''For'';

h. Amend section 9(a)(5) by removing the word ''or'' after the semicolon at the end of the sentence;

i. Amend section 9(a)(6) by removing the period at the end of the sentence and adding a semicolon in its place;

j. Add a new section 9(a)(7);

k. Add a new section 9(a)(8);

l. Revise section 9(b);

m. Amend section 10 to:

i. Designate the introductory text as paragraph (b) and adding a new paragraph (a); and

ii. Redesignate paragraphs (a) through (d) in redesignated paragraph (b) as (1) through (4), respectively;

n. Amend section 11 to:

i. Revise paragraph (b);

ii. Revise paragraph (c); and

iii. Remove paragraph (e).

The additions and revisions read as follows:

**§ 457.133 Prune crop insurance provisions.**

* * * * *

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities.

In addition to the requirements of section 3 of the Basic Provisions:

(a) You may select only one price election for all the prunes in the county insured under this policy unless the Special Provisions provide different price elections by type, in which case you may select one price election for each type designated in the Special Provisions. The price elections you choose for each type must have the same percentage relationship to the maximum price offered by us for each type. For example, if you choose 100 percent of the maximum price election for one type, you must also choose 100 percent of the maximum price election for all other types.

(b) You must report, by the production reporting date designated in section 3 of the Basic Provisions, by type if applicable:

* * * * *

(4) * * *

(i) The age of the interplanted crop, and type, if applicable;

* * * * *

(c) We will reduce the yield used to establish your production guarantee, as necessary, based on our estimate of the effect of any such situation listed in section 3(b) that may occur. If you fail to notify us of any situation in section 3(b), we will reduce the yield used to establish your production guarantee at any time we become aware of the circumstance. If the situation in 3(b) is reported:

(1) Before the beginning of the insurance period, the yield used to establish your production guarantee will be reduced for the current crop year regardless of whether the situation was due to an insured or uninsured cause of loss;

(2) After the beginning of the insurance period and you notify us by the production reporting date, the yield used to establish your production guarantee will be reduced for the current crop year only if the potential reduction in the yield used to establish your production guarantee is due to an uninsured cause of loss; or

(3) After the beginning of the insurance period and you fail to notify us by the production reporting date, an amount equal to the reduction in the yield will be added to the production to count calculated in section 11(c) due to uninsured causes when determining any indemnity. We will reduce the yield used to establish your production guarantee for the subsequent crop year.

* * * * *

6. Insured Crop.

* * * * *

(c) That are grown on trees that:

(1) Are listed in the Special Provisions;

(2) Are grown on rootstock that is adapted to the area;

(3) Are grown in an orchard that, if inspected, is considered acceptable by us; and

(4) Have reached at least the seventh growing season after being set out.

* * * * *

8. Insurance Period.

(a) * * *

(1) For the year of application, coverage begins on March 1.

* * * * *

9. Causes of Loss.

(a) * * *

* * * * *

(7) Insects, but not damage due to insufficient or improper application of pest control measures; or

(8) Plant disease, but not damage due to insufficient or improper application of disease control measures.

(b) In addition to the causes of loss excluded in section 12 of the Basic Provisions, we will not insure against damage or loss of production due to inability to market the prunes for any reason other than actual physical damage from an insurable cause specified in this section. For example, we will not pay you an indemnity if you are unable to market due to quarantine, boycott, or refusal of any person to accept production.

10. Duties in the Event of Damage or Loss.

(a) In accordance with the requirements of section 14 of the Basic Provisions, you must leave representative samples in accordance with our procedures.

* * * * *

11. Settlement of Claim.

* * * * *

(b) * * *

(1) Multiplying the insured acreage for each type, if applicable, by its respective production guarantee;

(2) Multiplying the result of 11(b)(1) by the respective price election for each type, if applicable;

(3) Totaling the results of section 11(b)(2) if there is more than one type;

(4) Multiplying the total production to count (see section 11(c)), of each type, if applicable, by its respective price election;

(5) Totaling the results of section 11(b)(4) if there is more than one type;

(6) Subtracting the result of section 11(b)(4) from the result of section 11(b)(2) if there is only one type or subtracting the result of section 11(b)(5) from the result of section 11(b)(3) if there is more than one type; and

(7) Multiplying the result of section 11(b)(6) by your share.

For example:

You select 75 percent coverage level, 100 percent of the price election, and have a 100 percent share in 50.0 acres of type A prunes in the unit. The production guarantee is 2.5 tons per acre and your price election is $630.00 per ton. You harvest 10.0 tons. Your indemnity would be calculated as follows:

(1) 50.0 acres × 2.5 tons = 125.0 ton production guarantee;

(2) 125.0 ton guarantee × $630.00 price election = $78,750 value of production guarantee;

(4) 10.0 tons × $630.00 price election = $6,300 value of production to count;

(6) $78,750 − $6,300 = $72,450 loss; and

(7) $72,450 × 1.000 share = $72,450 indemnity payment.

In addition to the information in the first example, you have an additional 50.0 acres of type B prunes with 100 percent share in the same unit. The production guarantee is 2.0 tons per acre and the price election is $550.00 per ton. You harvest 5.0 tons. Your total indemnity for both types A and B would be calculated as follows:

(1) 50.0 acres × 2.5 tons = 125.0 ton production guarantee for type A and 50.0 acres × 2.0 tons = 100.0 ton production guarantee for type B;

(2) 125.0 ton guarantee × $630.00 price election = $78,750 value of production guarantee for type A and 100.0 ton guarantee × $550.00 price election = $55,000 value production guarantee for type B;

(3) $78,750 + $55,000 = $133,750 total value of production guarantee;

(4) 10.0 tons × $630.00 price election = $6,300 value of production to count for type A and 5.0 tons × $550.00 price election = $2,750 value of production to count for type B;

(5) $6,300 + $2,750 = $9,050 total value of production to count;

(6) $133,750 − $9,050 = $124,700 loss; and

(7) $124,700 loss × 1.000 share = $124,700 indemnity payment.

(c) The total production to count (in tons) from all insurable acreage on the unit will include all harvested and appraised production of natural condition prunes that meet the definition of standard prunes and any production that is harvested and intended for use as fresh fruit. The total production to count will include:

* * * * *

Signed in Washington, DC, on November 22, 2011.

**William J. Murphy,**

*Manager, Federal Crop Insurance Corporation.*

[FR Doc. 2011–31083 Filed 12–2–11; 8:45 am]

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## DEPARTMENT OF AGRICULTURE

### Food Safety and Inspection Service

### 9 CFR Parts 316, 317, 320, 331, 354, 355, 381, 412, and 424

**[Docket No. 99–021P; FDMS Docket Number FSIS–2005–0016]**

**RIN 0583–AC59**

## Prior Label Approval System: Generic Label Approval

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Food Safety and Inspection Service (FSIS) is proposing to amend the meat and poultry products inspection regulations to expand the circumstances in which FSIS will generically approve the labels of meat and poultry products. The Agency also is proposing to combine the regulations that provide for the approval of labels for meat products and poultry products into a new CFR part.

**DATES:** Comments must be received on or before February 3, 2012.

**ADDRESSES:** FSIS invites interested persons to submit comments on this proposed rule. Comments may be submitted by either of the following methods:

- *Federal eRulemaking Portal:* This Web site provides the ability to type short comments directly into the comment field on this Web page or attach a file for lengthier comments. Go to *http://www.regulations.gov.* Follow the online instructions at that site for submitting comments.
- *Mail, including diskettes or CD–ROMs, and hand- or courier-delivered items:* Send to U.S. Department of Agriculture (USDA), FSIS, OPPD, RIMD, Docket Room, Patriots Plaza 3, 1400 Independence Avenue SW., Mailstop 3782, 8–163A, Washington, DC 20250–3700.

*Instructions:* All items submitted by mail or electronic mail must include the Agency name and docket number FSIS–2005–0016. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information provided, to *http://www.regulations.gov.*

*Docket:* For access to background documents or comments received, go to the FSIS Docket Room at the address listed above between 8 a.m. and 4:30 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Jeff Canavan, Food Technologist, Labeling and Program Delivery Division, Office of Policy and Program Development, Food Safety and Inspection Service, U.S. Department of Agriculture, Beltsville, MD 20705–5273; Telephone (301) 504–0879; Fax (301) 504–0872.

**SUPPLEMENTARY INFORMATION:**

### Background

*Introduction*

The Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.*) direct the Secretary of Agriculture to maintain meat and poultry product inspection programs designed to assure consumers that meat and poultry products distributed to them (including imports) are safe, wholesome, not adulterated, and properly marked, labeled, and packaged. Section 2 of the FMIA (21 U.S.C. 602) and section 2 of the PPIA (21 U.S.C. 451) state that unwholesome, adulterated, or misbranded meat or meat food products and poultry or poultry food products are injurious to the public welfare; destroy markets for wholesome, not adulterated, and properly marked, labeled, and packaged products; and result in sundry losses to producers and processors of meat and poultry products, as well as injury to consumers. Therefore, Congress has granted to the Secretary broad authority to protect consumers' health and welfare.

Section 7(d) of the FMIA (21 U.S.C. 607(d)) states: ''No article subject to this title shall be sold or offered for sale by any person, firm, or corporation, in commerce, under any name or other marking or labeling which is false or misleading, or in any container of a

misleading form or size, but established trade names and other marking and labeling and containers which are not false or misleading and which are approved by the Secretary are permitted.'' The PPIA contains similar language in section 8(c) (21 U.S.C. 457(c)).

The Department's longstanding interpretation of these provisions is that they require that the Secretary of Agriculture or his or her representative approve all labels to be used on federally inspected and passed, and imported, meat and poultry products before the products are distributed in commerce. Without approved labels, meat and poultry products may not be sold, offered for sale, or otherwise distributed in commerce.

These prior label approval provisions also apply to establishments that do business solely within designated States (see 21 U.S.C. 451 and 602). A State is designated if it does not have, or is not effectively enforcing, with respect to establishments within its jurisdiction at which livestock or poultry are slaughtered, or at which their carcasses or products are prepared for use as human food solely for distribution within such State, requirements at least equal to those contained in titles I and IV of the FMIA and specified sections of the PPIA (21 U.S.C. 454(c)(1) and 661(c)(1)). Once a State is designated, the inspection requirements of the FMIA and PPIA apply to establishments that slaughter livestock and poultry, and prepare or process meat or poultry products, solely for distribution within the State.

*Current Label Regulations*

There are up to eight features required on most meat and poultry labels. The mandatory features are designed to ensure that meat and poultry products are accurately and truthfully labeled, and that they provide the necessary product information for consumers to make an informed purchasing decision. These required features of meat and poultry product labels must appear on the immediate containers of domestic products (9 CFR part 317, subpart A, and 9 CFR part 381, subpart N) and imported products (9 CFR part 327 and 9 CFR part 381, subpart T). The meat inspection regulations define an ''immediate container'' as the receptacle or other covering in which any product is directly contained or wholly or partially enclosed (9 CFR 301.2). The poultry products inspection regulations define an ''immediate container'' as any consumer package or any other container in which poultry products, not consumer packaged, are packed (9 CFR 381.1(b)).

The required features include: (1) The standardized, common or usual, or descriptive name, of the product (9 CFR 317.2(e) and 381.117); (2) an ingredients statement containing the common or usual name of each ingredient of the product listed in descending order of predominance (9 CFR 317.2(f) and 381.118); (3) the name and place of business of the manufacturer, packer, or distributor (9 CFR 317.2(g) and 381.122); (4) an accurate statement of the net quantity of contents (9 CFR 317.2(h) and 381.121); (5) the inspection legend, including the number of the official establishment (9 CFR 317.2(i) and 381.123); (6) a safe handling statement if the product is perishable; *e.g.,* ''Keep Frozen'' or ''Keep Refrigerated'' (9 CFR 317.2(k) and 381.125(a)); (7) nutrition labeling for applicable meat and poultry products; [1] and (8) safe handling instructions if the meat or poultry component of the product is not ready-to-eat (9 CFR 317.2(l) and 381.125(b)). In addition, imported meat and poultry products must bear the country of origin under the product name in accordance with 9 CFR 327.14(b)(1) and 381.205(a).

These mandatory features must be prominently and informatively displayed on the principal display panel, the information panel, or other surface of the product label. The first six features described above, including the labeling of country of origin for imported products in accordance with 9 CFR 327.14 and 381.205, have been required by the meat and poultry inspection regulations for decades. FSIS implemented regulations that require the nutrition labeling of cooked or heat-treated multi-ingredient meat and poultry products and the display of safe handling instructions in 1993 and 1994, respectively. Therefore, industry has had a significant amount of experience complying with the regulations for all required label features.

The regulations contain other provisions to ensure that no statement, word, picture, design, or device that is false or misleading in any particular, or that conveys any false impression, or that gives any false indication of origin, identity, or quality, appears in any marking or other labeling (9 CFR 317.8 and 381.129). Pursuant to the authority contained in section 7(e) of the FMIA (21 U.S.C. 607(e)) and section 8(d) of the PPIA (21 U.S.C. 457(d)), the Administrator, FSIS, may withhold the use of any marking or labeling that is false or misleading, within the meaning of the FMIA or the PPIA and the implementing regulations.

*Current Prior Label Approval System and the Procedures the Agency Employs To Implement It*

In order to ensure that meat and poultry products comply with the FMIA and PPIA and their implementing regulations, FSIS conducts a prior approval program for labels that are to be used on federally inspected meat and poultry products and imported products (see 9 CFR 317.4, 317.5, 327.14, 381.132, 381.133, 381.134, and 381.205).

Under the current program, FSIS evaluates sketches of labels for approval. A ''sketch label'' is a printer's proof or other version that clearly shows all required label features, size, location, and indication of final color. To obtain sketch label approval, domestic meat and poultry establishments and certified foreign establishments, or their representatives, submit sketch labels to FSIS for evaluation, except when the label is generically approved by the Agency under 9 CFR 317.5 or 381.133.

Meat and poultry establishments and certified foreign establishments submit sketch labels accompanied by FSIS Form 7234–1 (01/08/2008), ''Application for Approval of Labels, Marking or Device,'' to the Agency for evaluation. In addition to the required label information, any special claims or statements that the establishment intends to make (*e.g.,* quality claims, animal production raising claims, product origin claims, or nutrient content claims) must be included on the label, along with documentation supporting the claim. The label application must contain the basic information about the establishment and the product, including:

1. Establishment number;
2. Product name;
3. Product formulation;
4. Processing procedures and handling information;
4. Firm name and address;
5. Total available labeling space of the container;
6. Size of the principal display panel; and
7. The Hazard Analysis and Critical Control Point category under which the establishment is producing the meat or poultry product.

All such information is evaluated by a technical labeling policy expert in FSIS, who is responsible for verifying that sketch labels comply with the applicable requirements. A ''final label''

[1] Nutrition labeling is required for heat-treated and multi-ingredient meat and poultry products. New nutrition labeling requirements for ground or chopped meat and poultry products will take effect January 1, 2012 (75 FR 82148, Dec. 29, 2010).

does not have to be submitted to the Agency for evaluation and approval. Since July 1, 1996, meat and poultry establishments and certified foreign establishments have been responsible for ensuring that the labels that they apply to their meat and poultry products comply with Federal regulations. All labels are subject to FSIS verification for compliance with Agency regulations to ensure that they are accurate, truthful, and not misleading. The management of the official establishment or establishment certified under a foreign inspection system must maintain a copy of all labels and labeling used, along with the product formulation and processing procedures. Such records must be made available to any duly authorized representative of the Secretary upon request.

*Generic Label Approval*

Generic label approval refers to the prior approval of labels or modifications to labels by the Agency without submitting such labels to FSIS for sketch approval. Generic label approval requires that all mandatory label features be in conformance with FSIS regulations (9 CFR 317.5(a)(1) and 381.133(a)(1)). Although such labels are not submitted to FSIS for approval, they are deemed to be approved and, therefore, may be applied to product in accordance with the Agency's prior label approval system.

In 1983, FSIS estimated that it evaluated approximately 130,000 label submissions a year. That year, the Agency promulgated regulations that granted limited label approval authority to the Inspector-In-Charge (IIC) at official establishments and provided generic approval to limited types of labels (*e.g.,* labels for raw, single ingredient meat and poultry products) (48 FR 11410, March 18, 1983). This generic approval did not extend to the labels of the products of certified foreign establishments. The rulemaking was intended to reduce the number of labels and other labeling submitted for evaluation by FSIS and to lessen the paperwork burden on official establishments. The general goal was to improve the efficiency of the label approval system by streamlining the review process.

Even with the changes made by the rule, however, the number of labels and other labeling submitted to the Agency continued to grow. During fiscal year 1991, the Agency processed approximately 167,500 labels. Of these, 87,500 were final labels, and 60,000 were sketch labels that were approved. Approximately 20,000 labels were not approved. The Agency did not maintain records on the number of temporary approvals or other types of labeling (*e.g.,* insert labeling applied at retail) that were evaluated and acted upon by the Agency.

On March 25, 1992, FSIS published an Advance Notice of Proposed Rulemaking (ANPRM) (57 FR 10300, Mar. 25, 1992) on the Agency's prior label approval system. The ANPRM presented two options for making additional changes to the prior label approval system: (1) Revise the system by significantly reducing the scope of review through expansion of the categories of generically approved labels and replacing the general requirement of FSIS approval of sketch and final labels with one for sketch labels only; or (2) replace the system with a system in which all labels are generically approved and used without prior submission to FSIS for evaluation and approval.

On November 23, 1993, FSIS published a proposed rule (58 FR 62014) to amend the Federal meat and poultry products inspection regulations by expanding the types of generically approved labels authorized for use on meat and poultry products by official establishments in the United States and foreign establishments certified under foreign inspection systems. The rule was proposed as a first step in the gradual streamlining and modernization of the label approval system. In the proposal, the Agency sought comment on a long-term plan to implement a system in which all labels are generically approved. After reviewing the comments received in response to the proposed rule, and in light of FSIS's ongoing reassessment of its labeling policies, FSIS decided to proceed with a gradual streamlining and modernization of the label approval system.

On December 29, 1995 (effective July 1, 1996), FSIS published a final rule titled ''Prior Label Approval System'' (60 FR 67334). The implementing regulations, 9 CFR 317.5 and 381.133, outline the types of labels and modifications to labels that are deemed to be approved without submission to FSIS, provided that the label displays all mandatory label features in conformance with applicable Federal regulations.

FSIS permits official establishments and foreign establishments certified by officials of foreign inspection systems to use the following generically approved labeling without the submission of sketches for evaluation and approval by FSIS:

1. Labels for a product that has a standard of identity or composition as specified in 9 CFR part 319 or part 381, subpart P, or is consistent with an informal standard that the Agency has laid out in the Food Standards and Labeling Policy Book; does not bear any special claims, such as quality claims, nutrient content claims, health claims, negative claims, geographical origin claims (except as provided by 9 CFR 317.5(b)(9)(xxv) and 381.133 (b)(9)(xxviii)), or guarantees; and is not a product that is not domestic and labeled in a foreign language;

2. Labels for raw, single-ingredient products (such as beef steak, lamb chops, chicken legs, or turkey breasts) that do not bear special claims, such as quality claims, nutrient content claims, health claims, negative claims, geographical origin claims, or guarantees, and are not products that are not domestic and labeled with a foreign language;

3. Labels for containers of meat and meat food products and poultry products sold under contract specifications to Federal Government agencies when such product is not offered for sale to the general public, provided that the contract specifications include specific requirements with respect to labeling that is made available to the IIC;

4. Labels for shipping containers that contain fully labeled immediate containers, provided that the outside container's labels comply with 9 CFR 316.13 or 381.127;

5. Labels for products not intended for human food, provided that they comply with 9 CFR part 325 or 9 CFR 381.152(c) and 381.193; and labels for poultry heads and feet for export for processing as human food if they comply with 9 CFR 381.190(b);

6. Meat and poultry inspection legends that comply with 9 CFR parts 312 and 316, and 9 CFR part 381, subpart M;

7. Inserts, tags, liners, posters, and like devices containing printed or graphic matter and for use on, or to be placed within, containers and coverings of products, provided such devices contain no reference to product and bear no misleading feature;

8. Labels for consumer test products not intended for sale; and

9. Labels that were previously approved by FSIS as sketch labels, and the final labels were prepared without modification or with the following modifications:

a. All features of the label are proportionately enlarged or reduced, provided that all minimum size requirements specified in applicable

regulations are met, and the label is legible;

b. A substitution of any unit of measurement with its abbreviation or the substitution of any abbreviation with its unit of measurement, *e.g.,* ''lb.'' for ''pound,'' or ''oz.'' for ''ounce,'' or of the word ''pound'' for ''lb.'' or ''ounce'' for ''oz.'';

c. A master or stock label that has been approved from which the name and address of the distributor are omitted, and such name and address are applied before being used (in such case, the words ''prepared for'' or similar statement must be shown together with the blank space reserved for the insertion of the name and address when such labels are offered for approval);

d. Wrappers or other covers bearing pictorial designs, emblematic designs, or illustrations, *e.g.,* floral arrangements, illustrations of animals, fireworks, etc., are used with approved labels (the use of such designs will not make necessary the application of labeling not otherwise required);

e. A change in the language or the arrangement of directions pertaining to the opening of containers or the serving of the product;

f. The addition, deletion, or amendment of a dated or undated coupon, a cents-off statement, cooking instructions, packer product code information, or UPC product code information;

g. Any change in the name or address of the packer, manufacturer, or distributor that appears in the signature line;

h. Any change in net weight, provided the size of the net weight statement complies with 9 CFR 317.2 or 381.121;

i. The addition, deletion, or amendment of recipe suggestions for the product;

j. Any change in punctuation;

k. Newly assigned or revised establishment numbers for a particular establishment for which use of the label has been approved by FSIS;

l. The addition or deletion of open dating information;

m. A change in the type of packaging material on which the label is printed;

n. Brand name changes, provided that there are no design changes, the brand name does not use a term that connotes quality or other product characteristics, the brand name has no geographic significance, and the brand name does not affect the name of the product;

o. The deletion of the word ''new'' on new product labels;

p. The addition, deletion, or amendment of special handling statements, such as ''Keep Refrigerated'' or ''Keep Frozen,'' provided that the change is consistent with 9 CFR 317.2(k) or 381.125(a);

q. The addition of safe handling instructions as required by 9 CFR 317.2(l) and 381.125(b);

r. Changes reflecting a change in the quantity of an ingredient shown in the formula without a change in the order of predominance shown on the label, provided that the change in quantity of ingredients complies with any minimum or maximum limits for the use of such ingredients prescribed in 9 CFR parts 318, 319, 424, subpart C, and 381, subpart P;

s. Changes in the color of the label, provided that sufficient contrast and legibility remain;

t. The addition, deletion, or substitution of the official USDA grade shield on labels of poultry products;

u. A change in the product vignette, provided the change does not affect mandatory label information or misrepresent the content of the package;

v. A change in an establishment number by a corporation or parent company for an establishment under its ownership;

w. Changes in nutrition labeling that only involve quantitative adjustments to the nutrition labeling information, except for serving sizes, provided the nutrition labeling information maintains its accuracy and consistency;

x. Deletion of any claim, and the deletion of non-mandatory features or non-mandatory information;

y. The addition or deletion of a direct translation of the English language into a foreign language for products marked ''for export only''; and

z. A country of origin statement on any product label described in 9 CFR 317.8(b)(40) and 381.129(f) that complies with the requirements in these paragraphs.

With the implementation of the 1995 final rule on July 1, 1996, FSIS transferred the responsibility for maintaining labeling records from IICs to official establishments in the United States and to foreign establishments certified by officials of a foreign inspection system. Each record must include a copy of the labeling, the product formulation, and processing procedures (9 CFR 320.1(b)(11)). This transfer of responsibility was done to be consistent with the record keeping requirements of other production related areas, *e.g.,* Sanitation (9 CFR 416.16) and Hazard Analysis and Critical Control Point (HACCP) Systems (9 CFR 417.5). For example, establishments are required to maintain copies of their HACCP plan, hazard analysis, records documenting the monitoring of critical control points, and sanitation operating procedures. These records must be made available to FSIS personnel upon request. Establishments are required to maintain records for product formulation and labeling similar to HACCP and Sanitation Standard Operating Procedure (SOP) records because establishments are responsible for ensuring the accuracy of all final labels applied to product.

To facilitate Agency verification of compliance with regulatory labeling requirements, FSIS requires that establishments make labeling records available to any authorized USDA official upon request (9 CFR 320.4). The Agency published FSIS Directive 7221.1, Amendment 1, titled ''Prior Labeling Approval,'' on August 19, 1996, to provide instructions to Federal inspectors on their responsibilities in verifying that the modifications to the FSIS food labeling prior approval program regulations were implemented effectively and without disruption of the inspection process.

As part of the 1995 final rule, FSIS stated that it intended to proceed with the gradual streamlining and modernization of the prior label approval system. FSIS anticipated making additional changes after it completed an assessment of the modified system.

FSIS announced that it would sample labels applied by establishments under the generic label approval regulations to assess compliance with the FMIA and the PPIA (9 CFR 317.5(a)(2) and 381.133(a)(2)). To effect this sampling, the Agency issued FSIS Directive 7221.1, Amendment 1, which instituted a nationally directed surveillance plan. Following implementation of the surveillance plan, FSIS assessed whether establishments were applying the generic label regulations correctly. The Agency brought label discrepancies to the attention of establishments for correction when it found them.

The Agency has used its surveillance to assess compliance trends and to determine whether any new labeling regulations or guidance materials are needed. FSIS assembled a taskforce of employees to: (1) Develop criteria and methods to select labels for sampling; (2) develop the appropriate compliance activity to respond to labeling errors; (3) develop tracking and reporting systems; and (4) design and implement a survey of the effects of the limited generic approvals.

The results of a survey [2] showed that 685 of the 1,107 establishments

[2] Generic Label Audit System Project (1997–1998).

operating at the time of the survey (193 establishments that were selected to be surveyed were no longer operating) used generically approved labels. Of the 1,513 labels that inspection program personnel submitted to FSIS headquarters, 538 were in compliance with all Federal regulations and policies, 896 had minor labeling errors (for example, insufficient spacing around the declaration of net weight or an error in the name of the manufacturer, packer, or distributor) that were not of public health or economic significance, and 79 had labeling errors that could not be granted a temporary approval without modification (*e.g.,* an incomplete product name). Sections 317.4(f) and 381.132(f) of Title 9 of the CFR provide for the temporary use of final labels that may be deficient under the following conditions: (1) The product label does not misrepresent the product; (2) the use of the label does not present any potential health, safety, or dietary problems to the consumer; (3) denial of use would create an undue economic hardship; and (4) an unfair competitive advantage would not result from the granting of the temporary approval.

*Survey Conclusions*

Although 79 of the 1,513 labels that were surveyed had deficiencies that could not be granted temporary approval without modification (*e.g.,* through the use of pressure sensitive stickers to correct label features not in compliance with Federal regulations), FSIS concluded that the survey showed that the great majority of establishments surveyed could effectively use generically approved labels without first submitting sketch labels to FSIS for evaluation and approval. Furthermore, the Agency concluded that the results showed enough acceptable compliance by establishments for FSIS to confirm that the gradual implementation of generic label provisions under the 1995 final rule was effective.

*Trends Toward Increased Guidance and Transparency of Labeling Policies for Industry*

In the years since the survey was conducted and the last major change to the generic label regulations was made, the Agency has emphasized the importance of providing guidance and outreach to industry, trade groups, and consumers. FSIS has posted most of its labeling policy information on the Agency's Web site to increase accessibility to industry, particularly small businesses. The Labeling and Consumer Protection Reference Center was launched as a Web page in February 1999. The Web page includes a PowerPoint presentation titled ''Labeling 101,'' which is used by the Agency as a teaching tool at workshops on meat and poultry label requirements. In addition, FSIS has on its Web page guidance on animal production claims and on nutrition labeling, a glossary of meat and poultry labeling terms, the Food Standards and Labeling Policy Book, and questions and answers on various topics, such as irradiation and the labeling of ingredients. The Web page also includes FSIS Form 7234–1, Application for Approval of Labels, Marking and Device, and detailed instructions to assist establishments in preparing label applications for submission to FSIS. In addition, the Agency's labeling policy Web page contains a guidebook that provides information on FSIS labeling requirements, including generic approval. Due to these efforts, and because no other evidence has been submitted to FSIS to suggest that generically approved labeling cannot be successfully applied, FSIS has concluded that expanding the types of labeling that is generically approved is appropriate at this time.

**Proposed Rule**

The provisions of the generic label regulations appear to be comprehensive. However, in practical application, they are restrictive regarding the types of labels and labeling changes that are considered by the Agency to be approved without submitting such labeling to the Agency. For example, the label for a non-standardized product, such as a pepperoni pizza (bearing no special statements or claims) that was sketch approved by FSIS would need to be resubmitted for sketch approval if the establishment makes a minor formula change that affects the order of predominance in the ingredients statement. This need to resubmit exists because the generic label regulations only provide for changes to the product formula for non-standardized meat or poultry products that have been sketch approved if the order of predominance in the ingredients statement does not change. Consequently, the current label regulations require industry to submit for approval a significant amount of labeling that the Agency believes could successfully be generically approved. Expanding the types of labels that can be generically approved would lessen the burden on industry to submit labels to the Agency, while allowing the Agency to better focus on, and direct its resources to, other consumer protection and food safety activities.

FSIS is proposing to amend the meat and poultry products inspection regulations (9 CFR 317.5 and 381.133) to expand the circumstances in which the labels of meat and poultry products will be deemed to be generically approved by FSIS. If adopted, the new generic label regulations for meat and poultry will be placed in a new part 412 in Title 9. The Agency is proposing to combine the regulations that provide for the approval of labels for meat products and for poultry products (9 CFR 317.4 and 381.132) into part 412. This proposal, if adopted, will modernize the regulations by expanding the types of labels that FSIS considers generically approved without prior submission to the Agency. This rulemaking will also streamline the regulations by placing all the label approval regulations for meat and poultry products in one part in Title 9.

Under the proposed rule, establishments that apply generically approved labels without prior submission to the Agency will have the responsibility of ensuring that all basic required label features (*i.e.,* product name, safe handling statement, ingredients statement, address line, net weight, legend, safe handling instructions, nutrition labeling for multi-ingredient products, as well as the country of origin and mark of inspection of the foreign system for imported products) appear on their meat or poultry product labels in accordance with Federal regulations.

If this proposal is adopted, FSIS will require establishments to submit for evaluation only certain types of labeling, *e.g.,* labels for temporary approval, labels for products produced under religious exemption, labels for export with labeling deviations, and claims and special statements intended for use on labels. FSIS will continue to require the submission of such labels and special statements and claims because they are more likely to present significant policy issues that have health or economic significance. Examples of labeling that will need to be submitted for evaluation and approval before use if this proposal is adopted are: (1) Labels for chicken produced under Buddhist exemption; (2) labels for beef intestine produced for export to China that identify the product as ''beef casings,'' and (3) labels for temporary use that do not list all ingredients in the correct order of predominance.

Examples of special statements and claims for use on labels are: (1) Claims relating a product's nutrient content to a health or a disease condition; (2) statements that identify a product as ''organic'' or containing organic

ingredients; (3) claims regarding meat and poultry production practices; (4) claims that are undefined in FSIS regulations, such as ''gluten free;'' and (5) instructional or disclaimer statements concerning pathogens, *e.g.,* ''for cooking only'' or ''not tested for *E. coli* O157:H7;'' and (6) statements that identify a product as ''natural.'' A special statement or claim may be submitted to the Agency for approval in the context of a final label; however, FSIS will not evaluate the mandatory features (*e.g.,* handling statement and net weight) that are generically approved by the Agency. FSIS will only evaluate the special statement or claim that is presented on the label.

Under the proposal, statements on labels that are defined in FSIS's regulations or policy guidance, *e.g.,* a statement that characterizes a product's nutrient content, such as ''low fat;'' that has geographical significance, such as ''Italian Style;'' or that makes a country of origin statement on the label of any meat or poultry product ''covered commodity,'' will not need to be submitted to FSIS for evaluation. Similarly, if this proposal is adopted, FSIS will not view the addition of an allergen statement (*e.g.,* ''contains soy'') applied in accordance with the Food Allergen Labeling and Consumer Protection Act as a special statement or claim that requires sketch approval. The application of statements of this type are clearly prescribed in an FSIS compliance policy guide (*http://www.fsis.usda.gov/Regulations_&_Policies/Labeling_Allergens/index.asp*).

Through its prior label approval system, FSIS is aware that most establishments are voluntarily applying allergen statements to meat and poultry product labels in accordance with the Agency's compliance policy guide on the use of statements of this type.[3] FSIS plans to continue to monitor the application of allergen statements, but as long as the Agency continues to observe the widespread application of allergen statements on a voluntary basis, FSIS will not initiate rulemaking to make allergen statements a required label feature. FSIS intends to continue to use its post-market surveillance activities to ensure that labels containing statements of this type are not false or misleading and comply with all applicable Federal regulations.

The proposed rule will affect several other sections in the meat and poultry inspection regulations that reference label approval or generically approved labels. 9 CFR 317.8(b)(32)(ii) requires the submission of labels bearing calendar dates, *e.g.,* ''sell by date.'' FSIS is proposing to amend this section by removing the reference to 9 CFR 317.4 for submitting labels for approval because FSIS no longer believes that labels with these types of phrases need to be submitted before use. The use of phrases relating to calendar dates is prescribed in FSIS regulations, and industry has been applying these types of labeling statements for years.

FSIS is proposing to revise the recordkeeping requirements for product labels, formulation, and processing procedures that are described in 9 CFR 320.1(b)(11) by removing the references to 9 CFR 317.4 and 317.5 and replacing them with a reference to the new label approval regulations for meat and poultry found in 9 CFR part 412.

9 CFR 327.14(c) in FSIS's regulations on meat imports references label approval by FSIS in accordance with 9 CFR part 317. FSIS is proposing to revise 9 CFR 327.14(c) to reference the new label approval regulations in 9 CFR part 412.

FSIS is proposing to remove the reference to 9 CFR 317.4 in 9 CFR 331.3(e) and to replace it with a reference to 9 CFR part 412. The Agency is also proposing replace the outdated references to the ''Labels and Packaging Staff, Meat and Poultry Inspection'' in these regulations with ''FSIS labeling program at headquarters.''

In regard to the poultry label regulations and the use of the term ''fresh,'' FSIS is proposing to amend 9 CFR 381.129(b)(6)(i) to remove the reference to the current generic label regulations. Because the requirements for the use of the term ''fresh'' are prescribed in FSIS's regulations, and the term has been used by industry for a number of years, FSIS does not consider it any longer to be a special statement or claim. Therefore, under the proposed rule, establishments will be able to use the term on labels without submitting the labels for evaluation, provided the use of this term is consistent with the provisions of 9 CFR 381.129(b)(6)(i).

Similar to the meat inspection regulations, 9 CFR 381.129(c)(2) requires the approval of phrases with regard to calendar dates on poultry products. FSIS is proposing to amend this regulation by removing the reference to 9 CFR 381.132 for label approval because FSIS considers it no longer necessary to require pre-market approval of the labels on which these types of phrases appear. The use of phrases relating to calendar dates is prescribed in FSIS poultry regulations, and FSIS published several years ago a comprehensive set of guidance material on poultry dating (*http://www.fsis.usda.gov/PDF/Labeling_Guide_on_Poultry_Food_Dating.pdf*). Thus, ample guidance exists for manufacturers to ensure that the labels on which such information is placed are truthful and not misleading without the need to submit such labels to FSIS first for pre-market evaluation.

FSIS is proposing to eliminate the requirement that any label bearing the USDA approved quality control system logo, and any wording or explanation with respect to the logo, be approved. The logo is illustrated clearly in the regulations, and its use is prescribed as well. As such, FSIS does not believe that labels bearing the logo need to be submitted for approval. If this proposal is adopted, 9 CFR 318.4(f) and 381.145(f) will be amended to remove the references to ''parts 316 and 317 of this chapter'' and ''subparts M and N,'' respectively.

FSIS is proposing to revise the recordkeeping requirements for product labels, formulation, and processing procedures described in 9 CFR 381.175(b)(6) to remove the references to 9 CFR 381.132 and 381.133. These references will be replaced with a reference to the new label approval regulations found in 9 CFR part 412.

For the same reason, FSIS is proposing to replace the references to 9 CFR 381.132 and 381.133, which discuss the approval of marks and other labeling for use on immediate containers of imported products, in 9 CFR 381.205(c) with a reference to 9 CFR part 412.

The Agency is also proposing to amend 9 CFR 381.222(d)(1) to remove the reference to 9 CFR 381.132 for label approval and to replace it with a reference to 9 CFR part 412. As with 9 CFR 331.3(e) and 331.3(e)(1), the Agency is proposing to replace the outdated references to the ''Labels and Packaging Staff, Meat and Poultry Inspection'' in 9 CFR 381.222(d)(2) and (3) with one to the ''FSIS labeling program at headquarters.''

In regard to other FSIS regulations, FSIS is proposing to amend footnote 3 in the table of approved substances (9 CFR 424.21(c)) to replace the old references for label approval to 9 CFR 317.4 and 381.32 (which should have actually been 9 CFR 381.132) with a reference to 9 CFR part 412.

Finally, FSIS is proposing to amend 9 CFR 424.22(c)(4), which discusses the need for the approval of labels of irradiated meat and poultry products, by removing the references for label approval in 9 CFR 317.4 and subparts M and N in part 381. Because the requirements for the labels of irradiated

[3] Source: FSIS Labeling and Program Delivery Division, Label Audit, 2010.

products are prescribed in FSIS's regulations, and the term has been used by industry for a number of years, FSIS no longer considers it to be a special statement or claim that requires submitting such labels for approval.

**Options Considered for This Proposal**

FSIS considered several options in developing this proposed rule. The first option FSIS considered was to maintain the current prior label approval system. Under this option, FSIS would not modernize its regulations by increasing the types of labels that the Agency considers generically approved and would not streamline its regulations by combining the label approval regulations for meat and poultry into one location in Title 9. Under this option, establishments and certified foreign establishments would not have to change any procedures and could continue to apply certain types of generically approved labels as provided for in the regulations. Therefore, FSIS would not need to allocate its resources to conduct rulemaking.

However, there are several major disadvantages to this option. First, the option would not be consistent with the Agency's commitment to enable manufacturers to make decisions and assume more responsibility concerning whether products that they produce are compliant with FSIS labeling regulations. Our current generic label rule was intended to reduce the number of labels and other labeling that are submitted for evaluation by FSIS and to lessen the paperwork burden on official establishments. The goal was to improve efficiency by streamlining the label evaluation and approval process. Streamlining and modernizing the prior label approval process is important to the Agency so that it can better focus on and direct its resources to other consumer protection and food safety activities.

Second, the regulations for the mandatory label features have been in place for decades, and FSIS believes that, as a result of its verification activities, establishments and certified foreign establishments can effectively apply labels with the mandatory label features without submitting them for approval to the Agency. Consequently, under this option, industry would continue to need to submit a significant number of labels for evaluation and approval because parts of the generic label regulations are unnecessarily restrictive. Specifically, the regulations require establishments to submit labels for evaluation that do not present policy issues from the standpoint of food safety, health, economic adulteration, or misbranding.

The second option that FSIS considered was: (1) Amending its regulations so that all labels, including labels for temporary approval and labels bearing claims, would be considered generically approved by the Agency; and (2) streamlining its regulations by combining the label approval regulations for meat and poultry in one location in Title 9. The primary advantages of this option are that it would streamline the Agency's label approval regulations and eliminate the burden on industry to submit labels to the Agency for approval. However, a major disadvantage of this option is that it would likely result in misbranded products in the marketplace. While the results of the generic labeling survey showed success in establishments applying certain types of labels (*e.g.,* the mandatory features that have been required by the meat and poultry inspection regulations for decades), the results of the survey cannot be used to support the generic approval of all labels because certain types of labels, *e.g.,* labels with special statements and claims, present significant policy issues and are not defined in FSIS regulations. Consequently, establishments may not be familiar with the Agency's requirements for the support or application of certain special statements or claims, which could result in increased labeling errors and misbranded product.

Industry is familiar with the requirements for mandatory label features, but the Agency believes that it needs to continue to provide pre-market evaluation and approval of certain types of labels (*e.g.,* temporary approvals and labels for product produced under a religious exemption). Further, FSIS needs to continue to provide pre-market evaluation and approval of special label statements and claims (*e.g.,* animal production raising claims and ''natural'') that present significant and evolving policy issues. The pre-market evaluation and approval of certain types of labels, and special statements and claims intended for use on labels, are needed for the Agency to verify that all labels are accurate, truthful, and not misleading before products enter commerce.

The third option FSIS considered was to: (1) Expand the types of labels that would be subject to generic approval; and (2) streamline its regulations by combining the label approval regulations for meat and poultry in one location in Title 9 of the CFR. Under this option, FSIS would expand the types of labels that the Agency considers generically approved (*i.e.,* any labels that bear mandatory features without special statements or claims). The Agency would continue to require the submission of certain types of label, *e.g.,* labels for temporary approval, labels for export products with label deviations, and products produced under religious exemptions.

Under this option, Federal establishments and certified foreign establishments would be responsible for ensuring that the basic required features on labels are applied in accordance with all applicable regulations. Temporary approvals, labels for export products that deviate from domestic labeling requirements, and labels for products produced under religious exemption, however, would represent exceptions that FSIS would need to evaluate on a case by case basis. Therefore, these limited types of labels would have to be submitted to FSIS for evaluation and approval before use. In addition, manufacturers would be required to submit special statements and claims intended to be used on labels to the Agency for approval under this option.

A major advantage of the third option is that establishments would be responsible for developing labels that include the basic mandatory features (*i.e.,* product name, safe handling statement, ingredients statement, signature line, net weight, legend, safe handling instructions, and nutrition labeling) in accordance with Federal regulations. This option would thus allow Agency personnel to focus their efforts on evaluating claims or special statements that have consumer safety or economic implications and on labels that cannot be generically approved, *e.g.,* requests for temporary approval to use labeling that is deficient in some manner. It would substantially reduce the types of labels that would need to be submitted to the Agency, thus reducing, although not entirely eliminating, the burden for industry to submit labels to FSIS for approval.

FSIS would continue to perform verification and post-market surveillance activities in commerce to ensure that meat and poultry product labels comply with all applicable regulations. Specifically, FSIS would select samples of generically approved labels from the records maintained by official establishments and establishments certified under foreign inspection systems, in accordance with part 327 and part 381, subpart T, to determine compliance with label requirements. If the Agency found that an establishment is using a false or misleading label, it would institute the proceedings prescribed in 9 CFR 500.8

to revoke the approval for the label. FSIS's surveillance activities would ensure that the consumer is protected under this option.

Therefore, FSIS concludes that the third option is the most feasible for rulemaking. It is an approach that will effectively enhance implementation of a generic label system that imposes less burden on industry. It promotes effective use of Agency resources. The option will not adversely affect consumer protection because FSIS will continue to evaluate labeling, *e.g.,* special statements and claims and requests for temporary approval, that have consumer safety or economic implications. Moreover, FSIS will continue its verification and compliance activities to ensure that establishments are labeling their products in conformance with Agency regulations. Finally, it will streamline FSIS regulations by putting the meat and poultry prior label approval regulations in one part in Title 9.

We invite public comment on these options as well as on other options not discussed above.

**Executive Orders 12866 and 13563**

Executive Orders (EOs) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if a regulation is necessary, to select the regulatory approach that maximizes net benefits (including potential economic, environmental, public health and safety, and other advantages, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This action has been reviewed for compliance with EOs 12866 and 13563.

This rule has been designated a ''significant regulatory action,'' although not economically significant, under section 3(f) of EO 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget.

The Agency has determined that this proposed rule maximizes net benefits to consumers and establishments by expanding the types of labels that are approved generically under the FMIA and the PPIA.

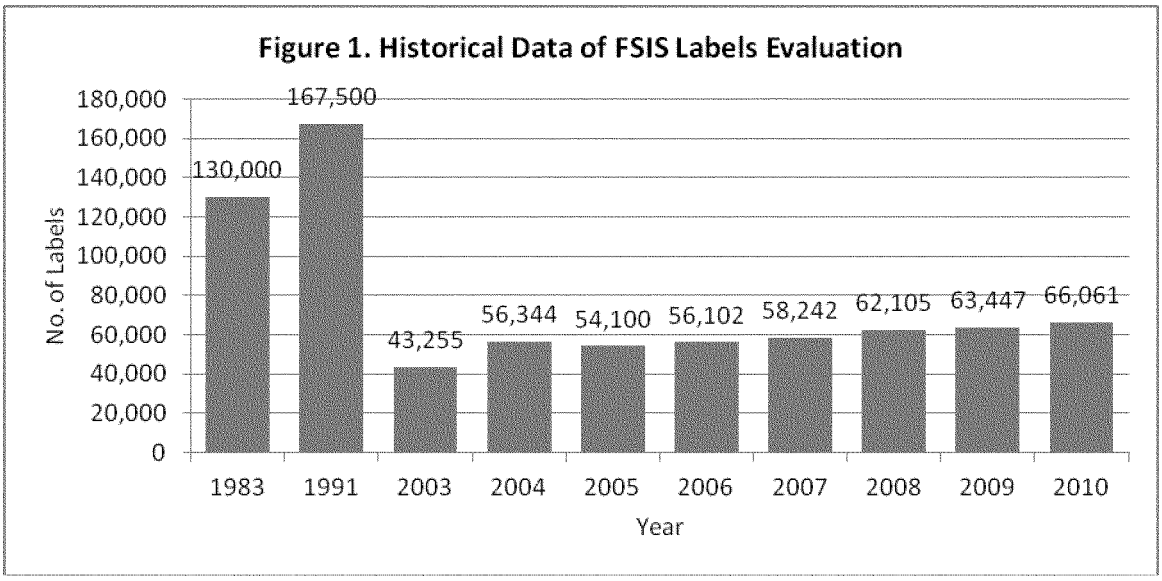
**I. Need for the Rule**

The purpose of the proposed rule is to expand the circumstances in which the labels of meat and poultry products will be deemed to be generically approved by FSIS and to combine the regulations that provide for the generic approval of labels for meat products into a new part 412 in Title 9, Chapter III, of the CFR. The proposed rule is the next step in the Agency's gradual streamlining and modernizing of the prior label approval system.

This rulemaking's intent is to reduce the number of labels evaluated by FSIS that only bear basic features (*e.g.,* product name, ingredients statement, net weight) and to reduce the amount of paperwork filed by establishments with FSIS. If finalized, these actions will improve the efficiency of the label approval system by streamlining the evaluation process for specific types of labels and making the label approval system more convenient and cost-effective for industry. As for consumers, this new process will enhance market efficiency by promoting a faster introduction of new products into the marketplace to meet demand while not negatively affecting consumer protection from misbranded product.

**II. Historical Record of FSIS's Prior Label Approval System**

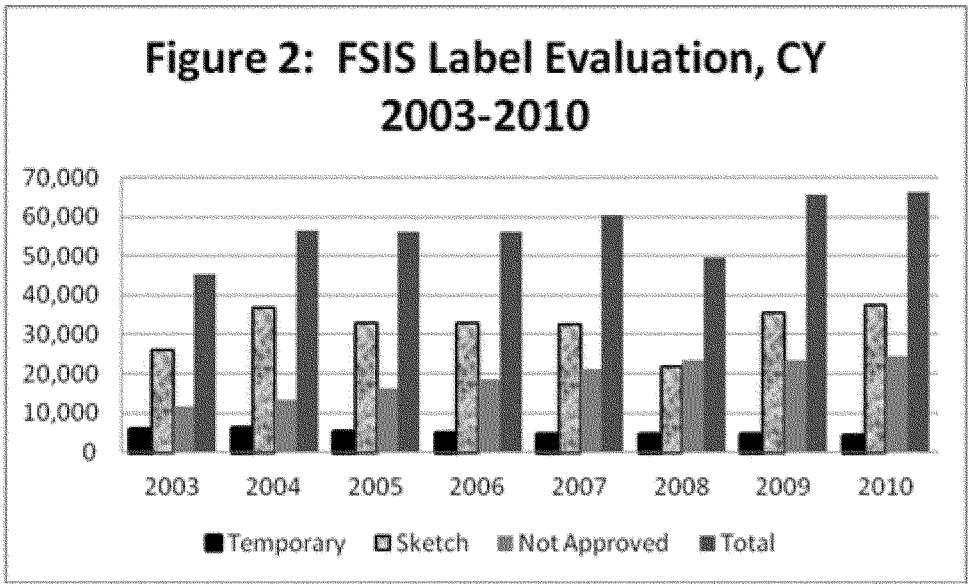
In 1983, when FSIS established limited types of generically approved labels, the Agency evaluated 130,000 labels. In 1991, the number of labels evaluated peaked at 167,500 labels. The 1995 final rule that amended the prior label approval system expanded the types of labels and label changes that may be applied in accordance with the generic label regulations. As a result, the number of labels evaluated by FSIS decreased by 74 percent to 43,255 in 2003, as depicted in Figure 1. From 2003 to 2010, the number of labels evaluated per year averaged 57,457, with a minimum of 43,255 (2003) and a maximum of 66,061 (2010).




*Source:* FSIS, Labeling and Program Delivery Division (LPDD), Labeling Information System (LIS) Database

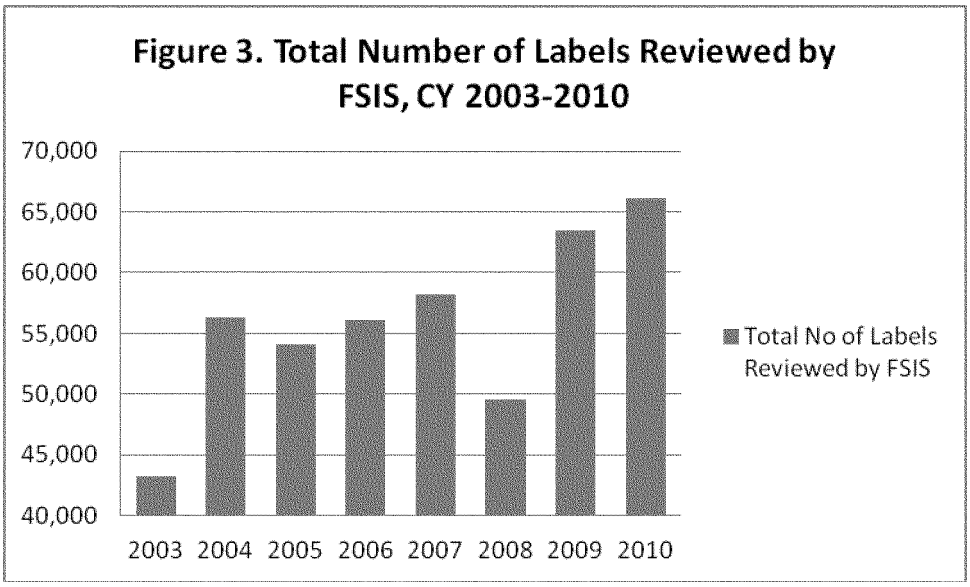
Under the current prior label approval system, FSIS evaluates and approves meat and poultry labels for temporary or sketch approval. Labels are not approved when they do not comply with Federal regulations, or when they have claims and special statements that are not substantiated or supported with sufficient documentation. As depicted in Figure 2, sketch labels make up over 50 percent of the volume of labels evaluated and approved by FSIS, while

the approval of temporary labels makes up only about 9 percent of the total volume.




Source: FSIS, LPDD, LIS Database

During 2003–2010, FSIS reviewed and evaluated a total of 459,656 labels. As depicted in Figure 3, the number of labels reviewed and evaluated by FSIS LPDD increased 53 percent, from 43,255 labels in 2003 to 66,061 labels in 2010. Each year the number of labels increased, except between 2004 and 2005, when labels decreased 4 percent, from 56,344 labels to 54,100 labels, but then increased 4 percent to 56,102 labels in 2006.




*Source:* FSIS, LPDD, LIS Database

When looking at the data of the Agency approval of Temporary Labels (See Table 1), we find that the approval level was at 13 percent in 2003 (5,831 labels approved), which then declined to 6 percent in 2010 (4,101 labels approved). The approval level was at its lowest in 2010 (6.2%), when the Agency approved 4,101 labels out of 66,061 labels. Since 2003, the Agency has approved 45 percent more sketch labels and 30 percent fewer temporary labels.

TABLE 1—LABEL EVALUATION AND APPROVAL PROCESS, 2003–2010

| Agency action | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 |
|---|---|---|---|---|---|---|---|---|
| Temporary Approval | 5,831 (13%) | 6,124 (11%) | 5,036 (9%) | 4,763 (8%) | 4,404 (7.5%) | 4,369 (8.8%) | 4,575 (7.2%) | 4,101 (6.2%) |
| Sketch Approval | 25,870 | 36,967 | 32,795 | 32,956 | 32,588 | 21,693 | 35,588 | 37,465 |
| Unapproved | 11,554 | 13,252 | 16,269 | 18,383 | 21,250 | 23,456 | 23,284 | 24,495 |
| *Total* | *43,255* | *56,343* | *54,100* | *56,102* | *58,242* | *49,518* | *63,447* | *66,061* |

Examining the data closer, the number of sketch labels approved increased 64 percent, from 21,693 labels in 2008 to 35,588 labels in 2009, while the number not approved remains the same and the number of temporary slightly increased. The number of labels not approved has climbed steadily from 2003, when it was at its lowest at 11,554 labels unapproved, to its high of 24,495 labels not approved in 2010. Between 2005 and 2007, as the number of sketch label approvals leveled off in the 32,000 range, the number of labels not approved increased 30 percent, from 16,269 labels to 21,250. FSIS attributes this increase in labels not approved to the increase in special claims, statements that were not substantiated, and sketch labels that Agency personnel could not approve as modified because the labels contained several errors or major discrepancies. During this timeframe, FSIS placed much of its labeling guidance on its Web site and conducted many labeling workshops.

## III. Industry Profile

### *A. Establishments*

Based on the Agency's Performance Based Inspection System databases, in 2011, there were about 6,099 Federal establishments. FSIS estimates that there were approximately 266,061 approved meat and poultry product labels used by these establishments. FSIS evaluated 66,061 of them in 2010; the remaining 200,000 were approved under the Prior Label Approval System because they met the standards for generic approval.

### *B. Label Consultant Firms*

There are about 12 firms that submit labels to LPDD on behalf of Federal establishments. These firms provide label courier service, information, and training to their clients on FSIS labeling policies. All of the firms in this industry are small, usually having one to four employees. Many of these firms now offer consulting services, such as ensuring that import and export labels to be reviewed for compliance with USDA regulations receive expedited service and providing label outsourcing, in which a firm handles all of an establishment's food labeling needs.

## IV. Benefits

### *A. Industry*

If adopted, the proposed rule will continue the streamlining and modernization of the Agency's prior label approval system. The proposed rule will permit establishments to realize an estimated cost savings of a minimum of $8.7 million (discounted over a 10-year period) for generically approving about 584,486 additional labels over a 10-year period at about $25 per label submission.[4] In the absence of the proposed rule, establishments will not realize any cost savings because Federal regulations will continue to require establishments to submit a significant number of labels to LPDD for evaluation.[5] Establishments will also realize an increase in the number of generically approved labels over a 10-year period under the proposed rule.

TABLE 2—ESTIMATED ESTABLISHMENT COST SAVINGS (IN 2010 DOLLARS)

| (A) | (B) | (C) | (D) | (E) | (F) | (G) |
|---|---|---|---|---|---|---|
| Year | Total number of labels developed and applied by establishments that do not require FSIS evaluation *Before rule* | Increase in number of labels developed and applied by establishments that would not require FSIS evaluation | Total number of labels developed and applied by establishments that would not require FSIS evaluation *After rule* | Total cost savings Col.(C) × *$25 from reduced need for FSIS label evaluation | To apply discount rate of 7.00% | Discounted total cost savings col. (E) × Col. (F) |
| 0 | 200,000 | 0 | 200,000 | $0 | 1.00 | $0 |
| 1 | 250,985 | 50,985 | 301,970 | $1,274,625 | 0.93 | $1,185,401 |
| 2 | 253,495 | 52,515 | 306,009 | $1,312,864 | 0.86 | $1,129,063 |
| 3 | 256,030 | 54,090 | 310,120 | $1,352,250 | 0.79 | $1,068,277 |
| 4 | 258,590 | 55,713 | 314,303 | $1,392,817 | 0.72 | $1,002,828 |
| 5 | 261,176 | 57,384 | 318,560 | $1,434,602 | 0.65 | $932,491 |
| 6 | 263,788 | 59,106 | 322,893 | $1,477,640 | 0.58 | $857,031 |
| 7 | 266,426 | 60,879 | 327,304 | $1,521,969 | 0.51 | $776,204 |
| 8 | 269,090 | 62,705 | 331,795 | $1,567,628 | 0.44 | $689,756 |
| 9 | 271,781 | 64,586 | 336,367 | $1,614,657 | 0.37 | $597,423 |
| 10 | 274,499 | 66,524 | 341,022 | $1,663,097 | 0.30 | $498,929 |

[4] The cost per label is the cost of submitting a label for review to FSIS, which averages about $25.00 per submission. This amount will be used as a proxy to estimate the cost savings to establishments that prepare their labels for review using FSIS Form 7234–1 ''Application for approval of Labels, Markings, or Device'' and preparing a printer's proof of the label for evaluation and approval by LPDD.

[5] See Table 2.

TABLE 2—ESTIMATED ESTABLISHMENT COST SAVINGS (IN 2010 DOLLARS)—Continued

| (A) | (B) | (C) | (D) | (E) | (F) | (G) |
|---|---|---|---|---|---|---|
| Year | Total number of labels developed and applied by establishments that do not require FSIS evaluation | Increase in number of labels developed and applied by establishments that would not require FSIS evaluation | Total number of labels developed and applied by establishments that would not require FSIS evaluation | Total cost savings Col.(C) × *$25 from reduced need for FSIS label evaluation | To apply discount rate of 7.00% | Discounted total cost savings col. (E) × Col. (F) |
| *Total* | *2,825,858* | *584,486* | *3,410,344* | *$14,612,147* | ..... | *$8,737,404* |

*Description:*
*Col A:* Estimate is for a 10-year period. Year "0" is the year before the enactment of the rule.
*Col B:* Total number of labels developed and applied by official establishments that do not currently require FSIS evaluation.
*Col C:* Increase in the number of labels generically developed and applied by establishments as a result of the rule (*i.e.,* would not need FSIS evaluation.
*Col D:* Total number of labels developed and applied by establishments after the rule was enacted.
*Col E:* Total cost savings realized to establishments, using an estimated $25 as the cost per label submission to LPDD.
*Col F:* Discount rate of 7 percent.
*Col G:* Discount cost savings over 10 years.
Source: FSIS Policy Analysis Division Calculations.

Because fewer labels will need to be submitted to the Agency for evaluation, establishments will realize a cost savings because they will no longer need to incur costs to have certain types of labels evaluated by FSIS.

*B. Agency*

The proposed rule should reduce the number of labels submitted to FSIS for evaluation and enable the Agency to reallocate the staff hours saved from evaluating fewer labels towards the development of labeling policy, the evaluation of new and novel labeling policy issues, and involvement in other food safety and consumer protection activities. The proposed rule would streamline the approval process by amending the regulations to provide that, except in certain specified circumstances, the label of a meat or poultry product is deemed to be approved generically.

Table 3 shows the chronological progression of streamlining and modernizing the prior label approval system through various rulemakings.

TABLE 3—COMPARISON OF FSIS PRIOR LABEL APPROVAL SYSTEM RULEMAKINGS

| 1983 | 1995 | 2011 |
|---|---|---|
| *Prior label approval system* | *Prior label approval system* | *Proposed prior label approval system* |
| Establishments granted limited labeling approval to the IIC. | Expanded the types of labels and modifications to labels that the Agency deemed generically approved. | Proposed to expand all types of labels and of modifications to labels that the Agency deems generically approved except in certain specified circumstances. |
| Label records maintained by IIC | Label records maintained by the establishments. | Label records maintained by the establishments. |
| Agency conducts all evaluation and approval of temporary, sketch, and final labels. | Agency conducts all evaluations and approvals of temporary and sketch labels only.. | Agency conducts all evaluations and approvals of special statements and claims, labels for temporary approval, labels for products produced under a religious exemption, and labels for products for export with labeling deviations. |

Source: FSIS, LPDD

TABLE 4—ESTIMATED FSIS COST SAVINGS (IN 2010 DOLLARS)

| (A) | (B) | (C) | (D) | (E) | (F) | (G) | (H) |
|---|---|---|---|---|---|---|---|
| Year | Total number of labels evaluated and approved by LPDD *Before rule* | Total number of labels evaluated and approved by LPDD *After rule* | Annual salary cost ($) of LPDD [1] *Before rule* | Annual salary cost ($) of LPDD [2] *After rule* | Annual salary difference (D) − (E) | To apply discount rate of 7.00% | Discounted cost savings (F) * (G) |
| 0 | 66,061 | 66,061 | 538,710 | 538,710 | 0 | 1.00 | 0 |
| 1 | 68,043 | 17,011 | 554,871 | 134,677 | 420,194 | 0.93 | 390,781 |
| 2 | 70,084 | 17,521 | 571,517 | 138,717 | 432,800 | 0.86 | 372,208 |
| 3 | 72,187 | 18,047 | 588,663 | 142,879 | 445,784 | 0.79 | 352,169 |
| 4 | 74,352 | 18,588 | 606,323 | 147,165 | 459,158 | 0.72 | 330,594 |
| 5 | 76,583 | 19,146 | 624,513 | 151,580 | 472,932 | 0.65 | 307,406 |

TABLE 4—ESTIMATED FSIS COST SAVINGS (IN 2010 DOLLARS)—Continued

| (A) | (B) | (C) | (D) | (E) | (F) | (G) | (H) |
|---|---|---|---|---|---|---|---|
| Year | Total number of labels evaluated and approved by LPDD *Before rule* | Total number of labels evaluated and approved by LPDD *After rule* | Annual salary cost ($) of LPDD [1] *Before rule* | Annual salary cost ($) of LPDD [2] *After rule* | Annual salary difference (D) – (E) | To apply discount rate of 7.00% | Discounted cost savings (F) * (G) |
| 6 | 78,880 | 19,720 | 643,248 | 156,128 | 487,120 | 0.58 | 282,530 |
| 7 | 81,247 | 20,312 | 662,545 | 160,811 | 501,734 | 0.51 | 255,884 |
| 8 | 83,684 | 20,921 | 682,422 | 165,636 | 516,786 | 0.44 | 227,386 |
| 9 | 86,195 | 21,549 | 702,894 | 170,605 | 532,290 | 0.37 | 196,947 |
| 10 | 88,780 | 22,195 | 723,981 | 175,723 | 548,258 | 0.30 | 164,477 |
| Total | 846,096 | 261,070 | 6,899,688 | 2,082,631 | 4,817,057 | | 2,880,382 |

Description:
*Col A:* Estimate is for a 10 year period. Year "0" is the year before the enactment of the rule.
*Col B:* Total number of labels evaluated and approved by LPDD prior to rule enactment assuming a 3 percent growth factor.
*Col C:* Total number of labels evaluated and approved by LPDD after rule enactment, assuming a 3 percent growth factor.
*Col D:* Annual salary cost of LPDD staff who evaluate labels, prior to enactment of rule, assuming a 3 percent growth factor.
*Col E:* Annual salary cost of LPDD personnel who evaluates labels, after rule enactment, assuming a 3 percent growth factor.
*Col F:* Annual salary difference between salary before rule enactment and after rule enactment, assuming a 3 percent growth factor.
*Col G:* Discount rate of 7 percent.
*Col H:* Discount cost savings.
Footnotes:
[1] Total salary is based on a staff of 11 personnel paid at the average rate of a GS–13, step 4 of $47.09 per hour: 11 staff persons would review labels at a cost of $538,710 per year ($47.09 an hour × 4 hours a day × 11 persons × 5 days a week = $10,359.80. $10,359.80 × 52 weeks = $538,710).
[2] Total salary is based on a staff of 11 personnel paid at the average rate of a GS–13, step 4 at $47.09 per hour: 11 staff persons would review labels at a cost of $134,677.40 per year ($47.09 an hour × 1 hour a day × 11 persons × 5 days a week = $2,589.95 × 52 weeks = $134,677.40.
Source: FSIS Policy Analysis Division calculations.

If this proposed rule becomes final, in the year before the effective date of the rule FSIS will continue to review 66,061 labels because of the lag time between the publication of the rule and industry compliance with it. In years 1–10, FSIS will experience a 69 percent reduction in the volume of labels submitted for evaluation.

Currently, FSIS employs eleven labeling policy experts to evaluate labels.[6] FSIS staff members are organized into teams based on special claims or issues, such as amenability, organic, or country of origin,[7] and evaluate labeling four hours per day, five days a week, at a cost of $10,360 per week. FSIS assumes that it will evaluate labels and labeling for one hour per day, five days a week, as a result of the reduction in the volume of labels or labeling submitted to FSIS. Thus, the proposed rule would permit the Agency to realize an estimated discounted cost savings of $2.9 million over 10 years [8] from evaluating labels because FSIS is expected to review a total of 261,070 labels under the proposed rule as compared with 846,096 under the current system.[9] This cost savings from fewer staff hours being allocated towards label evaluation can be redirected towards other food safety and consumer protection activities.

## V. Costs

The proposed rule would not impose any new costs on meat and poultry establishments that submit labels for review to FSIS and it minimizes the regulatory burden on establishments that submit labels for review. The proposed rule does not change the requirement that establishments maintain copies of all labeling records, along with the product formulations and a description of the processing procedures used to formulate the products in accordance with 9 CFR 320.2 and part 381, subpart Q. These labeling records must be made available to any authorized Agency official within 24 hours upon request.

The proposed rule also does not impose any additional cost burden on establishments because first, establishments are already applying generically approved labels and maintaining all labeling records, and second, establishments are experienced in submitting labels to FSIS for evaluation. If this proposal is adopted, establishments will continue label production, once the labels are approved by FSIS. The cost of label design and products is not a part of this proposed rule.

## VI. Summary

If this proposed rule is adopted, it will be net beneficial because it will streamline the generic label approval process, while imposing no additional cost burden on establishments. FSIS estimates that establishments will realize a discounted cost savings of $8.7 million as a result of their ability to generically approve an additional 584,486 labels over a 10-year period. Furthermore, the Agency will realize a discounted cost savings of $2.9 million for evaluating 584,486 fewer labels over a 10-year period. This cost savings in fewer staff hours being spent evaluating labels can be redirected towards other Agency initiatives. Therefore, the net benefit derived from the proposed rule is $11.6 million ($8.7 million in establishment savings plus $2.9 million in Agency savings), discounted at 7 percent, over a 10-year period.

## Preliminary Regulatory Flexibility Analysis

The FSIS Administrator has determined that this proposed rule would not have a significant impact on a substantial number of small entities, as defined by the Regulatory Flexibility

[6] The average General schedule (GS) level grade of the staff is a GS–13, step 4.

[7] Each team will have a member who is knowledgeable about certain special claims.

[8] See Table 4.

[9] Ibid.

Act (5 U.S.C. 601). The proposed changes will affect those entities in the United States that submit labels for review to FSIS. There are 6,099 meat and poultry establishments that could possibly be affected by this proposed rule since all are eligible to submit labels for review and 12 small label consulting firms that are involved in various labeling activities, such as submitting labels to FSIS for evaluation on the behalf of meat and poultry establishments. Of the 6,099 establishments, there are about 2,616 small federally inspected establishments (with more than 10 but less than 500 employees) and 3,103 very small establishments (with fewer than 10 employees) based on HACCP Classification. Therefore, a total of 5,719 small and very small establishments could be possibly affected by this rule. These small and very small establishments, like the large establishments, would be permitted to generically approved labels as long as there are no special claims. Small entities would not be disadvantaged because the proposed rule would minimize the regulatory burden on all establishments. The proposed rule would not have a significant impact on a substantial number of label consulting firms. Since the expanded use of generically approved labels in 1995, these firms have modified their consulting services to specialize in certain policy areas, *e.g.,* the production and labeling of organic products and animal production raising practices. Therefore, the Agency believes that the proposed rule will not have a significant economic impact on a substantial number of small entities (establishments and labeling consulting firms).

In making its determination, the Agency considered two alternatives to the proposed rule: the status quo and making all labels candidates for generic labeling. Keeping the status quo would mean that the Agency would continue to commit limited resources to a process that establishments can assume, if the proper guidance was available. Therefore the Agency rejects this alternative. The second alternative, making all labels generically approved, would mean that some products may be misbranded because of misleading statement and claims on the labels. Therefore the Agency rejects this alternative as well.

**Executive Order 12988**

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule except as discussed below.

**Paperwork Requirements**

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*), the information collection requirement associated with this proposed rule on prior labeling has been submitted for approval to OMB.

*Title:* Marking, Labeling, and Packaging of Meat, Poultry, and Egg Products.

*OMB No.:* 0583–0092.

*Expiration Date of Approval:*

*Type of Request:* Revision of a currently approved information collection.

*Abstract:* FSIS has been delegated the authority to exercise the functions of the Secretary as specified in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601, *et seq.*), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451, *et seq.*), and the Egg Products Inspection Act (EPIA) (21 U.S.C. 1031, *et seq.*).

FSIS protects the public by verifying that meat, poultry, and egg products are safe, wholesome, unadulterated, and properly labeled and packaged. FSIS is requesting a revision of a currently approved information collection addressing paperwork requirements specified in the regulations related to marking, labeling, and packaging of meat, poultry, and egg products.

FSIS is proposing to expand the circumstances in which FSIS will generically approve the labels of meat and poultry products. Under this proposed rule, more official and foreign establishments would be able to use the generic approval of product labels that would also result in a reduced number of regular label approvals. Hence, FSIS is requesting a revision of the Marking, Labeling, and Packaging of Meat, Poultry, and Egg Products information collection. The total number of hours for this information collection will decrease 31,091 hours because of the increased use of generic labeling.

*Estimate of Burden:* FSIS estimates that it will take establishments on the average of 0.33 hours per response.

*Respondents:* Official establishments, plants, and foreign establishments.

*Estimated Number of Respondents:* 6,418.

*Estimated Number of Responses per Respondent:* 45.7.

*Estimated Total Annual Burden on Respondents:* 97,176 hours.

Copies of this information collection assessment can be obtained from John O'Connell, Paperwork Reduction Act Coordinator, Food Safety and Inspection Service, USDA, 1400 Independence Avenue SW., Room 6083, South Building, Washington, DC 20250.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of FSIS's functions, including whether the information will have practical utility; (b) the accuracy of FSIS'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 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.

Comments may be sent to both John O'Connell, Paperwork Reduction Act Coordinator, at the address provided above, and the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20253. To be most effective, comments should be sent to OMB within 60 days of the publication date of this proposed rule.

**E-Government Act**

FSIS and USDA are committed to achieving the purposes of the E-Government Act (44 U.S.C. 3601, *et seq.*) by, among other things, promoting the use of the Internet and other information technologies and providing increased opportunities for citizen access to Government information and services, and for other purposes.

FSIS believes that by proceeding with this rulemaking, the Agency could potentially accept the electronic submission of requests for the evaluation of claims or special statements, which will significantly streamline the approval process.

**National Environmental Policy Act**

*The expected environmental effects:* The use of labels by meat and poultry product establishments that have been deemed to be generically approved by FSIS is an activity that will not have a significant individual or cumulative effect on the human environment. Therefore, this proposed rule is appropriately subject to the categorical exclusion from the preparation of an environmental assessment or environmental impact statement provided under 7 CFR 1b.4(6) of the U.S. Department of Agriculture regulations.

**Executive Order 13175**

This final rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation will not have substantial and direct effects on Tribal governments and will not have significant Tribal implications.

**USDA Nondiscrimination Statement**

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, or audiotape) should contact USDA's Target Center at (202) 720–2600 (voice and TTY).

To file a written complaint of discrimination, write USDA, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW., Washington, DC 20250–9410 or call (202) 720–5964 (voice and TTY). USDA is an equal opportunity provider and employer.

**Additional Public Notification**

FSIS will announce this proposed rule online through the FSIS Web page located at *http://www.fsis.usda.gov/regulations_&_policies/ProposedRules/index.asp*.

FSIS will also make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to constituents and stakeholders. The Update is communicated via Listserv, a free electronic mail subscription service for industry, trade groups, consumer interest groups, health professionals, and other individuals who have asked to be included. The Update is also available on the FSIS Web page. In addition, FSIS offers an electronic mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/News_&_Events/Email_Subscription/*. Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

**List of Subjects**

Food labeling, Food packaging, Meat inspection, Poultry and poultry products, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, FSIS is proposing to amend 9 CFR, Chapter III, as follows:

## PART 317—LABELING, MARKING DEVICES, AND CONTAINERS

1. The authority citation for part 317 continues to read as follows:

**Authority:** 21 U.S.C. 601–695; 7 CFR 2.18, 2.53.

**§§ 317.4 and 317.5 [Removed and Reserved]**

2. Sections 317.4 and 317.5 are removed and reserved.

3. In § 317.8, revise paragraph (b)(32)(ii) to read as follows:

**§ 317.8 False or misleading labeling or practices generally; specific prohibitions and requirements for labels and containers.**

* * * * *

(b) * * *

(32) * * *

(ii) Immediately adjacent to the calendar date will be a phrase explaining the meaning of such date, in terms of ''packing'' date, ''sell by'' date, or ''use before'' date, with or without a further qualifying phrase, *e.g.,* ''For Maximum Freshness'' or ''For Best Quality.''

* * * * *

## PART 318—ENTRY INTO OFFICIAL ESTABLISHMENTS; REINSPECTION AND PREPARATION OF PRODUCTS

4. The authority citation for part 318 continues to read as follows:

**Authority:** 7 U.S.C. 138, 450, 1901–1906; 21 U.S.C. 601–695; 7 CFR 2.18, 2.53.

5. In § 318.4, revise paragraph (f) introductory text to read as follows:

**§ 318.4 Preparation of products to be officially supervised; responsibilities of official establishments; plant operated quality control.**

* * * * *

(f) *Labeling Logo.* Owners and operators of official establishments having a total plant quality control system approved under the provisions of paragraph (c) of this section may only use, as a part of any label, the following logo.

* * * * *

## PART 320—RECORDS, REGISTRATION, AND REPORTS

6. The authority citation for part 320 continues to read as follows:

**Authority:** 21 U.S.C. 601–695; 7 CFR 2.7, 2.18, 2.53.

7. In § 320.1, revise paragraph (b)(11) to read as follows:

**§ 320.1 Records required to be kept.**

* * * * *

(b) * * *

(11) Records of labeling, product formula, processing procedures, and any additional documentation needed to support that the labels are consistent with the Federal meat and poultry regulations and policies on labeling, as prescribed in § 412.1 of this chapter.

## PART 327—IMPORTED PRODUCTS

8. The authority citation for part 327 continues to read as follows:

**Authority:** 21 U.S.C. 601–695; 7 CFR 2.18, 2.53.

9. In § 327.14, revise paragraph (c) to read as follows:

**§ 327.14 Marking of products and labeling of immediate containers thereof for importation.**

* * * * *

(c) All marks and other labeling for use on or with immediate containers, as well as private brands on carcasses or parts of carcasses, shall be approved by the Food Safety and Inspection Service in accordance with part 412 of these regulations before products bearing such marks, labeling, or brands will be entered into the United States. The marks of inspection of foreign systems embossed on metal containers or branded on carcasses or parts thereof need not be submitted to the Food Safety and Inspection Service for approval, and such marks of inspection put on stencils, box dies, labels, and brands may be used on such immediate containers as tierces, barrels, drums, boxes, crates, and large-size fiberboard containers of foreign products without such marks of inspection being submitted for approval, provided the markings made by such articles are applicable to the product and are not false or misleading.

## PART 331—SPECIAL PROVISIONS FOR DESIGNATED STATES AND TERRITORIES; AND FOR DESIGNATION OF ESTABLISHMENTS WHICH ENDANGER PUBLIC HEALTH AND FOR SUCH DESIGNATED ESTABLISHMENTS

10. The authority citation for part 331 is revised to read as follows:

**Authority:** 21 U.S.C. 601–695; 7 CFR 2.17, 2.53.

11. Amend § 331.3 by revising paragraphs (e) introductory text, (e)(1), and (e)(3) to read as follows:

**§ 331.3 States designated under paragraph 301(c) of the Act; application of regulations.**

* * * * *

(e) Sections 316.7, 317.3, and 412.1 will apply to such establishments, except as provided in this paragraph (e).

(1) The operator of each such establishment will, prior to the inauguration of inspection, identify all labeling and marking devices in use, or proposed for use, (upon the date of inauguration of inspection) to the Front Line Supervisor of the circuit in which the establishment is located. Temporary approval, pending formal approval under §§ 316.7, 317.3, and 412.1, will be granted by the Front Line Supervisor for labeling and marking devices that he determines are neither false nor misleading, provided the official inspection legend bearing the official establishment number is applied to the principal display panel of each label, either by a mechanical printing device or a self-destructive pressure sensitive sticker, and provided the label shows the true product name, an accurate ingredient statement, the name and address of the manufacturer, packer, or distributor, and any other features required by section 1(n) of the Act.

* * * * *

(3) The operator of the official establishment shall promptly forward a copy of each item of labeling and a description of each marking device for which temporary approval has been granted by the Front Line Supervisor (showing any modifications required by the Front Line Supervisor) to the FSIS labeling program at headquarters, Food Safety and Inspection Service, USDA, 5601 Sunnyside Ave., Stop 5476, Beltsville, MD 20705–5476, accompanied by the formula and details of preparation and packaging for each product. Within 90 days after inauguration of inspection, all labeling material and marking devices temporarily approved by the Front Line Supervisor must receive approval as required by §§ 316.7, 317.3, and 412.1, or their use must be discontinued.

* * * * *

## PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

12. The authority citation for part 381 continues to read as follows:

**Authority:** 7 U.S.C. 138f, 450, 1901–1906; 21 U.S.C. 451–470; 7 CFR 2.18, 2.53.

13. Amend section 381.129 by revising paragraphs (b)(6)(i) and (c)(2) to read as follows:

**§ 381.129 False or misleading labeling or containers.**

* * * * *

(b) * * *

(6)(i) A raw poultry product whose internal temperature has ever been below 26°F may not bear a label declaration of ''fresh.'' A raw poultry product bearing a label declaration of ''fresh'' but whose internal temperature has ever been below 26°F is mislabeled. The temperature of individual packages of raw poultry product within an official establishment may deviate below the 26°F standard by 1 deg. (*i.e.,* have a temperature of 25°F) and still be labeled ''fresh.'' The temperature of individual packages of raw poultry product outside an official establishment may deviate below the 26°F standard by 2 deg. (*i.e.,* have a temperature of 24°F) and still be labeled ''fresh.'' The average temperature of poultry product lots of each specific product type must be 26°F. Product described in this paragraph is not subject to the freezing procedures required in section 381.66(f)(2) of this subchapter.

* * * * *

(c) * * *

(2) Immediately adjacent to the calendar date will be a phrase explaining the meaning of such date in terms of ''packing'' date, ''sell by'' date, or ''use before'' date, with or without a further qualifying phrase, *e.g.,* ''For Maximum Freshness'' or ''For Best Quality.''

* * * * *

**§§ 381.132 and 381.133 [Removed and Reserved]**

14. Sections 381.132 and 381.133 are removed and reserved.

15. In § 381.145, revise paragraph (f) introductory text to read as follows:

**§ 381.145 Poultry products and other articles entering or at official establishments; examination and other requirements.**

* * * * *

(f) *Labeling Logo.* Owners and operators of official establishments having a total plant quality control system approved under the provisions of paragraph (c) of this section may only use, as a part of any label, the following logo.

* * * * *

16. In § 381.175, revise paragraph (b)(6) to read as follows:

**§ 381.175 Records required to be kept.**

* * * * *

(b) * * *

(6) Records of all labeling, along with the product formula, processing procedures, and any additional documentation needed to support that the labels are consistent with the Federal meat and poultry regulations and policies on labeling, as prescribed in § 412.1.

17. In § 381.205, revise paragraph (c) to read as follows:

**§ 381.205 Labeling of immediate containers of poultry products offered for entry.**

* * * * *

(c) All marks and other labeling for use on or with immediate containers shall be approved for use by the Food Safety and Inspection Service in accordance with part 412 of this chapter before products bearing such marks and other labeling will be permitted for entry into the United States.

18. In § 381.222, revise paragraph (d) to read as follows:

**§ 381.222 States designated under paragraph 5(c) of the Act; application of regulations.**

* * * * *

(d) Subpart N of this part shall apply to such establishments except as provided in this paragraph (d).

(1) The operator of each such establishment shall, prior to the inauguration of inspection, identify all labeling and marking devices in use, or proposed for use (upon the date of inauguration of inspection) to the Front Line Supervisor in which the establishment is located. Temporary approval, pending formal approval under § 412.1, will be granted by the Front Line Supervisor for labeling and marking devices that he determines are neither false nor misleading, provided the official inspection legend bearing the official establishment number is applied to the principal display panel of each label, either by a mechanical printing device or a self-destructive pressure sensitive sticker, and provided the label shows the true product name, an accurate ingredient statement, the name and address of the manufacturer, packer, or distributor, and any other features required by section 4(h) of the Act.

(2) The Front Line Supervisor will forward one copy of each item of labeling and a description of each marking device for which he has granted temporary approval to the FSIS labeling program at headquarters and will retain one copy in a temporary approval file for the establishment.

(3) The operator of the official establishment shall promptly forward a

copy of each item of labeling and a description of each marking device for which temporary approval has been granted by the Front Line Supervisor (showing any modifications required by the Front Line Supervisor) to the FSIS labeling program at headquarters, accompanied by the formula and details of preparation and packaging for each product. Within 90 days after inauguration of inspection, all labeling material and marking devices temporarily approved by the Front Line Supervisor must receive approval as required by § 412.1 or their use must be discontinued.

(4) The Front Line Supervisor will also review all shipping containers to ensure that they do not have any false or misleading labeling and are otherwise not misbranded. Modifications of unacceptable information on labeling material by the use of pressure sensitive tape of a type that cannot be removed without visible evidence of such removal, or by blocking out with an ink stamp will be authorized on a temporary basis to permit the maximum allowable use of all labeling materials on hand. All unacceptable labeling material which is not modified to comply with the requirements of the regulations must be destroyed or removed from the official establishment.

* * * * *

19. Add part 412 to read as follows:

## PART 412—LABEL APPROVAL

Sec.
412.1 Label approval.
412.2 Approval of Generic Labels.

**Authority:** 21 U.S.C. 451–470, 601–695; 7 CFR 2.18, 2.53.

### § 412.1 Label approval.

(a) No final label shall be used on any product unless the label has been submitted for approval to the FSIS labeling program at headquarters, accompanied by FSIS Form 7234–1, Application for Approval of Labels, Marking, and Devices, and approved by such division, except for generically approved labels authorized for use in § 412.2. The management of the official establishment or establishment certified under a foreign inspection system, in accordance with parts 327 and 381, subpart T, must maintain a copy of all labels used, in accordance with parts 320 and 381, Subpart Q, of this subchapter. Such records shall be made available to any duly authorized representative of the Secretary upon request.

(b) All labels required to be submitted for approval as set forth in § 412.1(a) will be submitted to the FSIS labeling program at headquarters, in duplicate. A parent company for a corporation may submit only one label application for a product produced in other establishments that are owned by the corporation.

(c) The Food Safety and Inspection Service requires the submission of labeling applications for the following:

(1) Sketch label as defined in § 412.1(d) for products which are produced under a religious exemption;

(2) Sketch labels for products for foreign commerce whose labels deviate from FSIS regulations, with the exception of printing labels in foreign language or printing labels that bear a statement of the quantity of contents in accordance with the usage of the country to which exported as described in section 317.7 and part 381, subpart M.

(3) Special statements and claims as defined in § 412.1(e) and presented in the context of a final label.

(4) Requests for the temporary use of final labels as prescribed in § 412.1(f).

(d) A ''sketch'' label is the concept of a label. It may be a printer's proof or equivalent that is sufficiently legible to clearly show all labeling features, size, and location. The Food Safety and Inspection Service will accept sketches that are hand drawn or computer generated, or other reasonable facsimiles that clearly reflect and project the final version of the label.

(e) ''Special statements and claims'' are claims, logos, trademarks, and other symbols on labels that are not defined in the Federal meat and poultry products inspection regulations, such as health claims, negative claims (*e.g.,* gluten free), ingredient and processing method claims (*e.g.,* high pressure processing), structure-function claims, animal production and raising claims, organic claims, natural claims, and instructional or disclaimer statements concerning pathogens (*e.g.,* ''for cooking only'' or ''not tested for E. coli O157:H7''). Examples of logos and symbols include graphic representations of hearts and geographic landmarks.

(f)(1) Temporary approval for the use of a final label that may be deemed deficient in some particular may be granted by the FSIS labeling program at headquarters. Temporary approvals may be granted for a period not to exceed 180 calendar days, under the following conditions:

(i) The proposed label would not misrepresent the product;

(ii) The use of the label would not present any potential health, safety, or dietary problems to the consumer;

(iii) Denial of the request would create undue economic hardship; and

(iv) An unfair competitive advantage would not result from the granting of the temporary approval.

(2) Extensions of temporary approvals may also be granted by the FSIS labeling program at headquarters provided that the applicant demonstrates that new circumstances, meeting the above criteria, have developed since the original temporary approval was granted.

### § 412.2 Approval of generic labels.

(a)(1) An official establishment, or an establishment certified under a foreign inspection system in accordance with part 327, or part 381, subpart T of this subchapter, is authorized to use generically approved labels, as defined in paragraph (b) of this section, and thus is free to use such labels without submitting them to the Food Safety and Inspection Service for approval, provided the label, in accordance with this section, displays all mandatory features in a prominent manner in compliance with part 317 or part 381, and is not otherwise false or misleading in any particular.

(2) The Food Safety and Inspection Service will select samples of generically approved labels from the records maintained by official establishments and establishments certified under foreign inspection systems, in accordance with part 327 or part 381, subpart T, to determine compliance with label requirements. If the Agency finds that an establishment is using a false or misleading label, it will institute the proceedings prescribed in § 500.8 of this chapter to revoke the approval for the label.

(b) Generically approved labels are labels that bear all applicable mandatory labeling features (*i.e.,* product name, safe handling statement, ingredients statement, the name and place of business of the manufacturer, packer or distributor, net weight, legend, safe handling instructions, and nutrition labeling) in accordance with Federal regulations. Labels that bear claims and statements that are defined in FSIS's regulations (*e.g.,* a statement that characterizes a product's nutrient content, such as ''low fat,'' or has geographical significance, such as ''German Brand''), and that comply with those regulations are also deemed to be approved by the Agency without being submitted for evaluation and approval.

## PART 424—PREPARATION AND PROCESSING PROCEDURES

20. The authority citation for part 424 continues to read as follows:

**Authority:** 7 U.S.C. 450, 1901–1906; 21 U.S.C. 451–470, 601–695; 7 CFR 2.18, 2.53.

19. In § 424.21, revise footnote 3 in the table in paragraph (c) to read as follows:

**§ 424.21 Use of food ingredients and sources of radiation.**

* * * * *

(c) * * *

[3] Provided that its use is functional and suitable for the product and it is permitted for use at the lowest level necessary to accomplish the desired technical effect as determined in specific cases prior to label approval under part 412.

* * * * *

22. In § 424.22, revise paragraph (c)(4)(i) introductory text to read as follows:

**§ 424.22 Certain other permitted uses.**

* * * * *

(c) * * *

(4) * * *

(i) The labels on packages of meat food and poultry products irradiated in their entirety, in conformance with this section and with 21 CFR 179.26(a) and (b), must bear the logo shown at the end of this paragraph. Unless the word ''Irradiated'' is part of the product name, labels also must bear a statement such as ''Treated with radiation'' or ''Treated by irradiation.'' The logo must be placed in conjunction with the required statement, if the statement is used. The statement is not required to be more prominent than the declaration of ingredients required under § 317.2(c)(2).

Done in Washington, DC, on November 29, 2011.

**Alfred V. Almanza**

*Administrator.*

[FR Doc. 2011–30992 Filed 12–2–11; 8:45 am]

BILLING CODE 3410–DM–P

## BUREAU OF CONSUMER FINANCIAL PROTECTION

## 12 CFR Chapter X

**[Docket No. CFPB—2011–0039]**

## Streamlining Inherited Regulations

**AGENCY:** Bureau of Consumer Financial Protection.

**ACTION:** Notice of streamlining project; request for information.

**SUMMARY:** The Bureau of Consumer Financial Protection (the Bureau) is requesting specific suggestions from the public for streamlining regulations it recently inherited from other Federal agencies. This document asks the public to identify provisions of the inherited regulations that the Bureau should make the highest priority for updating, modifying, or eliminating because they are outdated, unduly burdensome, or unnecessary. This document discusses several specific requirements that may warrant review. It also seeks suggestions for practical measures to make complying with the regulations easier.

**DATES:** Comments must be submitted by March 5, 2012. Commenters will have 30 additional days, until April 3, 2012, to respond to other comments.

**ADDRESSES:** Interested parties are invited to submit written comments electronically or in paper form. Comments should refer to ''Docket No. CFPB–2011–0039.'' Comments should be submitted to:

- *Electronic: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Research, Markets & Regulations Division, Bureau of Consumer Financial Protection, 1500 Pennsylvania Avenue NW., (Attn: 1801 L Street NW), Washington, DC 20220.
- *Hand Delivery/Courier in Lieu of Mail:* Research, Markets & Regulations Division, Bureau of Consumer Financial Protection, 1700 G Street NW., Washington, DC 20006.

In general, all comments received will be posted without change to *http://www.regulations.gov.* In addition, comments will be available for public inspection and copying at 1700 G Street NW., Washington, DC 20006, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect comments by telephoning (202) 435–7275.

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information, such as account numbers or social security numbers, should not be included. Comments will not be edited to remove any identifying or contact information.

**FOR FURTHER INFORMATION CONTACT:** Jane Gell, Senior Counsel and Special Advisor; Daniel Brown, Counsel, Research, Markets & Regulations Division, Bureau of Consumer Financial Protection, (202) 453–7700.

**SUPPLEMENTARY INFORMATION:**

### I. Background

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act or Act) [1] established the Bureau and, on July 21, 2011, transferred to the Bureau rulemaking authority under Federal consumer financial laws previously vested in seven other Federal agencies.[2] Accordingly, the Bureau assumed responsibility over the various regulations that these agencies had issued under this rulemaking authority.[3]

In the coming weeks, the Bureau will republish the prior agencies' regulations implementing fourteen consumer laws [4] (the ''inherited regulations'') as regulations of the Bureau, which will be codified in Chapter X of Title 12 of the Code of Federal Regulations. These republished regulations will incorporate only technical changes and will not impose new substantive obligations. The technical changes reflect the transfer of authority to the Bureau and certain other amendments made by the Dodd-Frank Act to the underlying statutes.

The inherited regulations serve important public policy purposes and provide key protections to consumers, as discussed further below. But the Bureau believes there may be opportunities to streamline the inherited regulations by updating, modifying, or eliminating outdated, unduly burdensome, or unnecessary provisions. With this document, the Bureau is seeking specific suggestions from the public for the highest priority areas for streamlining.[5]

[1] Public Law 111–203, 124 Stat. 1376 (2010).

[2] These agencies are: The Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), the Federal Trade Commission (FTC), the National Credit Union Administration (NCUA), the Office of the Comptroller of the Currency (OCC), the Office of Thrift Supervision (OTS), and the Department of Housing and Urban Development (HUD).

[3] On July 21, 2011, the Bureau published a list of the rules and orders that it will enforce. *See* 76 FR 43569 (July 21, 2011). The Bureau assumed rulemaking authority for all the items on this list, except items 1 and 6 through 12 in section F (Federal Trade Commission). The Bureau also has assumed responsibility over Regulation FF, 12 CFR part 232, which the Board issued pursuant to its authority under the Fair Credit Reporting Act, and which was inadvertently omitted from the list.

[4] These fourteen laws are: The Consumer Leasing Act, the Electronic Fund Transfer Act (except with respect to Section 920 of that Act), the Equal Credit Opportunity Act, the Fair Credit Reporting Act (except with respect to Sections 615(e) and 628 of that act), the Fair Debt Collection Practices Act, Subsections (b) through (f) of Section 43 of the Federal Deposit Insurance Act, Sections 502 through 509 of the Gramm-Leach-Bliley Act (except for Section 505 as it applies to Section 501(b)), the Home Mortgage Disclosure Act, the Real Estate Settlement Procedures Act, the S.A.F.E. Mortgage Licensing Act, the Truth in Lending Act, the Truth in Savings Act, Section 626 of the Omnibus Appropriations Act, 2009, and the Interstate Land Sales Full Disclosure Act.

[5] This request for information is based in part on guidance provided by the Office of Management and Budget Memorandum for the Heads of Independent Regulatory Agencies, M–11–28,

Continued

Setting priorities is necessary to ensure that the Bureau's resources—and the resources of stakeholders who would comment on any proposed revisions—are spent identifying the most promising areas for streamlining and addressing them appropriately. Public input is essential to selecting these priorities.

## II. Streamlining the Inherited Regulations

Regulation is critical to achieving important public objectives such as fair, stable, and efficient markets. Regulation of consumer financial services, in particular, is an essential tool for achieving key purposes and objectives Congress set forth for the Bureau, including: providing consumers with timely and understandable information about transactions; protecting consumers from unfair, deceptive, or abusive practices and from discrimination; ensuring markets operate fairly, transparently, and efficiently; and ensuring access to consumer financial products and services for all consumers. In addition, each of the laws on which the inherited regulations are based has its own objectives, such as better informing consumers in the market or markets subject to the law.

Regulation is critical to address failures in markets for consumer financial services that markets will not correct on their own. Sometimes regulation is necessary to produce information for the marketplace that the market will not generate on its own. For example, before adoption of the Truth in Lending Act (TILA), different lenders disclosed credit costs in different ways for the same product, making comparison difficult or impossible. TILA generally requires uniform disclosure of the cost of credit. The Dodd-Frank Act requires the Bureau to streamline disclosure of mortgage costs by consolidating TILA disclosures with disclosures of mortgage settlement costs under the Real Estate Settlement Procedures Act.

Sometimes better disclosures and better consumer education are not sufficient to protect consumers and the marketplace, making substantive regulations necessary to accomplish these goals. In the lead-up to the financial crisis, market forces did not ensure adequate underwriting of mortgage loans and lenders made large numbers of loans without due regard to borrowers' repayment ability. The Dodd-Frank Act requires lenders to make a reasonable and good faith determination that a borrower can repay his or her mortgage.[6] The Act also addresses the failure of the market to curb certain servicing practices that harm consumers. Consumers cannot feasibly switch servicers, so servicers often lack sufficient incentives to treat consumers appropriately. The Dodd-Frank Act creates new protections for consumers against certain harmful servicing practices.[7]

For the next year the Bureau is focusing most of its rulemaking resources on these and other mortgage reforms that Congress instructed the Bureau to implement. This focus is dictated by the January 2013 statutory deadline for most of these rules.

At the same time, the Bureau wants to start reviewing the inherited regulations. In document, the Bureau is focused on identifying the highest priorities for streamlining these regulations. In addition to authorizing new rules to address market failures, Congress also authorized the Bureau to ''reduce unwarranted regulatory burden'' by regularly identifying and addressing ''outdated, unnecessary, or unduly burdensome regulations.''[8] Some of the consumer protection statutes also authorize the Bureau to make adjustments and exceptions to statutory requirements where necessary or appropriate to facilitate compliance.[9]

Different circumstances may point to opportunities for streamlining rules and facilitating compliance. Some regulations may have become overly complex and unnecessarily difficult to understand and comply with, presenting an opportunity for simplification. Differences between regulations, such as differences in definitions of key terms, may cause confusion, presenting an opportunity for standardization where underlying statutes permit. In some cases, the Bureau has inherited from different agencies several regulations implementing the same law, which may present opportunities for harmonization.[10]

Due to changing technology or market practices, some provisions of regulations may be less necessary or no longer needed. Provisions may refer to technologies that are no longer frequently used; fail to reflect technologies that are now in use; or inhibit the use of existing or emerging technologies. These types of circumstances may call for updating regulations. Regulations may also need to be reviewed to determine if they unnecessarily restrict consumer choice, inhibit innovation, or inappropriately favor certain business models.

Provisions of regulations may be more stringent than necessary to achieve the objective, or they may have little incremental effect over and above other existing laws or market forces. Provisions may suit larger market participants but impose unnecessarily disproportionate costs on smaller participants. These types of circumstances may call for relaxing, reducing, or eliminating provisions of regulations at least for some types or sizes of providers.

Various circumstances can also warrant stronger rules. For example, market changes may have produced gaps in coverage of certain types of entities or transactions. Disclosures may have to be supplemented or replaced with restrictions on sales practices or product terms that are unfair according to established legal standards. The Bureau will consider in due course how the inherited regulations may need to be strengthened. In this document, the Bureau is focused on identifying streamlining opportunities.

## III. Goals, Approaches, and Potential Outcomes of This Targeted Review

The principal goal of this initial, targeted review is to identify the highest priority areas for attempting to streamline the inherited regulations by updating, modifying, or eliminating outdated, unduly burdensome, or unnecessary provisions. The Bureau is focused on identifying improvements it can make without Congressional action—that is, improvements that are consistent with the underlying statute in question and with the discretion Congress has given the Bureau to implement that statute, including any discretion to adopt exceptions from, or adjustments to, statutory requirements.

''Executive Order 13579, 'Regulation and Independent Regulatory Agencies' '' (July 22, 2011).

[6] Public Law 111–203 § 1411, 124 Stat. 1376, 2142 (to be codified at 15 U.S.C. 1639c).

[7] Public Law 111–203 §§ 1461–1465, 124 Stat. 1376, 2178–85 (to be codified at 15 U.S.C. 1639d-g).

[8] Public Law 111–203 § 1021, 124 Stat. 1376, 1980 (to be codified at 12 U.S.C. 5511).

[9] *See, e.g.,* 15 U.S.C. 1667f (Consumer Leasing Act); 15 U.S.C. 1693b(c) (Electronic Fund Transfer Act); 15 U.S.C. 1691b (Equal Credit Opportunity Act); 12 U.S.C. 2804(a) (Home Mortgage Disclosure Act); 12 U.S.C. 2617(a) (Real Estate Settlement Procedures Act); 15 U.S.C. 1604(a) (Truth in Lending Act); 12 U.S.C. 4308(a)(3) (Truth in Savings Act).

[10] As the Bureau republishes the inherited regulations in the coming weeks, it will consolidate separate regulations issued by different agencies to implement the same law. Because the Bureau will make only technical changes with republication, the republished rules will preserve some small but arguably substantive differences among the predecessor rules. The Bureau seeks comment on whether and how best to harmonize the remaining differences.

If the Bureau judges that a desired change requires a statutory amendment, the Bureau will consider making recommendations to Congress. But the purpose of this document is not to solicit recommendations for changes, however important, that require Congressional action.

After the Bureau receives public input and determines its priorities, the Bureau will consider whether to issue a notice of proposed rulemaking to streamline specific provisions of regulations. Examples of specific provisions the Bureau may consider revising are listed in Part V. The Bureau could also, or instead, fold proposals to revise specific provisions into one or more of the broader rulemakings that will implement the Dodd-Frank Act's changes to the Truth in Lending, Real Estate Settlement Procedures, Home Mortgage Disclosure, and Equal Credit Opportunity Acts. The Bureau also could address specific provisions of regulations when it reviews those regulations in due course. The Bureau will also consider practical measures to make it easier for firms, especially smaller ones, to comply with the inherited regulations.

In setting priorities for streamlining, the Bureau will consider five factors: first, the potential benefits and costs of a potential regulatory change for consumers and covered entities; second, the likelihood that the Bureau would be able to achieve the benefits consistent with the underlying statute; third, the speed with which the public would realize the benefits; fourth, the governmental and private resources it would take to realize the benefits; and fifth, the state of the evidence with which to judge these factors.

These criteria have certain implications. The Bureau will not consider changes that would undermine important public policy objectives simply to reduce compliance burdens. The Bureau also is mindful that the benefits of regulatory stability, which allows firms to plan with confidence, sometimes outweigh the benefits of small improvements to a regulation. In addition, a change that reduces costs in one respect may increase costs in another respect, and the Bureau will be mindful of these tradeoffs. For example, making two regulations more consistent with each other may make compliance easier but set more stringent requirements for at least some transactions.

The Bureau will seek the most reliable available evidence, including quantitative data where feasible, to facilitate analysis of key issues. The Bureau will be sensitive to the sometimes substantial cost of obtaining data and will seek to ensure that the benefits of procuring the data are worth their cost. However, the Bureau will also expect that advocates of specific revisions to regulations provide evidence to justify any assertion that the benefits of these revisions would justify the costs.

Another goal of this document is to facilitate planning for reviewing the inherited regulations more broadly. The Bureau's review of inherited regulations must proceed in stages. It would not be feasible for the Bureau or the public to review or revise all of the inherited regulations at once. Considering changes to regulations takes time—the law and prudence require robust analysis and public comment on substantive changes to regulations. This process takes substantial public resources. It also takes substantial private resources of the stakeholders that engage in the process.

The Bureau's highest rulemaking priority in the near term is careful implementation of mortgage reforms of the Dodd-Frank Act, most of which have a January 2013 deadline. The Bureau must set priorities for addressing other regulations—those in need of streamlining and those in need of strengthening—and decide where to begin, and then it will seek to proceed in the way that best uses public and private resources. For this reason, the Bureau also seeks input on how it should approach reviewing the inherited regulations, including the order in which it should review them.

Comment is sought on these goals, approaches, and potential outcomes.

## IV. General Requests for Information

The questions below solicit comment on (a) Planning for reviews of the inherited regulations generally; (b) specific opportunities for streamlining the inherited regulations; and (c) practical measures to facilitate compliance and promote innovation. The inherited regulations will be republished shortly.[11] Comments should prominently identify the specific provision (as republished) of the specific regulation addressed.

1. The Bureau could define its priorities for reviewing the inherited regulations in at least two different ways. It could focus on a particular regulation or set of regulations. Or it could focus on a market sector and all of the regulations that apply to that sector. Commenters may suggest other approaches. What approach should the Bureau take, and why? In what order should the Bureau review the inherited regulations, and why?

2. Commenters are invited to offer their highest priorities for updating, modifying, or eliminating specific provisions of regulations that are outdated, unduly burdensome, or unnecessary. Commenters are asked to single out their top priority. Suggestions should focus on revisions that would not require Congressional action. Commenters may wish to take into account the five factors the Bureau plans to consider to set its priorities: The size, likelihood, and speed of potential gains from streamlining; the resources needed to achieve the gains; and the strength of the evidence with which to judge these factors. Commenters may consider suggesting provisions of regulations that should be:

- Simplified, rationalized, or consolidated;
- Relaxed, modified, or eliminated, perhaps for smaller firms or certain classes of transactions, without undermining essential protections;
- Updated to reflect current practices and technology;
- Adjusted to avoid unintended consequences; or
- Changed to remove an obstacle to responsible innovation.

3. The Bureau is in the midst of testing new mortgage disclosures under the Truth in Lending Act and Real Estate Settlement Procedures Act. Are there *other* required disclosures that available evidence suggests should be considered for modification or removal?

4. For each suggestion in response to questions 2 and 3, commenters are asked to describe and, where possible, quantify the potential benefits *and* costs to consumers *and* providers of changing the regulation as recommended.

5. For each suggestion, commenters are asked to submit or identify empirical models, data, research, case studies, or other evidence the Bureau could use to analyze and, if possible, to quantify or describe the potential costs and benefits of the changes the commenter advocates.

6. Are there pilots, field tests, or demonstrations that the Bureau could launch to better assess benefits and costs of potential revisions to regulations?

7. The Bureau is interested in identifying practical measures it can take, apart from revising regulations, to make compliance with the inherited regulations easier. For example, are there systematic ways the Bureau could improve guidance about how to comply with regulations? Are there ways the Bureau could make it easier for financial

[11] The inherited regulations implement the statutes listed in footnote 4.

institutions to obtain answers to specific compliance questions they may have? The Bureau will evaluate recommendations according to the same factors it will use to evaluate suggestions to revise regulations.

8. The Bureau also is interested in identifying practical measures it could take to promote, or remove obstacles to, responsible innovation in consumer financial services markets.

## V. Specific Illustrations of Potential Streamlining Opportunities

In this part, the Bureau seeks information and views about specific potential revisions to the inherited regulations. The Bureau has not necessarily determined its authority to address the examples discussed below. In some cases, the Bureau may determine after further consideration that statutory amendments may be required. Nor has the Bureau determined whether it should adopt any of the revisions discussed below, or whether these particular revisions, if warranted, would be more important than other possible revisions the Bureau may consider after receiving public input.

*Consistent and Sufficient Definitions*

Several of the inherited regulations define key terms differently. For example, Regulation Z (12 CFR part 226), Regulation E (12 CFR part 205), Regulation DD (12 CFR part 230), Regulation V (12 CFR part 222), and Regulation P (12 CFR part 216 and parallel regulations at 12 CFR part 332 (FDIC), 16 CFR part 313 (FTC), 12 CFR part 716 and 741.220 (NCUA), 12 CFR part 40 (OCC), 12 CFR part 573 (OTS)) each define ''consumer'' differently. Similarly, Regulation B (12 CFR part 202) and Regulation Z define ''credit'' differently. Regulation Z defines ''business day'' differently than Regulation CC (12 CFR part 229), for which the Bureau shares certain joint rulewriting authorities with the Federal Reserve Board.

Sometimes different definitions are necessary to fulfill different statutory objectives, but other times those differences may be unnecessary. What terms, if any, should be defined more consistently across these regulations? How, precisely, should they be defined?

Sometimes key terms are not defined. For example, under Regulations B and C (12 CFR part 203), important obligations of a creditor depend upon whether an application is ''approved,'' ''denied,'' or ''withdrawn,'' but neither regulation defines these terms, leaving room for different applications of the same terms. What terms, if any, should be defined for the first time or defined more clearly?

*Annual Privacy Notices*

Regulation P of the Board of Governors of the Federal Reserve System and parallel regulations of other Federal agencies govern the treatment of nonpublic personal information about consumers. These regulations generally require that financial services providers give a privacy notice to a customer annually during a customer relationship. Providers have questioned the value of providing consumers annual notices where the provider's privacy practices have not changed since the last notice, at least where the provider does not share information with other firms (or shares in narrow cases). Should there be an exception from the requirement to provide an annual privacy notice in these or any other circumstances?

*ATM Fee Disclosure*

Under Regulation E, any person that operates an automated teller machine (ATM) that imposes a fee on any consumer for withdrawing funds or inquiring about a balance must disclose the amount of any fee the operator charges. The operator must disclose the fee on the ATM screen or in a paper notice before the consumer must pay a fee. In addition, the regulation requires the operator to post a sign on the ATM itself that fees ''will'' or ''may be imposed'' but does not require the sign to state the fee amount. 12 CFR 205.16(c). Should the requirement to post a sign be eliminated? Are other disclosures of ATM fees adequate to inform consumers?

*Coverage/Scope of Regulation C (Home Mortgage Disclosure)*

Under Regulation C, a depository institution generally must collect, report, and disclose certain mortgage data if it originated or refinanced one home purchase loan in the preceding calendar year, its assets exceed a specified minimum, and it is located in a metropolitan statistical area. 12 CFR 203.2(e). As a result, some depository institutions that do not originate home purchase loans but occasionally refinance a home purchase loan as an accommodation for a customer are required to collect, report, and disclose mortgage data. Should depositories that make or refinance small numbers of loans be exempted? If so, what number of loans would be appropriate?

*Coverage/Scope of Regulation B (Equal Credit Opportunity)*

Under Regulation B, all creditors that take applications for home purchase loans or refinancings of home purchase loans must request information about applicant characteristics such as race and ethnicity. 12 CFR 202.913(a). Regulators can use these data to monitor compliance with fair lending obligations. Under Regulation C, some depository and other mortgage lending institutions are exempt from collecting applicant characteristic information based on factors such as location, size, and loan volume. 12 CFR 203.1(c), 203.2(e). Should Regulations B and C have a consistent exemption for data collection, or do the data collections serve different purposes justifying different scopes of coverage?

Under Regulation B, all creditors that take action on applications for credit must timely notify applicants of the action. 12 CFR 202.9(a). Should creditors that receive a small number of applications be exempted from this requirement? If so, what is the appropriate number of applications? Should the existence or size of an exemption vary based on type of product? If the Bureau adopted an exemption, what adjustments would it need to make to requirements for adverse action notices under the Fair Credit Reporting Act?

*Coverage/Scope of Regulation Z (Truth in Lending)*

In general, Regulation Z covers a creditor if it extended consumer credit more than 25 times in the past calendar year (or more than 5 times, for transactions secured by a dwelling). 12 CFR 226.2(a)(17)(v). Should these thresholds be raised? What would be an appropriate threshold? And should a similar exemption be applied to disclosure requirements under the Real Estate Settlement Procedures Act that the Bureau will integrate with Truth in Lending disclosure requirements?

Regulation Z generally covers a creditor if it makes more than 25 consumer loans in total of any type. Should different types of consumer credit have different thresholds? For example, should creditors be exempted from the student loan requirements if they made less than a certain number of student loans in the preceding calendar year, regardless of how many other consumer loans they made?

*Ability To Pay Credit Card Debt*

Regulation Z requires credit card issuers, before extending credit, to assess the individual borrower's ability

to repay the loan. 12 CFR 226.51. This requirement is based on a provision of the Credit Card Accountability Responsibility and Disclosure Act of 2009 (Credit CARD Act), Public Law 111–24, 123 Stat. 1734 (2009). Concern has been expressed by some card issuers and also some members of Congress that these rules may have the unintended consequence of precluding some individuals, especially non-working spouses, from obtaining credit they are capable of repaying. Should this section of Regulation Z be amended, and, if so, how?

*Electronic Disclosures*

The inherited regulations require that certain disclosures, including periodic statements and receipts under Regulations E and Z, be provided to consumers in writing in a form that they may keep. The Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*) permits disclosures that must be provided in writing to be provided electronically if the provider meets certain requirements, including obtaining the consumer's consent. Some parts of the inherited regulations permit certain disclosures to be provided electronically or in writing. Should the Bureau permit other disclosures now required to be in writing to be delivered in electronic form?

In addition, mobile banking has become more prevalent and widely used by consumers since the E-Sign Act was adopted. For mobile banking applications, should the Bureau consider allowing certain disclosures to be provided by text messaging, even though text messages are not readily retainable and, if so, under what circumstances and with what safeguards?

*Interstate Land Sales Full Disclosure Act*

The Interstate Land Sales Full Disclosure Act (ILSA) (15 U.S.C. 1701 *et seq.*) imposes reporting, disclosure, and anti-fraud protections on some interstate land sales. Commentators have questioned whether improvements in consumers' access to information about these sales warrant changes to reporting and disclosure requirements. They have also indicated that technological changes may warrant updates to the form and manner of reporting and disclosure. Changes in state property regulations in past decades may also warrant changes to ILSA regulations. For these or other reasons, what changes to implementing regulations, if any, should the Bureau make?

Dated: November 29, 2011.

**Raj Date,**

*Special Advisor to the Secretary of the Treasury on the Consumer Financial Protection Bureau.*

[FR Doc. 2011–31030 Filed 12–2–11; 8:45 am]

BILLING CODE 4810–AM–P

## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## 26 CFR Part 1

**[REG–130777–11]**

**RIN 1545–BK45**

## Treasury Inflation-Protected Securities Issued at a Premium

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

**SUMMARY:** In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations that provide guidance on the tax treatment of Treasury Inflation-Protected Securities issued with more than a de minimis amount of premium. The text of those regulations also serves as the text of these proposed regulations. This document also provides notice of a public hearing on these proposed regulations.

**DATES:** Written or electronic comments must be received by March 5, 2012. Outlines of topics to be discussed at the public hearing scheduled for March 28, 2012, must be received by March 7, 2012.

**ADDRESSES:** Send submissions to: CC:PA:LPD:PR (REG–130777–11), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–130777–11), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC, or sent electronically, via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–130777–11).

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed regulations, William E. Blanchard, (202) 622–3950; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Oluwafunmilayo (Funmi) Taylor, (202) 622–7180 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

### Background and Explanation of Provisions

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) relating to section 1275. The temporary regulations provide that the coupon bond method described in § 1.1275–7(d) applies to Treasury Inflation-Protected Securities (TIPS) issued with more than a de minimis amount of premium. The temporary regulations apply to TIPS issued on or after April 8, 2011. The text of the temporary regulations also serves as the text of these proposed regulations. In addition to comments on the text of the temporary regulations, the IRS and the Treasury Department request comments on whether the rules in the temporary regulations should be extended to other types of inflation-indexed debt instruments.

### Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

### Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and the Treasury Department specifically request comments on the clarity of the proposed rule and how it may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for March 28, 2012, beginning at 10 a.m. in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. Due to building security procedures, visitors must enter through the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the

building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written or electronic comments by March 5, 2012 and submit an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by March 7, 2012. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

### Drafting Information

The principal author of these regulations is William E. Blanchard, Office of Associate Chief Counsel (Financial Institutions and Products). However, other personnel from the IRS and the Treasury Department participated in their development.

### List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

### Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

## PART 1—INCOME TAXES

**Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 * * *

**Par. 2.** Section 1.1275–7 is revised to read as follows:

**§ 1.1275–7 Inflation-indexed debt instruments.**

[The text of the proposed amendments to § 1.1275–7 is the same as the text for § 1.1275–7T(i) through (k) published elsewhere in this issue of the **Federal Register**].

**Steven T. Miller,**

*Deputy Commissioner for Services and Enforcement.*

[FR Doc. 2011–31176 Filed 12–2–11; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

## Alcohol and Tobacco Tax and Trade Bureau

## 27 CFR Part 9

**[Docket No. TTB–2011–0011; Notice No. 125]**

**RIN 1513–AB83**

## Proposed Establishment of the Inwood Valley Viticultural Area

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Alcohol and Tobacco Tax and Trade Bureau (TTB) proposes to establish the 28,298-acre ''Inwood Valley'' viticultural area in Shasta County, California. 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. TTB invites comments on this proposed addition to its regulations.

**DATES:** TTB must receive your comments on or before February 3, 2012.

**ADDRESSES:** Please send your comments on this notice to one of the following addresses:

- *http://www.regulations.gov* (via the online comment form for this notice as posted within Docket No. TTB–2011–0011 at ''Regulations.gov,'' the Federal e-rulemaking portal);
- *U.S. Mail:* Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044–4412; or
- *Hand delivery/courier in lieu of mail:* Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Suite 200–E, Washington, DC 20005.

See the Public Participation section of this notice for specific instructions and requirements for submitting comments, and for information on how to request a public hearing.

You may view copies of this notice, selected supporting materials, and any comments TTB receives about this proposal at *http://www.regulations.gov* within Docket No. TTB–2011–0011. A link to that docket is posted on the TTB Web site at *http://www.ttb.gov/wine/wine_rulemaking.shtml* under Notice No. 125. You also may view copies of this notice, all related petitions, maps or other supporting materials, and any comments TTB receives about this proposal by appointment at the TTB Information Resource Center, 1310 G Street NW., Washington, DC 20005. Please call 202–453–2270 to make an appointment.

**FOR FURTHER INFORMATION CONTACT:** Elisabeth C. Kann, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Box 12, Washington, DC 20005; phone (202) 453–1039, ext. 002.

**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 provides 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 a 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. Section 9.12 of the TTB regulations (27 CFR 9.12) 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 proposed 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 proposed viticultural area;
- A narrative description of the features of the proposed 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 proposed viticultural area, with the boundary of the proposed viticultural area clearly drawn thereon; and
- A detailed narrative description of the proposed viticultural area boundary based on USGS map markings.

**Inwood Valley Petition**

TTB received a petition from consulting geographer Patrick Shabram, on behalf of himself and Anselmo Vineyards of Inwood Valley, California, proposing the establishment of the ''Inwood Valley'' American viticultural area. As described in the petition, the proposed viticultural area contains 28,298 acres, 60 of which are dedicated to 4 commercially-producing vineyards, with 14 additional acres planned for viticultural development. The distinguishing features of the proposed viticultural area include geology, topography, climate, native vegetation, and soil. According to the petition, the proposed Inwood Valley viticultural area, located in rural, southern Shasta County in north-central California, would not overlap, or otherwise involve, any existing or proposed viticultural areas.

Unless otherwise noted, all information, evidence, and data described or contained in the following sections is from the petition and its supporting exhibits.

*Name Evidence*

''Inwood'' is the name of a small, rural community located within the proposed Inwood Valley viticultural area, as shown on the USGS Inwood quadrangle map. The Inwood community is located along California State Highway 44 (''Northern California'' map, American Automobile Association, 2007), and Inwood Road is the primary road running through the Inwood Valley area.

According to TTB's research using the U.S. Board on Geographic Names, Geographic Names Information System (GNIS), the name ''Inwood'' is used in three contexts within the boundary of the proposed Inwood Valley viticultural area: a community, a school, and a cemetery. According to the GNIS, ''Inwood'' and ''Inwood Hill'' are geographical name uses found in nine U.S. states, but the GNIS contains no references to the use of the name ''Inwood Valley'' in the United States. Residents use ''Inwood Valley'' as a geographical descriptor for the area, and the ''Inwood Valley'' name is part of the business name for at least one local business, the Inwood Valley Counseling Services.

In addition, local grape growers and winemakers use the terms ''Inwood Valley'' and ''Inwood'' to describe their vineyard locations. For example, Anselmo Vineyards is ''nestled in the rolling hills of Inwood Valley,'' according to the Web site of Seven Hills Land and Cattle Ranch (previously named Inwood Ranch and Vineyards (*http://www.bar7h.com/*)), and another winery, the Lassen Peak Winery, states on its Web site that it is located in the ''Inwood area of Shingletown'' (*http://www.lassenpeakwinery.com/2801.html*). TTB notes that the town of Shingletown is adjacent to the southern portion of the proposed boundary line.

*Boundary Evidence*

Viticulture in the Inwood Valley region predates Prohibition. In 1864, Elijah Boots planted the first vines in the area (''Matson Vineyards beyond Elderberries,'' Earl Bloor, Edible Shasta-Butte, 2008, page 23), and wild mission grapes, which are evidence of the 1864 plantings, are still found in one of the Inwood Valley vineyards. After a long hiatus, viticulture was re-established in the Inwood Valley region in the latter half of the twentieth century; 10 acres of merlot grapes were planted at the Inwood Ranch and Vineyards in the late 1970s, and the Lassen Peak Winery planted vines in 1982.

The east-west trending valley known as ''Inwood Valley'' has a unique climate that contrasts with the surrounding areas. The valley is located in a transition zone between the eastern high elevations around Lassen Peak and the western low elevations of the Redding Basin and the Sacramento Valley floor. Higher elevation ridges to the north and south of Inwood Valley also surround the proposed viticultural area. The mixed conifer forest vegetation to the east of the proposed boundary line gradually transitions westerly through the proposed Inwood Valley viticultural area to the grasslands and blue oak woodlands located to the west outside of the proposed boundary line. The diverse soil types in the proposed viticultural area also reflect the transitional nature of the region, although they all contain mostly volcanic parent materials, which is in marked contrast to the primarily sedimentary parent material in soils located to the west of the proposed viticultural area.

The proposed boundary line is generally based on elevation and soil types, and it uses identifiable features on USGS maps rather than contour lines, which are difficult to follow on the relevant maps. Using the distinguishing features described below as a basis, the proposed viticultural area includes those areas in the Inwood Valley region that are located above 1,000 feet and below 3,000 feet.

*Distinguishing Features*

The distinguishing features of the proposed Inwood Valley viticultural area include geology, topography, climate, native vegetation, and soil. The transitional nature of the region is evidenced by the contrast between the distinguishing features of the proposed Inwood Valley viticultural area and the same types of features in the areas to the east and west of the proposed viticultural area, with additional topographical differences along and outside of the surrounding ridges to the north and south.

*Geology*

The geology of the proposed Inwood Valley viticultural area is dominated by volcanic lava flow and pyroclastic deposits associated with past eruptions that formed the Tuscan Formation, which is a subset of the Cascade Range Province. The lava flows occurred beginning around 4 million years ago and continued through geologically recent times. The Tuscan Formation overlies the Chico Formation, which is composed of Cretaceous sedimentary rock that was created when the area was under water. The Chico Formation is exposed along some tributary depressions and in Bear Creek Canyon, which is located within the proposed viticultural area. The Tuscan Formation is overlain in places by porous Quaternary basalt and andesite lava flows, although it is also exposed in

many locations within the proposed viticultural area.

The Tuscan Formation is made of highly permeable rock, which holds large amounts of water and serves as a natural aquifer for the greater Sacramento Valley region. Some areas of the Tuscan Formation are exposed at its higher eastern elevations, which serve as recharging points for the aquifer's underground water flows. As a result, the exposure of the Tuscan Formation in some locations in the proposed Inwood Valley viticultural area creates an unusually large number of springs in the Inwood Valley region, which provide an important agricultural resource for area vineyards.

To the west of the proposed Inwood Valley viticultural area, basalt flows overlie Tuscan Formation materials that flowed into the lower Redding Basin. The underlying geology is dominated by the Red Bluff Formation, characterized by older, thin sedimentary deposits (Pleistocene) (''Bear Creek Watershed Assessment,'' ENPLAN, Jan. 2006). In his geographic analysis submitted in support of the petition, Mr. Shabram explains that this geological distinction demonstrates a significant difference between the Inwood Valley region and the Redding Basin to the west, into which Bear Creek flows before joining the Sacramento River.

The higher elevation Cascade Range lies to the east of the proposed Inwood Valley viticultural area.

*Topography*

The proposed Inwood Valley viticultural area is a unique valley landform that lies in a vertical transition zone. Most of the Inwood Valley region is located at elevations around 2,000 feet, according to the USGS maps. The proposed Inwood Valley viticultural area is part of the large Bear Creek watershed, which has east-to-west elevations between 6,740 and 370 feet, ranging from the Cascade Range down to the Sacramento River.

As shown on the USGS maps, elevations in the Inwood Valley region descend east-to-west as the valley runs from the Cascade Range to the Redding Basin. There are steep terrain and higher elevations to the east of the proposed Inwood Valley viticultural area toward the 10,335-foot Lassen Peak in the Cascade Range. The low, flat Redding Basin, at only 564 feet in elevation, is to the west of the proposed Inwood Valley viticultural area.

The 1,000- to 3,000-foot elevations of the proposed Inwood Valley viticultural area distinguish it viticulturally from the surrounding areas. Above 3,000 feet in elevation, the terrain ascends steeply to the Cascade Range in the east, according to USGS maps. Along the high eastern portion of the boundary line of the proposed Inwood Valley viticultural area is a 3,471-foot unnamed peak in the Cascade Range, according to the USGS maps. The steep terrain, high elevation, and concomitant low temperatures in this region render it unsuitable for viticulture. Farther to the west, the lower and flatter elevations outside of the proposed Inwood Valley viticultural area around Redding contrast to the approximately 900–1,000 feet elevations that define much of the western portion of the proposed viticultural area boundary line.

To the north and south of the Inwood Valley region, ridges at higher elevations form natural boundaries between the Bear Creek watershed and other watersheds. The steep terrain along these ridges is generally unsuitable for viticulture.

*Climate*

Temperatures

The growing season data in the petition for the proposed Inwood Valley viticultural area is measured according to the Winkler climate classification system (''General Viticulture,'' Albert J. Winkler, University of California Press, 1974, pp. 61–64).[1] In the proposed Inwood Valley viticultural area, growing season temperatures range from 2,700 to 3,400 GDD units, according to 1978–99 data from vineyard owner Michael Boehlert at Lassen Peak Winery. The temperatures of the proposed Inwood Valley viticultural area are a combination of regions ll and lll, which are cooler than the region V temperatures to the west, and they are warmer than the much cooler mountainous regions to the east and the cooler ridges to the immediate north and south. Beyond the adjacent ridges, the surrounding valleys to the north and south of the proposed Inwood Valley viticultural area have region IV growing season temperatures, which are warmer than the proposed viticultural area.

Mr. Shabram explains that growing season temperatures in the proposed Inwood Valley viticultural area are greatly influenced by the valley's east-west funnel shape and consistent winds, as well as by its proximity to higher, cooler elevations on three sides. In addition, a reduction in solar radiation in the early and late months of the growing season results from the narrow valley floor and high flanking ridgelines that obscure the sun. Beyond the north and south ridgelines are small valleys with varying climatic influences and different watersheds.

A cooling pattern of nighttime mountain breezes also significantly affects the growing season temperatures of the proposed Inwood Valley viticultural area. In the evening, cold, heavy air drains downward into the valley, primarily from the Cascade Range to the east and, to a lesser extent, from the north and south ridgelines. The funnel of air that moves down slope through the valley intensifies the cooling effect of the surrounding air drainage. The nighttime cooling effect is most predominant in the summer months as it buffers the effect of the warm western wind pattern from the Redding Basin. The nighttime down slope wind speeds, moving east-to-west through Inwood Valley, vary from 5 to 7 miles per hour, according to Mr. Boehlert.

To the east of the proposed Inwood Valley viticultural area, temperatures decrease as the elevation increases. The 5,677-foot elevation Manzanita Lake, located in the Cascade Range, is approximately 20 miles east of Inwood Valley (''Northern California Map''). Mr. Shabram states that the region to the east of the proposed viticultural area is not conducive to viticulture based on mean temperatures that are above 50 degrees Fahrenheit only 4 months per year.

To the south of the proposed Inwood Valley viticultural area, near Volta Powerhouse, temperatures yield 3,965 GDD units, a high region IV growing season, according to data from Lassen Peak Winery.

The Redding Basin lies to the west of the proposed Inwood Valley viticultural area, which is an area known for hot days and warm nights during the growing season. The lower elevations of the Redding Basin result in higher temperatures as compared to the Inwood Valley region. The Redding Basin averages a hot region V growing season at 4,564 GDD units, according to data from the Western Regional Climate Center (WRCC).

The 3,000-foot elevation Bear Creek Ridge lies to the north of the proposed Inwood Valley viticultural area. The petition provides two 2008 region IV heat summation totals for the area near Whitmore, also to the north of the proposed viticultural area: 3,642 and

[1] In the Winkler system, heat accumulation per year defines climatic regions. As a measurement of heat accumulation during the growing season, 1 growing degree day (GDD) accumulates for each degree Fahrenheit that a day's mean temperature is above 50 degrees, which is the minimum temperature required for grapevine growth. Climatic region I has less than 2,500 GDD units per year; region II, 2,501 to 3,000; region III, 3,001 to 3,500; region IV, 3,501 to 4,000; and region V, 4,001 or more (*ibid.*).

3,941 GDD units. These temperatures indicate warmer growing season temperatures than the Inwood Valley region.

Precipitation

The table below shows the annual and growing season precipitation averages for the proposed Inwood Valley viticultural area and surrounding areas; the information in the table is based on years of data collection from the WRCC and Inwood Valley residents.

| Location and direction from Inwood Valley | Average annual total in inches | Average growing season total in inches (April to October) | Data years | Data source |
|---|---|---|---|---|
| Inwood Valley | 53.8 | 14.1 | 1973–2005 | Stan Weidert. |
| Inwood Valley | 59.5 | 14.4 | 1995–2004 | Soaring Hawk Ranch. |
| Inwood Valley (average) | 56.6 | 14.2 | | Average of above sources. |
| Shingletown (south) | 45.8 | 12.2 | 1958–1984 | WRCC. |
| Manzanita Lake (east) | 40.9 | 13.0 | 1949–2009 | WRCC. |
| Redding (west) | 34.2 | 7.9 | 1986–2009 | WRCC. |
| Burney (north) | 28.0 | 7.2 | 1948–2009 | WRCC. |

The table indicates that the average precipitation in the proposed Inwood Valley viticultural area is 56.6 inches annually, with an average of 14.2 inches of precipitation during the growing season. As shown in the table, the proposed Inwood Valley viticultural area is wetter, both annually and during the growing season, than all of the surrounding areas listed in the table. For example, the Inwood Valley region on average receives 10.8 inches more precipitation annually than Shingletown and 28.6 inches more precipitation annually than Burney, which are located to the south and north of the proposed Inwood Valley viticultural area, respectively. In addition, according to the table, the growing season precipitation average in the proposed Inwood Valley viticultural area—a viticulturally important factor—is approximately 2 inches more than Shingletown and 7 inches more than Burney.

*Native Vegetation*

The vegetation within the proposed Inwood Valley viticultural area further reflects the distinctiveness of the region as a transition zone between the cooler climate at higher elevations to the east and the warmer climate at lower elevations to the west. Vegetation differences are significant in foothill environments as variations in native vegetation closely reflect shifts in elevation and climate.

Sierra mixed conifer dominates the eastern section of the Bear Creek watershed, and grasslands and blue oak foothill pine woodland dominate the western section (''WHR Vegetation Classification'' map, Bear Creek Watershed Assessment). The middle part of the Bear Creek watershed defines the viticulturally unique transition area of the Inwood Valley region. Blue oak and ponderosa pine woodland and mountain hardwoods dominate the valley region, with some mixed chaparral and pockets of annual grasses. According to Mr. Shabram, the variety of vegetation in this region contributes to the viticultural distinctiveness of the proposed Inwood Valley viticultural area because it results in a more varied organic composition of the soils in the area as contrasted to the surrounding regions, which contain more homogenous vegetation.

The cool climate to the east of the proposed Inwood Valley viticultural area results in different natural vegetation. To the east of the proposed viticultural area, the blue oak and valley oak vegetation of the Inwood Valley area transitions to mixed conifer and lodgepole pine forests, eventually transitioning to tundra at the higher elevations of the Cascade Range. At the opposite end of the valley, in the lower elevation Redding Basin to the west of the proposed Inwood Valley viticultural area, are annual grasses and foothill woodland vegetation, including some foothill pine and blue oak.

To the south of the proposed Inwood Valley viticultural area, as the terrain changes from the lower Inwood Valley elevations to the higher Shingletown elevations, the vegetation transitions from mixed woodland and ponderosa forest to the complete dominance of ponderosa pine forests. Variations in vegetation are less apparent to the north of the proposed Inwood Valley viticultural area due to the well-exposed, southern facing slopes on Bear Creek Ridge, which increase the amount of warming solar radiation and moderate the cooling temperatures normally expected at higher elevations. According to Mr. Shabram, this exposure has a drying effect that would favor grasses, montane chaparral, and woodland over mixed pine forests.

*Soils*

There are 27 different soil series within the proposed Inwood Valley viticultural area. The diversity in soil series results from volcanic activity that created various volcanic parent materials, the exposure of Cretaceous sedimentary parent materials, and the transitional and varied nature of the vegetation in the region. Despite this diversity, however, the top 5 soil series in the area cover approximately 71.4 percent of the proposed viticultural area, and all of the soils within the proposed boundary line are generally moderately well-drained and share a similar color and texture.

According to Mr. Shabram, the soil types of the proposed Inwood Valley viticultural area are distinguishable from the soils of the surrounding regions. For example, the mostly volcanic parent materials of the Inwood Valley region soils are in marked contrast to the primarily sedimentary parent material in soils found in Redding, to the west of the proposed viticultural area. In addition, according to Mr. Shabram, none of the deep alluvial deposits found to the west and southwest of the proposed Inwood Valley viticultural area in the Redding Basin and Sacramento Valley floor are found within Inwood Valley. Mr. Shabram further notes that the varied organic composition of the soils in the proposed viticultural area reflects the unique climate and the distinctively transitional vegetation of the Inwood Valley region, particularly as compared to the surrounding regions.

The dominant soil type in the proposed Inwood Valley viticultural area is the Aiken series, which accounts for nearly 25 percent of the soil in the area, as well as the majority of the area currently planted to vineyards. Aiken soils are derived from basic volcanic rock, with conifers and mixed

hardwoods (particularly Ponderosa pine) contributing to the organic component of the soil. Generally located on gently rolling, broad, tabular slopes, Aiken soils cover most of the Inwood Valley floor as well as portions of the Shingletown Ridge in the southeastern portion of the proposed viticultural area. In the western portion of the proposed viticultural area, Guenoc series soil is increasingly present, along with small pockets of Toomes loam, Aiken loam, and Anita clay.

In contrast, soils to the west of the proposed viticultural area are dominated by Guenoc and Toomes series soils; there are no Aiken soils located in this region. Guenoc series soils are formed from weathered igneous parent material, particularly basaltic rock, and include organic influences of annual grasses and foothill woodland vegetation. Toomes soils are shallow soils typically consisting of well- to excessively well-drained gravelly loam, with volcanic parent materials and annual grasses as organic influences.

The areas to the east and southeast of the proposed viticultural area are dominated by Cohasset, Windy, and McCarthy loams, all of which are generally found at high elevations (above 5,600 feet), are influenced by conifers, and are indicative of the elevations and volcanic parent material in the area.

The soils along the ridges and in the adjacent valleys to the north and south of the proposed viticultural area are highly variable. The adjacent valley to the north lacks the Aiken loams found in the floor of Inwood Valley. Although some Aiken series soils are present in pockets in areas to the southeast of the proposed viticultural area, those soils are adjacent to Cohasset series soils, indicating that the soils in those areas are subject to different climactic and vegetative influences.

**TTB Determination**

TTB concludes that the petition to establish the 28,298-acre Inwood Valley viticultural area merits consideration and public comment, as invited in this notice.

*Boundary Description*

See the narrative boundary description of the petitioned-for viticultural area in the proposed regulatory text published at the end of this notice.

*Maps*

The petitioner provided the required maps, and TTB lists them below in the proposed regulatory text.

**Impact on Current 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. If TTB establishes this proposed viticultural area, its name, ''Inwood Valley,'' will be recognized as a name of viticultural significance under 27 CFR 4.39(i)(3). The text of the proposed regulation clarifies this point. Consequently, wine bottlers using ''Inwood Valley'' in a brand name, including a trademark, or in another label reference as to the origin of the wine, will have to ensure that the product is eligible to use the viticultural area name as an appellation of origin. TTB does not believe that ''Inwood,'' standing alone, should have viticultural significance if the new area is established because of the widespread use of ''Inwood'' as a geographical name, as noted earlier in this preamble. Accordingly, the proposed part 9 regulatory text set forth in this document specifies only the full ''Inwood Valley'' name as a term of viticultural significance for purposes of part 4 of the TTB regulations.

If this proposed regulatory text is adopted as a final rule, wine bottlers using ''Inwood Valley'' in a brand name, including a trademark, or in another label reference as to the origin of the wine, will have to ensure that the product is eligible to use ''Inwood Valley'' as an appellation of origin.

For a wine to be labeled with a viticultural area name or with a brand name that includes a viticultural area name or other term identified as being viticulturally significant 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). If the wine is not eligible for labeling with the viticultural area name or other viticulturally significant term and that name or term appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the viticultural area name or other viticulturally significant term appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label.

Different rules apply if a wine has a brand name containing a viticultural area name or other term of viticultural significance that was used as a brand name on a label approved before July 7, 1986. See 27 CFR 4.39(i)(2) for details.

**Public Participation**

*Comments Invited*

TTB invites comments from interested members of the public on whether we should establish the proposed Inwood Valley viticultural area. TTB is also interested in receiving comments on the sufficiency and accuracy of the name, boundary, geology, topography, climate, and other information submitted in support of the petition. Please provide any available specific information in support of your comments.

Because of the potential impact of the establishment of the proposed Inwood Valley viticultural area on wine labels that include the term ''Inwood Valley'' as discussed above under Impact on Current Wine Labels, TTB is also interested in comments as to whether there will be a conflict between the proposed viticulturally significant term and currently used brand names. If a commenter believes that a conflict will arise, the comment should describe the nature of that conflict, including any anticipated negative economic impact that approval of the proposed viticultural area will have on an existing viticultural enterprise. TTB is also interested in receiving suggestions for ways to avoid conflicts, for example, by adopting a modified or different name for the viticultural area.

Although TTB believes that only the full ''Inwood Valley'' name should be considered to have viticultural significance upon establishment of the proposed new viticultural area, TTB also invites comments from those who believe that ''Inwood'' standing alone should have viticultural significance upon establishment of the viticultural area. Comments in this regard should include documentation or other information regarding whether the use of ''Inwood'' on a label of a wine derived from grapes grown outside the proposed viticultural area could cause consumers and vintners to attribute to the wine in question the quality, reputation, or other characteristic of wine made from grapes grown in the proposed viticultural area.

*Submitting Comments*

You may submit comments on this notice by using one of the following three methods:

• *Federal e-Rulemaking Portal:* You may send comments via the online comment form posted with this notice within Docket No. TTB–2011–0011 on ''Regulations.gov,'' the Federal e-rulemaking portal, at *http://www.regulations.gov.* A direct link to that docket is available under Notice No. 125 on the TTB Web site at

*http://www.ttb.gov/wine/wine_rulemaking.shtml.* Supplemental files may be attached to comments submitted via Regulations.gov. For complete instructions on how to use Regulations.gov, visit the site and click on ''User Guide'' under ''How to Use this Site.''

• *U.S. Mail:* You may send comments via postal mail to the Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044–4412.

• *Hand Delivery/Courier:* You may hand-carry your comments or have them hand-carried to the Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Suite 200–E, Washington, DC 20005.

Please submit your comments by the closing date shown above in this notice. Your comments must reference Notice No. 125 and include your name and mailing address. Your comments also must be made in English, be legible, and be written in language acceptable for public disclosure. TTB does not acknowledge receipt of comments, and it considers all comments as originals.

If you are commenting on behalf of an association, business, or other entity, your comment must include the entity's name as well as your name and position title. If you comment via Regulations.gov, please enter the entity's name in the ''Organization'' blank of the online comment form. If you comment via postal mail, please submit your entity's comment on letterhead.

You may also write to the Administrator before the comment closing date to ask for a public hearing. The Administrator reserves the right to determine whether to hold a public hearing.

*Confidentiality*

All submitted comments and attachments are part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider to be confidential or inappropriate for public disclosure.

*Public Disclosure*

TTB will post, and you may view, copies of this notice, selected supporting materials, and any online or mailed comments we receive about this proposal within Docket No. TTB–2011–0011 on the Federal e-rulemaking portal, Regulations.gov, at *http://www.regulations.gov.* A direct link to that docket is available on the TTB Web site at *http://www.ttb.gov/wine/wine_rulemaking.shtml* under Notice No. 125. You may also reach the relevant docket through the Regulations.gov search page at *http://www.regulations.gov.* For instructions on how to use Regulations.gov, visit the site and click on ''User Guide'' under ''How to Use this Site.''

All posted comments will display the commenter's name, organization (if any), city, and State, and, in the case of mailed comments, all address information, including e-mail addresses. TTB may omit voluminous attachments or material that it considers unsuitable for posting.

You also may view copies of this notice, all related petitions, maps and other supporting materials, and any electronic or mailed comments TTB receives about this proposal by appointment at the TTB Information Resource Center, 1310 G Street NW., Washington, DC 20005. You may also obtain copies at 20 cents per 8.5- x 11-inch page. Contact TTB's information specialist at the above address or by telephone at 202–453–2270 to schedule an appointment or to request copies of comments or other materials.

**Regulatory Flexibility Act**

TTB certifies that this proposed regulation, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposed regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of a viticultural area name would be 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 proposed rule is not a significant regulatory action as defined by Executive Order 12866. Therefore, it requires no regulatory assessment.

**Drafting Information**

Elisabeth C. Kann of the Regulations and Rulings Division drafted this notice.

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

Wine.

**Proposed Regulatory Amendment**

For the reasons discussed in the preamble, TTB proposes to amend title 27, chapter I, 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. Subpart C is amended by adding § 9.____ to read as follows:

**§ 9.____ Inwood Valley.**

(a) *Name.* The name of the viticultural area described in this section is ''Inwood Valley''. For purposes of part 4 of this chapter, ''Inwood Valley'' is a term of viticultural significance.

(b) *Approved maps.* The five United States Geological Survey 1:24,000 scale topographic maps used to determine the boundary of the Inwood Valley viticultural area are titled:

(1) Clough Gulch, California-Shasta County, Provisional edition 1985;

(2) Inwood, California-Shasta County, Provisional edition 1985;

(3) Hagaman Gulch, California-Shasta County, Provisional edition 1985;

(4) Shingletown, California-Shasta County, Provisional edition 1985; and

(5) Tuscan Buttes NE., California, 1965, Photoinspected 1976.

(c) *Boundary.* The Inwood Valley viticultural area is located in Shasta County, California. The boundary of the Inwood Valley viticultural area is as described below:

(1) The beginning point is on the Clough Gulch map at BM (Benchmark) 1254.4 located along State Route 44 in T31N/R2W. From the beginning point, proceed east-northeast in a straight line for approximately 4.2 miles, onto the Inwood map, to the intersection of that line with the 1,786-foot elevation point, section 17, T31N/R1W; then

(2) Proceed east-northeast in a straight line for approximately 2 miles to the intersection of that line with the 2,086-foot elevation point, section 15, T31N/R1W; then

(3) Proceed north-northeast in a straight line for approximately 0.7 mile to the intersection of that line with the marked 1,648-foot elevation point (which should be marked as 2,648 feet based on its two adjacent elevation lines) and a 4WD (four-wheel drive) trail on the Bear Creek Ridge; section 10, T31N/R1W; then

(4) Proceed east-northeast in a straight line for approximately 0.8 mile to the intersection of that line with the 2,952-foot elevation point (located between two transmission lines), section 11, T31N/R1W; then

(5) Proceed east-northeast in a straight line for approximately 1.2 miles to the intersection of that line with the 3,042-foot summit of Blue Mountain, section 1, T31N/R1W; then

(6) Proceed east in a straight line for approximately 0.7 mile, crossing over the Mt. Diablo Meridian line, to the

intersection of that line with the 3,104-foot elevation point, section 6, T31N/R1E; then

(7) Proceed east-northeast in a straight line for approximately 2.3 miles to the intersection of that line with the 3,000-foot elevation Alamine Peak, section 32, T32N/R1E; then

(8) Proceed southeast in a straight line for approximately 2.2 miles, onto the Hagaman Gulch map, to the intersection of that line with Bear Pen Springs, section 10, T31N/R1E; then

(9) Proceed west-southwest in a straight line for approximately 0.9 mile to the intersection of that line with the 3,373-foot summit of Chalk Mountain, section 9, T31N/R1E; then

(10) Proceed south-southwest in a straight line, returning to the Inwood map, for approximately 1.1 miles to the intersection of that line with the 2,756-foot elevation point, section 17, T31N/R1E; then

(11) Proceed south-southwest in a straight line for approximately 0.6 mile to the western-most intersection of that line with an improved road marked ''Private'' and the section 17 southern boundary line, T31N/R1E; then

(12) Proceed southwest along that ''Private'' road for approximately 1.6 miles to the marked gate of the ''Private'' road at the road's intersection with unnamed improved and unimproved roads, section 29, T31N/R1E; then

(13) Proceed southwest in a straight line, onto the Shingletown map, approximately 1.6 miles to the intersection of that line with Highway 44 and an unnamed improved road (known locally as Ash Creek Road), section 31, T31N/R1E; then

(14) Proceed southwest in a straight line for approximately 0.2 miles to the intersection of that line with the 3,334-foot elevation point, section 31, T31N/R1E; then

(15) Proceed southwest in a straight line for approximately 1.6 miles to the intersection of that line with the 3,029-foot elevation point on the Shingletown Ridge, section 1, T30N/R1W; then

(16) Proceed nearly due west in a straight line for approximately 1.6 miles to the intersection of that line with the 2,435-foot elevation point, section 3, T30N/R1W; then

(17) Proceed nearly due west in a straight line for approximately 1.8 miles to the intersection of that line with the 1,989-foot elevation point and an unnamed improved road (shown as ''Black Butte Road'' on the Tuscan Buttes NE map), section 5 south boundary line, T30N/R1W; then

(18) Proceed west-northwest in a straight line, onto the Tuscan Buttes NE map, for approximately 4.9 miles to the intersection of that line with the 956-foot elevation point near an unnamed spring in section 33, T31N/R2W; then

(19) Proceed north in a straight line, onto the Clough Gulch map, for approximately 1.7 miles to the intersection of that line with BM 1048.1 on Highway 44, section 28, T31N/R2W; then

(20) Proceed east along Highway 44 for approximately 1.1 miles, returning to the beginning point.

Signed: November 14, 2011.

**John J. Manfreda,**

*Administrator.*

[FR Doc. 2011–31141 Filed 12–2–11; 8:45 am]

**BILLING CODE 4810–31–P**

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## DEPARTMENT OF THE TREASURY

## Alcohol and Tobacco Tax and Trade Bureau

## 27 CFR Part 19

**[Docket No. TTB–2011–0010; Notice No. 124]**

**RIN 1513–AB89**

## Revisions to Distilled Spirits Plant Operations Reports and Regulations

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

**ACTION:** Notice of proposed rulemaking; solicitation of comments.

**SUMMARY:** The Alcohol and Tobacco Tax and Trade Bureau (TTB) proposes to replace the current four report forms used by distilled spirits plants to report their operations with two new report forms that would be submitted on a monthly or quarterly basis. This proposal would streamline the reporting process and would result in savings for the industry and for TTB by significantly reducing the number of reports that must be completed and filed by industry members and processed by TTB.

**DATES:** TTB must receive your written comments on or before February 3, 2012.

**ADDRESSES:** You may send comments on this notice to one of the following addresses:

- *http://www.regulations.gov:* To submit comments via the Internet, use the comment form for this notice as posted within Docket No. TTB–2011–0010 at ''Regulations.gov,'' the Federal e-rulemaking portal;
- *Mail:* Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044–4412.
- *Hand Delivery/Courier in Lieu of Mail:* Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Suite 200–E, Washington, DC 20005.

See the Public Participation section of this notice for specific instructions and requirements for submitting comments, and for information on how to request a public hearing.

You may view copies of this notice, the proposed two new report forms, and any comments TTB receives about this proposal within Docket No. TTB–2011–0010 at *http://www.regulations.gov.* A link to the Regulations.gov comment form for proposal is posted on the TTB Web site at *http://www.ttb.gov/regulations_laws/all_rulemaking.shtml* under Notice No. 124. You also may view copies of this notice, the proposed two new report forms, and any comments TTB receives about this proposal by appointment at the TTB Information Resource Center, 1310 G Street NW., Washington, DC 20220. Please call 202–453–2270 to make an appointment.

**FOR FURTHER INFORMATION CONTACT:** Rita D. Butler, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, at 202–453–1039, extension 101, or *rita.butler@ttb.gov.*

**SUPPLEMENTARY INFORMATION:**

### Background

*Internal Revenue Code of 1986*

Chapter 51 of the Internal Revenue Code of 1986 (IRC), 26 U.S.C. chapter 51, contains excise tax and related provisions concerning distilled spirits, wines, and beer used for beverage purposes and distilled spirits used for nonbeverage purposes. Section 5001 of the IRC (26 U.S.C. 5001) imposes an excise tax on distilled spirits at a rate of $13.50 per proof gallon. Under section 5006(a) of the IRC (26 U.S.C. 5006(a)) the excise tax on distilled spirits is generally determined at the time the distilled spirits are withdrawn from the bonded premises of a distilled spirits plant (DSP). However, section 5214(a) of the IRC (26 U.S.C. 5214(a)), authorizes the withdrawal of distilled spirits for specified purposes free of tax or without payment of tax, subject to regulations prescribed by the Secretary of the Treasury (the Secretary).

Within chapter 51 of the IRC, subchapter B sets forth qualification requirements for DSPs. Section 5171 (26 U.S.C. 5171) concerns the establishment of DSPs and provides: (1) In subsection (a), that operations as a distiller, warehouseman, or processor may be conducted only on the bonded premises of a DSP by a person who is qualified under subchapter B; (2) in subsection

(b), that a DSP may be established only by a person who intends to conduct at the DSP operations as a distiller, as a warehouseman, or as both; (3) in subsection (c), that each person shall, before commencing operations at a DSP, make application to the Secretary for, and receive notice of, the registration of the DSP; and (4) in subsection (d), that each person required to file an application for registration under subsection (c) whose distilled spirits operations are not required to be covered by a basic permit under the Federal Alcohol Administration Act (27 U.S.C. 203 and 204) shall, before commencing those operations, apply for and obtain a permit from the Secretary to engage in those operations (the terms of subsection (d) apply to persons who engage in operations involving distilled spirits for industrial, such as nonbeverage, use). Section 5181 contains special requirements for the establishment of DSPs solely for the purpose of producing, processing, and storing, and for using and distributing, distilled spirits to be used exclusively for fuel use; such DSPs are commonly referred to as alcohol fuel plants (AFPs).

Section 5207 of the IRC (26 U.S.C. 5207) specifies the records that every DSP proprietor must keep, in a form and manner as prescribed by the Secretary by regulation. The required records relate to production, storage, denaturation, and processing activities, and may include other information regarding those or other activities as required by regulation. Section 5207 also provides that each person required to keep those records must provide reports containing information regarding his or her operations at the time and in the form and manner as the Secretary prescribes by regulation.

The provisions of chapter 51 of the IRC, as well as the provisions of the Federal Alcohol Administration Act (FAA Act), are administered by TTB.

*Regulations Pertaining to DSPs*

The regulations promulgated under the IRC concerning distilled spirits plants are contained in part 19 of title 27 of the Code of Federal Regulations (27 CFR part 19). Those regulations are also administered by TTB.

Under the part 19 regulations, a person may establish a DSP either to produce (distill) spirits or to store (warehouse) spirits, or both, and a DSP so established may also process spirits. While a DSP may engage in all three operations, § 19.72 provides, consistent with section 5171(b) of the IRC, that a person may not establish a DSP solely for the processing of spirits (which includes the denaturing of spirits). The part 19 regulations include, in subpart V, provisions regarding records and reports pertaining to DSP operations. Those provisions include § 19.632, which sets forth requirements for completing and submitting monthly operations reports to TTB. This regulation requires the submission of four monthly operations reports on the following forms: TTB F 5110.40, Monthly Report of Production Operations; TTB F 5110.11, Monthly Report of Storage Operations; TTB F 5110.28, Monthly Report of Processing Operations; and TTB F 5110.43, Monthly Report of Processing (Denaturing) Operations. Section 19.632 further provides that the DSP proprietor must submit these monthly reports, either in paper format or electronically, not later than the 15th day of the month following the close of the reporting period.

Consistent with the instructions for completing TTB F 5110.11, a plant reporting storage operations may be required to file up to four monthly storage reports—for all domestic spirits, spirits from Puerto Rico, spirits from the U.S. Virgin Islands, and for all other imported spirits.

**Need for Change**

TTB is proposing changes to the distilled spirits operations reporting requirements to improve TTB's ability to effectively monitor the operations of the distilled spirits industry, and to address the concerns and desires of the distilled spirits industry, particularly small distillers, for improved reporting requirements. TTB's proposed changes are the result of an internal review of the current reporting process and reflect changes within the distilled spirits industry. Under the current reporting process, each DSP may be required to submit as many as seven operational reports monthly. These include a production report, up to four storage reports, a processing report, and a denaturing report (if applicable). DSPs currently submit an average of 28.4 operational reports per year. TTB's review indicates that the number of operational reports currently being submitted to TTB is beyond what is necessary to effectively monitor the industry in order to adequately protect the revenue.

Further, TTB has determined that the data it needs to monitor the industry could be more efficiently and effectively reported. For example, inventories currently may be accounted for in up to seven separate reports, depending on the operations of the DSP, and receipts of spirits in bond from outside the DSP are not distinguished from receipts of spirits transferred between accounts within the plant. In addition, some data currently being reported are not used or analyzed. Improvement to the current reporting system would allow TTB to better identify reporting errors and make it easier for TTB to reconcile the data with other submissions, such as excise tax returns. These changes would improve the efficiency of operations within TTB.

Changes in the distilled spirits industry over the past three decades have resulted in the need for TTB to receive information and data that better reflect industry activities and that better reveal potential risks to the revenue. Particularly, changes resulting from the demand for alcohol for fuel use have dramatically expanded the number of plants in the industrial alcohol segment of the industry, and new ''craft'' or ''artisan'' distilling operations have greatly increased the number of small DSPs in the beverage alcohol segment of the industry.

Additionally, TTB has observed a growing separation of the industrial alcohol and alcohol fuel industry from the beverage industry; however, current reporting is not sufficient to properly monitor these different types of DSP activities. For example, while a DSP may be permitted to use spirits for either beverage purposes under an FAA Act Basic Permit, or industrial purposes under an IRC Operating Permit, or both, current reports are insufficient for tracking spirits transferred in bond between permitted plants under subpart P of part 19 of the TTB regulations. Additionally, while DSPs which hold both beverage and industrial permits are allowed to move spirits between the DSP's own beverage and industrial accounts, current reports do not sufficiently track the transfer of these spirits between internal accounts. As a result of recent audits and/or investigations, TTB found that a number of plants authorized to produce or warehouse industrial spirits had begun to market spirits into the beverage distilling and bottling industries. For example, TTB determined that one plant, qualified only as a producer of industrial spirits, was producing spirits for beverage use and shipping those spirits to a number of beverage alcohol bottlers. Under the current reporting system such transfers are difficult to identify, trace, and reconcile, making taxable and nontaxable removals difficult to distinguish. TTB believes that the current reporting process can be improved to better protect the revenue.

**TTB Proposal**

TTB is proposing to require DSPs to submit up to two separate operations reports in place of the possible seven reports currently required. One report would cover operations involving distilled spirits for beverage use, and the other report would cover operations involving spirits for industrial use. DSPs would be required to complete one or both reports depending on the distilled spirits operations they are qualified to conduct under their TTB permit(s).

TTB believes that its proposed changes to the current DSP operations reporting process would significantly reduce the reporting burden on industry members, result in greater efficiencies for TTB, and improve TTB's ability to monitor the distilled spirits industry and protect the revenue. TTB's analysis indicates that TTB can monitor the industry and protect the revenue by revising the information being reported in a more efficient format.

TTB is also proposing to reduce the number of monthly operations reports submitted by industry members, by providing for quarterly reporting in lieu of monthly reporting for industry members that submit quarterly tax returns, and to realign the information being reported without adding any new recordkeeping or data reporting requirements.

TTB is proposing to amend 27 CFR 19.632, which sets forth requirements for completing and submitting monthly operations reports to TTB, by replacing the current four report forms used by DSPs to report their operations with two proposed report forms that would be submitted on a monthly or quarterly basis. Specifically, TTB is proposing to separate the reporting of beverage alcohol operations from the reporting of industrial alcohol operations as described in greater detail below. This format change would result in limiting the number of required reports per month or per quarter to no more than two, and for many DSPs, the requirement may be only one report per month or per quarter.

As mentioned above, TTB is also proposing to change the monthly reporting requirement to quarterly reporting for those industry members that file quarterly excise tax returns under § 19.235. Section 19.235 generally provides that a DSP proprietor may file quarterly tax returns if the proprietor was not liable for more than $50,000 in distilled spirits excise taxes in the preceding calendar year, and reasonably expects not to be liable for more than $50,000 in distilled spirits excise taxes for the current calendar year. TTB estimates that over 75 percent of registered DSPs qualify for quarterly excise tax payment and filing; under the proposed changes in this notice, these same DSPs would also file operations reports on a quarterly basis. If DSP proprietors eligible for quarterly excise tax payments and returns actually file quarterly operations reports instead of monthly operations reports, this would correspondingly reduce the reporting burden on these smaller DSP proprietors, as well as the administrative burden on TTB.

*Current Forms Versus Proposed Forms*

TTB proposes to consolidate the information and data collected in four current forms (TTB F 5110.40, Monthly Report of Production Operations; TTB F 5110.11, Monthly Report of Storage Operations; TTB F 5110.28, Monthly Report of Processing Operations; and TTB F 5110.43, Monthly Report of Processing (Denaturing) Operations) into two forms. The two proposed forms would be titled, TTB F 5110.77, Distilled Spirits Plant Operations Report—Beverage (Nonindustrial) Alcohol and TTB F 5110.78, Distilled Spirits Plant Operations Report—Industrial Alcohol.

The proposed new forms would not require a DSP to report the level of detailed activity in the production, storage, and processing accounts that the current forms require. A DSP would be required to report the proof gallons of spirits in inventory at the plant as either produced, received, or removed during the reporting period.

Beverage Alcohol

Part I of the proposed beverage (nonindustrial) alcohol report form, TTB F 5110.77, would show beginning and ending balances of inventory for the reporting period. The current forms show only the beginning balance of inventory. Part II of the proposed form would summarize all production and redistillation activities for the reporting period; this section corresponds to the current Monthly Report of Production Operations. Part III would total alcohol and spirits received, and Part IV would summarize all removals. Parts V and VI of the proposed form would document the receipts and removals in greater detail. Parts III–VI correspond to the current Monthly Report of Storage Operations and Monthly Report of Processing Operations. Part VII would document materials used in the production of spirits. The remaining parts of the proposed form, Parts VIII–X, would cover, respectively, receipts of distilled spirits for redistillation, receipts of wine, and receipts of flavors. Parts VII–X correspond to various sections of the current Monthly Report of Production Operations.

Under the current reporting procedures for storage operations, separate monthly reports on TTB F 5110.11 are required for domestic, imported, Puerto Rican, and U.S. Virgin Islands spirits. Under this proposed regulatory change, separate monthly reports for storage operations based on the origin of the spirits would no longer be necessary.

Industrial Alcohol

The proposed report form for industrial alcohol operations, TTB F 5110.78, would document beginning and ending balances of inventory within Part I. Part II of the proposed form would cover all production and redistillation activities. Receipts and removals would be recorded under Parts III and IV of the proposed form, respectively, with additional details provided in Parts V and VI. Part VII of the proposed form would cover materials used in production. The remaining parts of the proposed form would show redistillation operations—relating to receipt and use of spirits, denatured spirits, and articles—(Part VIII), alcohol for fuel use operations (Part IX), and denatured alcohol operations (Part X). The proposed industrial alcohol form mainly corresponds to the current Monthly Report of Processing (Denaturing) Operations.

Beverage and Industrial Alcohol Operations at the Same Plant

Under this regulatory proposal, DSPs conducting both beverage and industrial alcohol operations would be required to submit no more than two forms per month or per quarter, as described above, to report all activities.

**Public Participation**

*Comments Sought*

TTB invites comments on this proposed rulemaking from all interested parties. Since TTB desires to implement these new reporting requirements as soon as possible, TTB is particularly interested in comments regarding the length of time that industry members would need in order to transition their business procedures to be able to comply with the proposed reporting requirements.

Please submit your comments by the closing date shown above in this notice. All comments must reference Notice No. 124 and must include your name and mailing address. Your comments also must be made in English, be legible, and

be written in language acceptable for public disclosure. TTB does not acknowledge receipt of comments, and considers all comments as originals.

*Submitting Comments*

You may submit comments on this notice by using one of the following three methods:

• *Federal e-Rulemaking Portal:* You may send comments via the online comment form associated with this notice in Docket No. TTB–2011–0010 on ''Regulations.gov,'' the Federal e-rulemaking portal, at *http://www.regulations.gov.* A link to the Regulations.gov comment form for this proposal is available under Notice No. 124 on the TTB Web site at *http://www.ttb.gov/regulations_laws/all_rulemaking.shtml.* Supplemental files may be attached to comments submitted via Regulations.gov. For information on how to use Regulations.gov, click on the site's Help or FAQ tabs.

• *U.S. Mail:* You may send comments via postal mail to the Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044–4412.

• *Hand Delivery/Courier:* You may hand-carry your comments or have them hand-carried to the Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Suite 200–E, Washington, DC 20005.

If you are commenting on behalf of an association, business, or other entity, your comment must include the entity's name as well as your name and position title. If you comment via Regulations.gov, please include the entity's name in the ''Organization'' blank of the comment form. If you comment via postal mail, please submit your entity's comment on letterhead.

You may also write to the Administrator before the comment closing date to ask for a public hearing. The Administrator reserves the right to determine whether to hold a public hearing.

*Confidentiality*

All submitted comments and attachments are part of the public record and are subject to public disclosure. Do not enclose any material in your comments that you consider to be confidential or that is inappropriate for public disclosure.

*Public Disclosure*

On the Federal e-rulemaking portal, Regulations.gov, TTB will post, and the public may view, copies of this notice, copies of the two proposed forms, and any electronic or mailed comments TTB receives about this proposal. You may view the Regulations.gov docket containing this notice and the posted comments received on it through the Regulations.gov search page at *http://www.regulations.gov.*

All posted comments will display the commenter's name, organization (if any), city, and State, and, in the case of mailed comments, all address information, including email addresses. TTB may omit voluminous attachments or material that TTB considers unsuitable for posting.

You and other members of the public may view copies of this notice, copies of the two proposed forms, and any electronic or mailed comments TTB receives about this proposal by appointment at the TTB Information Resource Center, 1310 G Street NW., Washington, DC 20220. You may also obtain copies at 20 cents per 8.5- x 11-inch page. Contact TTB's information specialist at the above address or by telephone at 202–453–2270 to schedule an appointment or to request copies of comments or other materials.

**Regulatory Analysis and Notices**

*Executive Order 12866*

It has been determined that this proposed rule is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required.

*Regulatory Flexibility Act*

Pursuant to the requirements of the Regulatory Flexibility Act (5 U.S.C. Chapter 6) TTB certifies that this notice of proposed rulemaking will not have a significant economic impact on a substantial number of small entities. The changes being proposed do not create any additional requirements on small businesses and would only have the effect of lessening current reporting requirements. Accordingly, a regulatory flexibility analysis is not required.

*Paperwork Reduction Act*

Currently, there are four collections of information approved by the Office of Management and Budget (OMB) that cover both recordkeeping and reporting of DSP operations. These collections of information, approved in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3504(h)), are associated with control numbers 1513–0047, 1513–0039, 1513–0041, and 1513–0049. The specific regulatory section in this proposed rule that contains collections of information is 27 CFR 19.632 and it concerns only reporting of DSP operations; TTB is not proposing to change the recordkeeping requirements currently associated with these four control numbers. Consistent with the proposed regulatory change, TTB intends to replace the four existing collections of information with two new collections of information: (1) Distilled Spirits Plant Operations Recordkeeping Requirements, and (2) Distilled Spirits Plant Operations Reporting Requirements. These two new collections of information have been submitted to OMB for approval. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

The proposed amendments to § 19.632, which would affect only reporting requirements, would decrease the number of operational reports that DSP proprietors are required to submit to TTB. Currently, there are four types of reports that proprietors may be required to submit, and each of these reports must be submitted on a monthly basis. In place of these requirements, the proposed amendments would provide for proprietors to submit one or two reports on a monthly or quarterly basis. The proposed amendments would replace the four current reports with an industrial report and a beverage (nonindustrial) report. Proprietors that are qualified to conduct either industrial or beverage operations would only be required to complete one of the respective reports, while proprietors qualified to conduct both types of operations would be required to complete both reports. In addition, the proposed amendments would require proprietors to submit required reports quarterly, rather than monthly, if they pay excise taxes and file excise tax returns quarterly in accordance with 27 CFR 19.235.

Based on the current number of permitted DSPs, TTB estimates that, as a result of the proposed regulatory amendments (and reflecting the estimated number of monthly and quarterly filers), the total annual burden for the distilled spirits operations reporting, for each report, will be as follows:

• *Estimated total annual reporting burden:* 8,592 hours.

• *Estimated average annual burden hours per respondent:* 13.68 hours.

• *Estimated number of respondents:* 150 reporting monthly; 478 reporting quarterly.

• *Estimated annual frequency of responses:* 12 for monthly reporting; 4 for quarterly reporting.

Distilled spirits operations recordkeeping requirements would not

be changed as a result of the proposed regulatory amendments. TTB estimates that the total annual burden for distilled spirits operations recordkeeping, are as follows:

• *Estimated total annual recordkeeping burden:* 1 hour.

• *Estimated number of respondents:* 628.

• *Estimated annual frequency of responses:* 1.

Comments on the two collections of information submitted to OMB should be sent to OMB to Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503. A copy should also be sent to the Alcohol and Tobacco Tax and Trade Bureau by any of the methods previously described. Because OMB must complete its review of the collection of information between 30 and 60 days after publication, comments on the information collection should be submitted not later than January 4, 2012. Comments are specifically requested concerning:

• Whether the two collections of information submitted to OMB are necessary for the proper performance of the functions of the Alcohol and Tobacco Tax and Trade Bureau, including whether the information will have practical utility;

• The accuracy of the estimated burdens associated with the two collections of information submitted to OMB;

• How to enhance the quality, utility, and clarity of the information to be collected;

• How to minimize the burden of complying with the proposed revisions of the collections of information, including the application of automated collection techniques or other forms of information technology; and

• Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

**Drafting Information**

Rita D. Butler of the Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, drafted this document.

**List of Subjects in 27 CFR Part 19**

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations (Government agencies), Caribbean Basin initiative, Chemicals, Claims, Customs duties and inspection, Electronic funds transfers, Excise taxes, Exports, Gasohol, Imports, Labeling, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Research, Security measures, Spices and flavorings, Stills, Surety bonds, Transportation, Vinegar, Virgin Islands, Warehouses, Wine.

**Proposed Amendments to the Regulations**

For the reasons explained in the preamble, TTB proposes to amend 27 CFR part 19 as set forth below:

## PART 19—DISTILLED SPIRITS PLANTS

1. The authority citation for part 19 continues to read as follows:

**Authority:** 19 U.S.C. 81c, 1311; 26 U.S.C. 5001, 5002, 5004–5006, 5008, 5010, 5041, 5061, 5062, 5066, 5081, 5101, 5111–5114, 5121–5124, 5142, 5143, 5146, 5148, 5171–5173, 5175, 5176, 5178–5181, 5201–5204, 5206, 5207, 5211–5215, 5221–5223, 5231, 5232, 5235, 5236, 5241–5243, 5271, 5273, 5301, 5311–5313, 5362, 5370, 5373, 5501–5505, 5551–5555, 5559, 5561, 5562, 5601, 5612, 5682, 6001, 6065, 6109, 6302, 6311, 6676, 6806, 7011, 7510, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

**§ 19.624 [Amended]**

2. In the last sentence of § 19.624(a), remove the word ''monthly''.

3. Section 19.632 is revised to read as follows:

**§ 19.632 Submission of operations reports.**

(a) Except as otherwise provided in paragraph (b) of this section, for each distilled spirits plant registered under this part the proprietor must submit to the Director, National Revenue Center, reports of distilled spirits operations on the forms specified in this section on a monthly basis not later than the 15th day of the month following the close of the reporting period. Each report must be completed in accordance with the instructions on the applicable form and may be submitted either in paper format or electronically via TTB Pay.gov. The proprietor must submit the original reports to TTB and must retain a copy of each report for its records. The required report forms are as follows:

(1) Distilled Spirits Plant Operations Report—Beverage (Nonindustrial) Alcohol, TTB F 5110.77, for any plant holding a basic permit issued under the Federal Alcohol Administration Act and part 1 of this chapter or an operating permit issued under 26 U.S.C. 5171 and subpart D of this part that authorizes warehousing of spirits (without bottling) for nonindustrial use; and

(2) Distilled Spirits Plant Operations Report—Industrial Alcohol, TTB F 5110.78, for any plant holding an operating permit issued under 26 U.S.C. 5171 and subpart D of this part that authorizes distilling, warehousing, and processing (including denaturing), for industrial use, or the manufacture of articles.

(b) In lieu of monthly reporting under paragraph (a) of this section, a proprietor that files quarterly tax returns pursuant to § 19.235 must submit quarterly reports of operations. The four quarterly reporting periods and report due dates are as follows:

| Quarter | Due date |
|---|---|
| January, February, March | April 15. |
| April, May, June | July 15. |
| July, August, September | October 15. |
| October, November, December | January 15. |

(26 U.S.C. 5207)

Signed: July 15, 2011.

**John J. Manfreda,**

*Administrator.*

Approved: July 26, 2011.

**Timothy E. Skud,**

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

[FR Doc. 2011–31142 Filed 12–2–11; 8:45 am]

BILLING CODE 4810–31–P

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

### 29 CFR Part 1910

**[Docket No. OSHA–2011–0183]**

**RIN 1218–AC64**

## Revising Standards Referenced in the Acetylene Standard

**AGENCY:** Occupational Safety and Health Administration (OSHA), Department of Labor.

**ACTION:** Notice of proposed rulemaking; request for comments.

**SUMMARY:** In this notice of proposed rulemaking, the Agency is proposing to revise its Acetylene Standard for general industry by updating a reference to a standard published by a standards developing organization (''SDO standards''). OSHA also is publishing a direct final rule in today's **Federal Register** taking this same action. This rulemaking is a continuation of OSHA's ongoing effort to update references to SDO standards used throughout its rules.

**DATES:** Submit comments to this proposed rule (including comments to the information-collection (paperwork) determination described under the section titled *Procedural*

*Determinations*), hearing requests, and other information by January 4, 2012. All submissions must bear a postmark or provide other evidence of the submission date. (The following section titled **ADDRESSES** describes methods available for making submissions.)

**ADDRESSES:** Submit comments, hearing requests, and other information as follows:

• *Electronic:* Submit comments electronically to *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

• *Facsimile:* OSHA allows facsimile transmission of comments and hearing requests that are 10 pages or fewer in length (including attachments). Send these documents to the OSHA Docket Office at (202) 693–1648; OSHA does not require hard copies of these documents. Instead of transmitting facsimile copies of attachments that supplement these documents (*e.g.,* studies, journal articles), commenters must submit these attachments to the OSHA Docket Office, Technical Data Center, Room N–2625, OSHA, U.S. Department of Labor, 200 Constitution Ave. NW., Washington, DC 20210. These attachments must clearly identify the sender's name, date, subject, and docket number (OSHA–2011–0183) so that the Agency can attach them to the appropriate document.

• *Regular mail, express delivery, hand (courier) delivery, and messenger service:* Submit comments and any additional material (*e.g.,* studies, journal articles) to the OSHA Docket Office, Docket No. OSHA–2011–0183 or Regulation Identification Number (RIN) 1218–AC08, Technical Data Center, Room N–2625, OSHA, U.S. Department of Labor, 200 Constitution Ave. NW., Washington, DC 20210; *telephone:* (202) 693–2350. (OSHA's TTY number is (877) 889–5627.) Note that security-related procedures may result in significant delays in receiving comments and other written materials by regular mail. Please contact the OSHA Docket Office for information about security procedures concerning delivery of materials by express delivery, hand delivery, and messenger service. The hours of operation for the OSHA Docket Office are 8:15 a.m. to 4:45 p.m., e.t.

• *Instructions:* All submissions must include the Agency name and the OSHA docket number (OSHA–2011–0183). OSHA will place comments and other material, including any personal information, in the public docket without revision, and these materials will be available online at *http://www.regulations.gov.* Therefore, the Agency cautions commenters about submitting statements they do not want made available to the public, or submitting comments that contain personal information (either about themselves or others) such as Social Security numbers, birth dates, and medical data.

• *Docket:* The electronic docket for this NPRM established at *http://www.regulations.gov* lists most of the documents in the docket. However, some information (*e.g.,* copyrighted material) is not publicly available to read or download through this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Contact the OSHA Docket Office for assistance in locating docket submissions.

**FOR FURTHER INFORMATION CONTACT:**

*Press inquiries:* Contact Frank Meilinger, OSHA Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; *telephone:* (202) 693–1999.

*General and technical information:* Contact Ted Twardowski, Office of Safety Systems, Directorate of Standards and Guidance, Room N–3609, OSHA, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; *telephone:* (202) 693–2255; *fax:* (202) 693–1663.

**SUPPLEMENTARY INFORMATION:**

*Copies of this **Federal Register** notice:* 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, also are available at OSHA's Web page at *http://www.osha.gov.*

**Table of Contents**

I. Background
II. Direct Final Rulemaking
A. General
B. Relationship Between This Direct Final Rule and the Companion Proposed Rule
C. Request for Comment
III. Summary and Explanation of Revisions to the Acetylene Standard
IV. Procedural Determinations
A. Legal Considerations
B. Final Economic Analysis and Regulatory Flexibility Act Certification
C. OMB Review Under the Paperwork Reduction Act of 1995
D. Federalism
E. State Plan States
F. Unfunded Mandates Reform Act of 1995
G. Public Participation
V. Authority and Signature

## I. Background

This action is part of a rulemaking project instituted by the Occupational Safety and Health Administration (''OSHA'' or ''the Agency'') to update OSHA standards that reference or include language from outdated standards published by standards developing organizations (''SDO standards'') (69 FR 68283). A SDO standard referenced in OSHA's Acetylene Standard (29 CFR 1910.102) is among the SDO standards that the Agency identified for revision.

OSHA adopted the original Acetylene Standard in 1974 pursuant to Section 6(a) of the Occupational Safety and Health Act of 1970 (OSH Act; 29 U.S.C. 651, 655). This section allowed OSHA, during the first two years after passage of the OSH Act, to adopt existing Federal and national consensus standards as OSHA safety and health standards, including the Acetylene Standard.

On August, 11, 2009, OSHA published a direct final rule (DFR) and an accompanying notice of proposed rulemaking (NPRM) that updated references to recognize the latest edition of the Compressed Gas Association standard, CGA G–1–2003, in the Acetylene Standard. *See* 74 FR 40442 and 74 FR 40450, respectively. OSHA received no adverse comments on the DFR, and it became effective on November 9, 2009. *See* 74 FR 57883.

The Compressed Gas Association published a new edition of CGA G–1 in June 2009. OSHA did not include the CGA G–1–2009 in the DFR because that edition was not available to OSHA prior to publication of the DFR. However, three of the eight comments received on the DFR (Exs. OSHA–2008–0034–0017, –0010, and –0022) recommended that the Agency reference CGA G–1–2009 instead of the 2003 edition. This NPRM would remove CGA G–1–2003 from the existing Acetylene Standard and replace it with CGA G–1–2009.

## II. Direct Final Rulemaking

### *A. General*

In a direct final rulemaking, an agency publishes a DFR in the **Federal Register** along with a statement that the rule will become effective unless the agency receives a significant adverse comment within a specified period. An agency uses direct final rulemaking when it anticipates the rule will be non-controversial. The agency concurrently publishes a proposed rule that is essentially identical to the DFR. If the agency receives no significant adverse comments in response to the DFR, the rule goes into effect. If, however, the agency receives significant adverse comment within the specified period, the agency withdraws the DFR and

treats the comments as submissions on the proposed rule.

OSHA is using a DFR in this rulemaking because it expects the rule to: Be noncontroversial; provide protection to employees that is at least equivalent to the protection afforded to them by the outdated standard; and impose no significant new compliance costs on employers (69 FR 68283, 68285). OSHA used DFRs previously to update or, when appropriate, revoke references to outdated national SDO standards in OSHA rules (*see, e.g.,* 69 FR 68283, 70 FR 76979, and 71 FR 80843).

For purposes of this rulemaking, a significant adverse comment is one that explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach. In determining whether a comment necessitates withdrawal of the DFR, OSHA will consider whether the comment raises an issue serious enough to warrant a substantive response in a notice-and-comment process. OSHA will not consider a comment recommending an addition to the rule to be a significant adverse comment unless the comment states why the DFR would be ineffective without the addition. If OSHA receives a timely significant adverse comment, the Agency will publish a **Federal Register** notice withdrawing the DFR no later than February 3, 2012.

OSHA preliminarily determined that updating and replacing the SDO standard in the Acetylene Standard is appropriate for direct final rulemaking. First, the revision made to the Acetylene Standard will not compromise the safety of employees, and instead enhances employee protection. As described below, the revision will make the requirements of OSHA's Acetylene Standard consistent with current industry practices, thereby eliminating confusion and clarifying employer obligations, which will increase employee safety by encouraging compliance. Furthermore, bringing the Acetylene Standard in line with industry practice will not produce additional costs for employers, and may reduce compliance costs. Finally, the revision is non-controversial because it merely updates the SDO standard referenced in the rule to the most current version of that standard.

*B. Relationship Between This Proposed Rule and the Companion Direct Final Rule*

This NPRM is the companion document to a direct final rule (DFR) also published in today's **Federal Register.** If OSHA receives no significant adverse comment on the DFR, it will publish a **Federal Register** document confirming the effective date of the DFR and withdrawing this NPRM. The confirmation may include minor stylistic or technical corrections to the DFR. For the purpose of judicial review, OSHA considers the date that it confirms the effective date of the DFR to be the date of issuance. However, if OSHA receives significant adverse comment on the DFR, it will publish a timely withdrawal of the DFR and proceed with this NPRM, which addresses.

*C. Request for Comment*

OSHA requests comments on all issues related to this rulemaking, including economic or other regulatory impacts of this action on the regulated community. OSHA will consider all of the comments, and the comments will become part of the record.

the same revisions to the Acetylene Standard.

## III. Summary and Explanation of Revisions to the Acetylene Standard

This NPRM would update the SDO standard referenced in paragraph 1910.102(a) of the Acetylene Standard. To ensure that employers have access to the latest safety requirements for managing acetylene, this NPRM would adopt the requirements specified in the most recent, 2009, edition of the SDO standard, CGA G–1–2009. The following discussion provides a summary of the revisions OSHA is proposing for paragraph (a) of the Acetylene Standard.

For paragraph (a) of § 1910.102 (Cylinders), this NPRM would replace the reference to the 2003 edition of CGA Pamphlet G–1 (''Acetylene'') (Ex. OSHA–2008–0034–0006) with the most recent (2009) edition of that standard, also entitled ''Acetylene'' (Ex. OSHA–2011–0183–0003). In reviewing CGA G1–2009, the Agency prepared a side-by-side comparison of the 2009 and 2003 editions (Ex. OSHA–2011–0183–0004). OSHA found minor changes to the titles of CGA reports referenced in paragraph 4 of section 3.2 (Physical and chemical properties) and section 4.2 (Valves); these changes are not substantive. In section 4.5 (Marking and labeling), CGA also provides additional guidance clarifying Department of Transportation labeling regulations, and labeling requirements for transporting acetylene in Canada. The Agency preliminarily determined that this information provides guidance only, and, therefore, would impose no additional burden on employers. Lastly, OSHA identified an addition to the note in section 5.2 (Rules for storing acetylene) that designates as ''in service'' single cylinders of acetylene and oxygen located at a work station (*e.g.,* chained to a wall or building column, secured on a cylinder cart). The Agency preliminarily determined that this change is consistent with current industry practice, and, consequently, would not increase employers' burden.[1]

OSHA believes that the provisions of CGA G–1–2009 are consistent with the usual and customary practice of employers in the industry, and preliminarily determined that incorporating CGA G–1–2009 into paragraph (a) of § 1910.102 would not add compliance burden for employers. OSHA invites the public to comment on whether the revisions proposed for the Acetylene Standard represent current industry practice.

## IV. Procedural Determinations

*A. Legal Considerations*

The purpose of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 *et seq.*), is ''to assure so far as possible every working man and woman in the nation safe and healthful working conditions and to preserve our human resources.'' 29 U.S.C. 651(b). To achieve this goal, Congress authorized the Secretary of Labor to promulgate and enforce occupational safety and health standards. 29 U.S.C. 655(b), 654(b). A safety or health standard is a standard ''which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment or places of employment.'' 29 U.S.C. 652(8). A standard is reasonably necessary or appropriate within the meaning of Section 652(8) when a significant risk of material harm exists in the workplace and the standard would substantially reduce or eliminate that workplace risk.

This NPRM would not reduce the employee protections put into place by the standard OSHA is proposing to update under this rulemaking. Instead, OSHA believes this rulemaking likely would enhance employee safety by clarifying employer obligations. Therefore, it is unnecessary to determine significant risk, or the extent to which this rule would reduce that risk, as typically is required by *Industrial Union Department, AFL–CIO*

[1] In its comments to the 2009 DFR revising OSHA's Acetylene Standard, CGA made the following statement regarding the addition to this note: ''CGA does not envision a hardship or economic burden on the industry nor any reduction in industrial safety as a result of this change.''

v. *American Petroleum Institute* (448 U.S. 607 (1980)).

*B. Final Economic Analysis and Regulatory Flexibility Act Certification*

The proposed standard would not be ''economically significant'' as specified by Executive Order 12866, or a ''major rule'' under Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA''; 5 U.S.C. 804). The DFR resulting from this proposed rule would not impose significant additional costs on any private-sector or public-sector entity, and does not meet any of the criteria for an economically significant or major rule specified by Executive Order 12866 and the relevant statutes. OSHA developed this proposal with attention to the approaches to rulemaking outlined in Executive Orders 12866 and 13563.

This NPRM simply proposes to update a reference to an outdated SDO standard in OSHA's Acetylene Standard. The Agency preliminarily concludes that the revisions will not impose any additional costs on employers because it believes that the updated SDO standard represents the usual and customary practice of employers in the industry. Consequently, the proposal imposes no costs on employers. Therefore, OSHA certifies that this rulemaking would not have a significant economic impact on a substantial number of small entities. Accordingly, the Agency is not preparing a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

*C. OMB Review Under the Paperwork Reduction Act of 1995*

Neither the existing nor updated SDO standard addressed by this NPRM contain collection of information requirements. Therefore, this NPRM does not impose or remove any information-collection requirements for purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* and 5 CFR part 1320. Accordingly, the Agency does not have to prepare an Information Collection Request in association with this rulemaking.

Members of the public may respond to this paperwork determination by sending their written comments to the Office of Information and Regulatory Affairs, Attn: OSHA Desk Officer (RIN 1218–AC08), Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503. The Agency encourages commenters to submit these comments to the rulemaking docket, along with their comments on other parts of the NPRM. For instructions on submitting these comments and accessing the docket, see the sections of this **Federal Register** notice titled **DATES** and **ADDRESSES.** However, OSHA will not consider any comment received on this paperwork determination to be a ''significant adverse comment'' as specified under Section II (''Direct Final Rulemaking'') of this notice.

To make inquiries, or to request other information, contact Mr. Todd Owen, Directorate of Standards and Guidance, OSHA, Room N–3609, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2222.

*D. Federalism*

OSHA reviewed this NPRM in accordance with the Executive Order on Federalism (Executive Order 13132, 64 FR 43255, August 10, 1999), which requires that Federal agencies, to the extent possible, refrain from limiting State policy options, consult with States prior to taking any actions that would restrict State policy options, and take such actions only when clear constitutional authority exists and the problem is national in scope.

Under Section 18 of the Occupational Safety and Health Act of 1970 (''OSH Act''; U.S.C. 651 *et seq.*), Congress expressly provides that States may adopt, with Federal approval, a plan for the development and enforcement of occupational safety and health standards; OSHA refers to States that obtain Federal approval for such a plan as ''State Plan States.'' 29 U.S.C. 667. Occupational safety and health standards developed by State Plan States must be at least as effective in providing safe and healthful employment and places of employment as the Federal standards. Subject to these requirements, State Plan States are free to develop and enforce their own requirements for occupational safety and health standards. While OSHA drafted this NPRM to protect employees in every State, Section 18(c)(2) of the Act permits State Plan States and Territories to develop and enforce their own standards for acetylene operations provided these requirements are at least as effective in providing safe and healthful employment and places of employment as the final requirements that result from this proposal.

In summary, this NPRM complies with Executive Order 13132. In States without OSHA-approved State Plans, any standard developed from this NPRM would limit State policy options in the same manner as every standard promulgated by OSHA. In States with OSHA-approved State Plans, this rulemaking would not significantly limit State policy options.

*E. State Plan States*

When Federal OSHA promulgates a new standard or a more stringent amendment to an existing standard, the 27 States or U.S. Territories with their own OSHA-approved occupational safety and health plans (''State Plan States'') must amend their standards to reflect the new standard or amendment, or show OSHA why such action is unnecessary (*e.g.,* if an existing State standard covering this area is already ''at least as effective'' as the new Federal standard or amendment). 29 CFR 1953.5(a). The State standard must be ''at least as effective'' as the final Federal rule, and must be completed within six months of the publication date of the final Federal rule. 29 CFR 1953.5(a). When OSHA promulgates a new standard or amendment that does not impose additional or more stringent requirements than the existing standard, State Plan States are not required to amend their standards, although OSHA may encourage them to do so.

While this proposed rule does not impose any additional or more stringent requirements on employers than the existing Acetylene Standard, OSHA believes that the provisions of this proposal would provide employers with critical, updated information and methods that will help protect their employees from the hazards found in workplaces engaged in acetylene operations. Therefore, if adopted as proposed, OSHA will encourage the State Plan States to adopt comparable provisions within six months of publication of the final rule. The 27 States and territories with OSHA-approved State Plans are: Alaska, Arizona, California, Connecticut, Hawaii, Illinois, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, New Jersey, New York, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, and Wyoming. Connecticut, Illinois, New Jersey, New York, and the Virgin Islands have OSHA-approved State Plans that apply to State and local government employees only.

*F. Unfunded Mandates Reform Act of 1995*

OSHA reviewed this NPRM in accordance with the Unfunded Mandates Reform Act of 1995 (''UMRA''; 2 U.S.C. 1501 *et seq.*) and Executive Order 12875 (56 FR 58093). As discussed above in Section IV.B (''Final Economic Analysis and

Regulatory Flexibility Act Certification'') of this notice, the Agency determined that this NPRM would not impose additional costs on any private-sector or public-sector entity. Accordingly, this NPRM requires no additional expenditures by either public or private employers.

As noted above under Section IV.E (''State Plan States'') of this notice, the Agency's standards do not apply to State and local governments except in States that have elected voluntarily to adopt a State Plan approved by the Agency. Consequently, this NPRM would not meet the definition of a ''Federal intergovernmental mandate'' (*See* Section 421(5) of the UMRA (2 U.S.C. 658(5))). Therefore, for the purposes of the UMRA, the Agency certifies that this NPRM does not mandate that State, local, or tribal governments adopt new, unfunded regulatory obligations, or increase expenditures by the private sector of more than $100 million in any year.

*G. Public Participation*

OSHA requests comments on all issues concerning this NPRM. The Agency also welcomes comments on its determination that this NPRM would have no negative economic or other regulatory impacts on employers, and will increase employee protection. If OSHA receives no significant adverse comment, it will publish a **Federal Register** document confirming the effective date of the companion DFR and withdrawing this NPRM. Such confirmation may include minor stylistic or technical corrections to the document. For a full discussion of what constitutes a significant adverse comment, see Section II (''Direct Final Rulemaking'') of this notice.

The Agency will withdraw the DFR if it receives significant adverse comment on the amendments contained in it, and proceed with this NPRM by addressing the comment(s) and publishing a new final rule. The comment period for this NPRM runs concurrently with that of the DFR. Therefore, OSHA will treat any comments received under this NPRM as comments regarding the DFR. Similarly, OSHA will consider a significant adverse comment submitted to the DFR as a comment to this NPRM; the Agency will consider such a comment in developing a subsequent final rule.

OSHA will post comments received without revision to *http://www.regulations.gov*, including any personal information provided. Accordingly, OSHA cautions commenters about submitting personal information such as Social Security numbers and birth dates.

**List of Subjects in 29 CFR Part 1910**

Acetylene, General industry, Occupational safety and health, Safety.

**V. Authority and Signature**

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, authorized the preparation of this notice. The Agency is issuing this notice under Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), Secretary of Labor's Order 4–2010 (75 FR 55355), and 29 CFR part 1911.

Signed at Washington, DC, on November 22, 2011.

**David Michaels,**

*Assistant Secretary of Labor for Occupational Safety and Health.*

**Amendments to the Standard**

For the reasons discussed in the preamble, the Occupational Safety and Health Administration is proposing to amend 29 CFR part 1910 as set forth below:

## PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

### Subpart A—[Amended]

1. The authority citation for subpart A continues to read as follows:

**Authority:** Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 3–2000 (65 FR 50017), 5–2002 (67 FR 65008), 5–2007 (72 FR 31159), and 4–2010 (75 FR 55355), as applicable.

Sections 1910.6, 1910.7, 1910.8 and 1910.9 also issued under 29 CFR part 1911. Section 1910.7(f) also issued under 31 U.S.C. 9701, 29 U.S.C. 9a, 5 U.S.C. 553; Pub. L. 106–113 (113 Stat. 1501A–222); Pub. L. 111–8 and 111–317; and OMB Circular A–25 (dated July 8, 1993) (58 FR 38142, July 15, 1993).

2. Amend § 1910.6 by revising paragraph (k)(3) to read as follows:

**§ 1910.6 Incorporation by reference.**

* * * * *

(k) * * *

* * * * *

(3) CGA G–1–2009 Acetylene, IBR approved for § 1910.102(a). Copies of CGA Pamphlet G–1, Twelfth Edition, are available for purchase from the: Compressed Gas Association, Inc., 4221 Walney Road, 5th Floor, Chantilly, VA 20151; telephone: (703) 788–2700; fax: (703) 961–1831; email: *cga@cganet.com.*

* * * * *

### Subpart H—[Amended]

3. Revise the authority citation for subpart H to read as follows:

**Authority:** 29 U.S.C. 653, 655, 657; Secretary of Labor's Orders Nos. 12–71(36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 3–2000 (65 FR 50017), 5–2002 (67 FR 65008), 5–2007 (72 FR 31159), or 4–2010 (75 FR 55355), as applicable; and 29 CFR part 11.

Sections 1910.103, 1910.106 through 1910.111, and 1910.119, 1910.120, and 1910.122 through 1910.126 also issued under 29 CFR part 1911.

Section 1910.119 also issued under Section 304, Clean Air Act Amendments of 1990 (Pub. L. 101–549), reprinted at 29 U.S.C. 655 Note.

Section 1910.120 also issued under 29 U.S.C. 655 Note, and 5 U.S.C. 553.

4. Amend § 1910.102 by revising paragraph (a) to read as follows:

**§ 1910.102 Acetylene.**

(a) *Cylinders.* Employers must ensure that the in-plant transfer, handling, storage, and use of acetylene in cylinders comply with the provisions of CGA Pamphlet G–1–2009 (''Acetylene'') (incorporated by reference, see § 1910.6).

* * * * *

[FR Doc. 2011–30654 Filed 12–2–11; 8:45 am]

BILLING CODE 4510–26–P

## ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

### 36 CFR Part 1190

**[Docket No. ATBCB 2011–04]**

**RIN 3014–AA26**

## Accessibility Guidelines for Pedestrian Facilities in the Public Right-of-Way; Reopening of Comment Period

**AGENCY:** Architectural and Transportation Barriers Compliance Board.

**ACTION:** Notice of proposed rulemaking; reopening of comment period.

**SUMMARY:** The Architectural and Transportation Barriers Compliance Board (Access Board) is reopening until February 2, 2012, the comment period for the notice entitled ''Accessibility Guidelines for Pedestrian Facilities in the Public Right-of-Way,'' that appeared in the **Federal Register** on July 26, 2011. In that notice, the Access Board proposed guidelines for accessible public rights-of-way and requested comments by November 23, 2011. The Access Board is taking this action to allow interested persons additional time to submit comments.

**DATES:** Submit comments by February 2, 2012.

**ADDRESSES:** Submit comments by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Regulations.gov ID for this docket is ATBCB–2011–0004.
- *Email: row@access-board.gov.* Include docket number ATBCB 2011–04 or RIN number 3014–AA26 in the subject line of the message.
- *Fax:* (202) 272–0081.
- *Mail or Hand Delivery/Courier:* Office of Technical and Informational Services, Access Board, 1331 F Street NW., Suite 1000, Washington, DC 20004–1111.

All comments will be posted without change to *http://www.regulations.gov,* including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** Scott Windley, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street NW., Suite 1000, Washington, DC 20004–1111. Telephone (202) 272–0025 (voice) or (202) 272–0028 (TTY). Email address *row@access-board.gov.*

**SUPPLEMENTARY INFORMATION:**

## Introduction

The Architectural and Transportation Barriers Compliance Board (Access Board) is reopening until February 2, 2012, the comment period for the notice entitled ''Accessibility Guidelines for Pedestrian Facilities in the Public Right-of-Way,'' that appeared in the **Federal Register** on July 26, 2011 (76 FR 44664). In that notice, the Access Board proposed guidelines for accessible public rights-of-way and requested comments by November 23, 2011.

On the day the comment period ended, the Access Board received a request from the National Association of Counties, the National League of Cities and the U.S. Conference of Mayors to extend the comment period for at least 90 days to provide local governments with additional time to review and more fully assess the proposed rule. In addition, just prior to the closing of the comment period, the American Council of Engineering Companies requested an unspecified extension of the comment period. Although the Access Board has already provided a 120-day comment period and has held two public hearings on the proposed rule, the Board will provide additional time for the public to submit comments on this proposed rule. The new comment period ends on February 2, 2012.

**David M. Capozzi,**

*Executive Director.*

[FR Doc. 2011–31089 Filed 12–2–11; 8:45 am]

**BILLING CODE 8150–01–P**

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R04–OAR–2010–0483–201155; FRL–9498–8]**

## Approval and Promulgation of Implementation Plans; State of Tennessee: Prevention of Significant Deterioration and Nonattainment New Source Review Rules: Nitrogen Oxides as a Precursor to Ozone

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve changes to the Tennessee State Implementation Plan (SIP), submitted by the Tennessee Department of Environment and Conservation (TDEC) through the Division of Air Pollution Control to EPA on May 28, 2009. The proposed SIP revision modifies Tennessee's New Source Review (NSR) Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) programs. Tennessee's May 28, 2009, SIP revision makes several changes for which EPA is proposing approval in this rulemaking. First, the proposed revision addresses requirements promulgated in the 1997 8-Hour Ozone National Ambient Air Quality Standards (NAAQS) plementation Rule NSR Update Phase II (hereafter referred to as the ''Ozone Implementation NSR Update'' or ''Phase II Rule''). Second, the May 28, 2009, SIP revision includes updates to Tennessee's PSD and NNSR permitting regulations regarding the addition of clean coal technology (CCT) requirements. Lastly, the SIP revision includes clarifying changes and corrections to portions of the Tennessee NSR rule. All changes in the proposed SIP revision are necessary to comply with Federal regulations related to Tennessee's NSR permitting program. EPA is proposing approval of the May 28, 2009, proposed SIP revision because the Agency has preliminarily determined that the changes are in accordance with the Clean Air Act (CAA or Act) and EPA regulations regarding NSR permitting.

**DATES:** Comments must be received on or before January 4, 2012.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R04–OAR–2010–0483, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: benjamin.lynorae@epa.gov.*
3. *Fax:* (404) 562–9019.
4. *Mail:* EPA–R04–OAR–2010–0483, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Ms. Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

*Instructions:* Direct your comments to Docket ID No. ''EPA–R04–OAR–2010–0483.'' 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 through *http://www.regulations.gov* or email, information that you consider to be CBI or otherwise protected. 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 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 at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** For information regarding the Tennessee SIP, contact Ms. Twunjala Bradley, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. *Telephone number:* (404) 562–9352; *email address: bradley.twunjala@epa.gov.* For information regarding NSR, contact Ms. Yolanda Adams, Air Permits Section, at the same address above. *Telephone number:* (404) 562–9214; *email address: adams.yolanda@epa.gov.* For information regarding 8-hour ozone NAAQS, contact Ms. Jane Spann, Regulatory Development Section, at the same address above. *Telephone number:* (404) 562–9029; *email address: spann.jane@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

## Table of Contents

I. What action is EPA proposing?
II. What is the background for EPA's proposed action?
A. What is the NSR program?
B. What are the NSR requirements for the Phase II Rule?
III. What is EPA's analysis of Tennessee's SIP revision?
A. EPA's Analysis of Tennessee's NSR Rule Revision To Adopt the Phase II Rule Requirements
B. EPA's Analysis of Tennessee's Inclusion of Certain Clean Coal Technology Changes
C. EPA's Analysis of Tennessee's Clarifying Changes and Corrections
IV. Proposed Action
V. Statutory and Executive Order Reviews

## I. What action is EPA proposing?

On May 28, 2009, TDEC submitted a revision to EPA for approval into the Tennessee SIP to adopt Federal requirements for NSR permitting.[1] Tennessee's SIP revision makes changes to Tennessee's Air Quality Regulations, Chapter 1200–03–09—*Construction and Operating Permits, Rule Number .01—Construction Permit, .02—Operating Permits, and .03—General Provisions* to adopt PSD and NNSR requirements related to the implementation of the Phase II Rule.[2] First, the proposed revision addresses requirements promulgated in the Phase II Rule. In summary, the May 28, 2009, SIP revision addresses the Ozone Implementation NSR Update requirements for Tennessee to: (1) Specifically recognize that nitrogen oxides ($NO_X$) emissions are ozone precursors; (2) adopt NNSR provisions for major stationary source thresholds for sources in certain classes of nonattainment areas for 8-hour ozone, carbon monoxide and particulate matter with a nominal aerodynamic diameter less than or equal to 10 microns ($PM_{10}$); (3) address changes to offset ratios for marginal, moderate, serious, severe, and extreme ozone nonattainment areas; and (4) address changes to provisions addressing offset requirements for facilities that shut down or curtail operation. Tennessee's May 28, 2009 submittal adopts these provisions promulgated in the Phase II Rule. In addition, May 28, 2009, SIP revision includes updates to the Tennessee PSD and NNSR permitting regulations regarding the adoption of CCT definitions at 1200–03–09.01. Lastly, the SIP revision includes clarifying changes and corrections to its rules at 1200–3–9–.01, 1200–3–9–.02 and 1200–3–9–.03. All changes in the proposed SIP revision are necessary to comply with Federal regulations related to Tennessee's NSR permitting program. Pursuant to section 110 of the CAA, EPA is proposing to approve all the aforementioned changes into the Tennessee SIP.

Tennessee's May 28, 2009, submittal also included the removal of provisions for clean units (CU) and pollution control projects (PCP) from the State's PSD and NNSR regulations that were vacated by the United States Court of Appeals for the District of Columbia Circuit (DC Circuit Court)[3] to be consistent with the Federal regulations. EPA did not approve revisions into Tennessee's federally-approved SIP regarding the provisions for CU and PCP. Therefore, no action related to the provisions of CU and PCP is necessary.

## II. What is the background for EPA's proposed action?

### *A. What is the NSR program?*

The CAA NSR program is a preconstruction review and permitting program applicable to certain new and modified stationary sources of air pollutants regulated under the CAA. The program includes a combination of air quality planning and air pollution control technology requirements. The CAA NSR program is composed of three separate programs: PSD, NNSR, and Minor NSR. PSD is established in Part C of title I of the CAA and applies in areas that meet the NAAQS ''attainment areas'' as well as areas where there is insufficient information to determine if the area meets the NAAQS—''unclassifiable areas.'' The NNSR program is established in Part D of title I of the CAA and applies in areas that are not in attainment of the NAAQS—''nonattainment areas.'' The minor NSR program addresses construction or modification activities that do not qualify as ''major'' and applies regardless of the designation of the area in which a source is located. Together, these programs are referred to as NSR programs. EPA regulations governing the implementation of these programs are contained in 40 Code of Federal Regulations (CFR) parts 51.165, 51.166, 52.21, 52.24, and part 51, Appendix S.

Section 109 of the CAA requires EPA to promulgate a primary NAAQS to protect public health and a secondary NAAQS to protect public welfare. Once

[1] Tennessee's May 28, 2009, SIP revision also contained changes to Tennessee's SIP-approved NSR permitting regulations regarding ''baseline actual emissions.'' EPA is not proposing action for this revision at this time.

[2] Tennessee's May 28, 2009 SIP submittal also made changes to the State's title V regulations at 1200–3–9–.02(11) which EPA is not proposing action as these regulations are not part of the SIP.

[3] On December 31, 2002, (67 FR 80186), EPA published final rule changes to 40 CFR parts 51 and 52, regarding the CAA's PSD and NNSR programs. On November 7, 2003, (68 FR 63021), EPA published a notice of final action on the reconsideration of the December 31, 2002, final rule changes. The December 31, 2002, and the November 7, 2003, final actions are collectively referred to as the ''2002 NSR Reform Rules.'' On June 24, 2005, DC Circuit Court vacated portions of the 2002 NSR Reform Rules pertaining to CU and PCP.

EPA sets those standards, states must develop, adopt, and submit a SIP to EPA for approval that includes emission limitations and other control measures to attain and maintain the NAAQS. *See* CAA section 110. Each SIP is also required to include a preconstruction review program for the construction and modification of any stationary source of air pollution to assure the maintenance of the NAAQS. The May 28, 2009, SIP submittal changes Tennessee's PSD and NNSR programs.

*B. What are the NSR requirements for the Phase II Rule?*

Today's proposed action on the Tennessee SIP relates in part to EPA's Phase II Rule. 70 FR 71612 (November 29, 2005). In the Phase II Rule, EPA made a number of changes including: recognizing $NO_X$ as an ozone precursor for PSD purposes; changes to the NNSR rules establishing major stationary thresholds (marginal, moderate, serious, severe, and extreme NAA classifications) and significant emission rates for the 8-hour ozone, PM10 and carbon monoxide NAAQS; revised the criteria for crediting emission reductions credits from operation shutdowns and curtailments as offsets, and changes to offset ratios for marginal, moderate, serious, severe, and extreme ozone NAA. EPA finalized regulations to address permit requirements for the 1997 8-hour ozone NAAQS to implement the NSR program by specifically identifying $NO_X$ as an ozone precursor.

On July 18, 1997, EPA promulgated a revised 8-hour ozone NAAQS of 0.08 parts per million—also referred to as the 1997 8-hour ozone NAAQS. On April 30, 2004, EPA designated areas as attainment, nonattainment and unclassifiable for the 1997 8-hour ozone NAAQS. As part of the framework to implement the 1997 8-hour ozone NAAQS, EPA promulgated an implementation rule in two phases. Phase I of EPA's 1997 8-hour ozone implementation rule (Phase I Rule), published on April 30, 2004, effective on June 15, 2004, provided the implementation requirements for designating areas under subpart 1 and subpart 2 of the CAA (69 FR 23951).

On November 29, 2005, EPA promulgated the second phase for implementation provisions related to the 1997 8-hour ozone NAAQS—also known as the Phase II Rule (70 FR 71612). The Phase II Rule addressed control and planning requirements as they applied to areas designated nonattainment for the 1997 8-hour ozone NAAQS such as reasonably available control technology, reasonably available control measures, reasonable further progress, modeling and attainment demonstrations and NSR, and the impact to reformulated gas for the 1997 8-hour ozone NAAQS transition. The Phase II Rule requirements include, among other changes, a provision stating that $NO_X$ is an ozone precursor. 70 FR 71612, 71679. In the Phase II Rule, EPA stated as follows:

> ''The EPA has recognized $NO_X$ as an ozone precursor in several national rules because of its contribution to ozone transport and the ozone nonattainment problem. The EPA's recognition of $NO_X$ as an ozone precursor is supported by scientific studies, which have long recognized the role of $NO_X$ in ozone formation and transport. Such formation and transport is not limited to nonattainment areas. Therefore, we believe $NO_X$ should be treated consistently as an ozone precursor in both our PSD and nonattainment NSR regulations. For these reasons, we have promulgated final regulations providing that $NO_X$ is an ozone precursor in attainment areas.''

As was discussed earlier, the Phase II Rule made changes to Federal regulations at 40 CFR 51.165 and 51.166 (which governs the NNSR and PSD permitting programs respectively). Pursuant to these requirements, states were required to submit SIP revisions adopting the relevant Federal requirements of the Phase II Rule (at 40 CFR 51.165 and 51.166) into their SIP no later than June 15, 2007. On May 28, 2009, Tennessee submitted a SIP revision (the subject of this action) to adopt the relevant provisions at 40 CFR 51.165 and 51.166 into the Tennessee SIP to be consistent with Federal regulations for NSR permitting purposes promulgated in the Phase II Rule.

## III. What is EPA's analysis of Tennessee's SIP revision?

Tennessee currently has a SIP-approved NSR program for new and modified stationary sources. TDEC's PSD preconstruction rules are found in Rule 1200–3–9–.01(4) and apply to major stationary sources or modifications constructed in areas designated attainment as required under part C of title I of the CAA with respect to the NAAQS. TDEC's Rule 1200–3–9–.01(5) includes permitting requirements for sources in and impacting nonattainment areas. Today, EPA is proposing to approve changes to Tennessee's rules at 1200–3–9–.01(4) and at 1200–3–9–.01(5) to update the State's existing NSR program to be consistent with Federal NSR regulations, amended in the Phase II Rule (at 40 CFR 51.165 and 51.166). Lastly, EPA is proposing to approve Tennessee's clarifying changes and corrections to its rules at 1200–3–9–.01, 1200–3–9–.02 and 1200–3–9–.03. More detail is provided below regarding EPA's analysis of the changes to Tennessee's SIP as provided in the May 28, 2009, SIP revision.

*A. EPA's Analysis of Tennessee's NSR Rule Revision To Adopt the Phase II Rule Requirements*

Tennessee's May 28, 2009, SIP revision included changes to the State's PSD and NNSR programs to address EPA's Phase II Rule. As part of its review of the Tennessee submittal, EPA performed a line-by-line review of the proposed revision including the provision which differs from the Federal rules, and determined that they are consistent with the program requirements for NSR, set forth at 40 CFR 51.165 and 51.166. States may meet the requirements of 40 CFR part 51 and the Phase II Rules with alternative but equivalent regulations. Tennessee adopted the Federal PSD and NNSR rules amended in the Phase II Rules with minor NNSR variations.

Specifically, with regards to the permit requirements for NNSR $NO_X$ as an ozone precursor, Tennessee's SIP revision did not specifically include the NNSR provisions at 40 CFR 51.165(a)(1)(v)(E) and 51.165(a)(1)(x)(C). *See* Phase II Rule at 70 FR 71612 (November 29, 2005). The Federal regulations at 40 CFR 51.165(a)(1)(v)(E) and (a)(1)(x)(C) relate to applying the same volatile organic compound (VOC) emission requirements for significant net emissions and emission rates (respectively) to $NO_X$ emissions of major stationary sources and major modifications. However, Tennessee's NSR program has equivalent provisions that address both of the aforementioned Phase II Rule requirements. Tennessee's existing SIP includes the definition of ''ozone precursor'' at 1200–03–09–.01(5)(b)1(xxxiii). Ozone precursor is defined in Tennessee's SIP as VOC and/or $NO_X$. Also, Tennessee's SIP defines ''regulated NSR pollutant'' as ''VOC and/or nitrogen oxides compound (1200–03–09–.01(5)(b)(1)(xlix).'' Tennessee's definition for ''major modification'' (at 1200–03–09–.01(5)(b)1(v)) states that ''any significant emissions increase from any emissions units or emission increase at a major stationary source that is significant for volatile organic compounds and/or nitrogen oxides shall be considered significant for ozone.''

In addition, Tennessee's May 28, 2009, SIP revision does not explicitly include the Phase II Rule provision at 51.165(a)(1)(iv)(A)(2) which addresses the applicability of $NO_X$ as an ozone

precursor to major stationary source emission thresholds in nonattainment areas (based on classifications).[4] However, EPA believes that Tennessee's SIP already covers the requirement of 51.165(a)(1)(iv)(A)(2) because: (1) The definition of a ''major stationary source'' (1200–03–09–.01(5)(b)(1)(iv)) in the Tennessee SIP addresses major stationary source thresholds for $NO_X$ for moderate nonattainment areas (which was the highest nonattainment classification in the State), and (2) Tennessee's SIP recognizes $NO_X$ as a regulated NSR pollutant.

EPA has preliminarily determined that the rules adopted by Tennessee in the May 28, 2009, SIP revision are at least as stringent as the Federal program. Therefore, EPA has preliminarily determined that Tennessee's May 28, 2009, SIP revision is consistent with the NSR permit program requirements set forth at 40 CFR 51.165 and 51.166.

*B. EPA's Analysis of Tennessee's Inclusion of Certain Clean Coal Technology Changes*

In addition to adopting the Federal rules consistent with the Phase II Rule, Tennessee's SIP revision also includes changes that were promulgated by EPA in a portion of the 1992 WEPCO Rule (*Wisconsin Electric Power Co.* v. *Reilly,* 893 F.2d 901 (7th Cir. 1990)) on July 21, 1992 (57 FR 32314). The portion of the WEPCO Rule relevant to today's proposal, regards the establishment of CCT and re-powering projects and the applicability of NSR requirements to such projects. As part of the WEPCO Rule, EPA established definitions for CCT, CCT demonstration project, temporary CCT demonstration project, and re-powering. In addition, the rule exempted CCT demonstration projects (that constitute re-powering) from PSD requirements (major modification) as long as the projects do not cause an increase in potential to emit of a regulated NSR pollutant emitted by the unit.

Tennessee's May 28, 2009, SIP submittal revised Tennessee's NSR regulations at 1200–03–09–.01 to adopt the CCT and repowering definitions promulgated as part of the WEPCO Rule and now found at 40 CFR 51.165(a)(1)(xxii)–(xxiv) and 51.166(b)(33)–(36) as well as modify the definition of ''major modification'' to exempt ''clean coal technology demonstration projects'' (consistent with 51.165(a)(1)(v)(C)(9) and 51.166(b)(2)(iii)(*(i)–(j).* EPA has preliminarily determined that the rule changes made by Tennessee are consistent with the current Federal regulations at 40 CFR 51.165 and 51.166.

*C. EPA's Analysis of Tennessee's Clarifying Changes and Corrections*

In addition to the adoption of specific Federal regulations mentioned above, TDEC is also making clarifying changes and corrections to its SIP for portions of Rules 1200–3–9–.01, 1200–3–9–.02 and 1200–03–09–.03. As a result of the removal of all references to the ''clean units'' language (due to the vacatur), Tennessee, were appropriate, replaced the terms ''clean units'' or ''clean'' with the terms ''new emission units'' or ''new'' at Rule 1200–3–9–.01 consistent with the hybrid test applicability provision amended in the 2002 NSR Reform Rule. 67 FR 8018 at 80260). In addition, Tennessee is correcting a typographical error for the definition of ''major stationary source'' at Rule 1200–3–0–.01(5)(b)(i)1(iv)(II) by removing the ''s'' from the word ''items'' between the word ''under and before numerical (''iv).'' For rule 1200–3–9–.02—''Operating Permits,'' Tennessee is revising paragraph (1) to clarify the timeframe and conditions for an air contaminant source (constructed or modified in accordance with Rule 1200–3–9–.01) to apply for an operating permit. Additionally, Tennessee is also correcting a typographical error at Paragraph 1 of Rule 1200–3–9–.03(1) which describes the authority of the State to requests an early timeframe for sources to comply with emission regulations stipulated in the Tennessee SIP. This correction at 1200–03–09–.03 replaces the word ''data'' with ''date.''

## IV. Proposed Action

EPA is proposing to approve Tennessee's May 28, 2009, SIP revision adopting Federal regulations amended in the Phase II Rule (including recognition of $NO_X$ as an ozone precursor) into the Tennessee SIP. Additionally, EPA is proposing to approve Tennessee's changes to its PSD and NNSR permitting regulations regarding the addition of CCT requirements (established in a portion of EPA's WEPCO Rule) at 1200–03–09.01; and the clarifying changes and correction to Tennessee's NSR rule. EPA has made the preliminary determination that this SIP revision is approvable because it is in accordance with the CAA and EPA regulations regarding NSR permitting.

## 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 Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed 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 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 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.

[4] At the time of the May 28, 2009, SIP revision, Tennessee's highest ozone nonattainment classification was moderate.

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

Environmental protection, Air pollution control, Intergovernmental relations, Ozone, Nitrogen oxides, Recordkeeping and reporting, Volatile organic compounds.

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

Dated: November 22, 2011.

**A. Stanley Meiburg,**

*Acting Regional Administrator, Region 4.*

[FR Doc. 2011–31189 Filed 12–2–11; 8:45 am]

**BILLING CODE 6560–50–P**

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R04–OAR–2011–0351–201122; FRL–9498–9]**

## Approval and Promulgation of Implementation Plans; Georgia; 110(a)(1) and (2) Infrastructure Requirements for the 1997 8-Hour Ozone National Ambient Air Quality Standards

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve the State Implementation Plan (SIP) submission, submitted by the State of Georgia, through the Georgia Department of Natural Resources, Environmental Protection Division (EPD), to demonstrate that the State meets the requirements of sections 110(a)(1) and (2) of the Clean Air Act (CAA or Act) for the 1997 8-hour ozone national ambient air quality standards (NAAQS). Section 110(a) of the CAA requires that each state adopt and submit a SIP for the implementation, maintenance and enforcement of each NAAQS promulgated by the EPA, which is commonly referred to as an ''infrastructure'' SIP. EPD certified that the Georgia SIP contains provisions that ensure the 1997 8-hour ozone NAAQS are implemented, enforced, and maintained in Georgia (hereafter referred to as ''infrastructure submission''). Georgia's infrastructure submission, provided to EPA on December 13, 2007, and clarified in a subsequent submission submitted on September 9, 2008, addresses all the required infrastructure elements for the 1997 8-hour ozone NAAQS.

**DATES:** Written comments must be received on or before January 4, 2012.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R04–OAR–2011–0351, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: benjamin.lynorae@epa.gov.*
3. *Fax:* (404) 562–9019.
4. *Mail:* ''EPA–R04–OAR–2011–0351,'' Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Lynorae Benjamin, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

*Instructions:* Direct your comments to Docket ID No. EPA–R04–OAR–2011–0351. 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 through *http://www.regulations.gov* or email, information that you consider to be CBI or otherwise protected. 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 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 at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Nacosta C. Ward, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9140. Ms. Ward can be reached via electronic mail at *ward.nacosta@epa.gov.*

### Table of Contents

I. Background
II. What elements are required under sections 110(a)(1) and (2)?
III. Scope of Infrastructure SIPs
IV. What is EPA's analysis of how georgia addressed the elements of sections 110(a)(1) and (2) ''infrastructure'' provisions?
V. Proposed Action
VI. Statutory and Executive Order Reviews

### I. Background

On July 18, 1997, EPA promulgated a new NAAQS for ozone based on 8-hour average concentrations. The 8-hour averaging period replaced the previous 1-hour averaging period, and the level of the NAAQS was changed from 0.12 parts per million (ppm) to 0.08 ppm. *See* 62 FR 38856. Pursuant to section 110(a)(1) of the CAA, states are required to submit SIPs meeting the requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS. Sections 110(a)(2) require states to address basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance of the NAAQS. States were required to submit

such SIPs for the 1997 8-hour ozone NAAQS to EPA no later than June 2000. However, intervening litigation over the 1997 8-hour ozone 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 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) 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 received from each state as of January 7, 2008.

On March 27, 2008, EPA published a final rulemaking entitled, ''Completeness Findings for Section 110(a) State Implementation Plans; 8-Hour Ozone NAAQS,'' making a finding that each state had submitted or failed to submit a complete SIP that provided the basic program elements of section 110(a)(2) necessary to implement the 1997 8-hour ozone NAAQS. *See* 73 FR 16205. For those states that did receive findings, such as Georgia, the findings of failure to submit for all or a portion of a state's implementation plan established a 24-month deadline for EPA to promulgate a Federal Implementation Plan (FIP) to address the outstanding SIP elements unless, prior to that time, the affected states submitted, and EPA approved, the required SIPs. However, the findings of failure to submit did not impose sanctions or set deadlines for imposing sanctions as described in section 179 of the CAA, because these findings do not pertain to the elements contained in the Title I part D plan for nonattainment areas as required under section 110(a)(2)(I). Additionally, the findings of failure to submit for the infrastructure submittals are not a SIP call pursuant to section 110(k)(5).

The finding that all or portions of a state's submission are complete established a 12-month deadline for EPA to take action upon the complete SIP elements in accordance with section 110(k). Georgia's infrastructure submission was received by EPA on December 13, 2007, and was determined to be complete on March 27, 2008, for all elements with the exception of 110(a)(2)(G). Specifically, 110(a)(2)(G) relates to the SIP providing authority comparable to that in section 303 of the CAA, Emergency Power, and adequate contingency plans to implement such authority. Georgia was among other states that received a finding of failure to submit because its infrastructure submission was deemed incomplete for element (G) for the 1997 8-hour ozone NAAQS by March 1, 2008. The finding of failure to submit action triggered a 24-month clock for EPA to either issue a FIP or take final action on a SIP revision which corrects the deficiency for which the finding of failure to submit was received.

On September 9, 2008, EPD submitted a letter to EPA to clarify that Georgia does have authority to implement emergency powers for the 8-hour ozone standard and that EPA has approved these provisions in the SIP. Following review of Georgia's SIP in light of EPD's September 9, 2008 letter, EPA has preliminarily determined that Georgia's federally-approved SIP does include provisions which provide the State with the authority to implement emergency powers for the 8-hour ozone standard. Today's action is proposing to approve Georgia's infrastructure submission for which EPA made the completeness determination and findings of failure to submit on March 27, 2008. This action is not approving any specific rule, but rather proposing that Georgia's already approved SIP meets certain CAA requirements.

## II. What elements are required under sections 110(a)(1) and (2)?

Section 110(a) of the CAA requires states to submit SIPs to provide for the implementation, maintenance, and enforcement of a new or revised NAAQS within three years following the promulgation of such NAAQS, or within such shorter period as EPA may prescribe. Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS affects the content of the submission. The contents of such SIP submissions may also vary depending upon what provisions the state's existing SIP already contains. In the case of the 1997 8-hour ozone NAAQS, states typically have met the basic program elements required in section 110(a)(2) through earlier SIP submissions in connection with previous ozone NAAQS.

More specifically, section 110(a)(1) provides the procedural and timing requirements for SIPs. Section 110(a)(2) lists specific elements that states must meet for ''infrastructure'' SIP requirements related to a newly established or revised NAAQS. As mentioned above, these requirements include SIP infrastructure elements such as modeling, monitoring, and emissions inventories that are designed to assure attainment and maintenance of the NAAQS. The requirements that are the subject of this proposed rulemaking are listed below [1] and in EPA's October 2, 2007, memorandum entitled ''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.''

- 110(a)(2)(A): Emission limits and other control measures.
- 110(a)(2)(B): Ambient air quality monitoring/data system.
- 110(a)(2)(C): Program for enforcement of control measures.[2]
- 110(a)(2)(D): Interstate transport.[3]

[1] Two elements identified in section 110(a)(2) are not governed by the three year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within three years after promulgation of a new or revised NAAQS, but rather due at the time the nonattainment area plan requirements are due pursuant to section 172. These requirements 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. Today's proposed rulemaking does not address infrastructure elements related to section 110(a)(2)(I) or the nonattainment planning requirements of 110(a)(2)(C).

[2] This rulemaking only addresses requirements for this element as they relate to attainment areas.

[3] Today's proposed rule does not address element 110(a)(2)(D)(i) (Interstate Transport) for the 1997 8-hour ozone NAAQS. Interstate transport requirements were formerly addressed by Georgia consistent with the Clean Air Interstate Rule (CAIR). On December 23, 2008, CAIR was remanded by the DC Circuit Court of Appeals, without vacatur, back to EPA. *See North Carolina* v. *EPA,* 531 F.3d 896 (DC Cir. 2008). Prior to this remand, EPA took final action to approve Georgia's SIP revision, which was submitted to comply with CAIR. *See* 72 FR 57202 (October 9, 2007). In so doing, Georgia's CAIR SIP revision addressed the interstate transport provisions in section 110(a)(2)(D)(i) for the 1997 8-hour ozone NAAQS. In response to the remand of CAIR, EPA has recently finalized a new rule to address the interstate transport of $NO_X$ and $SO_X$ in the eastern United States. *See* 76 Fed. Reg. 48208 (August 8, 2011) (''the Cross-State Air Pollution Rule''). EPA's

- 110(a)(2)(E): Adequate resources.
- 110(a)(2)(F): Stationary source monitoring system.
- 110(a)(2)(G): Emergency power.
- 110(a)(2)(H): Future SIP revisions.
- 110(a)(2)(I): Areas designated nonattainment and meet the applicable requirements of part D.[4]
- 110(a)(2)(J): Consultation with government officials; public notification; and PSD and visibility protection.
- 110(a)(2)(K): Air quality modeling/data.
- 110(a)(2)(L): Permitting fees.
- 110(a)(2)(M): Consultation/participation by affected local entities.

## III. Scope of Infrastructure SIPs

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.[5] 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 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 (PSD) 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 SIPs for the 1997 8-hour ozone NAAQS from Georgia.

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 re-approval 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 re-approval of any existing provisions that relate to these four substantive issues. EPA is reiterating that position in this action on the infrastructure SIP for Georgia.

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

action on element 110(a)(2)(D)(i) will be addressed in a separate action.

[4] This requirement was inadvertently omitted from EPA's October 2, 2007, memorandum entitled ''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,'' but as mentioned above is not relevant to today's proposed rulemaking.

[5] *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.

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.[6] 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.[7]

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).[8] This 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.[9] 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 implementation plans. 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.[10]

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.[11] 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.''[12] 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.''[13] EPA also stated its belief that with one exception, these requirements were ''relatively self

[6] 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.

[7] 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* ''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'').

[8] *See Id.,* 70 FR 25162, at 63–65 (May 12, 2005) (explaining relationship between timing requirement of section 110(a)(2)(D) versus section 110(a)(2)(I)).

[9] 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 $p.m._{2.5}$ 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 PM2.5 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.

[10] For example, implementation of the 1997 $p.m._{2.5}$ NAAQS required the deployment of a system of new monitors to measure ambient levels of that new indicator species for the new NAAQS.

[11] *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'').

[12] *Id.,* at page 2.

[13] *Id.,* at attachment A, page 1.

explanatory, and past experience with SIPs for other NAAQS should enable States to meet these requirements with assistance from EPA Regions.'' [14] However, for the one exception to that general assumption (*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 implementation plans 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.[15] 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), 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 SIPs for Georgia.

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.[16] Section 110(k)(6) authorizes EPA to correct errors in past actions, such as past approvals of SIP submissions.[17] Significantly, EPA's determination that an action on the infrastructure SIP 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.[18]

## IV. What is EPA's analysis of how Georgia addressed the elements of the sections 110(a)(1) and (2) ''infrastructure'' provisions?

The Georgia infrastructure submission addresses the provisions of sections 110(a)(1) and (2) as described below.

1. 110(a)(2)(A): *Emission limits and other control measures:* Several regulations within Georgia's SIP provide

[14] *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.

[15] *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'').

[16] 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).

[17] 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* 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).

[18] 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* 75 FR 42342, 42344 (July 21, 2010) (proposed disapproval of director's discretion provisions); 76 FR 4540 (January 26, 2011) (final disapproval of such provisions).

Georgia's rules and regulations relevant to air quality control regulations. The regulations described below have been federally approved in the Georgia SIP and include enforceable emission limitations and other control measures. Regulations 391–3–1–.02(2), *Emissions Standards,* and 391–3–1–.02(4), *Ambient Air Standards,* establish emission limits for ozone and address the required control measures, means and techniques for compliance with the ozone NAAQS respectively. EPA has made the preliminary determination that the provisions contained in these chapters and Georgia's practices are adequate to protect the 1997 8-hour ozone NAAQS in the State.

In this action, EPA is not proposing to approve or disapprove any existing State provisions with regard to excess emissions during SSM of operations at a facility. EPA believes that a number of states have SSM provisions which are contrary to the CAA and existing EPA guidance, ''State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown'' (September 20, 1999), 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.

Additionally, in this action, EPA is not proposing to approve or disapprove any existing State rules with regard to director's discretion or variance provisions. EPA believes that a number of states have such provisions which are contrary to the CAA and existing EPA guidance (52 FR 45109 (November 24, 1987)), 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 which is contrary to the CAA and EPA guidance to take steps to correct the deficiency as soon as possible.

2. 110(a)(2)(B) *Ambient air quality monitoring/data system:* Regulations 391–3–1-.02(3), *Sampling,* and 391–3–1–.02(6), *Source Monitoring,* along with the Georgia Network Description and Ambient Air Monitoring Network Plan, provide for an ambient air quality monitoring system in the State. Annually, EPA approves the ambient air monitoring network plan for the state agencies. In August 2011, Georgia submitted its monitoring network plan to EPA, and on October 21, 2011, EPA approved this plan. Georgia's approved monitoring network plan can be accessed at *http://www.regulations.gov* using Docket ID No. EPA–R04–OAR–2011–0351. EPA has made the preliminary determination that Georgia's SIP and practices are adequate for the ambient air quality monitoring and data system related to the 1997 8-hour ozone NAAQS.

3. 110(a)(2)(C) *Program for enforcement of control measures including review of proposed new sources:* Regulation 391–3–1–.02(7), *Prevention of Significant Deterioration of Air Quality (PSD),* pertains to the construction or modification of any major stationary source in areas designated as attainment or unclassifiable. On March 5, 2007, EPD submitted revisions to their Prevention of Significant Deterioration/New Source Review (PSD/NSR) regulations for EPA approval. In the March 5, 2007, SIP revision, Georgia included revisions to rules in Regulation 391–3–1–.02(7) which address infrastructure requirements C and J.

The March 5, 2007, SIP revision addresses the Ozone Implementation NSR Update requirements to include nitrogen oxides ($NO_X$) as an ozone precursor for permitting purposes. Specifically, the Ozone Implementation NSR Update requirements include changes to major source thresholds for sources in certain classes of nonattainment areas, changes to offset ratios for marginal, moderate, serious, severe, and extreme ozone nonattainment areas, provisions addressing offset requirements for facilities that shut down or curtail operation, and a requirement stating that NOx emissions are ozone precursors. In a November 22, 2010, final rulemaking action, EPA approved Georgia's March 5, 2007, SIP revision. *See* 75 FR 71018.

EPA published a final rulemaking notice approving Georgia's greenhouse gas (GHG) regulations on September 8, 2011 (76 FR 55572). These revisions establish appropriate emission thresholds for determining which new stationary sources and modification projects become subject to Georgia's PSD permitting requirements for their GHG emissions. The September 8, 2011, rulemaking finalizes approval of the Georgia rules which address the thresholds for GHG permitting applicability in Georgia.

On December 30, 2010, EPA published a final rulemaking, ''Action To Ensure Authority To Implement Title V Permitting Programs Under the Greenhouse Gas Tailoring Rule'' (75 FR 82254) to narrow EPA's previous approval of State title V operating permit programs that apply (or may apply) to GHG-emitting sources; this rule hereafter is referred to as the ''Narrowing Rule.'' EPA narrowed its previous approval of certain State permitting thresholds, for GHG emissions so that only sources that equal or exceed the GHG thresholds, as established in the final Tailoring Rule, would be covered as major sources by the Federally-approved programs in the affected States. Georgia was included in this rulemaking.

In this action, EPA is proposing to approve Georgia's infrastructure SIP for the 8-hour ozone NAAQS 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, however, to approve or disapprove the state's existing minor NSR program 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 to give the states an appropriate level of flexibility to design a program that meets their particular air quality concerns, while assuring reasonable consistency across the country in protecting the NAAQS with respect to new and modified minor sources.

EPA has made the preliminary determination that Georgia's SIP and practices are adequate for program enforcement of control measures including review of proposed new sources related to the 1997 8-hour ozone NAAQS.

4. 110(a)(2)(D)(ii) *Interstate and International transport provisions:* Regulation 391–3–1–.02(7), *Prevention of Significant Deterioration of Air Quality (PSD),* outlines how Georgia will notify neighboring states of potential impacts from new or modified sources. Georgia does not have any pending obligation under sections 115 and 126. EPA has made the preliminary determination that Georgia's SIP and practices are adequate for insuring compliance with the applicable requirements relating to interstate and international pollution abatement for the 1997 8-hour ozone NAAQS.

5. 110(a)(2)(E) *Adequate resources:* EPD is responsible for promulgating rules and regulations for the NAAQS, emissions standards general policies, a system of permits, and fee schedules for

the review of plans, and other planning needs. As evidence of the adequacy of EPD's resources, EPA submitted a letter to Georgia on March 24, 2011, outlining 105 grant commitments and the current status of these commitments for fiscal year 2010. The letter EPA submitted to Georgia can be accessed at *http://www.regulations.gov* using Docket ID No. EPA–R04–OAR–2011–0351. Annually, states update these grant commitments based on current SIP requirements, air quality planning, and applicable requirements related to the NAAQS. Georgia satisfactorily met all commitments agreed to in the Air Planning Agreement for fiscal year 2010, therefore Georgia's grants were finalized and closed out.

Section 110(a)(2)(E)(ii) requires that the state comply with section 128 of the CAA. Section 128 requires that: (1) The majority of members of the state body which approves permits or enforcement orders represent the public interest and do not derive any significant portion of their income from persons subject to permitting or enforcement orders under the CAA; and (2) any potential conflicts of interest by such body be adequately disclosed. On August 26, 1976, EPA approved into the Georgia SIP administration and enforcement provisions as prescribed in the Official Code of Georgia Annotated (O.C.G.A.) Section 12–9–1, *et seq.,* as amended, also referred to as the ''Georgia Air Quality Act.'' Specifically, O.C.G.A. Section 12–9–5 provides the Powers and duties of Board of Natural Resources as to air quality. Section 12–9–5(a) states:

> Any hearing officer appointed by the Board of Natural Resources, and all members of five-member committees of the Board of Natural Resources, shall, and at least a majority of members of the entire Board of Natural Resources shall, represent the public interest and shall not derive any significant portion of their income from persons subject to permits or enforcement orders under this article. All potential conflicts of interest shall be adequately disclosed.

EPA has made the preliminary determination that Georgia has adequate resources for implementation of the 1997 8-hour ozone NAAQS.

6. 110(a)(2)(F) *Stationary source monitoring system:* Georgia's infrastructure submission describes how the State establishes requirements for emissions compliance testing and utilizes emissions sampling and analysis. It further describes how the State ensures the quality of its data through observing emissions and monitoring operations. Georgia EPD uses these data to track progress towards maintaining the NAAQS, develop control and maintenance strategies, identify sources and general emission levels, and determine compliance with emission regulations and additional EPA requirements. These requirements are provided in Regulation 391–3–1–.02(6), *Source Monitoring.*

Additionally, Georgia is required to submit emissions data to EPA for purposes of the National Emissions Inventory (NEI). The NEI is EPA's central repository for air emissions data. EPA published the Air Emissions Reporting Rule (AERR) on December 5, 2008, which modified the requirements for collecting and reporting air emissions data (73 FR 76539). The AERR shortened the time states had to report emissions data from 17 to 12 months, giving states one calendar year to submit emissions data. All states are required to submit a comprehensive emissions inventory every three years and report emissions for certain larger sources annually through EPA's online Emissions Inventory System (EIS). States report emissions data for the six criteria pollutants and the precursors that form them—nitrogen oxides, sulfur dioxide, ammonia, lead, carbon monoxide, particulate matter, and volatile organic compounds. Many states also voluntarily report emissions of hazardous air pollutants. Georgia made its latest update to the NEI on February 16, 2011. EPA compiles the emissions data, supplementing it where necessary, and releases it to the general public through the Web site *http://www.epa.gov/ttn/chief/eiinformation.html.* EPA has made the preliminary determination that Georgia's SIP and practices are adequate for the stationary source monitoring systems related to the 1997 8-hour ozone NAAQS.

7. 110(a)(2)(G) *Emergency power:* Regulation 391–3–1–.04*, Air Pollution Episodes,* of the Georgia SIP identifies air pollution emergency episodes and preplanned abatement strategies. These criteria have previously been approved by EPA. As discussed above, Georgia received a finding of failure to submit because its infrastructure submission was deemed incomplete for element (G) for the 1997 8-hour ozone NAAQS by March 1, 2008. On September 9, 2008, EPD submitted a letter to EPA to clarify that Georgia does have authority to implement emergency powers for the 8-hour ozone standard and confirmed that EPA had previously approved these provisions in the SIP. The September 9, 2008, letter EPD sent to EPA can be accessed at *http://www.regulations.gov* using Docket ID No. EPA–R04–OAR–2011–0351. Following this clarification, EPA has made the preliminary determination that Georgia's SIP and practices are adequate for emergency powers related to the 1997 8-hour ozone NAAQS.

8. 110(a)(2)(H) *Future SIP revisions:* EPD is responsible for adopting air quality rules and revising SIPs as needed to attain or maintain the NAAQS in Georgia. EPD has the ability and authority to respond to calls for SIP revisions, and has provided a number of SIP revisions over the years for implementation of the NAAQS. Specific to the 1997 8-hour ozone NAAQS, Georgia has provided a number of submissions, including the following:

- December 31, 2004, SIP Revision—(EPA approval, 71 FR 50195, August 26, 2005) Chattanooga EAC 8-hour Ozone Attainment Demonstration;
- December 31, 2004, SIP Revision—(EPA approval, 70 FR 50199, August 26, 2005) Augusta EAC 8-hour Ozone Attainment Demonstration;
- June 15, 2007, SIP Revision—(EPA approval, 72 FR53432, September 19, 2007) Macon Co. 8-hr $O_3$ Redesignation;
- June 15, 2007, SIP Revision—(EPA approval, 72 FR 58538, October 16, 2007) Murray Co. 8-hr $O_3$ Redesignation;
- October 21, 2009, SIP Revision—Atlanta 1997 8-hr ozone Attainment Demonstration; and,
- October 21, 2009, SIP Revision—Substitution of Transportation Control Measures in Atlanta Ozone and $PM_{2.5}$ SIPs.

EPA has made the preliminary determination that Georgia's SIP and practices adequately demonstrate a commitment to provide future SIP revisions related to the 1997 8-hour ozone NAAQS when necessary. EPA notes, however, that Georgia's one remaining 1997 8-hour ozone NAAQS nonattainment area—the Atlanta, Georgia Area (hereafter referred to as the ''Atlanta Area'')—is currently attaining 1997 8-hour ozone NAAQS. In a June 23, 2011 final rulemaking, EPA determined that the Atlanta Area has attained the 1997 8-hour ozone NAAQS. *See* 76 FR 36873. That final action, in accordance with 40 CFR 51.918, suspended the requirements for the Atlanta Area to submit attainment demonstrations, associated RACM, RFP plans, contingency measures, and other planning SIPs related to attainment of the 1997 8-hour ozone NAAQS so long as the Atlanta Area continues to meet the 1997 8-hour ozone NAAQS.

9. 110(a)(2)(J) (121 consultation) *Consultation with government officials:* Regulation 391–3–1–.03, *Permits,* as well as Georgia's Regional Haze Implementation Plan (which allows for consultation between appropriate state, local, and tribal air pollution control agencies as well as the corresponding Federal Land Managers), provide for consultation with government officials

whose jurisdictions might be affected by SIP development activities. Georgia adopted state-wide consultation procedures for the implementation of transportation conformity. These consultation procedures include considerations associated with the development of mobile inventories for SIPs. Implementation of transportation conformity as outlined in the consultation procedures requires EPD to consult with federal, state and local transportation and air quality agency officials on the development of motor vehicle emissions budgets. EPA approved Georgia's consultation procedures on April 7, 2000 (*See* 65 FR 18245). EPA has made the preliminary determination that Georgia's SIP and practices adequately demonstrate consultation with government officials related to the 1997 8-hour ozone NAAQS when necessary.

10. 110(a)(2)(J) (127 public notification) *Public notification:* EPD has public notice mechanisms in place to notify the public of ozone and other pollutant forecasting, including an air quality monitoring Web site providing ground level ozone alerts, *http://www.georgiaair.org/smogforecast/*. Regulation 391–3–1–.04*, Air Pollution Episodes,* requires that EPD notify the public of any air pollution episode or NAAQS violation. EPA has made the preliminary determination that Georgia's SIP and practices adequately demonstrate the State's ability to provide public notification related to the 1997 8-hour ozone NAAQS when necessary.

11. 110(a)(2)(J) (PSD) *PSD and visibility protection:* Georgia's authority to regulate new and modified sources of ozone precursors volatile organic compounds (VOCs) and $NO_X$ to assist in the protection of air quality in attainment and unclassifiable areas is provided for in Regulation 391–3–1–.02(7), *Prevention of Significant Deterioration of Air Quality (PSD).* On March 5, 2007, EPD submitted revisions to their Prevention of Significant Deterioration/New Source Review (PSD/NSR) regulations for EPA approval. In the March 5, 2007, SIP revision, Georgia included revisions to rules in Regulation 391–3–1–.02(7), *Prevention of Significant Deterioration of Air Quality (PSD),* of Georgia's SIP that address the infrastructure requirements C and J.

As described above, the March 5, 2007, SIP revision addressed the Ozone Implementation NSR Update requirements to include $NO_X$ as an ozone precursor for permitting purposes. This involved changes to major source thresholds for sources in certain classes of nonattainment areas, changes to offset ratios for marginal, moderate, serious, severe, and extreme ozone nonattainment areas, provisions addressing offset requirements for facilities that shut down or curtail operation, and a requirement stating that $NO_X$ emissions are ozone precursors. In a November 22, 2010, final rulemaking action, EPA approved Georgia's March 5, 2007, SIP revision. *See* 75 FR 71018.

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, EPA finds 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. Georgia has submitted SIP revisions for approval to satisfy the requirements of the CAA Section 169A and 169B, and the regional haze and best available retrofit technology rules contained in 40 CFR 51.308. These revisions are currently under review and will be acted on in a separate action. EPA has made the preliminary determination that Georgia's SIP and practices adequately demonstrate the State's ability to implement PSD programs and to provide for visibility protection related to the 1997 8-hour ozone NAAQS when necessary.

12. 110(a)(2)(K) *Air quality and modeling/data:* Regulation 391–3–1–.02(7)(b)(8), *Prevention of Significant Deterioration of Air Quality (PSD)-Air Quality Models,* incorporates by reference 40 CFR 52.21(l), which specifies that air modeling be conducted in accordance with 40 CFR part 51, Appendix W ''Guideline on Air Quality Models.'' These regulations demonstrate that Georgia has the authority to provide relevant data for the purpose of predicting the effect on ambient air quality of the 8-hour ozone NAAQS. Additionally, Georgia supports a regional effort to coordinate the development of emissions inventories and conduct regional modeling for several NAAQS, including the 1997 8-hour ozone NAAQS, for the Southeastern states. Taken as a whole, Georgia's air quality regulations demonstrate that EPD has the authority to provide relevant data for the purpose of predicting the effect on ambient air quality of the 8-hour ozone NAAQS. EPA has made the preliminary determination that Georgia's SIP and practices adequately demonstrate the State's ability to provide for air quality and modeling, along with analysis of the associated data, related to the 1997 8-hour ozone NAAQS when necessary.

13. 110(a)(2)(L) *Permitting fees:* Georgia addresses the review of construction permits as previously discussed in 110(a)(2)(C). Permitting fees in Georgia are collected through the State's federally-approved title V fees program, according to State regulation 391–3–1–.03(9) *Permit Fees.* EPA has made the preliminary determination that Georgia's SIP and practices adequately provide for permitting fees related to the 1997 8-hour ozone NAAQS when necessary.

14. 110(a)(2)(M) *Consultation/participation by affected local entities:* Regulation 391–3–1–.03(11)(a)(2)*, Permit by Rule-General Requirements,* requires that EPD notify the public of an application, preliminary determination, the activity or activities involved in a permit action, any emissions associated with a permit modification, and the opportunity for comment prior to making a final permitting decision. Furthermore, EPD has demonstrated consultation with, and participation by, affected local entities through its work with local political subdivisions during the developing of its Transportation Conformity SIP, Regional Haze Implementation Plan, and Early Action Compacts. EPA has made the preliminary determination that Georgia's SIP and practices adequately demonstrate consultation with affected local entities related to the 1997 8-hour ozone NAAQS when necessary.

## V. Proposed Action

As described above, EPA has addressed the elements of the CAA 110(a)(1) and (2) SIP requirements pursuant to EPA's October 2, 2007, guidance to ensure that the 1997 8-hour ozone NAAQS are implemented, enforced, and maintained in Georgia. EPA is proposing to approve Georgia's infrastructure submission for the 1997 8-hour ozone NAAQS because its September 9, 2008 submission is consistent with section 110 of the CAA.

## VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions,

EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed 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 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 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 dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: November 21, 2011.

**A. Stanley Meiburg,**

*Acting Regional Administrator, Region 4.*

[FR Doc. 2011–31191 Filed 12–2–11; 8:45 am]

**BILLING CODE 6560–50–P**

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R09–OAR–2011–0846; FRL–9493–3]**

## Revisions to the California State Implementation Plan, Placer County Air Pollution Control District

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve revisions to the Placer County Air Pollution Control District (PCAPCD) portion of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from architectural coatings and automotive refinishing operations. We are proposing to approve two local rules to regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

**DATES:** Any comments on this proposal must arrive by January 4, 2012.

**ADDRESSES:** Submit comments, identified by docket number EPA–R09–OAR–2011–0846, by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions.
2. *Email: steckel.andrew@epa.gov.*
3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

*Instructions:* All comments will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *http://www.regulations.gov* or email. *http://www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send email directly to EPA, your email address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* Generally, documents in the docket for this action are available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at *http://www.regulations.gov,* some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material, large maps), and some may not be publicly available in either location (*e.g.,* CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** David Grounds, EPA Region IX, (415) 972–3019, *grounds.david@epa.gov.*

**SUPPLEMENTARY INFORMATION:** This proposal addresses the following local rules: PCAPCD Rule 218, Architectural Coatings and Rule 234, Automotive Refinishing Operations. In the Rules and Regulations section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: October 27, 2011.

**Jared Blumenfeld,**

*Regional Administrator, Region IX.*

[FR Doc. 2011–30786 Filed 12–2–11; 8:45 am]

**BILLING CODE 6560–50–P**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

**[Docket No. FWS–R2–ES–2010–0041; MO 92210–0–0008]**

**RIN 1018–AV97**

# Endangered and Threatened Wildlife and Plants; 6-Month Extension of Final Determination for the Proposed Listing of the Dunes Sagebrush Lizard as Endangered

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

**ACTION:** Proposed rule; reopening of comment period.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce a 6-month extension of the final determination of whether to list the dunes sagebrush lizard (*Sceloporus arenicolus*) (lizard) as endangered and reopen the comment period on the proposed rule to list the species. We are taking this action because there is substantial disagreement regarding the sufficiency or accuracy of the available data relevant to the proposed listing rule, making it necessary to solicit additional information by reopening the comment period for 45 days.

**DATES:** The comment period end date is January 19, 2012. We request that comments be submitted by 11:59 p.m. Eastern Time on the closing date.

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

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* Search for Docket No. FWS–R2–ES–2010–0041, which is the docket number for this rulemaking.

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R2–ES–2010–0041; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

**FOR FURTHER INFORMATION CONTACT:** Wally Murphy, Field Supervisor, U.S. Fish and Wildlife Service, New Mexico Ecological Services Office, 2105 Osuna NE., Albuquerque, NM 87113; telephone ((505) 761–4781). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at (800) 877–8339).

**SUPPLEMENTARY INFORMATION:**

## Background

On December 14, 2010, we published a proposed rule (75 FR 77801) to list the dunes sagebrush lizard, a lizard known from southeastern New Mexico and adjacent west Texas, as endangered under the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*). For a description of previous Federal actions concerning the dunes sagebrush lizard (formerly known as the sand dunes lizard), please refer to the proposed rule. In addition to the original comment period associated with the publication of the proposed rule, we held two public meetings in April 2011 and reopened the comment period to accept additional public comments (76 FR 19304, April 7, 2011). That comment period closed on May 9, 2011.

Section 4(b)(6) of the Act requires that we take one of three actions within 1 year of a proposed listing: (1) Finalize the proposed listing; (2) withdraw the proposed listing; or (3) extend the final determination by not more than 6 months, if there is substantial disagreement regarding the sufficiency or accuracy of the available data relevant to the determination, for the purposes of soliciting additional data.

Since the publication of the proposed rule, there has been substantial disagreement regarding the interpretation of the limited surveys used to determine the dunes sagebrush lizard's status and trends. This has led to a significant disagreement regarding the current conservation status of the species in New Mexico and Texas. In addition, there was sparse information on the dunes sagebrush lizard's presence in Texas, leading to substantial disagreement on the accuracy of our analysis of the status of the lizard in Texas.

Therefore, in consideration of the disagreements surrounding the lizard's status, we are extending the final determination for 6 months in order to solicit information that will help to clarify these issues.

## Public Comments

We will accept written comments and information during this reopened comment period on our proposed listing for the dunes sagebrush lizard that was published in the **Federal Register** on December 14, 2010 (75 FR 77801). We will consider information and recommendations from all interested parties. We intend that any final action resulting from this proposal be as accurate as possible and based on the best available scientific and commercial data.

Therefore, in consideration of the disagreements surrounding the lizard's status, we are extending the final determination for 6 months in order to solicit information that will help to clarify these issues. We are particularly interested in new information regarding:

(1) Population estimates of the dunes sagebrush lizard in New Mexico and Texas.

(2) Data that quantify the current amount of habitat and the loss of habitat.

(3) Survey information, including maps, throughout the dunes sagebrush lizard's range, especially for Texas.

In addition to our request for new information, we are also reopening the comment period to ensure the public has full access to and an opportunity to comment on all the available information we have received since the second comment period closed. We have received new survey information for the lizard in New Mexico and Texas and an unsolicited peer review study on our proposed rule. We are soliciting input from concerned governmental agencies, the scientific community, industry, or any other interested party concerning the proposed rule in light of this additional information.

If you previously submitted comments or information on the proposed rule, please do not resubmit them. We have incorporated them into the public record, and we will fully consider them in the preparation of our final determination. Our final determination concerning this proposed listing will take into consideration all written comments and any additional information we received.

You may submit your comments and materials concerning the proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit a comment via *http://www.regulations.gov*, your entire comment—including any personal identifying information—will be posted on the Web site. We will post all hardcopy comments on *http://www.regulations.gov* as well. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we

used in preparing the proposed rule, will be available for public inspection on *http://www.regulations.gov* at Docket No. FWS–R2–ES–2010–0041, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**). You may obtain copies of the proposed rule on the Internet at *http://www.regulations.gov* at Docket No. FWS–R2–ES–2010–0041, or by mail from the New Mexico Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

## Authors

The primary authors of this notice are the staff of the U.S. Fish and Wildlife Service.

## Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: November 22, 2011.

**Daniel M. Ashe,**

*Director, U.S. Fish and Wildlife Service.*

[FR Doc. 2011–31198 Filed 12–2–11; 8:45 am]

**BILLING CODE 4310–55–P**

# Notices

Federal Register

Vol. 76, No. 233

Monday, December 5, 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

**RIN 0596–AC77**

### National Forest System Invasive Species Management Policy

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of issuance of final directive.

**SUMMARY:** The Forest Service has finalized the development of an internal directive to Forest Service Manual (FSM) 2900 for invasive species management. This final invasive species management directive will provide foundational comprehensive guidance for the management of invasive species on aquatic and terrestrial areas of the National Forest System (NFS). This directive articulates broad objectives, policies, responsibilities, and definitions for Forest Service employees and partners to more effectively communicate NFS invasive species management requirements at the local, regional, and national levels. This directive primarily serves to clarify and improve the understanding, scope, roles, principles, and responsibilities associated with NFS invasive species management for Forest Service employees and the public. This directive will increase the Forest Service's effectiveness when planning and implementing invasive species management activities; using a collaborative and holistic approach for protecting and restoring aquatic and terrestrial ecosystems from the impacts of invasive plants, pathogens, vertebrates, and invertebrates. The proposed policy was issued on June 3, 2011, (76 FR 32135–32141) in the **Federal Register** for a 60-day public comment period. Responses were received from a wide variety of stakeholders in the public and private sectors, including non-government organizations, State and local government agencies, private individuals, and other Federal government agencies. Responses were organized into seven broad categories for the analysis: (1) Management Techniques, Requirements, and Protocols; (2) Coordination, Cooperation, and Partnerships; (3) Planning, NEPA, and Environmental Compliance; (4) Program Objectives, Principles, and Goals; (5) Definitions and Terms; (6) Budget and Performance Integration; and (7) Miscellaneous General Comments.

An in-depth review of the comments and recommendations indicated strong support for the proposed directive and positive comments about the significant role that the National Forest System plays in the invasive species management issue. In addition, most respondents lauded the Agency for establishing this comprehensive policy guidance for the management of the full spectrum of invasive species across aquatic and terrestrial areas of the National Forest System. Respondents strongly supported the policy's emphasis on local, State, regional, and national coordination; and encouraged the National Forest System to continue broad integration and collaboration, both internally and externally. There was support and encouragement for national forests and grasslands to conduct invasives species management efforts which complement ongoing or existing programs and networks in the States. There also was support for the establishment of cooperative weed management areas, cooperative invasive species management areas, and similar landscape-scale partnerships involving national forests and grasslands; and for the use and sharing of information and compatible databases/protocols to advance the understanding of distribution, abundance, and management of invasive species. Some respondents recommended the Forest Service include the use of widely accepted protocols, management techniques and training programs available to help identify high risk species and pathways of invasion, and subsequently set priorities for management actions. Some respondents commented on funding and performance issues that hamper effective management of invasive species at the local level.

Respondents provided a number of recommendations to add specific criteria, and other detailed management requirements into various components of the proposed directive (FSM 2900); including specific direction and requirements related to programmatic and project-level planning, NEPA and related environmental compliance, Forest Plan standards, pesticide use, weed treatment and prevention techniques, and other tactical-level direction to manage invasive species populations. The Forest Service agrees that additional detailed direction is necessary, however, as described in the June 3, 2011, **Federal Register** Notice (76 FR 32135–32141), this directive (FSM 2900) is designed to provide broad policy requirements and direction, rather than detailed criteria, standards, protocols, and other tactical-level direction. Such detailed operational direction will be provided through an accompanying Forest Service Handbook; to be published in the **Federal Register** for public comment at a later date. Hence, the responses received on the proposed directive clearly indicated the importance of completing the accompanying Forest Service Handbook (FSH 2909.11) to provide the essential and specific operational requirements and policy standards necessary to effectively implement the invasive species management direction articulated in the proposed directive (FSM 2900), across the National Forest System.

Overall, the diverse suite of responses received validated that the proposed directive (FSM 2900) is consistent with the expectations of the general public, State and Federal partners, and other invasive species management stakeholders, for a proactive, collaborative, and holistic approach to managing aquatic and terrestrial invasive species. Based on the evaluation of the public responses received on the proposed directive, no changes were made to the final directive's objectives, policy statements, and definitions. Therefore, the Forest Service is issuing its final directive for the management of invasive species across the National Forest System, formally adding Chapter 2900, Invasive Species Management, as an amendment to the Forest Service Manual.

**DATES:** This final directive is effective December 5, 2011.

**FOR FURTHER INFORMATION CONTACT:** Mike Ielmini, National Invasive Species Program Coordinator, National Forest System, USDA Forest Service, Mailstop 1103, 1400 Independence Avenue SW., Washington, DC 20250, *phone:* (202) 205–1049.

**SUPPLEMENTARY INFORMATION:** The Forest Service is amending its directives by establishing a new title in the Forest Service Manual, FSM 2900—Invasive Species Management.

## Background and Need for the Final Directive

### *Background for the Final Directive*

The management of aquatic and terrestrial invasive species across the landscape is widely recognized, and the Forest Service has conducted invasive species management activities across many programs for decades. However, during the development of the *Forest Service National Strategy and Implementation Plan for Invasive Species Management* (2004), it was identified that the National Forest System (NFS) lacked a comprehensive policy (Forest Service directive) to provide specific direction to the field on the management of a full suite of aquatic and terrestrial invasive species. The need for a consolidated stand-alone directive for NFS invasive species management operations was further identified as a limiting factor during the program performance review, as well as during an ongoing program audit by the U.S. Department of Agriculture (USDA) Office of Inspector General. These assessments highlighted that the invasive species issue was not well understood in some Agency programs, and based on information gathered on NFS program activities and annual program performance, there was a need to better describe the roles and responsibilities for various levels of Agency staff and leadership to more effectively address invasive species threats impacting the National Forest System.

In addition to establishing this broad directive, the Agency is developing specific operational requirements, standards, criteria, and guidance for invasive species management operations through an accompanying handbook that will be issued through the Directives system. The process to develop this draft handbook has begun, and public comment will be sought in the near future.

### *Need for the Final Directive*

This final invasive species management directive will provide foundational, comprehensive guidance for the management of invasive species on aquatic and terrestrial areas of the National Forest System (NFS). This final directive articulates authorities, objectives, policies, principles, responsibilities, and definitions for Forest Service employees and partners to more effectively communicate NFS invasive species management requirements at the local, regional, and national levels. This final directive primarily serves to clarify and improve the understanding, scope, roles, principles, and responsibilities associated with NFS invasive species management for Forest Service employees and the public. This final directive will increase Forest Service effectiveness when planning and implementing invasive species management activities; using a collaborative and holistic approach for protecting and restoring aquatic and terrestrial ecosystems from the impacts of invasive plants, pathogens, vertebrates, and invertebrates.

This final directive applies to all of the National Forest System's resource management programs. For example, it recognizes the need to integrate invasive species prevention, early detection and rapid response, control, restoration, cooperation, education and awareness, and mitigation activities across NFS resource management programs, Forest land use planning activities, project-level planning activities, and other NFS operations. By improving the overall NFS effectiveness against aquatic and terrestrial invasive species, this final directive will help the Forest Service to better manage healthy, resilient landscapes which will have greater capacity to survive natural disturbances and large scale threats to sustainability, especially under changing and uncertain future environmental conditions such as those driven by climate change and increasing human uses; a benefit for all communities. Through the roles and responsibilities identified in this final directive, the Forest Service will be able to more effectively address invasive species in the context of environmental issues such as adaptation to climate change, increasing wildfire risk, watershed restoration, fragmentation of habitats, loss of biodiversity, and human health concerns while engaging the public, including participation by underserved communities in these programs and benefits. This final directive strengthens the Agency's ability to communicate (outreach) invasive species management needs at the local, regional, and national levels by articulating objectives, responsibilities, policies, principles, and definitions of invasive species management for Agency employees and diverse partners. This final directive fosters a better understanding and collaboration among diverse interests among the local to national levels in order to: (a) Develop integrated pest management strategies, goals, objectives, and projects; (b) reduce the threat invasive species pose to local economies; and (c) increase support for and accomplishment of priority invasive species management projects threatening aquatic and terrestrial areas of the National Forest System and neighboring lands. This will increase the Agency's effectiveness when planning and implementing invasive species management activities as a tool for achieving sustainable management and providing a broad range of ecosystem services from NFS lands benefiting all communities. Implementation of this directive is projected to increase the amount of invasive species work planned and accomplished, increasing economic development opportunities and improving local economic stability, including job and contracting opportunities among small business entities, low-income and socially disadvantaged groups and communities.

### *Final Objectives or Goals*

Management activities for aquatic and terrestrial invasive species (including vertebrates, invertebrates, plants, and pathogens) will be based upon an integrated pest management approach on all areas within the National Forest System, and on the areas managed outside of the National Forest System under the authority of the Wyden Amendment (Pub. L. 109–54, Section 434), prioritizing prevention and early detection and rapid response actions as necessary. All National Forest System invasive species management activities will be conducted within the following strategic objectives:

1. *Prevention.* Take proactive approaches to manage all aquatic and terrestrial areas of the National Forest System in a manner to protect native species and ecosystems from the introduction, establishment, and spread of invasive species. Prevention can also include actions to design public-use facilities to reduce accidental spread of invasive species, and actions to educate and raise awareness with internal and external audiences about the invasive species threat and respective management solutions.

2. *Early Detection and Rapid Response (EDRR).* Inventory and survey susceptible aquatic and terrestrial areas of the National Forest System so as to

quickly detect invasive species infestations, and subsequently implement immediate and specific actions to eradicate those infestations before they become established and/or spread. Coordinate detection and response activities with internal and external partners to achieve an effective EDRR approach across all aquatic and terrestrial areas of the National Forest System. EDRR actions are grouped into three main categories: early detection, rapid assessment, and rapid response. EDRR systems will be consistent with guidance from the National Invasive Species Council, such as the ''Guidelines for Early Detection and Rapid Response''.

3. *Control and Management.* Conduct integrated invasive species management activities on priority aquatic and terrestrial areas of the National Forest System will be consistent with guidance from the National Invasive Species Council, such as the ''Control and Management Guidelines'', to contain, reduce, and remove established infestations of aquatic and terrestrial invasive species, and to limit the adverse effects of those infestations on native species, human health, and other National Forest System resources.

4. *Restoration.* Pro-actively manage aquatic and terrestrial areas of the National Forest System to increase the ability of those areas to be self-sustaining and resistant (resilience) to the establishment of invasive species. Where necessary, implement restoration, rehabilitation, and/or revegetation activities following invasive species treatments to prevent or reduce the likelihood of the reoccurrence or spread of aquatic or terrestrial invasive species.

5. *Organizational Collaboration.* Cooperate with other Federal agencies, State agencies, local governments, tribes, academic institutions, and the private sector to increase public awareness of the invasive species threat, and promote a better understanding of integrated activities necessary to effectively manage aquatic and terrestrial invasive species throughout the National Forest System. Coordinate National Forest System invasive species management activities with other Forest Service programs and external partners to reduce, minimize, or eliminate the potential for introduction, establishment, spread, and impact of aquatic and terrestrial invasive species. Coordinate and integrate invasive species research and technical assistance activities conducted by Forest Service Research and Development, and State and Private Forestry programs with National Forest System programs to increase the management effectiveness against aquatic and terrestrial invasive species infestations impacting or threatening the National Forest System.

*Final Policy or Principles*

The management of aquatic and terrestrial invasive species (including vertebrates, invertebrates, plants, and pathogens) will be based on an integrated pest management approach, throughout the National Forest System.

1. Initiate, coordinate, and sustain actions to prevent, control, and eliminate priority infestations of invasive species in aquatic and terrestrial areas of the National Forest System using an integrated pest management approach, and collaborate with stakeholders to implement cooperative invasive species management activities in accordance with law and policy.

2. When applicable, invasive species management actions and standards should be incorporated into resource management plans at the forest level, and in programmatic environmental planning and assessment documents at the regional or national levels.

3. Determine the vectors, environmental factors, and pathways that favor the establishment and spread of invasive species in aquatic and terrestrial areas of the National Forest System, and design management practices to reduce or mitigate the risk for introduction or spread of invasive species in those areas.

4. Determine the risk of introducing, establishing, or spreading invasive species associated with any proposed action, as an integral component of project planning and analysis, and where necessary provide for alternatives or mitigation measures to reduce or eliminate that risk prior to project approval.

5. Ensure that all Forest Service management activities are designed to minimize or eliminate the possibility of establishment or spread of invasive species on the National Forest System, or to adjacent areas. Integrate visitor use strategies with invasive species management activities on aquatic and terrestrial areas of the National Forest System. At no time are invasive species to be promoted or used in site restoration or re-vegetation work, watershed rehabilitation projects, planted for bio-fuels production, or other management activities on national forests and grasslands.

6. Use contract and permit clauses to require that the activities of contractors and permittees are conducted to prevent and control the introduction, establishment, and spread of aquatic and terrestrial invasive species. For example, where determined to be appropriate use agreement clauses to require contractors or permittees to meet Forest Service-approved vehicle and equipment cleaning requirements/standards prior to using the vehicle or equipment in the National Forest System.

7. Make every effort to prevent the accidental spread of invasive species carried by contaminated vehicles, equipment, personnel, or materials (including plants, wood, plant/wood products, water, soil, rock, sand, gravel, mulch, seeds, grain, hay, straw, or other materials).

a. Establish and implement standards and requirements for vehicle and equipment cleaning to prevent the accidental spread of aquatic and terrestrial invasive species on the National Forest System or to adjacent areas.

b. Make every effort to ensure that all materials used on the National Forest System are free of invasive species and/or noxious weeds (including free of reproductive/propagative material such as seeds, roots, stems, flowers, leaves, larva, eggs, veligers, and so forth).

8. Where States have legislative authority to certify materials as weed-free (or invasive-free) and have an active State program to make those State-certified materials available to the public, forest officers shall develop rules restricting the possession, use, and transport of those materials unless proof exists that they have been State-certified as weed-free (or invasive-free), as provided in 36 CFR part 261 and Departmental Regulation 1512–1.

9. Monitor all management activities for potential spread or establishment of invasive species in aquatic and terrestrial areas of the National Forest System.

10. Manage invasive species in aquatic and terrestrial areas of the National Forest System using an integrated pest management approach to achieve the goals and objectives identified in Forest Land and Resource Management plans, and other Forest Service planning documents, and other plans developed in cooperation with external partners for the management of natural or cultural resources.

11. Integrate invasive species management funding broadly across a variety of National Forest System programs, while associating the funding with the specific aquatic or terrestrial invasive species that is being prioritized for management, as well as the purpose and need of the project or program objective.

12. Develop and utilize site-based and species-based risk assessments to prioritize the management of invasive species infestations in aquatic and terrestrial areas of the National Forest System. Where appropriate, use a structured decisionmaking process and adaptive management or similar strategies to help identify and prioritize invasive species management approaches and actions.

13. Comply with the Forest Service performance accountability system requirements for invasive species management to ensure efficient use of limited resources at all levels of the Agency and to provide information for adapting management actions to meet changing program needs and priorities. When appropriate, utilize a structured decisionmaking process to address invasive species management problems in changing conditions, uncertainty, or when information is limited.

14. Establish and maintain a national record keeping database system for the collection and reporting of information related to invasive species infestations and management activities, including invasive species management performance, associated with the National Forest System. Require all information associated with the National Forest System invasive species management (including inventories, surveys, and treatments) to be collected, recorded, and reported consistent with national program protocols, rules, and standards.

15. Where appropriate, integrate invasive species management activities, such as inventory, survey, treatment, prevention, monitoring, and so forth, into the National Forest System management programs. Use inventory and treatment information to help set priorities and select integrated management actions to address new or expanding invasive species infestations in aquatic and terrestrial areas of the National Forest System.

16. Assist and promote cooperative efforts with internal and external partners, including private, State, tribal, and local entities, research organizations, and international groups to collaboratively address priority invasive species issues affecting the National Forest System.

17. Coordinate as needed with Forest Service Research and Development and State and Private Forestry programs, other agencies included under the National Invasive Species Council, and external partners to identify priority/high-risk invasive species that threaten aquatic and terrestrial areas of the National Forest System. Encourage applied research to develop techniques and technology to reduce invasive species impacts to the National Forest System.

18. As appropriate, collaborate and coordinate with adjacent landowners and other stakeholders to improve invasive species management effectiveness across the landscape. Encourage cooperative partnerships to address invasive species threats within a broad geographical area.

*Final Definitions*

*Adaptive Management.* A system of management practices based on clearly identified intended outcomes and monitoring to determine if management actions are meeting those outcomes; and, if not, to facilitate management changes that will best ensure that those outcomes are met or reevaluated. Adaptive management stems from the recognition that knowledge about natural resource systems is sometimes uncertain.

*Control.* With respect to invasive species (plant, pathogen, vertebrate, or invertebrate species), control is defined as any activity or action taken to reduce the population, contain, limit the spread, or reduce the effects of an invasive species. Control activities are generally directed at established free-living infestations, and may not necessarily be intended to eradicate the targeted infestation in all cases.

*Early Detection.* The process of finding, identifying, and quantifying new, small, or previously unknown infestations of aquatic or terrestrial invasive species prior to (or in the initial stages of) its establishment as free-living expanding population. Early detection of an invasive species is typically coupled with integrated activities to rapidly assess and respond with quick and immediate actions to eradicate, control, or contain it.

*Eradication.* With respect to invasive species (plant, pathogen, vertebrate, or invertebrate species), eradication is defined as the removal or elimination of the last remaining individual invasive species in the target infestation on a given site. It is determined to be complete when the target species is absent from the site for a continuous time period (that is, several years after the last individual was observed). Eradication of an infestation of invasive species is relative to the time-frame provided for the treatment procedures. Considering the need for multiple treatments over time, certain populations can be eradicated using proper integrated management techniques.

*Integrated Pest Management (IPM).* A pest (in this context an invasive species) control strategy based on the determination of an economic, human health, or environmental threshold that indicates when a pest population is approaching the level at which control measures are necessary to prevent a decline in the desired conditions (economic or environmental factors). In principle, IPM is an ecologically-based holistic strategy that relies on natural mortality factors, such as natural enemies, weather, and environmental management, and seeks control tactics that disrupt these factors as little as possible. Integrated pest management techniques are defined within four broad categories: (1) Biological, (2) Cultural, (3) Mechanical/Physical, and (4) Chemical techniques.

*Invasive Species.* Executive Order 13112 defines an invasive species as ''an alien species whose introduction does or is likely to cause economic or environmental harm or harm to human health.'' The Forest Service relies on Executive Order 13112 to provide the basis for labeling certain organisms as invasive. Based on this definition, the labeling of a species as ''invasive'' requires closely examining both the origin and effects of the species. The key is that the species must cause, or be likely to cause, harm and be exotic to the ecosystem it has infested before we can consider labeling it as ''invasive''. Thus, native pests are not considered ''invasive'', even though they may cause harm. Invasive species infest both aquatic and terrestrial areas and can be identified within any of the following four taxonomic categories: Plants, Vertebrates, Invertebrates, and Pathogens. Additional information on this definition can be found in Executive Order 13112.

*Invasive Species Management.* Activities to prevent, control, contain, eradicate, survey, detect, identify, inventory, and monitor invasive species; includes rehabilitation and restoration of affected sites and educational activities related to invasive species. Management actions are based upon species-specific or site-specific plans (including forest plans, IPM plans, watershed restoration plans, and so forth), and support the accomplishment of plan goals and objectives and achieve successful restoration or protection of priority areas identified in the respective plan(s).

*Inventory.* Invasive species inventories are generally defined as the observance and collection of information related to the occurrence, population or infestation of the detected species across the landscape or with respect to a more narrowly-defined area or site. Inventory attributes and

purposes will vary, but are typically designed to meet specific management objectives which need information about the extent of an invasive species infestation. Inventories are typically conducted to quantify the extent of, and other attributes related to, infestations identified during survey activities.

*Memorandum of Understanding.* A written agreement between the Forest Service and local, State, or Federal entities, or private organizations, entered into when there is no exchange of funds from one organization to another.

*Monitoring.* For the purposes of invasive species program performance and accountability, the term ''monitoring'' refers to the observance and recording of information related to the responses to treating an invasive species infestation, and reported as treatment efficacy. By monitoring the treatment results over time, a measure of overall programmatic treatment efficacy can be determined and an adaptive management process can be used in subsequent treatment activities.

*Noxious Weed.* The term ''Noxious Weed'' is defined for the Federal Government in the Plant Protection Act of 2000 and in some individual State statutes. For purposes of this chapter, the term has the same meaning as found in the Plant Protection Act of 2000 as follows: The term ''noxious weed'' means any plant or plant product that can directly or indirectly injure or cause damage to crops (including nursery stock or plant products), livestock, poultry, or other interests of agriculture, irrigation, navigation, the natural resources of the United States, the public health, or the environment. The term typically describes species of plants that have been determined to be undesirable or injurious in some capacity. Federal noxious weeds are regulated by USDA Animal and Plant Health Inspection Service under the Plant Protection Act of 2000, which superseded the Federal Noxious Weed Act of 1974. State statues for noxious weeds vary widely, with some states lacking any laws defining or regulating noxious weeds. Depending on the individual State law, some plants listed by a State statute as ''noxious'' may be native plants which that state has determined to be undesirable. When the species are native they are not considered invasive species by the Federal Government. However, in most cases, State noxious weed lists include only exotic (non-native) species.

*Prevention.* Prevention measures for invasive species management programs include a wide range of actions and activities to reduce or eliminate the chance of an invasive species entering or becoming established in a particular area. Preventative activities can include projects for education and awareness as well as more traditional prevention activities such as vehicle/equipment cleaning, boat inspections, or native plant restoration plantings. Restoration activities typically prevent invasive species infestations by improving site resilience, and reducing or eliminating the conditions on a site that may facilitate or promote invasive species establishment.

*Priority Area Treated.* Program or project plans (primarily at the district or forest level) will identify priority areas on which to focus integrated management actions to directly prevent, control, or eradicate a priority/high-risk aquatic or terrestrial invasive species. Priority areas indentified for invasive species treatments may include any specifically-delineated project area. Examples include, but are not limited to: a fuels treatment area, a developed recreation area, a transportation corridor, a facility, a sensitive habitat for rare species, a wetland, a river, a lake, a stream, an irrigation ditch, a grazing allotment, a stock pond, a fire camp, wildlife winter range, a burned area, a fire-break, a timber sale area, a wilderness area, a Research Natural Area, an energy transmission right of way, and so forth. The size of the priority area treated will typically be measured in acres. For linear features (such as a stream/river, trail, roadway, power-line, ditch, and so forth) the area size can be calculated from the length and average width. In some cases, a smaller portion of a delineated project area infested by invasive species may be prioritized for treatment over the larger infestation. Guidance on determining and establishing priorities for invasive species management is provided in the Forest Service Invasive Species Management Handbook (FSH 2900).

*Rapid Response.* With respect to invasive species (plant, pathogen, vertebrate, or invertebrate species), rapid responses are defined as the quick and immediate actions taken to eradicate, control, or contain infestations that must be completed within a relatively short time to maximize the biological and economic effectiveness against the targeted invasive species. Depending on the risk of the targeted invasive species, rapid response actions may be supported by an emergency situation determination and emergency considerations would include the geographic extent of the infestation, distance from other known infestations, mobility and rate of spread of the invasive species, threat level and potential impacts, and available treatments.

*Restored.* With respect to performance specifically, the invasive species program is driven by an outcome-based performance measure centered on 'restoration'. An area treated (see ''treatment'' definition) against invasive species has been 'restored' when the targeted invasive species defined in the project plan was controlled or eradicated directly as a result of the treatment activity. In some instances, actions taken across particular areas to prevent the establishment and spread of specific invasive species are also included in this treatment definition. 'Restored' acres are a subset of 'treated' acres, which are tracked annually to determine the effectiveness of treatments. Preventing, controlling, or eradicating invasive species assists in the recovery of the area's resilience and the capacity of a system to adapt to change if the environment where the system exists has been degraded, damaged, or destroyed (in this case by invasive species); and helps to reestablish ecosystem functions by modifying or managing composition and processes necessary to make terrestrial and aquatic ecosystems sustainable, and resilient, under current and future conditions (as described in FSM 2020). In most cases, this is a performance measure defined in the project plan, and project managers have the flexibility to set the parameters for determining when the treated areas have been restored. Absence of an individual invasive species organism, whether through eradication or prevention efforts, is most often the criteria used to determine when acres have been restored. Monitoring treatment efficacy is critical to reporting invasive species management performance.

*Resilience.* The capacity of an ecosystem to absorb disturbance and reorganize while undergoing change, so as to still retain essentially the same function, structure, identity, and feedbacks. By working toward the goals of diverse native ecosystems that are connected and can absorb disturbance, it is expected that over time, management would create ecological conditions that support the abundance and distribution of native species within a geographic area to provide for native plant and animal diversity.

*State Agency.* A State Department of Agriculture, State Department of Natural Resources, other State agency, or subdivision thereof, responsible for the administration or implementation of State laws pertaining to invasive species, noxious weeds, exotic species, or other pest/undesirable species.

*Structured Decision Making (SDM).* A general term for carefully-organized analysis of problems in order to reach decisions that are focused clearly on achieving fundamental objectives. Based in decision theory and risk analysis, SDM encompasses a simple set of concepts and helpful steps, rather than a rigidly-prescribed approach for problem solving. Key SDM concepts include making decisions based on clearly articulated fundamental objectives, dealing explicitly with uncertainty, and responding transparently to legal mandates and public preferences or values in decisionmaking; thus, SDM integrates science and policy explicitly. Every decision consists of several primary elements, management objectives, decision options, and predictions of decision outcomes. By analyzing each component separately and thoughtfully within a comprehensive decision framework, it is possible to improve the quality of decisionmaking. The core SDM concepts and steps to better decisionmaking are useful across all types of decisions: from individuals making minor decisions to complex public sector decisions involving multiple decision makers, scientists, and other stakeholders.

*Survey.* An invasive species survey is a process of systematically searching a geographic area for a particular (targeted) invasive species, or a group of invasive species, to determine if the species exists in that area. It is important to know where and when surveys have occurred, even if the object of the survey (target species) was not located. Information on the absence of an invasive species can be as valuable as information on the presence of the species, and can be used as a foundation to an early detection system. Unlike inventories, surveys typically do not collect additional detailed attributes of the infestation or the associated site.

*Targeted Invasive Species.* An individual invasive species or population of invasive species, which has been prioritized at the project-level for management action based upon risk assessments, project objectives, economic considerations, and other priority-setting decision support tools.

*Treatment.* Any activity or action taken to directly prevent, control, or eradicate a targeted invasive species. Treatment of an invasive species infestation may not necessarily result in the elimination of the infestation, and multiple treatments on the same site or population are sometimes required to affect a change in the status of the infestation. Treatment activities typically fall within any of the four general categories of integrated management techniques: Biological treatments, Cultural treatments, Mechanical treatments, or Chemical treatments. For example, the use of domestic goats to control invasive plants would be considered a biological treatment; the use of a piscicide to control invasive fishes would be characterized as a chemical treatment; planting of native seeds used to prevent invasive species infestations and restore a degraded site would be considered a cultural treatment technique; developing an aquatic species barrier to prevent invasive species from spreading throughout a watershed would be considered a physical treatment; cleaning, scraping, or otherwise removing invasive species attached to equipment, structures, or vehicles would be considered a mechanical treatment designed to directly control and prevent the spread of those species.

**Regulatory Certifications**

*Environmental Impact*

This final directive establishes broad, foundational policy for invasive species management on the National Forest System and associated resources. Agency procedure at 36 CFR 220.6(d)(2) (73 FR 43093) excludes from documentation in an environmental assessment or environmental impact statement ''rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions.'' The Agency has concluded that the final directive falls within this category of actions and that no extraordinary circumstances exist which would require preparation of an environmental assessment or environmental impact statement.

*Regulatory Impact*

This final directive has been reviewed under USDA procedures and *Executive Order 12866, Regulatory Planning and Review.* It has been determined that this is not an economically significant action. This action to issue agency policy will not have an annual effect of $100 million or more on the economy nor adversely affect productivity, competition, jobs, the environment, public health or safety, nor State or local governments. This action will not interfere with an action taken or planned by another agency. This action will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs. Based on the overwhelmingly supportive responses from the diverse set of public and private stakeholders, no significant or material policy changes to the final directive were necessary. The final directive has been designated as non-significant and, therefore, is not subject to additional Office of Management and Budget review under Executive Order 12866.

This final directive has also been considered in light of Executive Order 13272 regarding proper consideration of small entities and the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), which amended the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). A small enitities flexibility assessment has determined that this action will not have a significant economic impact on a substantial number of small entities as defined by SBREFA. This final directive is focused on National Forest System invasive species management activities, is not a regulation, and imposes no requirements on small or large entities. Addtionally, this final directive will increase Agency effectiveness when planning, coordinating, and implementing National Forest System invasive species management activities at the local level and, in turn, will provide opportunities to facilitate economic development for local communities and may provide job opportunities for small business entities or individuals.

This final directive is consistent with the terminology and requirements identified in Executive Order 13112 on invasive species, and correlates the Forest Service roles and responsibilities with the goals, objectives, and priority actions to manage invasive species identified in the National Invasive Species Council's National Invasive Species Management Plan (2001 and 2008–2012, as amended).

*Federalism*

The Agency has considered this final directive under the requirements of Executive Order 13132, Federalism. The Agency has concluded that this final directive conforms with the federalism principles set out in this Executive Order; will not impose any compliance costs on the States; and will not have substantial direct effects on the States or the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the Agency has determined that no further assessment of federalism implications is necessary.

*Consultation and Coordination With Indian Tribal Governments*

Pursuant to Executive Order 13175 of November 6, 2000, ''Consultation and Coordination with Indian Tribal Governments,'' the Agency has assessed the impact of this final directive on Indian Tribes and has determined that it does not have substantial direct or unique effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. This final directive does not have tribal implications, affect the rights of Indian tribes to self-governance, and does not impact tribal sovereignty or self-determination. Specifically, this final directive represents a compilation and consolidation of existing invasive species management authorities, roles, and responsibilities focused on the duties of Forest Service personnel on the National Forest System, and does not impose substantial direct compliance costs on Indian tribal governments or preempt tribal law. Therefore, after discussions and coordination with the Forest Service Office of Tribal Relations and regional Forest Service tribal coordinators, the Agency has determined that formal consultation with Tribal governments on this final directive is unnecessary prior to publishing and issuing this final directive.

Implementation of this directive primarily occurs at the local level (national forest or grassland unit) through land management planning and project-level planning and accomplishment. Therefore, coordination with Tribes, other governmental organizations, and the public is most applicable at the forest and grassland level because it is at that level that specific invasive species management goals and objectives are established. Also, at that level the design and effects of invasive species management activities are most effectively managed in relation to the Agency's tribal trust responsibilities and Indian tribal treaty rights.

In addition, during the review and coordination with the Forest Service Office of Tribal Relations, it was agreed that the Agency would coordinate an outreach effort through the respective regional OTR directors/staff regarding the future development of the Forest Service Handbook for NFS Invasive Species Management; inviting additional review and collaboration with interested Tribal governments during that process. This future Forest Service Handbook on Invasive Species Management would tier directly from this final directive and would provide the detailed operational requirements, standards, criteria, and guidance which would be most applicable to Tribal government interests.

*No Takings Implications*

This final directive has been analyzed in accordance with the principles and criteria contained in Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and it has been determined that this final directive does not pose the risk of a taking of protected private property.

*Civil Justice Reform*

This final directive has been reviewed under Executive Order 12988 of February 7, 1996, ''Civil Justice Reform.'' After adoption of this final directive, (1) All State and local laws and regulations that conflict with this final directive or that would impede full implementation of this directive would be preempted; (2) no retroactive effect would be given to this final directive; and (3) this final directive would not require the use of administrative proceedings before parties could file suit in court challenging its provisions.

*Unfunded Mandates*

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), which the President signed into law on March 22, 1995, the Agency has assessed the effects of this final directive on State, local, and Tribal governments and the private sector. This final directive does not compel the expenditure of funds by any State, local, or Tribal government or anyone in the private sector. Therefore, a statement under section 202 of the Act is not required.

*Energy Effects*

This final directive has been reviewed under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. It has been determined that this final directive does not constitute a significant energy action as defined in the Executive Order.

*Controlling Paperwork Burdens on the Public*

This final directive does not contain any additional record keeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 that are not already required by law or not already approved for use, and therefore, imposes no additional paperwork burden on the public. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR part 1320 do not apply.

Dated: November 28, 2011.

**Harris D. Sherman,**

*Under Secretary, NRE.*

[FR Doc. 2011–31090 Filed 12–2–11; 8:45 am]

**BILLING CODE 3410–11–P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Newspapers Used for Publication of Legal Notices in the Southwestern Region, Which Includes Arizona, New Mexico, and Parts of Oklahoma and Texas

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice.

**SUMMARY:** This notice lists the newspapers that will be used by all Ranger Districts, Grasslands, Forests, and the Regional Office of the Southwestern Region to give legal notice for the availability for comments on projects under 36 CFR part 215, notice of decisions that may be subject to administrative appeal under 36 CFR parts 215 or Optional Appeal Procedures Available During the Planning Rule Transition Period (formerly 36 CFR part 217), and for opportunities to object to proposed authorized hazardous fuel reduction projects under 36 CFR 218.4. This notice also lists newspapers of record for notices pertaining to plan amendments and revisions under 36 CFR part 219. Newspaper publication is in addition to mailings and direct notice made to those who have participated in the planning of projects or plan revisions and amendments by submitting comments and/or requesting notice.

**DATES:** Use of these newspapers for the purpose of publishing legal notice for a plan amendment decision that is subject to appeal under ''Optional Appeal Procedures Available During the Planning Rule Transition Period'' (formerly 36 CFR part 217), for a comment and project decision that may be subject to appeal under 36 CFR part 215, for opportunity to object under 36 CFR part 218, and for planning notices on a plan revision or plan amendment under 36 CFR part 219 shall begin on the date of this publication and continue until further notice.

**ADDRESSES:** Margaret Van Gilder, Regional Appeals Coordinator, Forest Service, Southwestern Region; 333 Broadway SE., Albuquerque, NM 87102–3498.

**FOR FURTHER INFORMATION CONTACT:** Margaret Van Gilder, Regional Appeals Coordinator; (505) 842–3223.

**SUPPLEMENTARY INFORMATION:** Where more than one newspaper is listed for any unit, the first newspaper listed is the primary newspaper of record of which publication date shall be used for calculating the time period to file comment, appeal or an objection.

**Southwestern Regional Office**

*Regional Forester*

Notices of Availability for Comment and Decisions and Objections affecting New Mexico Forests:— ''*Albuquerque Journal*'', Albuquerque, New Mexico, for National Forest System Lands in the State of New Mexico and for any projects of Region-wide impact.

Regional Forester Notices of Availability for Comment and Decisions and Objections affecting Arizona Forests: —''*The Arizona Republic*'', Phoenix, Arizona, for National Forest System lands in the State of Arizona and for any projects of Region-wide impact.

Regional Forester Notices of Availability for Comment and Decisions and Objections affecting National Grasslands in New Mexico, Oklahoma, and Texas are listed by Grassland and location as follows: Kiowa National Grassland notices published in: —''*Union County Leader*'', Clayton, New Mexico. Rita Blanca National Grassland in Cimarron County, Oklahoma notices published in:—''*Boise City News*'', Boise City, Oklahoma. Rita Blanca National Grassland in Dallam County, Texas notices published in:—''*The Dalhart Texan*'', Dalhart, Texas. Black Kettle National Grassland in Roger Mills County, Oklahoma notices published in:—''*Cheyenne Star*'', Cheyenne, Oklahoma. Black Kettle National Grassland in Hemphill County, Texas notices published in:—''*The Canadian Record*'', Canadian, Texas. McClellan Creek National Grassland in Gray County, Texas notices published in:—''*The Pampa News*'', Pampa, Texas.

**Arizona National Forests**

*Apache-Sitgreaves National Forests*

Notices for Availability for Comments, Decisions and Objections by Forest Supervisor, Alpine Ranger District, Black Mesa Ranger District, Lakeside Ranger District, and Springerville Ranger District are published in: —''*The White Mountain Independent*'', Show Low and Navajo County, Arizona.

Clifton Ranger District Notices are published in:—''*Copper Era*'', Clifton, Arizona.

*Coconino National Forest*

Notices for Availability for Comments, Decisions and Objections by Forest Supervisor, Mogollon Rim Ranger District, Mormon Lake Ranger District, and Peaks Ranger District are published in: —''*Arizona Daily Sun*'', Flagstaff, Arizona.

Red Rock Ranger District Notices are published in: —''*Red Rock News*'', Sedona, Arizona.

*Coronado National Forest*

Notices for Availability for Comments, Decisions and Objections by Forest Supervisor and Santa Catalina Ranger District are published in: —''*The Arizona Daily Star*'', Tucson, Arizona.

Douglas Ranger District Notices are published in:—''*Daily Dispatch*'', Douglas, Arizona.

Nogales Ranger District Notices are published in: —''*Nogales International*'', Nogales, Arizona.

Sierra Vista Ranger District Notices are published in:—''*Sierra Vista Herald*'', Sierra Vista, Arizona.

Safford Ranger District Notices are published in:—''*Eastern Arizona Courier*'', Safford, Arizona.

*Kaibab National Forest*

Notices for Availability for Comments, Decisions and Objections by Forest Supervisor, North Kaibab Ranger District, Tusayan Ranger District, and Williams Ranger District Notices are published in: —''*Arizona Daily Sun*'', Flagstaff, Arizona.

*Prescott National Forest*

Notices for Availability for Comments, Decisions and Objections by Forest Supervisor, Bradshaw Ranger District, Chino Valley Ranger District and Verde Ranger District are published in: —''*Daily Courier*'', Prescott, Arizona.

*Tonto National Forest*

Notices for Availability for Comments, Decisions, and Objections by Forest Supervisor are published in:—''*Arizona Capitol Times*'', in Phoenix, Arizona.

Cave Creek Ranger District Notices are published in:—''*Arizona Capitol Times*'', in Phoenix, Arizona.

Globe Ranger District Notices are published in:—''*Arizona Silver Belt*'', Globe, Arizona.

Mesa Ranger District Notices are published in: —Arizona ''*Capitol Times*'', in Phoenix, Arizona.

Payson Ranger District, Pleasant Valley Ranger District and Tonto Basin Ranger District Notices are published in:—''*Payson Roundup*'', Payson, Arizona.

**New Mexico National Forests**

*Carson National Forest*

Notices for Availability for Comments, Decisions and Objections by Forest Supervisor, Camino Real Ranger District, Tres Piedras Ranger District and Questa Ranger District are published in:—''*The Taos News*'', Taos, New Mexico.

Canjilon Ranger District and El Rito Ranger District Notices are published in:—''*Rio Grande Sun*'', Espanola, New Mexico.

Jicarilla Ranger District Notices are published in:—''*Farmington Daily Times*'', Farmington, New Mexico.

*Cibola National Forest and National Grasslands*

Notices for Availability for Comments, Decisions and Objections by Forest Supervisor affecting lands in New Mexico, except the National Grasslands are published in:—''*Albuquerque Journal*'', Albuquerque, New Mexico.

Forest Supervisor Notices affecting National Grasslands in New Mexico, Oklahoma and Texas are published by grassland and location as follows: Kiowa National Grassland in Colfax, Harding, Mora and Union Counties, New Mexico published in:—''*Union County Leader*'', Clayton, New Mexico. Rita Blanca National Grassland in Cimarron County, Oklahoma published in:—''*Boise City News*'', Boise City, Oklahoma. Rita Blanca National Grassland in Dallam County, Texas published in:—''*The Dalhart Texan*'', Dalhart, Texas. Black Kettle National Grassland, in Roger Mills County, Oklahoma published in:—''*Cheyenne Star*'', Cheyenne, Oklahoma. Black Kettle National Grassland, in Hemphill County, Texas published in:—''*The Canadian Record*'', Canadian, Texas. McClellan Creek National Grassland published in:—''*The Pampa News*'', Pampa, Texas.

Mt. Taylor Ranger District Notices are published in:—''*Cibola County Beacon*'', Grants, New Mexico.

Magdalena Ranger District Notices are published in:—''*Defensor-Chieftain*'', Socorro, New Mexico.

Mountainair Ranger District Notices are published in:—''*Mountain View Telegraph*'', Moriarity, New Mexico.

Sandia Ranger District Notices are published in:—''*Albuquerque Journal*'', Albuquerque, New Mexico.

Kiowa National Grassland Notices are published in:—''*Union County Leader'',* Clayton, New Mexico.

Rita Blanca National Grassland Notices in Cimarron County, Oklahoma are published in:—''*Boise City News'',* Boise City, Oklahoma while Rita Blanca National Grassland Notices in Dallam County, Texas are published in:—''*Dalhart Texan'',* Dalhart, Texas.

Black Kettle National Grassland Notices in Roger Mills County, Oklahoma are published in:—''*Cheyenne Star'',* Cheyenne, Oklahoma, while Black Kettle National Grassland Notices in Hemphill County, Texas are published in:—''*The Canadian Record'',* Canadian, Texas.

McClellan Creek National Grassland Notices are published in:—''*The Pampa News'',* Pampa, Texas.

*Gila National Forest*

Notices for Availability for Comments, Decisions and Objections by Forest Supervisor, Quemado Ranger District, Reserve Ranger District, Glenwood Ranger District, Silver City Ranger District and Wilderness Ranger District are published in:—''*Silver City Daily Press'',* Silver City, New Mexico.

Black Range Ranger District Notices are published in:—''*The Herald'',* Truth or Consequences, New Mexico.

*Lincoln National Forest*

Notices for Availability for Comments, Decisions and Objections by Forest Supervisor and the Sacramento Ranger District are published in:—''*Alamogordo Daily News'',* Alamogordo, New Mexico.

Guadalupe Ranger District Notices are published in:—''*Carlsbad Current Argus'',* Carlsbad, New Mexico.

Smokey Bear Ranger District Notices are published in:—''*Ruidoso News'',* Ruidoso, New Mexico.

*Santa Fe National Forest*

Notices for Availability for Comments, Decisions and Objections by Forest Supervisor, Coyote Ranger District, Cuba Ranger District, Espanola Ranger District, Jemez Ranger District and Pecos-Las Vegas Ranger District are published in:—''*Albuquerque Journal'',* Albuquerque, New Mexico.

Dated: November 17, 2011.

**Gilbert Zepeda,**

*Deputy Regional Forester, Southwestern Region.*

[FR Doc. 2011–31097 Filed 12–2–11; 8:45 am]

**BILLING CODE 3410–11–P**

## DEPARTMENT OF AGRICULTURE

### Rural-Business Cooperative Service

### Notice of Request for Extension of a Currently Approved Information Collection

**AGENCY:** Rural Business-Cooperative Service, USDA.

**ACTION:** Proposed collection; comments requested.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Business-Cooperative Service's (RBS) intention to request an extension of a currently approved information collection in support of the program for 7 CFR, part 1951, subpart R, ''Rural Development Loan Servicing.''

**DATES:** Comments on this notice must be received by February 3, 2012, to be assured of consideration.

**FOR FURTHER INFORMATION CONTACT:** Lori Washington, Rural Business-Cooperative Service, USDA, STOP 3225, 1400 Independence Ave. SW., Washington, DC 20250–3225, *Telephone:* (202) 720–1400.

**SUPPLEMENTARY INFORMATION:**

*Title:* Rural Development Loan Servicing.

*OMB Number:* 0570–0015.

*Expiration Date of Approval:* January 31, 2012.

*Type of Request:* Extension of a currently approved information collection.

*Abstract:* The regulations contain various requirements for information from the intermediaries and some requirements may cause the intermediary to require information from ultimate recipients. The information requested is vital to RBS for prudent loan servicing, credit decisions, and reasonable program monitoring.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 3 hours per response.

*Respondents:* Non-profit corporations, public agencies, and cooperatives.

*Estimated number of Respondents:* 465.

*Estimated number of responses:* 4,173.

*Estimated total annual burden on respondents:* 11,992 hours.

Copies of this information collection can be obtained from Jeanne Jacobs, Regulations and Paperwork Management Branch, at (202) 692–0010.

### Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of RBS, including whether the information will have practical utility; (b) the accuracy of RBS 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 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. Comments may be sent to Jeanne Jacobs, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Stop 0742, 1400 Independence Ave. SW., Washington, DC 20250–0742. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: November 29, 2011.

**Judith A. Canales,**

*Administrator, Rural Business-Cooperative Service.*

[FR Doc. 2011–31150 Filed 12–2–11; 8:45 am]

**BILLING CODE 3410–XY–P**

## DEPARTMENT OF COMMERCE

### Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

*Agency:* National Oceanic and Atmospheric Administration (NOAA).

*Title:* National Saltwater Angler Registry and State Exemption Program.

*OMB Control Number:* 0648–0578.

*Form Number(s):* NA.

*Type of Request:* Regular submission (revision and extension of a current information collection).

*Number of Respondents:* 9,140.

*Average Hours Per Response:* 3 minutes.

*Burden Hours:* 457.

*Needs and Uses:* This request is for a revision and extension of a current information collection.

The National Saltwater Angler Registry Program (Registry Program) was established to implement recommendations included in the review of national saltwater angling data

collection programs conducted by the National Research Council (NRC) in 2005/2006, and the provisions of the Magnuson-Stevens Reauthorization Act, codified at Section 401(g) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), which require the Secretary of Commerce to commence improvements to recreational fisheries surveys, including establishing a national saltwater angler and for-hire vessel registry, by January 1, 2009. A final rule that includes regulatory measures to implement the Registry Program (Regulation Identifier Number (RIN) 0648–AW10) was adopted and codified in 50 CFR 600.1400 to 600.1417.

The Registry Program collects identification and contact information from those anglers and for-hire vessels who are involved in recreational fishing in the United States Exclusive Economic Zone or for anadromous fish in any waters, unless the anglers or vessels are exempted from the registration requirement. The data that is collected includes: for anglers—name, address, date of birth, telephone contact information, and region(s) of the country in which they fish; for for-hire vessels—owner and operator name, address, date of birth, telephone contact information, vessel name and registration/documentation number, and home port or primary operating area. This information is compiled into a national and/or series of regional registries that is being used to support surveys of recreational anglers and for-hire vessels to develop estimates of recreational angling effort.

There is a program change with this submission: a $15 registration fee will now be charged.

*Affected Public:* Business or other for-profit organizations; individuals or households.

*Frequency:* Annually.

*Respondent's Obligation:* Mandatory.

*OMB Desk Officer:* *OIRA_Submission@omb.eop.gov.*

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6616, 14th and Constitution Avenue NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov*.

Dated: November 29, 2011.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 2011–31095 Filed 12–2–11; 8:45 am]

**BILLING CODE 3510–22–P**

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## DEPARTMENT OF COMMERCE

### Census Bureau

### Proposed Information Collection; Comment Request; Current Population Survey (CPS) Fertility Supplement

**AGENCY:** U.S. Census Bureau, Commerce.

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** To ensure consideration, written comments must be submitted on or before February 3, 2012.

**ADDRESSES:** Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Karen Woods, U.S. Census Bureau, 7H110F, Washington, DC 20233–8400 at (301) 763–3806.

**SUPPLEMENTARY INFORMATION:**

#### I. Abstract

The U.S. Census Bureau plans to request clearance for the collection of data concerning the Fertility Supplement to be conducted in conjunction with the June 2012 CPS. The Census Bureau sponsors the supplement questions, which were previously collected in June 2010, and have been asked periodically since 1971. This year, the 2012 Fertility Supplement will include revised questions on marital status and cohabitation of women at the time of their first birth.

This survey provides information used mainly by government and private analysts to project future population growth, to analyze child spacing, and to aid policymakers in their decisions affected by changes in family size and composition. Past studies have discovered noticeable changes in the patterns of fertility rates and the timing of the first birth. Potential needs for government assistance, such as aid to families with dependent children, child care, and maternal health care for single parent households, can be estimated using CPS characteristics matched with fertility data.

#### II. Method of Collection

The fertility information will be collected by both personal visit and telephone interviews in conjunction with the regular June CPS interviewing. All interviews are conducted using computer-assisted interviewing

#### III. Data

*OMB Control Number:* 0607–0610.

*Form Number:* There are no forms. We conduct all interviewing on computers.

*Type of Review:* Regular submission.

*Affected Public:* Individuals or Households.

*Estimated Number of Respondents:* 30,000.

*Estimated Time per Response:* 1 minute.

*Estimated Total Annual Burden Hours:* 500.

*Estimated Total Annual Cost:* There are no costs to the respondents other than their time to answer the CPS questions.

*Respondent's Obligation:* Voluntary.

*Legal Authority:* Title 13 U.S.C. Section 182; and Title 29, U.S.C., Sections 1–9.

#### 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 30, 2011.

**Glenna Mickelson,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 2011–31113 Filed 12–2–11; 8:45 am]

**BILLING CODE 3510–07–P**

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[Order No. 1801]**

### Approval for Subzone Expansion and Expansion of Manufacturing Authority; Foreign-Trade Subzone 124B; North American Shipbuilding, LLC (Shipbuilding); Larose, Houma, and Port Fourchon, Louisiana

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

*Whereas,* the South Louisiana Port Commission, grantee of Foreign-Trade Zone 124, has requested an expansion of the subzone and the scope of manufacturing authority on behalf of North American Shipbuilding, LLC (NAS), operator of Subzone 124B at the NAS shipbuilding facilities in Larose, Houma, and Port Fourchon, Louisiana (FTZ Docket 27–2011, filed 4–8–2011);

*Whereas,* notice inviting public comment has been given in the **Federal Register** (76 FR 21702–21703, 4–18–2011) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

*Whereas,* the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations would be satisfied, and that the proposal would be in the public interest;

*Now, therefore,* the Board hereby orders:

The application to expand the subzone and the scope of manufacturing authority under zone procedures within Subzone 124B, as described in the application and **Federal Register** notice, is approved, subject to the Act and the Board's regulations, including Section 400.28, and the following special conditions:

1. Any foreign steel mill product admitted to the subzone, including plate, angles, shapes, channels, rolled steel stock, bars, pipes and tubes, not incorporated into merchandise otherwise classified, and which is used in manufacturing, shall be subject to customs duties in accordance with applicable law, unless the Executive Secretary determines that the same item is not then being produced by a domestic steel mill.

2. NAS shall meet its obligation under 15 CFR § 400.28(a)(3) by annually advising the Board's Executive Secretary as to significant new contracts with appropriate information concerning foreign purchases otherwise dutiable, so that the Board may consider whether any foreign dutiable items are being imported for manufacturing in the subzone primarily because of FTZ procedures and whether the Board should consider requiring customs duties to be paid on such items.

Signed at Washington, DC, this 28th day of November, 2011.

**Paul Piquado**

*Assistant Secretary of Commerce for Import Administration Alternate Chairman, Foreign-Trade Zones Board.*

ATTEST:

**Andrew McGilvray,**

*Executive Secretary*

[FR Doc. 2011–31140 Filed 12–2–11; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–423–808]**

### Stainless Steel Plate in Coils From Belgium: Notice of Extension of Time Limit for Preliminary Results of Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce

**DATES:** *Effective Date:* December 5, 2011.

**FOR FURTHER INFORMATION CONTACT:** Jolanta Lawska or John Conniff at (202) 482–8362 and (202) 482–1009, respectively; AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230.

#### Background

On June 28, 2011, the Department of Commerce (the ''Department'') published in the **Federal Register** a notice of initiation of the administrative review of the antidumping duty order on stainless steel plate in coils from Belgium, covering the period May 1, 2010, through April 30, 2011. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 76 FR 37781 (June 28, 2011). The preliminary results of this review are currently due no later than January 31, 2012.

#### Extension of Time Limits for Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order or finding for which a review is requested. Section 751(a)(3)(A) of the Act further states that if it is not practicable to complete the review within the time period specified, the administering authority may extend the 245-day period to issue its preliminary results by up to 120 days.

We determine that completion of the preliminary results of this review within the 245-day period is not practicable for the following reasons. This review requires the Department to gather and analyze a significant amount of information pertaining to the company's sales practices, manufacturing costs and corporate relationships, which is complicated due to recent changes in its corporate structure. Given the number and complexity of issues in this case, and in accordance with section 751(a)(3)(A) of the Act, we are extending the time period for issuing the preliminary results of review by 120 days. Therefore, the preliminary results are now due no later than May 30, 2012. The final results continue to be due 120 days after publication of the preliminary results.

We are issuing and publishing this notice in accordance with sections 751(a)(3)(A) and 777(i)(1) of the Act.

Dated: November 29, 2011.

**Christian Marsh,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2011–31178 Filed 12–2–11; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–580–807]**

### Polyethylene Terephthalate Film, Sheet, and Strip From Korea: Notice of Rescission of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** In response to a request from interested parties, the Department of Commerce (the Department) initiated an administrative review of the antidumping duty order on polyethylene terephthalate film, sheet,

and strip from Korea on July 28, 2011.[1] This review covers one company, Kolon Industries, Inc. (Kolon) for the period of review (POR) of June 1, 2010, through May 31, 2011. On November 18, 2011, the Department published in the **Federal Register** notice of revocation of the antidumping duty order on polyethylene terephthalate film, sheet, and strip from Korea with regard to Kolon, effective June 1, 2010.[2] Based on the revocation of the order with regard to Kolon, we are now rescinding this administrative review.

**DATES:** *Effective Date:* December 5, 2011.

**FOR FURTHER INFORMATION CONTACT:** Tyler Weinhold or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; *telephone:* (202) 482–1131 or (202) 482–0649, respectively.

**SUPPLEMENTARY INFORMATION:**

## Background

The petitioners in this proceeding are DuPont Teijin Films, Mitsubishi Polyester Film, Inc., and Toray Plastics (America) Inc. (collectively Petitioners). On July 28, 2010, in response to requests by Kolon and Petitioners, the Department published in the **Federal Register** a notice of initiation of an administrative review of the antidumping duty order on polyethylene terephthalate film, sheet, and strip from Korea covering the period June 1, 2010, through May 31, 2011. *See Initiation Notice.*

On November 18, 2011, the Department published in the **Federal Register** notice of revocation of the antidumping duty order on polyethylene terephthalate film, sheet, and strip from Korea with regard to Kolon, effective June 1, 2010. *See Final Results and Revocation in Part.*

## Rescission of Review

Pursuant to the revocation of the order with regard to Kolon effective June 1, 2010, we are rescinding this administrative review.

## Assessment

Pursuant to the revocation of the order with regard to Kolon effective June 1, 2010, and in accordance with 19 CFR 351.222(f)(3), the Department will order the termination of suspension of liquidation of entries of polyethylene terephthalate film, sheet, and strip from Korea produced by Kolon, effective June 1, 2010, as indicated in *Final Results and Revocation in Part.* Entries of polyethylene terephthalate film, sheet, and strip from Korea produced by Kolon on or after June 1, 2010, will be liquidated without regard to antidumping duties.

## Notifications

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with section 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: November 29, 2011.

**Gary Taverman,**

*Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2011–31148 Filed 12–2–11; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews, Requests for Revocations in Part and Deferral of Administrative Reviews,* 76 FR 45227 (July 28, 2011) (*Initiation Notice*).

[2] *See Polyethylene Terephthalate Film, Sheet, and Strip from Korea: Final Results of Antidumping Duty Administrative Review and Revocation in Part,* 76 FR 71512, (18, November, 2011) (*Final Results and Revocation in Part*).

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# DEPARTMENT OF COMMERCE

## International Trade Administration

**[A–570–909]**

## Certain Steel Nails From the People's Republic of China: Final Rescission of Antidumping Duty New Shipper Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (''Department'') is currently conducting a new shipper review (''NSR'') of the antidumping duty order on certain steel nails (''nails'') from the People's Republic of China (''PRC''). On September 12, 2011, we published in the **Federal Register** our preliminary notice to rescind the NSR with respect to Shanghai Colour[1] on the basis that its sale to the United States did not constitute a *bona fide* transaction.[2] Because we received no comments or new information after the publication of our intent to rescind this NSR, we have made no changes to our preliminary decision. Therefore, we have determined that this NSR should be rescinded.

**DATES:** Effective Date: December 5, 2011.

**FOR FURTHER INFORMATION CONTACT:** Ricardo Martinez Rivera, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; *telephone:* (202) 482–4532.

**SUPPLEMENTARY INFORMATION:**

## Background

On August 31, 2011,[3] the Department preliminarily rescinded this NSR because we determined that Shanghai Colour's single sale to the United States was not a *bona fide* transaction. On September 19, 2011, the Department received a letter from Shanghai Colour stating that it no longer intended to continue participating in the NSR.[4]

## Scope of Order

The merchandise covered by the order includes certain steel nails having a shaft length up to 12 inches. Certain steel nails include, but are not limited to, nails made of round wire and nails that are cut. Certain steel nails may be of one piece construction or constructed of two or more pieces. Certain steel nails may be produced from any type of steel, and have a variety of finishes, heads, shanks, point types, shaft lengths and shaft diameters. Finishes include, but are not limited to, coating in vinyl, zinc (galvanized, whether by electroplating or hot dipping one or more times),

[1] Shanghai Colour Nail Co., Ltd. (aka, Shanghai Colour Nail Import & Export Co., Ltd.), and Wuxi Colour Nail Co., Ltd. (collectively ''Shanghai Colour'').

[2] *See Certain Steel Nails From the People's Republic of China: Preliminary Results and Preliminary Rescission, in Part, of the Antidumping Duty Administrative Review and Preliminary Intent To Rescind New Shipper Review,* 76 FR 56147, 56148 (September 12, 2011).

[3] On August 31, 2011, the Department released the preliminary notice to interested parties. However, the Department was not able to publish this notice in the **Federal Register** until September 12, 2011, because of issues related to the Department's transition into IA Access, an electronic record management system. *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

[4] *See* Letter to the Secretary of Commerce: Notice to Withdraw from Representation, from Shanghai Colour, dated September 19, 2011.

phosphate cement, and paint. Head styles include, but are not limited to, flat, projection, cupped, oval, brad, headless, double, countersunk, and sinker. Shank styles include, but are not limited to, smooth, barbed, screw threaded, ring shank and fluted shank styles. Screw-threaded nails subject to this proceeding are driven using direct force and not by turning the fastener using a tool that engages with the head. Point styles include, but are not limited to, diamond, blunt, needle, chisel and no point. Finished nails may be sold in bulk, or they may be collated into strips or coils using materials such as plastic, paper, or wire. Certain steel nails subject to this proceeding are currently classified under the Harmonized Tariff Schedule of the United States (''HTSUS'') subheadings 7317.00.55, 7317.00.65 and 7317.00.75.

Excluded from the scope are steel roofing nails of all lengths and diameter, whether collated or in bulk, and whether or not galvanized. Steel roofing nails are specifically enumerated and identified in ASTM Standard F 1667 (2005 revision) as Type I, Style 20 nails. Also excluded from the scope are the following steel nails: (1) Non-collated (*i.e.,* hand-driven or bulk), two-piece steel nails having plastic or steel washers (caps) already assembled to the nail, having a bright or galvanized finish, a ring, fluted or spiral shank, an actual length of 0.500'' to 8'', inclusive; and an actual shank diameter of 0.1015'' to 0.166'', inclusive; and an actual washer or cap diameter of 0.900'' to 1.10'', inclusive; (2) Non-collated (*i.e.,* hand-driven or bulk), steel nails having a bright or galvanized finish, a smooth, barbed or ringed shank, an actual length of 0.500'' to 4'', inclusive; an actual shank diameter of 0.1015'' to 0.166'', inclusive; and an actual head diameter of 0.3375'' to 0.500'', inclusive; (3) Wire collated steel nails, in coils, having a galvanized finish, a smooth, barbed or ringed shank, an actual length of 0.500'' to 1.75'', inclusive; an actual shank diameter of 0.116'' to 0.166'', inclusive; and an actual head diameter of 0.3375'' to 0.500'', inclusive; and (4) Non-collated (*i.e.,* hand-driven or bulk), steel nails having a convex head (commonly known as an umbrella head), a smooth or spiral shank, a galvanized finish, an actual length of 1.75'' to 3'', inclusive; an actual shank diameter of 0.131'' to 0.152'', inclusive; and an actual head diameter of 0.450'' to 0.813'', inclusive.[5]

Also excluded from the scope of this proceeding are corrugated nails. A corrugated nail is made of a small strip of corrugated steel with sharp points on one side. Also excluded from the scope of this proceeding are fasteners suitable for use in powder-actuated hand tools, not threaded and threaded, which are currently classified under HTSUS 7317.00.20 and 7317.00.30. Also excluded from the scope of this proceeding are thumb tacks, which are currently classified under HTSUS 7317.00.10.00.

Also excluded from the scope of this proceeding are certain brads and finish nails that are equal to or less than 0.0720 inches in shank diameter, round or rectangular in cross section, between 0.375 inches and 2.5 inches in length, and that are collated with adhesive or polyester film tape backed with a heat seal adhesive. Also excluded from the scope of this proceeding are fasteners having a case hardness greater than or equal to 50 HRC, a carbon content greater than or equal to 0.5 percent, a round head, a secondary reduced-diameter raised head section, a centered shank, and a smooth symmetrical point, suitable for use in gas-actuated hand tools. While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

## Period of Review

The period of review (''POR'') is August 1, 2009, through August 5, 2010.

## Final Rescission of Review

As discussed in the memorandum regarding the *bona fide* sales analysis, the Department has determined that Shanghai Colour's single sale to the United States does not constitute a *bona fide* sale.[6] The Department also placed on the record and considered other relevant information indicating that Shanghai Colour may not be eligible for an NSR, and provided Shanghai Colour an opportunity to respond to that information.[7] Shanghai Colour did not respond to or rebut this information. Therefore, for the reasons stated above, we are rescinding this NSR. As the Department is rescinding this NSR, we are not calculating a company-specific rate for Shanghai Colour; it will remain part of the PRC-wide entity.

## Changes Since the Preliminary Results

We have made no changes to our preliminary decision to rescind the NSR of Shanghai Colour. While the Department normally issues a separate Issues and Decision Memorandum, which accompanies a final results/rescission notice published in the **Federal Register**, we have not done so here because we received no comments since publication of our preliminary intent to rescind.

## Assessment of Antidumping Duties

Because the Department is rescinding this review, a cash deposit of 118.04 percent *ad valorem,*[8] shall be collected for any entries produced or exported by Shanghai Colour. The Department intends to issue appropriate assessment instructions directly to CBP after 15 days from the publication of the final results of the second antidumping duty review of steel nails from the PRC.

## Notification to Interested Parties

This notice serves as the final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and in the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the return/destruction or conversion to judicial protective order of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO.

This notice is published in accordance with sections 751(a)(2)(B) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.214(f)(3).

Dated: November 21, 2011.

**Paul Piquado,**

*Assistant Secretary for Import Administration.*

[FR Doc. 2011–31061 Filed 12–2–11; 8:45 am]

**BILLING CODE 3510–DS–P**

[5] As the result of a changed circumstances review, the Department partially revoked the order with respect to these four specific types of steel nails, effective August 1, 2009. *See Certain Steel Nails from the People's Republic of China: Final Results of Antidumping Duty Changed Circumstances Review,* 76 FR 30101 (May 24, 2011).

[6] *See* Memorandum to James C. Doyle, Office 9, Director, through Matthew Renkey, Office 9, Acting Program Manager, from Ricardo Martinez Rivera, International Trade Compliance Analyst, Certain Steel Nails from the People's Republic of China: Bona Fide Nature of the Sale under Review for Shanghai Colour, dated August 31, 2011.

[7] *See* Memorandum to the File, through Matthew Renkey, Office 9, Acting Program Manager, from Ricardo Martinez Rivera, International Trade Compliance Analyst, Certain Steel Nails from the People's Republic of China: Consideration of Additional Factual Information, dated August 31, 2011.

[8] *See Notice of Antidumping Order: Certain Steel Nails from the People's Republic of China,* 73 FR 44961, 44963 (August 1, 2008).

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–822, A–583–820]**

### Certain Helical Spring Lock Washers From Taiwan and the People's Republic of China: Continuation of Antidumping Duty Orders

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**DATES:** *Effective Date:* December 5, 2011.

**SUMMARY:** As a result of the determinations by the Department of Commerce (''Department'') and the International Trade Commission (''ITC'') that revocation of the antidumping duty orders on certain helical spring lock washers from Taiwan and the People's Republic of China (''PRC'') would be likely to lead to a continuation or recurrence of dumping and material injury to an industry in the United States, the Department is publishing a notice of continuation of the antidumping duty orders.

**FOR FURTHER INFORMATION CONTACT:** Joshua Morris, 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) 482–1779.

**SUPPLEMENTARY INFORMATION:** On June 1, 2011, the Department published in the **Federal Register** the notice of initiation of the third sunset reviews of the antidumping duty orders on certain helical spring lock washers from Taiwan and the PRC, pursuant to section 751(c)(2) of the Tariff Act of 1930, as amended (''the Act''). *See Initiation of Five-Year (''Sunset'') Review,* 76 FR 31588 (June 1, 2011).

As a result of its review, the Department determined that revocation of the antidumping duty orders on certain helical spring lock washers from Taiwan and the PRC would be likely to lead to a continuation or recurrence of dumping and, therefore, notified the ITC of the magnitude of the margins likely to prevail should the order be revoked. *See Certain Helical Spring Lock Washers From Taiwan and the People's Republic of China: Final Results of the Expedited Third Five-Year Sunset Reviews of the Antidumping Duty Orders,* 76 FR 61343 (October 4, 2011).

On November 3, 2011, the ITC determined, pursuant to section 751(c)(1) of the Act, that revocation of the antidumping duty orders on certain helical spring lock washers from Taiwan and the PRC would be likely to lead to a continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See Helical Spring Lock Washers from China and Taiwan,* 76 FR 72722 (November 25, 2011), and *USITC Publication* 4276, Inv. Nos. 731–TA–624–625 (Third Review) (November, 2011).

#### Scope of the Orders

The products covered by the orders are lock washers of carbon steel, of carbon alloy steel, or of stainless steel, heat-treated or non-heat-treated, plated or non-plated, with ends that are off-line. Lock washers are designed to: (1) Function as a spring to compensate for developed looseness between the component parts of a fastened assembly; (2) distribute the load over a larger area for screws or bolts; and (3) provide a hardened bearing surface. The scope does not include internal or external tooth washers, nor does it include spring lock washers made of other metals, such as copper.

Lock washers subject to the orders are currently classifiable under subheadings 7318.21.0000 and 7318.21.0030 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.[1]

#### Continuation of the Order

As a result of these determinations by the Department and the ITC that revocation of the antidumping duty orders would be likely to lead to a continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping orders on certain helical spring lock washers from Taiwan and the PRC. CBP will continue to collect antidumping duty cash deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of the continuation of these orders will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act, the Department intends to initiate the next five-year review of the orders not later than 30 days prior to the fifth anniversary of the effective date of continuation.

[1] On September 30, 1997, the Department determined that lock washers which are imported into the United States in an uncut, coil form are within the scope of the orders. *See Notice of Scope Rulings,* 62 FR 62288 (November 21, 1997).

This five-year (sunset) review and this notice are in accordance with section 751(c) of the Act and published pursuant to section 777(i)(1) of the Act.

Dated: November 28, 2011.

**Paul Piquado,**

*Assistant Secretary for Import Administration.*

[FR Doc. 2011–31147 Filed 12–2–11; 8:45 am]

**BILLING CODE 3510–DS–P**

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Proposed Information Collection; Comment Request; West Coast Groundfish Trawl Economic Data Collection

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

**DATES:** Written comments must be submitted on or before February 3, 2012.

**ADDRESSES:** Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to Erin Steiner, (206) 860–3202 or *erin.steiner@noaa.gov*.

**SUPPLEMENTARY INFORMATION:**

#### I. Abstract

This request is for a revision of a currently approved information collection.

This information collection is needed in order to meet the monitoring requirements of the Magnuson-Stevens Act (MSA). In particular, the Northwest Fisheries Science Center (NWFSC) needs economic data on all harvesters, first receivers, shorebased processors, catcher processors, and motherships participating in the West Coast groundfish trawl fishery.

The currently approved collection covers collection of data for the 2009,

2010, and 2011 operating years. Data from the 2009 and 2010 operating years provides information on the economic condition of the fishery prior to the implementation of catch share management in January 2011, and has been collected by the NWFSC. Data for the 2011 operating year, which will provide information on the first year of operation under the catch share regime, will be collected from all catcher vessels registered to a limited entry trawl endorsed permit, catcher processors registered to catcher processor permits, and motherships registered to mothership permits, first receivers, and shorebased processors that received round or head-and-gutted individual fishing quota (IFQ) groundfish or whiting from a first receiver.

Based on review of the completed economic data collection (EDC) forms submitted for the 2009 and 2010 operating years as well as discussions with survey respondents, the NWFSC seeks to modify the four forms which are used in this information collection. These modifications clarify instructions, make the requests for information more consistent with the accounting/bookkeeping systems used by survey recipients, and continue to facilitate meeting MSA requirements for evaluation of the economic effect of catch share management on the West Coast groundfish limited entry trawl fishery.

As stated in 50 CFR 660.114, the EDC forms due on September 1, 2012 will provide data for the 2011 operating year.

The definition of the survey population is different for 2011 data, to account for differences between the requirements for the baseline collection and ongoing collections as defined in the regulations. To capture vessel improvements and repairs to vessels that did not harvest any groundfish or were operated by lessees, in the 2011 data collection, as well as to collect more complete information about shoreside operations that do not process fish, completion of each form in its entirety will be required for all owners of vessels registered to a limited entry trawl endorsed permit, a mothership permit, or a catcher processor permit, owners of a first receiver site license, and owners or lessees of a shorebased processor that received round or headed-and-gutted IFQ species groundfish or whiting from a first receiver. This is in contrast to the 2009 and 2010 data collection which allowed entities that did not harvest or process any groundfish to complete only the first four pages of the forms.

Other minor modifications to the catcher vessel forms include asking for information about lease dates of the vessel, and the addition of several expense categories based on feedback from the 2009 and 2010 data collections. The first receiver and shorebased processor form was modified to better align with accounting practices and to clarify the information required for reporting fish purchases. There were no other changes to the mothership or catcher processors forms.

## II. Method of Collection

Forms may be submitted via mail or electronically.

## III. Data

*OMB Control Number:* 0648–0618.

*Form Number:* None.

*Type of Review:* Regular submission (revision of a currently approved collection).

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 247.

*Estimated Time Per Response:* 8 hours.

*Estimated Total Annual Burden Hours:* 1,976.

*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 29, 2011.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 2011–31094 Filed 12–2–11; 8:45 am]

BILLING CODE 3510–22–P

# COMMODITY FUTURES TRADING COMMISSION

## Technology Advisory Committee

**AGENCY:** Commodity Futures Trading Commission (''CFTC'').

**ACTION:** Notice of Meeting of Technology Advisory Committee.

**SUMMARY:** The Technology Advisory Committee will hold a public meeting on December 13, 2011, from 10 a.m. to 5 p.m., at the CFTC's Washington, DC headquarters.

**DATES:** The meeting will be held on December 13, 2011 from 10 a.m. to 5 p.m. Members of the public who wish to submit written statements in connection with the meeting should submit them by December 12, 2011.

**ADDRESSES:** The meeting will take place in the Conference Center at the CFTC's headquarters, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581. Written statements should be submitted to: Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581, attention: Office of the Secretary. Please use the title ''Technology Advisory Committee'' in any written statement you may submit. Any statements submitted in connection with the committee meeting will be made available to the public.

**FOR FURTHER INFORMATION CONTACT:** Laura Gardy, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581, (202) 418–5354.

**SUPPLEMENTARY INFORMATION:** Matters to be addressed at the meeting are:

Emerging issues in the new trading environment of swap execution facilities (SEFs)

Defining, classifying, and observing high frequency traders (HFTs) and their impact on the markets

Interim recommendations from the Subcommittee on Data Standardization working groups on universal product and legal entity identifiers, standardization of machine-readable legal contracts, semantics, and data storage and retrieval.

The CFTC will make several options available to access the meeting. The meeting will be webcast on the CFTC's Web site, www.cftc.gov. Members of the public also can listen to the meeting by telephone by calling a toll-free telephone line to connect to a live audio feed. Call-in participants should be prepared to provide their first name, last name and affiliation.

*Domestic Toll Free:* 1–(866) 844–9416.

*International Toll:* Under Related Documents to be posted on *http://www.cftc.gov.*

*Conference ID:* 9848131.
*Call Leader Name:* Frank Rosen.
*Pass Code/Pin Code:* 2819384.

**Authority:** 5 U.S.C. app. 2 § 10(a)(2).

By the Commodity Futures Trading Commission.

Dated: November 30, 2011.

**David A. Stawick,**

*Secretary of the Commission.*

[FR Doc. 2011–31138 Filed 12–2–11; 8:45 am]

BILLING CODE P

## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

### Defense Federal Acquisition Regulation Supplement; Open Source Software Public Meeting

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Notice of public meeting.

**SUMMARY:** DoD is hosting a public meeting to initiate a dialogue with industry regarding the use of open source software in DoD contracts.

**DATES:** *Public Meeting:* January 12, 2012, from 10 a.m. to 12 p.m. EST.

**ADDRESSES:** *Public Meeting:* The public meeting will be held in the General Services Administration (GSA), Central Office Auditorium, 1800 F Street NW., Washington DC, 20405. The GSA Auditorium is located on the main floor of the building.

*Submission of Comments:* Interested parties are encouraged to submit comments in advance of the public meeting in order to establish the agenda and framework for the discussions in the meeting. Please cite ''Public Meeting, DFARS—Open Source Software'' in all correspondence related to this public meeting. You may submit written comments using any of the following methods:

○ *Email: dfars@osd.mil.* Include ''Public Meeting, DFARS—Open Source Software'' in the subject line of the message.

○ *Fax:* (703) 602–0350.

○ *Mail:* Defense Acquisition Regulations System, Attn: Mr. Mark Gomersall, OUSD(AT&L)DPAP(DARS), Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060.

**FOR FURTHER INFORMATION CONTACT:** Mr. Mark Gomersall, telephone (703) 602–0302.

**SUPPLEMENTARY INFORMATION:** DoD is interested in obtaining input from the public with regard to the risks to the contractors and the Government associated with using open source software on DoD contracts in the following areas:

• What are the risks that open source software may include proprietary or copyrighted material incorporated into the open source software without the authorization of the actual author, thereby exposing the Government and contractors who use or deliver the open source software to potential copyright infringement liability?

• Are contractors facing performance and warranty deficiencies to the extent that the open source software does not meet contract requirements, and the open source software license leaves the contractors without recourse?

• To what extent should the DFARS be revised to specify clearly the rights the Government obtains when a contractor acquires open source software for the Government, and why?

*Registration:* Individuals wishing to attend the public meeting should register by December 30, 2011, to ensure adequate room accommodations and to create an attendee list for secure entry to the GSA building for anyone who is not a Federal Government employee with a Government badge. Interested parties may register at this Web site, *http://www.acq.osd.mil/dpap/dars/open_source_software.html*, by providing the following information:

(1) Company or organization name.

(2) Names and email addresses of persons attending.

(3) Last four digits of social security number for each attendee (non-Federal employees only).

(4) Identify presenter if desiring to speak (limited to a 10-minute presentation per company or organization).

Attendees are encouraged to arrive at least 30 minutes early to ensure they are processed through security in a timely fashion. Attendees who registered online will be given priority if room constraints require limits on attendance.

*Special Accommodations:* The public meeting location is physically accessible to persons with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Mark Gomersall, telephone (703) 602–0302, at least 10 working days prior to the meeting date.

*Presentations:* If an attendee wishes to present a short oral presentation at the meeting of ten minutes or less, please advise during registration so appropriate arrangements can be made for scheduling purposes. If the presenter intends to share a handout to accompany an oral statement, please submit the document to *dfars@osd.mil* for posting no later than December 30, 2011, so that other attendees may download the handout prior to the meeting. When submitting briefing information, provide the presenter's name, organization affiliation, telephone number, and email address on the cover page.

*Correspondence and Comments:* Please cite ''Public Meeting, DFARS—Open Source Software'' in all correspondence related to this public meeting. The submitted presentations will be the only record of the public meeting.

Government procurement.

**Ynette R. Shelkin,**

*Editor, Defense Acquisition Regulations System.*

[FR Doc. 2011–31111 Filed 12–2–11; 8:45 am]

BILLING CODE 5001–06–P

## DEPARTMENT OF ENERGY

### Plan for Conduct of 2012 Electric Transmission Congestion Study

**AGENCY:** Office of Electricity Delivery and Energy Reliability, Department of Energy (DOE).

**ACTION:** Notice of regional workshops, correction.

**SUMMARY:** On November 10, 2011, the Department of Energy (Department or DOE) published a notice of four regional workshops and request for written comments in connection with the preparation of a study of electric transmission congestion pursuant to section 216(a)(1) of the Federal Power Act (76 FR 70122). This document makes a correction to that notice.

**FOR FURTHER INFORMATION CONTACT:** David Meyer, DOE Office of Electricity Delivery and Energy Reliability, (202) 586–1411, *david.meyer@hq.doe.gov.*

*Correction*

The November 10, 2011 notice stated that the four regional workshops will be simulcast over the Internet and that advance registration for the Webcasts is required by visiting *http://www.iian.ibeam.com/events/ener001/26552/.* The workshops will *not* be simulcast. However, the Department requests—but does not require—that individuals planning to attend the workshops in person pre-register at this Web site: *http://energy.gov/oe/congestion-study-2012.*

Issued in Washington, DC on November 29, 2011.

**Patricia A. Hoffman,**

*Assistant Secretary, Office of Electricity Delivery and Energy Reliability.*

[FR Doc. 2011–31118 Filed 12–2–11; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Energy Efficiency and Renewable Energy

### State Energy Advisory Board (STEAB)

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

**ACTION:** Notice of open teleconference.

**SUMMARY:** This notice announces a teleconference call of the State Energy Advisory Board (STEAB). The Federal Advisory Committee Act (Pub. L. 92–463; 86 Stat.770) requires that public notice of these meetings be announced in the **Federal Register**.

**DATES:** Thursday, January 19, 2012. 3:30 p.m.–4 p.m. EST.

To receive the call-in number and passcode, please contact the Board's Designated Federal Officer (DFO) at the address or phone number listed below.

**FOR FURTHER INFORMATION CONTACT:** Gil Sperling, STEAB Designated Federal Officer, Senior Management Technical Advisor, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, 1000 Independence Ave., SW., Washington, DC 20585. Phone (202) 287–1644.

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Board:* To provide advice and recommendations to the Assistant Secretary for the Office of Energy Efficiency and Renewable Energy regarding goals and objectives, programmatic and administrative policies, and to otherwise carry out the Board's responsibilities as designated in the State Energy Efficiency Programs Improvement Act of 1990 (Pub. L. 101–440).

*Tentative Agenda:* Welcome new members to the Board, review and update accomplishment of STEAB's Task Forces since the November meeting in Knoxville, TN, review the revised priorities of the STEAB, and provide an update to the Board on routine business matters and other topics of interest.

*Public Participation:* The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Gil Sperling at the address or telephone number listed above. Requests to make oral comments must be received five days prior to the meeting; reasonable provision will be made to include requested topic(s) on the agenda. The Chair of the Board is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

*Minutes:* The minutes of the meeting will be available for public review and copying within 60 days on the STEAB Web site: *http://www.steab.org.*

Issued at Washington, DC, on November 28, 2011.

**LaTanya R. Butler,**

*Acting Deputy Committee Management Officer.*

[FR Doc. 2011–31120 Filed 12–2–11; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Energy Efficiency and Renewable Energy

### State Energy Advisory Board (STEAB)

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

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a live Board meeting of the State Energy Advisory Board (STEAB). The Federal Advisory Committee Act (Pub. L. 92–463; 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

**DATES:**

March 13–14, 2012 9 a.m.–5 p.m.
March 15, 2012 9 a.m.–12 p.m.

**ADDRESSES:** Key Bridge Marriott, 1401 Lee Highway, Arlington, VA 22209.

**FOR FURTHER INFORMATION CONTACT:** Gil Sperling, STEAB Designated Federal Officer, Senior Management Technical Advisor, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, 1000 Independence Ave., SW., Washington DC, 20585.

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Board:* To provide advice and recommendations to the Assistant Secretary for the Office of Energy Efficiency and Renewable Energy (EERE) regarding goals and objectives, programmatic and administrative policies, and to otherwise carry out the Board's responsibilities as designated in the State Energy Efficiency Programs Improvement Act of 1990 (Pub. L. 101–440).

*Tentative Agenda:* Receive updates and reviews of the accomplishments of STEAB's Sub-committee and Task Forces, meet with key members of DOE and the Office of EERE to discuss new initiatives and technologies, and explore possible technology transfer programs, meet with EERE Program Managers to gain a better understanding of deployment efforts and ongoing initiatives, discuss ways to make sure States are successful with implementing ARRA funding before the March 2012 deadline, and update the Board on routine business matters and other topics of interest.

*Public Participation:* The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Gil Sperling at the address or telephone number listed above. Requests to make oral comments must be received five days prior to the meeting; reasonable provision will be made to include requested topic(s) on the agenda. The Chair of the Board is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

*Minutes:* The minutes of the meeting will be available for public review and copying within 60 days on the STEAB Web site: *http://www.steab.org.*

Issued at Washington, DC, on November 29, 2011.

**LaTanya R. Butler,**

*Acting Deputy Committee Management Officer.*

[FR Doc. 2011–31122 Filed 12–2–11; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Western Area Power Administration

### Record of Decision for the Modification of the Groton Generation Station Interconnection Agreement (DOE/EIS–0435)

**AGENCY:** Western Area Power Administration, DOE.

**ACTION:** Record of Decision.

**SUMMARY:** In 2009, Western Area Power Administration (Western) received a request from Basin Electric Power Cooperative (Basin Electric) to modify its Large Generator Interconnection Agreement (LGIA) with Basin Electric for the Groton Generation Station to eliminate current operating limits on the generating station. The LGIA currently limits the output of the Groton Generating Station to 50 average megawatts (MW). The Groton Generation Station is located about 5

miles south of Groton, in Brown County, South Dakota. On September 21, 2009, a notice was issued of the LGIA modification request and of intent to prepare an Environmental Impact Statement (EIS) (74 FR 48067). On June 3, 2011, the Notice of Availability of the Final EIS for the Modification of the Groton Generation Station Interconnection Agreement was published in the **Federal Register** (76 FR 32198). Western considered the environmental impacts and has decided to modify its LGIA with Basin Electric for the Groton Generation Station eliminating the 50-MW annual average operating limit. Basin Electric could then produce additional power up to the limits established in the current Title V air quality operating permit for the generating station.

**FOR FURTHER INFORMATION CONTACT:** For further information, please contact Ms. Erika Walters, NEPA Document Manager, Groton EIS, Western Area Power Administration, A7400, P.O. Box 281213, Lakewood, CO 80228, telephone (720) 962–7279, fax (720) 962–7269, or email *Groton@wapa.gov.* For general information on DOE's NEPA review process, please contact Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance, GC–20, U.S. Department of Energy, Washington, DC 20585, telephone (202) 586–4600 or (800) 472–2756.

**SUPPLEMENTARY INFORMATION:** Western is a Federal agency under the U.S. Department of Energy (DOE) that markets and transmits wholesale electric power through an integrated 17,000-circuit mile, high-voltage transmission system across 15 western states. Western's Open Access Transmission Service Tariff (Tariff) provides open access to its transmission system. Western provides these services through granting an interconnection request if there is available capacity on the transmission system, while protecting the transmission system reliability, and subject to review under the National Environmental Policy Act (NEPA). Western and Basin Electric have entered into a LGIA per Western's Tariff. Basin Electric currently operates the generating station with a condition in the LGIA with Western that limits the output of the generating station to 50-MW on an average annual basis.

## Proposed Federal Action

Western's need for action is triggered by Basin Electric's request to eliminate the 50-MW annual average operating limit. Western's proposed Federal action would result in a modification only to the LGIA for the Groton Generation Station, and would not require any modifications to the Groton Generation Station or Western's Groton Substation, or any new permits or authorizations from local, State, or Federal agencies. The elimination of the 50-MW annual average operating limit would meet Basin Electric's purpose and need by providing greater operational flexibility in meeting its objectives, and allowing Basin Electric to produce an estimated additional 305,760 megawatt-hours (MWh) per year, up to the limits imposed by the current Title V air quality control operating permit, which is based on emission limits of 238 tons for both nitrogen oxides ($NO_X$) and carbon monoxide (CO) per year. No other changes to Western's LGIA or the interconnection configuration with the Groton Generation Station would be required. Western's proposed Federal action is its preferred alternative.

## No Action Alternative

Under the No Action Alternative, Western would not approve modification to the LGIA to eliminate the operating limit. The Groton Generation Station would continue to operate with the 50-MW annual average operating limit. Western has determined that the No Action Alternative is the environmentally preferred alternative. However, the No Action Alternative would not meet Basin Electric's purpose and need.

## Alternatives Considered

In addition to the proposed Federal action and the no action alternative as described above, Western considered and dismissed several other alternatives including generation output above levels currently authorized by the Title V air permit, greenhouse gas capture and sequestration, and demand-side management. Western does not, however have authority to participate in or regulate generation projects. In addition, it is speculative that Basin Electric would apply for a revised Title V permit or implement greenhouse gas emission reductions. Also, while Western did not fully evaluate an alternative addressing demand-side management due to lack of regulatory authority over Basin Electric, Western did provide information on Basin Electric's demand-side management program.

## Mitigation Measures

Western's proposed action would result in a modification only to the LGIA for the Groton Generation Station. The elimination of the 50-MW annual average operating limit would not require any modifications to the Groton Generation Station or Western's Groton Substation, or any new permits or authorizations from local, State, or Federal agencies. Because eliminating Western's operating limit would not result in any significant environmental impacts, no mitigation measures have been adopted.

## Comments on the Final EIS

Western received comments from the U.S. Environmental Protection Agency (EPA) in a letter dated July 5, 2011. EPA's comment letter recommended additional disclosure and clarification of the impacts of the proposed actions, as well as the purpose of and need for the action. Based on a review of EPA's comments, and a subsequent meeting with EPA staff on August 25, 2011, Western has determined that the comments do not present any significant new circumstances or information relevant to environmental concerns and bearing on its proposed action or its impacts. Therefore, a Supplemental EIS is not required. The basis for this determination is summarized below.

EPA indicated that Western did not address its comment on the Draft EIS regarding the need to do additional analysis for the 1-hour $NO_2$ standard. Western did not request Basin Electric to conduct additional analysis for the 1-hour $NO_2$ standard because the Groton Generating Station's air quality permit would not be affected by Western's proposed action. In addition, Western recognizes any future station upgrade or modification would require a permit review, including analysis for the $NO_2$ standard, to be taken into account before a new or amended permit is issued. As explained in the Final EIS, it is speculative for Western to determine if Basin Electric would apply for a new permit.

EPA's comment letter indicated that EPA did not agree with Western's determinations for eliminating alternatives from full evaluation in the Final EIS, and encouraged Western to consider other mechanisms for emission reductions and increased energy efficiency. In the meeting with EPA staff on August 25, 2011, Western provided additional information on its roles and responsibilities under Western's Tariff, including clarifications why Western was not involved in the operation of the Groton Generation Station. Based on the Final EIS and this discussion with EPA, Western determined that there was no additional need to address alternatives outside of Western's authority.

EPA's comment letter recommended additional clarification on Western's need for agency action and Basin Electric's need for peaking generation.

Western's need for agency action in response to Basin Electric's request to eliminate the average 50-MW operating limit is distinct from Basin Electric's need to provide additional peaking energy. Language added in the Final EIS in Section 1.2 noting that the station does not gain any additional peaking generation capability is correct. While there is a need for additional peaking resource to serve projected additional member load growth, the capability of the Groton Generation Station would remain at 200 MW with Western's proposed action.

EPA's comment letter encouraged the disclosure and consideration of potential indirect effects from increased or decreased natural gas production for the Groton Generation Station. While Western acknowledges the potential for indirect effects from continued natural gas production and use, Western explained in the Final EIS that natural gas production would not be increased to serve additional output of the Groton Generation Station because the capacity of the natural gas production system meets the needs of the Groton Generation Station at full output. In addition, any gas not currently used by the station under the 50-MW average limit is provided to the market.

Lastly, EPA recommended disclosure of the temperature impairments at Lake Sharpe, along with acknowledgement that additional withdrawals, although small, may cumulatively contribute to this impairment unless demonstrated otherwise. In the Final EIS, Western indicated that the additional 15-acre-feet consumed by the Groton Generation Station under Western's proposed Federal action would be minuscule compared to the water level of Lake Oahe, corresponding to a lack of subsequent temperature effect of Lake Sharpe. However, Western does acknowledge EPA's comment.

**Decision**

Western's decision is to modify its LGIA with Basin Electric to eliminate the 50-MW annual average operating limit,[1] allowing operation up to the limits imposed by the current Title V air quality control operating permit. Western's decision to modify its LGIA with Basin Electric is based on providing open access under its Tariff and satisfying Basin Electric's objectives while recognizing there will be minimal harm to the environment.

This decision is based on the information contained in the Modification of the Groton Generation Station Interconnection Agreement Final EIS (DOE/EIS–0435). This Record of Decision was prepared pursuant to the requirements of the Council on Environmental Quality Regulations for Implementing NEPA (40 CFR parts 1500–1508) and DOE's Procedures for Implementing NEPA (10 CFR part 1021).

Dated: November 18, 2011.

**Timothy J. Meeks,**

*Administrator.*

[FR Doc. 2011–31124 Filed 12–2–11; 8:45 am]

BILLING CODE 6450–01–P

[1] Western's authority to issue a record of decision is pursuant to authority delegated on October 4, 1999, from the Assistant Secretary for Environment, Safety and Health to Western's Administrator.

## FARM CREDIT ADMINISTRATION

### Farm Credit Administration Board; Sunshine Act; Regular Meeting

**AGENCY:** Farm Credit Administration.

**SUMMARY:** Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the regular meeting of the Farm Credit Administration Board (Board).

**DATE AND TIME:** The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on December 8, 2011, from 9 a.m. until such time as the Board concludes its business.

**FOR FURTHER INFORMATION CONTACT:** Dale L. Aultman, Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

**ADDRESSES:** Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

**SUPPLEMENTARY INFORMATION:** Parts of this meeting of the Board will be open to the public (limited space available), and parts will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

**Open Session**

*A. Approval of Minutes*

- November 9, 2011.

*B. New Business*

- Senior Officer Compensation Disclosures and Related Topics—Proposed Rule.

*C. Reports*

- Semi-Annual Report on Office of Examination Operations.
- Quarterly Report on Farm Credit System Condition.

**Closed Session** *

- Office of Examination Supervisory and Oversight Activities.

Dated: November 30, 2011.

**Dale L. Aultman,**

*Secretary, Farm Credit Administration Board.*

[FR Doc. 2011–31319 Filed 12–1–11; 4:15 pm]

BILLING CODE 6705–01–P

* Session Closed—Exempt pursuant to 5 U.S.C. 552b(c)(8) and (9).

## FEDERAL COMMUNICATIONS COMMISSION

### Information Collection Being Submitted to the Office of Management and Budget for Review and Approval

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501—3520), the Federal Communications Commission invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s). Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid OMB control number.

**DATES:** Written Paperwork Reduction Act (PRA) comments should be submitted on or January 4, 2012. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the

FCC contact listed below as soon as possible.

**ADDRESSES:** Submit your PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at (202) 395–5167 or via Internet at *Nicholas_A._Fraser@omb.eop.gov* and to Benish Shah, Federal Communications Commission, via the Internet at *Benish.Shah@fcc.gov*. To submit your PRA comments by email send them to: *PRA@fcc.gov*.

**FOR FURTHER INFORMATION CONTACT:** Benish Shah, Office of Managing Director, (202) 418–7866.

*OMB Approval Number:* 3060–0329.

*Title:* Section 2.955, Equipment Authorization-Verification (Retention of Records).

*Form No.:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit and not-for-profit institutions.

*Number of Respondents:* 5,655 respondents; 5,655 responses.

*Estimated Time Per Response:* 18 hours (average).

*Frequency of Response:* One time and on occasion reporting requirements, recordkeeping requirement; and Third party disclosure requirements.

*Obligation to Respond:* Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. Sections 4(i), 302, 303(g), and 303(r) of the Communications Act of 1934, as amended; 47 U.S.C. sections 154(i), 302 and 303(r).

*Total Annual Burden:* 101,790 hours.

*Total Annual Cost:* $1,131,000.

*Privacy Impact Assessment:* N/A.

*Nature and Extent of Confidentiality:* Commission rules require equipment testing to determine performance and compliance with FCC standards. This testing is typically done by independent testing laboratories whose measurement facility has been reviewed by the Commission, or by an accrediting organization recognized by the Commission.

*Needs and Uses:* This collection will be submitted as an extension (no change in reporting requirements), after this 60 day comment period to the Office of Management and Budget (OMB) in order to obtain the full three year clearance.

Section 2.955 describes for each equipment device subject to verification, the responsible party, as shown in 47 CFR 2.909 shall maintain the records listed as follows:

(1) A record of the original design drawings and specifications and all changes that have been made that may affect compliance with the requirements of § 2.953.

(2) A record of the procedures used for production inspection and testing (if tests were performed) to insure the conformance required by § 2.953. (Statistical production line emission testing is not required.)

(3) A record of the measurements made on an appropriate test site that demonstrates compliance with the applicable regulations in this chapter. The record shall:

(i) Indicate the actual date all testing was performed;

(ii) State the name of the test laboratory, company, or individual performing the verification testing. The Commission may request additional information regarding the test site, the test equipment or the qualifications of the company or individual performing the verification tests;

(iii) Contain a description of how the device was actually tested, identifying the measurement procedure and test equipment that was used;

(iv) Contain a description of the equipment under test (EUT) and support equipment connected to, or installed within, the EUT;

(v) Identify the EUT and support equipment by trade name and model number and, if appropriate, by FCC Identifier and serial number;

(vi) Indicate the types and lengths of connecting cables used and how they were arranged or moved during testing;

(vii) Contain at least two drawings or photographs showing the test set-up for the highest line conducted emission and showing the test set-up for the highest radiated emission. These drawings or photographs must show enough detail to confirm other information contained in the test report. Any photographs used must be focused originals without glare or dark spots and must clearly show the test configuration used;

(viii) List all modifications, if any, made to the EUT by the testing company or individual to achieve compliance with the regulations in this chapter;

(ix) Include all of the data required to show compliance with the appropriate regulations in this chapter; and

(x) Contain, on the test report, the signature of the individual responsible for testing the product along with the name and signature of an official of the responsible party, as designated in § 2.909.

(4) For equipment subject to the provisions in part 15 of this chapter, the records shall indicate if the equipment was verified pursuant to the transition provisions contained in § 15.37 of this chapter.

(b) The records listed in paragraph (a) of this section shall be retained for two years after the manufacture of said equipment item has been permanently discontinued, or until the conclusion of an investigation or a proceeding if the manufacturer or importer is officially notified that an investigation or any other administrative proceeding involving his equipment has been instituted.

The Commission needs and requires the information under FCC Rules at 47 CFR parts 15 and 18, that RF equipment manufacturers (respondents) ''self determine'' their responsibility for adherence to these rules, as guided by the following criteria:

(a) Whether the RF equipment device that is being marketed complies with the applicable Commission Rules; and

(b) If the operation of the equipment is consistent with the initially documented test results, as reported to the Commission.

The information collection is essential to controlling potential interference to radio communications.

(a) Companies that manufacture RF equipment are the anticipated respondents to this information collection.

(b) This respondent ''public'' generally remains the same, although the types of equipment devices that they manufacture may change in response to changing technologies and to new spectrum allocations made by the Commission.

(c) In addition, the Commission may establish new technical operating standards in response to these changing technologies and in allocation spectrum, which these RF equipment manufacturers must meet to receive their equipment authorization from the FCC.

(d) However, the process that RF equipment manufacturers must follow to verify their compliance, as mandated by 47 CFR Section 2.955 of FCC Rules, will not change despite new technical standards established for specific equipment.

This information collection, therefore, applies to a variety of equipment, which is currently manufactured in the future, and that operates under varying technical standards.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary, Office of the Secretary, Office of Managing Director.*

[FR Doc. 2011–31143 Filed 12–2–11; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### Information Collections Being Submitted for Review and Approval to the Office of Management and Budget

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Federal Communications Commission (FCC), as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act (PRA) of 1995. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

**DATES:** Written comments should be submitted on or before January 4, 2012. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Nicholas A. Fraser, OMB, via fax (202) 395–5167, or via email *Nicholas_A._Fraser@omb.eop.gov;* and to Cathy Williams, FCC, via *email PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** section below.

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060–0161.

*Title:* Section 73.61, AM Directional Antenna Field Strength Measurements.

*Form Number:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business and other for-profit entities.

*Number of Respondents and Responses:* 2,268 respondents and 2,268 responses.

*Estimated Time per Response:* 4–50 hours.

*Frequency of Response:* Recordkeeping requirement.

*Total Annual Burden:* 36,020 hours.

*Total Annual Cost:* None.

*Obligation to Respond:* Required to obtain or retain benefits. The statutory authority for this collection of information is contained in Sections 154(i) and 303 of the Communications Act of 1934, as amended.

*Nature and Extent of Confidentiality:* There is no need for confidentiality with this collection of information.

*Privacy Impact Assessment:* No impact(s).

*Needs and Uses:* 47 CFR 73.61 requires that each AM station using directional antennas to make field strength measurement as often as necessary to ensure proper directional antenna system operation. Stations not having approved sampling systems make field strength measurements every three months. Stations with approved sampling systems must take field strength measurements as often as necessary. Also, all AM station using directional signals must take partial proofs of performance as often as necessary. The FCC staff used the data in field inspections/investigations. AM licensees with directional antennas use the data to ensure that adequate interference protection is maintained between stations and to ensure proper operation of antennas.

*OMB Control Number:* 3060–0991.

*Title:* AM Measurement Data.

*Form Number:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit entities.

*Number of Respondents and Responses:* 1,900 respondents; 4,568 responses.

*Estimated Hours per Response:* 0.50–25 hours.

*Frequency of Response:* Recordkeeping requirement, Third party disclosure requirement, On occasion reporting requirement.

*Total Annual Burden:* 30,795 hours.

*Total Annual Cost:* $1,371,500.

*Obligation to Respond:* Required to obtain or retain benefits. The statutory authority for this collection of information is contained in Section 154(i) of the Communications Act of 1934, as amended.

*Nature and Extent of Confidentiality:* There is no need for confidentiality required with this collection of information.

*Privacy Impact Assessment:* No impact(s).

*Needs and Uses:* Directional AM stations use antennas which suppress radiated field in some directions and enhance it in others. Under our current rules, an AM licensee operating with a directional antenna must perform a proof of performance to demonstrate that the antenna pattern conforms to the station's authorization. An AM station must perform a full proof to verify the pattern shape when a new directional antenna system is authorized. Partial proofs, which require fewer measurements, are occasionally necessary to show that an array continues to operate properly. Typically, a full proof requires measurement of the AM station's field strength on six to twelve critical bearings, ranging to distances of 15 kilometers or more from the antenna. Subsequent graphical analysis of proof measurements also requires substantial time and expense. In contrast, the computer modeling techniques authorized in the Second Report and Order are based on internal measurements, making the proof

process less time-consuming and expensive for AM licensees.

In order to control interference between stations and assure adequate community coverage, AM stations must conduct various engineering measurements to demonstrate that the antenna system operates as authorized. The following rule sections are included with this information collection.

*OMB Control Number:* 3060–0703.

*Title:* Determining Costs of Regulated Cable Equipment and Installation, FCC Form 1205.

*Form Number:* FCC Form 1205.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Businesses or other for-profit.

*Number of Respondents and Responses:* 4,000 respondents; 6,000 responses.

*Estimated Time per Response:* 4–12 hours.

*Frequency of Response:* Recordkeeping requirement, Annual reporting requirement, Third party disclosure requirement.

*Obligation to Respond:* Required to obtain or retain benefits. The statutory authority for this collection of information is contained in Section 301(j) of the Telecommunications Act of 1996 and 623(a)(7) of the *60031 Communications Act of 1934, as amended.

*Total Annual Burden:* 52,000 hours.

*Total Annual Cost:* $1,800,000.

*Privacy Act Impact Assessment:* No impact(s).

*Nature and Extent of Confidentiality:* There is no need for confidentiality with this collection of information.

*Needs and Uses:* Information derived from FCC Form 1205 filings is used to facilitate the review of equipment and installation rates. This information is then reviewed by each cable system's respective local franchising authority. Section 76.923 records are kept by cable operators in order to demonstrate that charges for the sale and lease of equipment for installation have been developed in accordance with the Commission's rules.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary, Office of the Secretary, Office of Managing Director.*

[FR Doc. 2011–31144 Filed 12–2–11; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Sunshine Act Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10 a.m. on Wednesday, December 7, 2011, to consider the following matters:

*Summary Agenda:* No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous Board of Directors' Meetings.

Memorandum and resolution re: Notice of Proposed Rulemaking on Treatment of a Mutual Insurance Holding Company as an Insurance Company for the Purpose of Section 203(e) of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

Memorandum and resolution re: Designated Reserve Ratio for 2012.

Memorandum and resolution re: Authorization to Publish Privacy Act System of Records Notices in the **Federal Register**.

Resolution for Retiring Executive.

Summary reports, status reports, reports of the Office of Inspector General, and reports of actions taken pursuant to authority delegated by the Board of Directors.

*Discussion Agenda:*

Memorandum and resolution re: Notice of Proposed Rulemaking on Risk-Based Capital Guidelines: Market Risk; Alternatives to Credit Ratings for Debt and Securitization Positions.

Memorandum and resolution re: Notice of Proposed Rulemaking on Permissible Investments for Federal and State Savings Associations: Corporate Debt Securities and Proposed Guidance on Due Diligence Requirements for Savings Associations in Determining whether a Corporate Debt Security is Eligible for Investment under Part 362.

Memorandum and resolution re: Proposed 2012 Corporate Operating Budget.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street NW., Washington, DC.

This Board meeting will be Webcast live via the Internet and subsequently made available on-demand approximately one week after the event. Visit *http://www.vodium.com/goto/fdic/boardmeetings.asp* to view the event. If you need any technical assistance, please visit our Video Help page at: *http://www.fdic.gov/video.html.*

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) 562–2404 (Voice) or (703) 649–4354 (Video Phone) to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–7043.

Dated: November 30, 2011.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

[FR Doc. 2011–31251 Filed 12–1–11; 4:15 pm]

BILLING CODE P

## FEDERAL MARITIME COMMISSION

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** Federal Maritime Commission.

**TIME AND DATE:** December 8, 2011—10 a.m.

**PLACE:** 800 North Capitol Street NW., First Floor Hearing Room, Washington, DC

**STATUS:** A part of the meeting will be in Open Session and the remainder of the meeting will be in Closed Session.

**MATTERS TO BE CONSIDERED:**

**Open Session**

1. Docket No. 11–09: Notice of Inquiry, Solicitation of Views on Proposal of the Ministry of Transport of the People's Republic of China for Adjustment of the Amount for the FMC Optional Bond Rider.

2. Docket No. 05–06: Notice of Inquiry, Non-Vessel-Operating Common Carrier Service Arrangements.

**Closed Session**

1. FMC Agreement No. 011962–007: Discussion of Proposed Amendment to Consolidated Chassis Management Pool Agreement.

2. Study of the European Union's 2008 Repeal of the Liner Shipping Conference Exemption from Competition Laws–Discussion of Bureau of Trade Analysis Draft.

**CONTACT PERSON FOR MORE INFORMATION:** Karen V. Gregory, Secretary, (202) 523–5725.

**Karen V. Gregory,**

*Secretary.*

[FR Doc. 2011–31228 Filed 12–1–11; 11:15 am]

**BILLING CODE 6730–01–P**

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisitions of Shares of a Savings and Loan Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and the Board's Regulation LL (12 CFR Part 238) to acquire shares of a savings and loan holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 19, 2011.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Schneidermann Family (George K. Schneidermann, Doris K. Schneidermann, Scott A. Schneidermann, Craig A. Schneidermann and Amy L. Schulte),* all of Rock Rapids, Iowa, as a group acting in concert and George K. Schneidermann, individually; to acquire additional voting shares of Rock Rivers Bancorp, and thereby indirectly acquire additional voting shares of Frontier Bank, both in Rock Rapids, Iowa.

Dated: Board of Governors of the Federal Reserve System, November 29, 2011.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 2011–31052 Filed 12–2–11; 8:45 am]

**BILLING CODE 6210–01–P**

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 19, 2011.

*A. Federal Reserve Bank of Kansas City* (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

*1. Gerald L. Lentfer, Firth, Nebraska; Steven J. Miller, Lincoln, Nebraska; and Thomas F. Oerter, Hickman, Nebraska, all as members of the Wilber Co. Voting Trust; and Steven J. Buchanan, Omaha, Nebraska, individually and as co-trustee of the Wilber Co. Voting Trust,* to acquire control of Wilber Co., and thereby indirectly acquire control of First State Bank, both in Lincoln, Nebraska.

Board of Governors of the Federal Reserve System, November 29, 2011.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 2011–31053 Filed 12–2–11; 8:45 am]

**BILLING CODE 6210–01–P**

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 29, 2011.

*A. Federal Reserve Bank of Kansas City* (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

*1. Elkhart Financial Corporation,* Elkhart, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of Elkhart, Elkhart, Kansas.

Board of Governors of the Federal Reserve System, November 29, 2011.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 2011–31051 Filed 12–1–11; 8:45 am]

**BILLING CODE 6210–01–P**

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 30, 2011.

**A. Federal Reserve Bank of Chicago** (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *ISB Bancorp, Inc., Tonica, Illinois,* to become a bank holding company by acquiring Tonica Bancorp, Inc., Tonica, Illinois, and thereby to acquire control of Illini State Bank, Oglesby, Illinois.

Board of Governors of the Federal Reserve System.

Dated: November 30, 2011.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 2011–31126 Filed 12–2–11; 8:45 am]

BILLING CODE 6210–01–P

## FEDERAL TRADE COMMISSION

### Agency Information Collection Activities; Request for OMB Review; Comment Request

**AGENCY:** Federal Trade Commission.

**ACTION:** Notice and request for comment; correction.

**SUMMARY:** The Federal Trade Commission published a notice and request for comment on November 29, 2011, concerning information requests to beverage alcohol advertisers, as required by the Paperwork Reduction Act. This document makes a technical correction to a hyperlink contained in that document.

**DATES:** *Effective Date:* December 5, 2011.

**FOR FURTHER INFORMATION CONTACT:** Janet M. Evans, Attorney, (202) 326–2125, or Carolyn L. Hann, Attorney, (202) 326–2745, Division of Advertising Practices, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580.

**SUPPLEMENTARY INFORMATION:** In FR Doc. 2011–30434, appearing on page 73640 in the **Federal Register** of Tuesday, November 29, 2011, the following correction is made: **SUPPLEMENTARY INFORMATION:**

### B. Information Requests to the Beverage Alcohol Industry [Corrected]

On page 73643, in the first column, ''http://www.ftc.gov/fedreg2011/11/111121alcoholstudypra2supp.pdf'' is corrected to read ''*http://www.ftc.gov/os/fedreg/2011/11/111121alcoholstudypra2supp.pdf.*''

**Richard C. Donohue,**

*Acting Secretary.*

[FR Doc. 2011–31082 Filed 12–2–11; 8:45 am]

BILLING CODE 6750–01–P

## FEDERAL TRADE COMMISSION

**[File No. 092 3184]**

### Facebook, Inc.; Analysis of Proposed Consent Order To Aid Public Comment

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed consent agreement.

**SUMMARY:** The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

**DATES:** Comments must be received on or before December 30, 2011.

**ADDRESSES:** Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Facebook, File No. 092 3184'' on your comment, and file your comment online at *https://ftcpublic.commentworks.com/ftc/facebookconsent*, by following the instructions on the Web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex D), 600 Pennsylvania Avenue NW., Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** Laura Berger (202) 326–8364), FTC, Bureau of Consumer Protection, 600 Pennsylvania Avenue NW., Washington, DC 20580.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for November 29, 2011), on the World Wide Web, at *http://www.ftc.gov/os/actions.shtm.* A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before December 30, 2011. Write ''Facebook, File No. 092 3184'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential,'' as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[1] Your comment will be kept

[1] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request,

Continued

confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/facebookconsent* by following the instructions on the Web-based form. If this Notice appears at *http://www.regulations.gov/#!home*, you also may file a comment through that Web site.

If you file your comment on paper, write ''Facebook, File No. 092 3184'' on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex D), 600 Pennsylvania Avenue NW., Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before December 22, 2011. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm*.

**Analysis of Agreement Containing Consent Order To Aid Public Comment**

The Federal Trade Commission has accepted, subject to final approval, a consent agreement from Facebook, Inc. (''Facebook'').

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement's proposed order.

Since at least 2004, Facebook has operated *http://www.facebook.com*, a social networking Web site that enables a consumer who uses the site (''user'') to create an online profile and communicate with other users. Among other things, a user's online profile can include information such as the user's name, a ''profile picture,'' interest groups they join, a ''Friend List'' of other users who are the user's ''Friends'' on the site, photo albums and videos they upload, and messages and comments posted by them or by other users. Users can also use third-party applications through the site (''Apps'') to, for example, play games, take quizzes, track their physical fitness routines for comparison to their friends' routines, or receive discount offers or calendar reminders. As of August 2011, Facebook had more than 750 million users.

The Commission's complaint alleges eight violations of Section 5(a) of the FTC Act, which prohibits deceptive and unfair acts or practices in or affecting commerce, by Facebook:

- *Facebook's Deceptive Privacy Settings:* Facebook communicated to users that they could restrict certain information they provided on the site to a limited audience, such as ''Friends Only.'' In fact, selecting these categories did not prevent users' information from being shared with Apps that their Friends used.
- *Facebook's Deceptive and Unfair December 2009 Privacy Changes:* In December 2009, Facebook changed its site so that certain information that users may have designated as private—such as a user's Friend List —was made public, without adequate disclosure to users. This conduct was also unfair to users.
- *Facebook's Deception Regarding App Access:* Facebook represented to users that whenever they authorized an App, the App would only access the information of the user that it needed to operate. In fact, the App could access nearly all of the user's information, even if unrelated to the App's operations. For example, an App that provided horoscopes for users could access the user's photos or employment information, even though there is no need for a horoscope App to access such information.
- *Facebook's Deception Regarding Sharing with Advertisers:* Facebook promised users that it would not share their personal information with advertisers; in fact, Facebook did share this information with advertisers when a user clicked on a Facebook ad.
- *Facebook's Deception Regarding Its Verified Apps Program:* Facebook had a ''Verified Apps'' program through which it represented that it had certified the security of certain Apps when, in fact, it had not.
- *Facebook's Deception Regarding Photo and Video Deletion:* Facebook stated to users that, when they deactivate or delete their accounts, their photos and videos would be inaccessible. In fact, Facebook continued to allow access to this content even after a user deactivated or deleted his or her account.
- *Safe Harbor:* Facebook deceptively stated that it complied with the U.S.-EU Safe Harbor Framework, a mechanism by which U.S. companies may transfer data from the European Union to the United States consistent with European law.

The proposed order contains provisions designed to prevent Facebook from engaging in practices in the future that are the same or similar to those alleged in the complaint.

Part I of the proposed order prohibits Facebook from misrepresenting the privacy or security of ''covered information,'' as well as the company's compliance with any privacy, security, or other compliance program, including but not limited to the U.S.-EU Safe Harbor Framework. ''Covered information'' is defined broadly as ''information from or about an individual consumer, including but not limited to: (a) A first or last name; (b) a home or other physical address, including street name and name of city or town; (c) an email address or other online contact information, such as an instant messaging user identifier or a screen name; (d) a mobile or other telephone number; (e) photos and videos; (f) Internet Protocol (''IP'') address, User ID, or other persistent identifier; (g) physical location; or (h) any information combined with any of (a) through (g) above.''

Part II of the proposed order requires Facebook to give its users a clear and prominent notice and obtain their affirmative express consent before sharing their previously-collected information with third parties in any way that materially exceeds the restrictions imposed by their privacy settings. A ''material . . . practice is one which is likely to affect a consumer's choice of or conduct regarding a product.'' FTC Policy Statement on Deception, Appended to *Cliffdale Associates, Inc.,* 103 F.T.C. 110, 174 (1984).

Part III of the proposed order requires Facebook to implement procedures reasonably designed to ensure that a user's covered information cannot be accessed from Facebook's servers after a reasonable period of time, not to exceed

and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

thirty (30) days, following a user's deletion of his or her account.

Part IV of the proposed order requires Facebook to establish and maintain a comprehensive privacy program that is reasonably designed to: (1) Address privacy risks related to the development and management of new and existing products and services, and (2) protect the privacy and confidentiality of covered information. The privacy program must be documented in writing and must contain controls and procedures appropriate to Facebook's size and complexity, the nature and scope of its activities, and the sensitivity of covered information. Specifically, the order requires Facebook to:

- Designate an employee or employees to coordinate and be responsible for the privacy program;
- Identify reasonably-foreseeable, material risks, both internal and external, that could result in the unauthorized collection, use, or disclosure of covered information and assess the sufficiency of any safeguards in place to control these risks;
- Design and implement reasonable controls and procedures to address the risks identified through the privacy risk assessment and regularly test or monitor the effectiveness of these controls and procedures;
- Develop and use reasonable steps to select and retain service providers capable of appropriately protecting the privacy of covered information they receive from respondent, and require service providers by contract to implement and maintain appropriate privacy protections; and
- Evaluate and adjust its privacy program in light of the results of the testing and monitoring, any material changes to its operations or business arrangements, or any other circumstances that it knows or has reason to know may have a material impact on the effectiveness of its privacy program.

Part V of the proposed order requires that Facebook obtain within 180 days, and every other year thereafter for twenty (20) years, an assessment and report from a qualified, objective, independent third-party professional, certifying, among other things, that it has in place a privacy program that provides protections that meet or exceed the protections required by Part IV of the proposed order; and its privacy controls are operating with sufficient effectiveness to provide reasonable assurance that the privacy of covered information is protected.

Parts VI through X of the proposed order are reporting and compliance provisions. Part VI requires that Facebook retain all ''widely disseminated statements'' that describe the extent to which respondent maintains and protects the privacy, security, and confidentiality of any covered information, along with all materials relied upon in making such statements, for a period of three (3) years. Part VI further requires Facebook to retain, for a period of six (6) months from the date received, all consumer complaints directed at Facebook, or forwarded to Facebook by a third party, that relate to the conduct prohibited by the proposed order, and any responses to such complaints. Part VI also requires Facebook to retain for a period of five (5) years from the date received, documents, prepared by or on behalf of Facebook, that contradict, qualify, or call into question its compliance with the proposed order. Part VI additionally requires Facebook to retain for a period of three (3) years, each materially different document relating to its attempt to obtain the affirmative express consent of users referred to in Part II, along with documents and information sufficient to show each user's consent and documents sufficient to demonstrate, on an aggregate basis, the number of users for whom each such privacy setting was in effect at any time Facebook has attempted to obtain such consent. Finally, Part VI requires that Facebook retain all materials relied upon to prepare the third-party assessments for a period of three (3) years after the date that each assessment is prepared.

Part VII requires dissemination of the order now and in the future to principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having supervisory responsibilities relating to the subject matter of the order. Part VIII ensures notification to the FTC of changes in corporate status. Part IX mandates that Facebook submit an initial compliance report to the FTC and make available to the FTC subsequent reports. Part X is a provision ''sunsetting'' the order after twenty (20) years, with certain exceptions.

The purpose of the analysis is to aid public comment on the proposed order. It is not intended to constitute an official interpretation of the complaint or proposed order, or to modify the proposed order's terms in any way.

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 2011–31158 Filed 12–2–11; 8:45 am]

BILLING CODE 6750–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[30Day–12–11DU]**

### Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995. To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an email to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

**Proposed Project**

The National Survey of Prison Health Care (NSPHC)—New—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

Section 306 of the Public Health Service (PHS) Act (42 U.S.C. 242k), as amended, authorizes that the Secretary of Health and Human Services (DHHS), acting through NCHS, shall collect statistics on the extent and nature of illness and disability of the population of the United States. This one-year clearance request includes data collection from identified respondents at the Department of Corrections within each state in the United States and the Federal Bureau of Prisons.

Few national level data exist concerning the administration of health care services in correctional facilities in the United States. National-level data from the health care providers within prison systems are important for a myriad of purposes related to improving prison health and health care. To remedy this gap in knowledge regarding the capacity of prison facilities to deliver medical and mental health services, NCHS in partnership with the Bureau of Justice Statistics (BJS) plans to conduct the National Survey of Prison Health Care (NSPHC). This collection aims to: provide an overall picture of the global structure of healthcare services in prisons in the United States; close gaps in available information about availability, location and capacity of healthcare services provided to inmates; and identify extent

to which electronic medical records are utilized within the correctional healthcare system.

NSPHC will be a mail survey to a prison official in the Department of Corrections (DOC) within each of the 50 States and Federal Bureau of Prisons (BOP) and will seek facility-level information on the types of healthcare services delivered and the mechanisms used to deliver these services.

NSPHC will collect data on healthcare services including the extent to which services are contracted; staffing; locations (*i.e.,* on- or off-site) of healthcare services and specialty healthcare services; and the types of of medical, dental, mental health, and pharmaceutical services provided to inmates. NSPHC will collect data on intake physical and mental health assessments practices for inmates; credentials of staff performing screenings; vaccinations against major infectious diseases; and smoking allowances. Discharge planning data collected includes the availability of bridge medications, Medicaid re-enrollment processes, and the number of inmates with mental illness linked to housing prior to release. NSPHC will also collect data on how DOCs maintain health records including the format (paper and/or electronic) of specific types of health records.

Potential users of the data collected through NSPHC are policy makers, correctional healthcare researchers, mental health researchers, and corrections administrators. There is no cost to respondents other than their time to participate. The total estimated annual burden is 204 hours.

ESTIMATED ANNUALIZED BURDEN HOURS

| Respondents | Form | Number of respondents | Number of responses per respondent | Avg. burden per response (in hours) |
|---|---|---|---|---|
| Prison official in DOC or BOP (Medical/Health Researcher) | NSPHC Questionnaire ..... | 51 | 1 | 4 |

Dated: November 28, 2011.

**Daniel Holcomb,**

*Reports Clearance Officer, Centers for Disease Control and Prevention.*

[FR Doc. 2011–31108 Filed 12–2–11; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2011–N–0826]**

### Determination That DEMULEN 1/50–28 (Ethinyl Estradiol; Ethynodiol Diacetate) Tablet and Four Other Drug Products Were 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 the five drug products listed in this document were not withdrawn from sale for reasons of safety or effectiveness. This determination means that FDA will not begin procedures to withdraw approval of abbreviated new drug applications (ANDAs) that refer to these drug products, and it will allow FDA to continue to approve ANDAs that refer to the products as long as they meet relevant legal and regulatory requirements.

**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 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products approved 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 generally known as the ''Orange Book.'' Under FDA regulations, a drug is 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).

Under § 314.161(a) (21 CFR 314.161(a)), the Agency must determine whether a listed drug was withdrawn from sale for reasons of safety or effectiveness: (1) Before an ANDA that refers to that listed drug may be approved, (2) whenever a listed drug is voluntarily withdrawn from sale and ANDAs that refer to the listed drug have been approved, and (3) when a person petitions for such a determination under 21 CFR 10.25(a) and 10.30. Section 314.161(d) provides that if FDA determines that a listed drug was withdrawn from sale for reasons of safety or effectiveness, the Agency will initiate proceedings that could result in the withdrawal of approval of the ANDAs that refer to the listed drug.

FDA has become aware that the drug products listed in the table in this document are no longer being marketed.

| Application No. | Drug | Applicant |
|---|---|---|
| NDA 016936 ..... | DEMULEN 1/50–28 (ethinyl estradiol; ethynodiol diacetate) Tablet, 0.05 mg; 1 mg. | GD Searle, LLC, 4901 Searle Pkwy., Skokie, IL 60077. |
| NDA 018160 ..... | DEMULEN 1/35–28 (ethinyl estradiol; ethynodiol diacetate) Tablet, 0.035 mg; 1 mg. | Do. |

| Application No. | Drug | Applicant |
|---|---|---|
| NDA 018168 | DEMULEN 1/35–21 (ethinyl estradiol; ethynodiol diacetate) Tablet, 0.035 mg; 1 mg. | Do. |
| NDA 019190 | TRIPHASIL–28 (ethinyl estradiol; levonorgestrel) Tablet, 0.03 mg, 0.04 mg, 0.03 mg; 0.05 mg, 0.075 mg, 0.125 mg. | Wyeth Pharmaceuticals, Inc., P.O. Box 8299, Philadelphia, PA 19101–8299. |
| NDA 019192 | TRIPHASIL–21 (ethinyl estradiol; levonorgestrel) Tablet, 0.03 mg, 0.04 mg, 0.03 mg; 0.05 mg, 0.075 mg, 0.125 mg. | Do. |

FDA has reviewed its records and, under § 314.161, has determined that the drug products listed in this document were not withdrawn from sale for reasons of safety or effectiveness. Accordingly, the Agency will continue to list the drug products listed in this document in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' identifies, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness.

Approved ANDAs that refer to the NDAs listed in this document are unaffected by the discontinued marketing of the products subject to those NDAs. Additional ANDAs that refer to these products may also be approved by the Agency if they comply with relevant legal and regulatory requirements. If FDA determines that labeling for these drug products should be revised to meet current standards, the Agency will advise ANDA applicants to submit such labeling.

Dated: November 30, 2011.

**Leslie Kux,**

*Acting Assistant Commissioner for Policy.*

[FR Doc. 2011–31146 Filed 12–2–11; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2010–P–0176]**

### SEDASYS Computer-Assisted Personalized Sedation System; Ethicon Endo-Surgery, Incorporated's Petition for Review of the Food and Drug Administration's Denial of Premarket Approval; Notice of Cancellation of Meeting

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The meeting of the Medical Devices Dispute Resolution Panel scheduled for December 14, 2011, is cancelled. This meeting was announced in the **Federal Register** of November 21, 2011 (76 FR 71980).

**FOR FURTHER INFORMATION CONTACT:** Nancy Braier, Center for Devices and Radiological Health, 10903 New Hampshire Ave., Bldg. 66, rm. 5454, Silver Spring, MD 20993–0002, (301) 796–5676, FAX: (301) 847–8510, email: *nancy.braier@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:**

#### Background

The meeting of the Medical Devices Dispute Resolution Panel of the Medical Devices Advisory Committee scheduled for December 14, 2011, is cancelled. On December 14, 2011, this advisory committee was slated to discuss the Center for Devices and Radiological Health's (CDRH's) denial of a premarket approval application (PMA) for the SEDASYS computer-assisted personalized sedation system (SEDASYS) submitted by Ethicon Endo-Surgery Inc. (EES), the sponsor for SEDASYS. This meeting has been cancelled because EES has withdrawn its petition for review of this denial.

On February 26, 2010, CDRH issued a letter to EES indicating that PMA P080009 for SEDASYS was not approvable under § 814.44(f) (21 CFR 814.44(f)) because CDRH concluded that the data and information offered in support of the PMA did not provide a reasonable assurance that the device is safe under the conditions of use prescribed, recommended, or suggested in the proposed labeling, as required by section 515(d)(2)(A) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360e(d)(2)(A)).

On March 25, 2010, EES requested review of the not approvable letter. Submitted in the form of a petition for reconsideration under 21 CFR 10.33 (see 21 CFR 814.44(f)(2)), EES's petition stated that, in accordance with § 814.44(f), EES considered the not approvable letter to be a denial of approval of PMA P080009 under § 814.45 (21 CFR 814.45). In accordance with section 515(d)(4) of the FD&C Act, EES requested review of this denial under section 515(g)(2) of the FD&C Act. Subsequently, on October 26, 2010, CDRH issued an order denying approval of the SEDASYS PMA (Denial Order), as required by § 814.45(e)(3). On November 5, 2010, in accordance with section 515(g)(2) of the FD&C Act, FDA granted EES's petition for review of the Denial Order.

FDA's Office of the Commissioner (OC) referred PMA P080009 and the basis for CDRH's Denial Order to the Medical Devices Dispute Resolution Panel of the Medical Devices Advisory Committee, an advisory committee of experts established, in part, to receive referrals of petitions for advisory committee review under section 515(g)(2)(B) of the FD&C Act. (See 76 FR 15321, March 21, 2011.) In the **Federal Register** of November 21, 2011, FDA announced that this advisory committee was scheduled to meet to discuss the clinical and scientific issues raised by CDRH's Denial Order on December 14, 2011.

By letter dated November 28, 2011, EES notified OC that EES ''withdraws its request for administrative review'' of that order ''through an independent advisory committee under Section 515(g)(2) of the Federal Food, Drug, and Cosmetic Act.'' Because EES has withdrawn its petition for review of CDRH's denial of approval of the SEDASYS PMA, OC regards the matter it initiated closed and is, accordingly, canceling the previously mentioned meeting of the Medical Devices Dispute Resolution Panel scheduled for December 14, 2011.

Dated: November 30, 2011.

**Leslie Kux,**

*Acting Assistant Commissioner for Policy.*

[FR Doc. 2011–31105 Filed 12–2–11; 8:45 am]

**BILLING CODE 4160–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Allergy and Infectious Diseases; 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 AIDS Research Advisory Committee, NIAID.

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 Committee:* AIDS Research Advisory Committee, NIAID, AIDS Vaccine Research Subcommittee.

*Date:* January 31–February 1, 2012.

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* The AVRS will meet with the NIAID-sponsored Strategic Working Group (SWG). Presentations and discussion of current and future plans of the HIV Vaccine Trials Network (HVTN).

*Place:* Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

*Contact Person:* James A. Bradac, Ph.D., Program Official, Preclinical Research and Development Branch, Division of AIDS, Room 5116, National Institutes of Health/NIAID, 6700B Rockledge Drive, Bethesda, MD 20892–7628, (301) 435–3754, *jbradac@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: November 29, 2011.

**Jennifer S. Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2011–31154 Filed 12–2–11; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Biomedical Imaging and Bioengineering; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Council for Biomedical Imaging and Bioengineering.

The meeting will be open to the public as indicated below, 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.

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/or contract proposals 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 and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Advisory Council for Biomedical Imaging and Bioengineering; NACBIB January 2012.

*Date:* January 20, 2012.

*Open:* 9 a.m. to 1 p.m.

*Agenda:* Report from the Institute Director, other Institute Staff and presentation of working group reports.

*Place:* Bethesda Marriott Suites, 6711 Democracy Boulevard, Independence Room, 2nd Level, Bethesda, MD 20817.

*Closed:* 1 p.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications and/or proposals.

*Place:* Bethesda Marriott Suites, 6711 Democracy Boulevard, Independence Room, 2nd Level, Bethesda, MD 20817.

*Contact Person:* Anthony Demsey, Ph.D., Director, National Institute of Biomedical Imaging and Bioengineering, 6707 Democracy Boulevard, Room 241, Bethesda, MD 20892.

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.

Information is also available on the Institute's/Center's home page: *http://www.nibib1.nih.gov/about/NACBIB/NACBIB.htm*, where an agenda and any additional information for the meeting will be posted when available.

Dated: November 29, 2011.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2011–31157 Filed 12–2–11; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Allergy and Infectious Diseases; Notice of Meetings

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of meetings of the AIDS Research Advisory Committee, NIAID.

The meetings 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 themeeting.

*Name of Committee:* AIDS Research Advisory Committee, NIAID.

*Date:* January 30, 2012.

*Time:* 1 p.m. to 5 p.m.

*Agenda:* Reports from the Division Director and other staff.

*Place:* National Institutes of Health, Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

*Contact Person:* Rona L. Siskind, Executive Secretary, AIDS Research Advisory Committee, Division of AIDS, NIAID/NIH, 6700B Rockledge Drive, Room 4139, Bethesda, MD 20892–7601, (301) 435–3732.

*Name of Committee:* AIDS Research Advisory Committee, NIAID.

*Date:* May 14, 2012.

*Time:* 1 p.m. to 5 p.m.

*Agenda:* Reports from the Division Director and other staff.

*Place:* National Institutes of Health, Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

*Contact Person:* Rona L. Siskind, Executive Secretary, AIDS Research Advisory Committee, Division of AIDS, NIAID/NIH, 6700B Rockledge Drive, Room 4139, Bethesda, MD 20892–7601, (301) 435–3732.

*Name of Committee:* AIDS Research Advisory Committee, NIAID.

*Date:* September 24, 2012.

*Time:* 1 p.m. to 5 p.m.

*Agenda:* Reports from the Division Director and other staff.

*Place:* National Institutes of Health, Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

*Contact Person:* Rona L. Siskind, Executive Secretary AIDS Research Advisory Committee, Division of AIDS, NIAID/NIH, 6700B Rockledge Drive, Room 4139, Bethesda, MD 20892–7601, (301) 435–3732.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: November 29, 2011.

**Jennifer S. Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2011–31155 Filed 12–2–11; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Cancer Advisory Board, December 5, 2011, 6:30 p.m. to December 6, 2011, 5 p.m., National Institutes of Health, Building

31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892 which was published in the **Federal Register** on October 27, 2011, 76 FR 66733.

This Notice is amending the start and end times of the closed session from 3:30 p.m.–5 p.m. to 4:20 p.m.–5:15 p.m. The end time of the meeting has also changed from 5 p.m. to 5:15 p.m. The meeting is partially closed to the public.

Dated: November 29, 2011.

**Jennifer S. Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2011–31149 Filed 12–2–11; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

### Current List of Laboratories and Instrumented Initial Testing Facilities Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

**AGENCY:** Substance Abuse and Mental Health Services Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Department of Health and Human Services (HHS) notifies Federal agencies of the Laboratories and Instrumented Initial Testing Facilities (IITF) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines). The Mandatory Guidelines were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908); September 30, 1997 (62 FR 51118); April 13, 2004 (69 FR 19644); November 25, 2008 (73 FR 71858); December 10, 2008 (73 FR 75122); and on April 30, 2010 (75 FR 22809).

A notice listing all currently certified Laboratories and Instrumented Initial Testing Facilities (IITF) is published in the **Federal Register** during the first week of each month. If any Laboratory/IITF's certification is suspended or revoked, the Laboratory/IITF will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any Laboratory/IITF has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end and will be omitted from the monthly listing thereafter.

This notice is also available on the Internet at *http://www.workplace.samhsa.gov* and *http://www.drugfreeworkplace.gov.*

**FOR FURTHER INFORMATION CONTACT:** Mrs. Giselle Hersh, Division of Workplace Programs, SAMHSA/CSAP, Room 2–1042, One Choke Cherry Road, Rockville, Maryland 20857; (240) 276–2600 (voice), (240) 276–2610 (fax).

**SUPPLEMENTARY INFORMATION:** The Mandatory Guidelines were initially developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71. The ''Mandatory Guidelines for Federal Workplace Drug Testing Programs'', as amended in the revisions listed above, requires {or set} strict standards that Laboratories and Instrumented Initial Testing Facilities (IITF) must meet in order to conduct drug and specimen validity tests on urine specimens for Federal agencies.

To become certified, an applicant Laboratory/IITF must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a Laboratory/IITF must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories and Instrumented Initial Testing Facilities (IITF) in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines. A Laboratory/IITF must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with the Mandatory Guidelines dated November 25, 2008 (73 FR 71858), the following Laboratories and Instrumented Initial Testing Facilities (IITF) meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

**Instrumented Initial Testing Facilities (IITF)**

None.

**Laboratories:**

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227, (414) 328–7840/(800) 877–7016, (Formerly: Bayshore Clinical Laboratory).

ACM Medical Laboratory, Inc., 160 Elmgrove Park, Rochester, NY 14624, (585) 429–2264.

Advanced Toxicology Network, 3560 Air Center Cove, Suite 101, Memphis, TN 38118, (901) 794–5770/(888) 290–1150.

Aegis Analytical Laboratories, 345 Hill Ave., Nashville, TN 37210, (615) 255–2400, (Formerly: Aegis Sciences Corporation, Aegis Analytical Laboratories, Inc.).

Alere Toxicology Services, 1111 Newton St., Gretna, LA 70053, (504) 361–8989/(800) 433–3823, (Formerly: Kroll Laboratory Specialists, Inc., Laboratory Specialists, Inc.).

Alere Toxicology Services, 450 Southlake Blvd., Richmond, VA 23236, (804) 378–9130, Formerly: Kroll Laboratory Specialists, Inc., Scientific Testing Laboratories, Inc.; Kroll Scientific Testing Laboratories, Inc.).

Baptist Medical Center-Toxicology Laboratory, 11401 I–30, Little Rock, AR 72209–7056, (501) 202–2783, (Formerly: Forensic Toxicology Laboratory Baptist Medical Center).

Clinical Reference Lab, 8433 Quivira Road, Lenexa, KS 66215–2802, (800) 445–6917.

Doctors Laboratory, Inc., 2906 Julia Drive, Valdosta, GA 31602, (229) 671–2281.

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Road, Warminster, PA 18974, (215) 674–9310.

ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655, (662) 236–2609.

Gamma-Dynacare Medical Laboratories*, A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall Street, London, ONT, Canada N6A 1P4, (519) 679–1630.

Laboratory Corporation of America Holdings, 7207 N. Gessner Road, Houston, TX 77040, (713) 856–8288/(800) 800–2387.

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, (908) 526–2400/(800) 437–4986, (Formerly: Roche Biomedical Laboratories, Inc.).

Laboratory Corporation of America Holdings, 1904 Alexander Drive, Research Triangle Park, NC 27709, (919) 572–6900/(800) 833–3984, (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group).

Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671, (866) 827–8042/(800) 233–6339, (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center).

LabOne, Inc. d/b/a Quest Diagnostics, 10101 Renner Blvd., Lenexa, KS 66219, (913) 888–3927/(800) 873–8845, (Formerly: Quest Diagnostics

Incorporated; LabOne, Inc.; Center for Laboratory Services, a Division of LabOne, Inc.,).

Maxxam Analytics*, 6740 Campobello Road, Mississauga, ON, Canada L5N 2L8, (905) 817–5700, (Formerly: Maxxam Analytics Inc., NOVAMANN (Ontario), Inc.).

MedTox Laboratories, Inc., 402 W. County Road D, St. Paul, MN 55112, (651) 636–7466/(800) 832–3244.

MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, (503) 413–5295/(800) 950–5295.

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, MN 55417, (612) 725–2088.

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, (661) 322–4250/(800) 350–3515.

One Source Toxicology Laboratory, Inc., 1213 Genoa-Red Bluff, Pasadena, TX 77504, (888) 747–3774, (Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory).

Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, (800) 328–6942, (Formerly: Centinela Hospital Airport Toxicology Laboratory).

Pathology Associates Medical Laboratories, 110 West Cliff Dr., Spokane, WA 99204, (509) 755–8991/(800) 541–7891 x7.

Phamatech, Inc., 10151 Barnes Canyon Road, San Diego, CA 92121, (858) 643–5555.

Quest Diagnostics Incorporated, 1777 Montreal Circle, Tucker, GA 30084, (800) 729–6432, (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories).

Quest Diagnostics Incorporated, 400 Egypt Road, Norristown, PA 19403, (610) 631–4600/(877) 642–2216, (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories).

Quest Diagnostics Incorporated, 8401 Fallbrook Ave., West Hills, CA 91304, (800) 877–2520, (Formerly: SmithKline Beecham Clinical Laboratories).

S.E.D. Medical Laboratories, 5601 Office Blvd., Albuquerque, NM 87109, (505) 727–6300/(800) 999–5227.

South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, (574) 234–4176 x1276.

Southwest Laboratories, 4625 E. Cotton Center Boulevard, Suite 177, Phoenix, AZ 85040, (602) 438–8507/(800) 279–0027.

St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101, (405) 272–7052.

STERLING Reference Laboratories, 2617 East L Street, Tacoma, WA 98421, (800) 442–0438.

Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, Suite 208, Columbia, MO 65203, (573) 882–1273.

Toxicology Testing Service, Inc., 5426 NW. 79th Ave., Miami, FL 33166, (305) 593–2260.

U.S. Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235, (301) 677–7085.

*The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on April 30, 2010 (75 FR 22809). After receiving DOT certification, the laboratory will be included in the monthly list of HHS-certified laboratories and participate in the NLCP certification maintenance program.

**Janine Denis Cook,**

*Chemist, Division of Workplace Programs, Center for Substance Abuse Prevention, CAMHSA.*

[FR Doc. 2011–31059 Filed 12–2–11; 8:45 am]

**BILLING CODE 4160–20–P**

## DEPARTMENT OF HOMELAND SECURITY

### Agency Information Collection Activities: Solicitation of Proposal Information for Award of Public Contracts

**AGENCY:** Office of the Chief Procurement Officer, DHS.

**ACTION:** 30-Day Notice and request for comments; Extension without change of a currently approved collection, 1600–0005.

**SUMMARY:** The Department of Homeland Security, Office of the Chief Procurement Officer, will submit the following information collection request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (P.L. 104–13, 44 U.S.C. Chapter 35). DHS previously published this information collection request (ICR) in the **Federal Register** on August 31, 2011 at 76 FR 54243, for a 60-day public comment period. No comments were received by DHS. The purpose of this notice is to allow additional 30-days for public comments.

**DATES:** Comments are encouraged and will be accepted until January 4, 2012. This process is conducted in accordance with 5 CFR 1320.10.

**ADDRESSES:** Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to OMB Desk Officer, Department of Homeland Security and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

The Office of Management and Budget is particularly interested in comments which:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

**FOR FURTHER INFORMATION CONTACT:** If additional information is required contact: The Department of Homeland Security (DHS), Office of Chief Procurement Officer, Acquisition Policy and Legislation Office, DHS *Attn.:* Camara Francis, Department of Homeland Security, Office of the Chief

Procurement Officer, Room 3114, Washington, DC 20528, *Camara.Francis@hq.dhs.gov,* (202) 447–5904.

**SUPPLEMENTARY INFORMATION:** The Department of Homeland Security (DHS) and the Office of the Chief Procurement Officer (OCPO) collect information when inviting firms to submit bids, proposals, and offers for public contracts for supplies and services. The information collection is necessary for compliance with the Federal Acquisition Regulation (FAR); 48 CFR Chapter 1, the Federal Property and Administrative Services Act (Division C of Title 41), under the Small Business Innovative Research (SBIR) and Small Business Technology Transfer (STTR) programs 15 U.S.C. 628.

For solicitations to contract made through a variety of means, whether conducted orally or in writing, contracting officers normally request information from prospective offerors such as pricing information, delivery schedule compliance, and whether the offeror has the resources (both human and financial) to accomplish requirements. Examples of the kinds of information collected can be found in the FAR at FAR 13.106–1, 13.106–3, 13.302–1, –3, –5, subpart 13.5, subpart 14.2, subpart 15.2, subpart 6.1, and subpart 35.

Examples where collections of information occur in soliciting for supplies/services include the issuance of draft Requests for Proposal (RFP), Requests for Information (RFI), and Broad Agency Announcements (BAA). The Government generally issues an RFP using the uniform contract format (FAR 15.204–1) with the intent of awarding a contract to one or more prospective offerors. The RFP can require those interested in making an offer to provide information in the following areas: schedule (FAR 15.204–2); contract clauses (FAR 15.204–3); list of documents, exhibits and other attachments (FAR 15.204–4) or representations and instructions (15.204–5).

FAR 15.201(e) authorizes agencies to issue RFIs when an agency ''does not presently intend to award a contract, but wants to obtain price, delivery, other market information, or capabilities for planning purposes''. RFIs solicit responses from the public. Similarly, FAR 35.106 authorizes Federal agencies to use BAAs to ''fulfill their requirements for scientific study and experimentation directed toward advancing the state-of-the-art or increasing knowledge or understanding rather than focusing on a specific system or hardware solution.''

The DHS Science and Technology (S&T) Directorate issues BAAs soliciting white papers and proposals from the public. DHS S&T evaluates white papers and proposals received from the public in response to a DHS S&T BAA using the evaluation criteria specified in the BAA through a peer or scientific review process in accordance with FAR 35.016(d). White paper evaluation determines those research ideas that merit submission of a full proposal and proposal evaluation determines those proposals that merit selection for contract award. Unclassified white papers and proposals are typically collected via the DHS S&T BAA secure Web site, while classified white papers and proposals must be submitted via proper classified courier or proper classified mailing procedures as described in the National Industrial Security Program Operating Manual (NSPOM).

Federal agencies with an annual extramural research and development (R&D) budget exceeding $100 million are required to participate in the SBIR Program. Similarly, Federal agencies with an extramural R&D budget exceeding $1 billion are required to participate in the STTR Program.

Federal agencies who participate in the SBIR and STTR programs must collect information from the public to: (1) Meet their reporting requirements under 15 U.S.C. 638 (b)(7), (g)(8), (i), (j)(1)(E), (j)(3)(C), (l), (o)(10), and (v); (2)Meet the requirement to maintain both a publicly accessible database of SBIR/STTR award information and a government database of SBIR/STTR award information for SBIR and STTR program evaluation under 15 U.S.C. 638(g)(10), (k), (o)(9), and (o)(15); and (3) Meet requirements for public outreach under 15 U.S.C. 638 (j)(2)(F), (o)(14), and (s).

DHS is not asking for anything outside of what is already required in the FAR. Should anything outside the FAR arise, DHS will submit a request for Office of Management and Budget (OMB) approval. The prior information collect request for OMB No. 1600–005 was approved through October 31, 2011 by OMB in a Notice of OMB Action.

The information being collected is used by the Government's contracting officers and other acquisition personnel, including technical and legal staffs to determine adequacy of technical and management approach, experience, responsibility, responsiveness, expertise of the firms submitting offers, identification of members of the public (i.e., small businesses) who qualify for, and are interested in participating in, the DHS SBIR Program, facilitate SBIR outreach to the public, and provide the DHS SBIR Program Office necessary and sufficient information to determine that proposals submitted by the public to the DHS SBIR Program meet criteria for consideration under the program.

Failure to collect this information would adversely affect the quality of products and services DHS receives from contractors. Potentially, contracts would be awarded to firms without sufficient experience and expertise, thereby placing the Department's operations in jeopardy. Defective and inadequate contractor deliverables would adversely affect DHS's fulfillment of the mission requirements in all areas. Additionally, the Department would be unsuccessful in identifying small businesses with research and development (R&D) capabilities, which would adversely affect the mission requirements in this area.

Many sources of the requested information use automated word processing systems, databases, emails, and, in some cases, web portals to facilitate preparation of material to be submitted and to post and collect information. It is common place within many of DHS's Components for submissions to be electronic as a result of implementation of e-Government initiatives.

DHS S&T uses information technology (i.e., electronic web portals) in the collection of information to reduce the data gathering and records management burden. DHS S&T uses a secure Web site which the public can propose SBIR research topics and submit proposals in response to SBIR solicitations. In addition, DHS uses a web portal to review RFIs and register to submit a white paper or proposal in response to a specific BAA. The data collection forms standardize the collection of information that is necessary and sufficient for the DHS SBIR Program Office to meet its requirements under 15 U.S.C. 638.

According to Federal Procurement Data System (FPDS) and Federal Business Opportunities (FedBizOpps), the number of competitive solicitations and award actions has increased each over the past three years, thereby increasing the universe of possible respondents to DHS and its Components' solicitations. However, an increase in the information collection burden associated with the gathering of additional information to support the evaluation of solicitation responses has been offset, by the use of electronic web portals, such as CCR, FAPIIS, those used

to submit SBIR research topics and submit response to DHS SBIR solicitations. Additionally, electronic web portals are used to collect unclassified white papers and proposals to reduce the data gathering and records management burden for BAAs.

In addition to issuance of solicitations over the Internet or electronic systems; increased use of oral presentations in *lieu* of written proposals, permitted under FAR 15.102; and increased use of combined contract action notices/requests for proposals, as encouraged by FAR 12.603, are contributing to the relative stability of DHS's information collection burden to the public. There is no change in the information being collected.

The Office of Management and Budget is particularly interested in comments which:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

**Analysis**

*Agency:* Office of the Chief Procurement Officer, DHS.

*Title:* Solicitation of Proposal Information for Award of Public Contracts.

*OMB Number:* 1600–0005.

*Frequency:* On Occasion.

*Affected Public:* Private Sector.

*Number of Respondents:* 17,180.

*Estimated Time per Respondent:* 13 hours.

*Total Burden Hours:* 721,560.

Dated: November 28, 2011.

**Margaret H. Graves,**

*Deputy Chief Information Officer.*

[FR Doc. 2011–31062 Filed 12–2–11; 8:45 am]

**BILLING CODE 9110–9B–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Citizenship and Immigration Services

### Agency Information Collection Activities: Form I–690; Revision of an Existing Information Collection; Comment Request

**ACTION:** 30-Day Notice of Information Collection Under Review: Form I–690, Application for Waiver of Grounds of Excludability; OMB Control Number 1615–0032.

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. An information collection notice was previously published in the **Federal Register** on August 19, 2011, at 76 FR 51996, allowing for a 60-day public comment period. USCIS did not receive any comments in connection with that notice.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until January 4, 2012. 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, Washington, DC 20529–2020. Comments may also be submitted to DHS via facsimile to (202) 272–0997 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 No. 1615–0032 in the subject box. 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:* Revision of a currently approved information collection.

(2) *Title of the Form/Collection:* Application for Waiver of Grounds of Excludability.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–690. 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. USCIS will use this form to determine whether applicants are eligible for admission to the United States under sections 210 and 245A of the Immigration and Nationality Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 74 responses at .25 hours (15 minutes) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 19 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, 20 Massachusetts Avenue NW., Washington, DC 20529–2020, Telephone number (202) 272–8377.

Dated: November 29, 2011.

**Sunday Aigbe,**

*Chief, Regulatory Products Division, Office of the Executive Secretariat, U.S. Citizenship and Immigration Services, Department of Homeland Security.*

[FR Doc. 2011–31114 Filed 12–2–11; 8:45 am]

**BILLING CODE 9111–97–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

### Agency Information Collection Activities: Declaration of Owner and Declaration of Consignee When Entry Is Made by an Agent

**AGENCY:** U.S. Customs and Border Protection (CBP), Department of Homeland Security.

**ACTION:** 60-Day Notice and request for comments; Extension of an existing collection of information: 1651–0093.

**SUMMARY:** As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the Declaration of Owner and Declaration of Consignee When Entry is made by an Agent (Forms 3347 and 3347A). This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

**DATES:** Written comments should be received on or before February 3, 2012, to be assured of consideration.

**ADDRESSES:** Direct all written comments to U.S. Customs and Border Protection, Attn.: Tracey Denning, Regulations and Rulings, Office of International Trade, 799 9th Street NW., 5th Floor, Washington, DC 20229–1177.

**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). 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 recordkeepers from the collection of information (total 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:* Declaration of Owner and Declaration of Consignee When Entry is made by an Agent.

*OMB Number:* 1651–0093.

*Form Number:* CBP Forms 3347 and 3347A.

*Abstract:* CBP Form 3347, *Declaration of Owner,* is a declaration from the owner of imported merchandise stating that he/she agrees to pay additional or increased duties, therefore releasing the importer of record from paying such duties. This form must be filed within 90 days from the date of entry. CBP Form 3347 is provided for by 19 CFR 24.11 and 141.20.

When entry is made in a consignee's name by an agent who has knowledge of the facts and who is authorized under a proper power of attorney by that consignee, a declaration from the consignee on CBP Form 3347A, *Declaration of Consignee When Entry is Made by an Agent,* shall be filed with the entry summary. If this declaration is filed, then no bond to produce a declaration of the consignee is required. CBP Form 3347 is provided for by 19 CFR 141.19(b)(2).

CBP Forms 3347 and 3347A are authorized by 19 U.S.C. 1485(d) and are accessible at *http://www.cbp.gov/xp/cgov/toolbox/forms/.*

*Action:* CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to CBP Forms 3347 and 3347A.

*Type of Review:* Extension (without change).

*Affected Public:* Businesses.

**CBP Form 3347**

*Estimated Number of Respondents:* 900.

*Estimated Number of Responses per Respondent:* 6.

*Estimated Total Annual Responses:* 5,400.

*Estimated Time per Response:* 15 minutes.

*Estimated Total Annual Burden Hours:* 540.

**CBP Form 3347A**

*Estimated Number of Respondents:* 50.

*Estimated Number of Responses per Respondent:* 6.

*Estimated Total Annual Responses:* 300.

*Estimated Time per Response:* 6 minutes.

*Estimated Total Annual Burden Hours:* 30.

Dated: November 30, 2011.

**Tracey Denning,**

*Agency Clearance Officer, U.S. Customs and Border Protection.*

[FR Doc. 2011–31194 Filed 12–2–11; 8:45 am]

BILLING CODE 9111–14–P

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

### Agency Information Collection Activities: Dominican Republic-Central America-United States Free Trade Agreement (CAFTA–DR)

**AGENCY:** U.S. Customs and Border Protection (CBP), Department of Homeland Security.

**ACTION:** 60-Day Notice and request for comments; Extension of an existing collection of information: 1651–0125.

**SUMMARY:** As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA–DR). This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

**DATES:** Written comments should be received on or before February 3, 2012, to be assured of consideration.

**ADDRESSES:** Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Regulations and Rulings, Office of International Trade, 799 9th Street NW., 5th Floor, Washington, DC 20229–1177.

**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). 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 costs burden to respondents or record keepers from the collection of information (a total 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:* Dominican Republic-Central America-United States Free Trade Agreement (CAFTA–DR).

*OMB Number:* 1651–0125.

*Form Number:* None.

*Abstract:* On August 5, 2004, the United States entered into the Dominican Republic-Central America-United States Free Trade Agreement with Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua (also known as CAFTA–DR). The Agreement was approved by Congress in section 101(a) of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (Pub. L. 109–53, 119 Stat. 462) (19 U.S.C. 4001) and provides for preferential tariff treatment of certain goods originating in one or more of the CAFTA–DR countries. It was signed into law on August 2, 2005.

In order to ascertain if imported goods are eligible for preferential tariff treatment or duty refunds under CAFTA–DR, CBP collects information such as name and contact information for importer and exporter; information about the producer of the good; a description of the good; the HTSUS tariff classification; and the applicable rule of origin. In addition, a certification and supporting documents may be requested by CBP in order to substantiate the claim for preferential tariff treatment. This collection of information is provided for by 19 CFR 10.583 through 19 CFR 10.592.

*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:* 2,500.

*Estimated Total Annual Responses:* 10,000.

*Annual Number of Responses per Respondent:* 4.

*Estimated Time per Response:* 24 minutes.

*Estimated Total Annual Burden Hours:* 4,000.

Dated: November 30, 2011.

**Tracey Denning,**

*Agency Clearance Officer, U.S. Customs and Border Protection.*

[FR Doc. 2011–31181 Filed 12–2–11; 8:45 am]

**BILLING CODE 9111–14–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Safety and Environmental Enforcement (BSEE)

**[Docket ID No. BSEE–2011–0002; OMB Control Number 1010–0050]**

### Information Collection Activities: Pipelines and Pipeline Rights-of-Way; Submitted for Office of Management and Budget (OMB) Review; Comment Request

**ACTION:** 60-day Notice.

**SUMMARY:** To comply with the Paperwork Reduction Act of 1995 (PRA), BSEE is inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) concerns a revision to the paperwork requirements in the regulations under Subpart J, ''Pipelines and Pipeline Rights-of-Way.''

**DATES:** You must submit comments by February 3, 2012.

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

- *Electronically:* Go to *http://www.regulations.gov.* In the entry titled ''Enter Keyword or ID,'' enter BSEE–2011–0002 then click search. Follow the instructions to submit public comments and view all related materials. We will post all comments.
- Email *nicole.mason@bsee.gov.* Mail or hand-carry comments to the Department of the Interior; Bureau of Safety and Environmental Enforcement; Regulations Development Branch; Attention: Nicole Mason; 381 Elden Street, MS–4024; Herndon, Virginia 20170–4817. Please reference ICR 1010–0050 in your comment and include your name and return address.

**FOR FURTHER INFORMATION CONTACT:** Nicole Mason, Regulations Development Branch at (703) 787–1605 to request additional information about this ICR.

**SUPPLEMENTARY INFORMATION:**

*Title:* 30 CFR Part 250, Subpart J, Pipelines and Pipeline Rights-of-Way.

*OMB Control Number:* 1010–0050.

*Form(s):* BSEE–0149.

*Abstract:* The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior to prescribe rules and regulations necessary for the administration of the leasing provisions of the Act related to mineral resources on the OCS. Such rules and regulations will apply to all operations conducted under a lease, right-of-way, or a right-of-use and easement. Section 1334(e) authorizes the Secretary to grant ROWs through the submerged lands of the OCS for pipelines '' * * * for the transportation of oil, natural gas, sulphur, or other minerals, or under such regulations and upon such conditions as may be prescribed by the Secretary, * * * including (as provided in section 1347(b) of this title) assuring maximum environmental protection by utilization of the best available and safest technologies, including the safest practices for pipeline burial.

The Independent Offices Appropriations Act (31 U.S.C. 9701), the Omnibus Appropriations Bill (Pub. L. 104–133, 110 Stat. 1321, April 26, 1996), and OMB Circular A–25, authorize Federal agencies to recover the full cost of services that confer special benefits. Pipeline ROWs and assignments are subject to cost recovery, and BSEE regulations specify filing fees for applications.

Regulations at 30 CFR 250, subpart J, implement these statutory requirements. We use the information to ensure those activities are performed in a safe manner. BSEE needs information concerning the proposed pipeline and safety equipment, inspections and tests, and natural and manmade hazards near the proposed pipeline route. BSEE uses the information to review pipeline designs prior to approving an application for an ROW or lease term pipeline to ensure that the pipeline, as constructed, will provide for safe transportation of minerals through the submerged lands of the OCS. They review proposed pipeline routes to ensure that the pipeline would not conflict with any State requirements or unduly interfere with other OCS activities. BSEE reviews proposals for taking pipeline safety equipment out of service to ensure alternate measures are used that will properly provide for the safety of the pipeline and associated

facilities (platform, etc.). They review notification of relinquishment of an ROW grant and requests to abandon pipelines to ensure that all legal obligations are met and pipelines are properly abandoned. BSEE monitors the records concerning pipeline inspections and tests to ensure safety of operations and protection of the environment and to schedule their workload to permit witnessing and inspecting operations. Information is also necessary to determine the point at which DOI or Department of Transportation (DOT) has regulatory responsibility for a pipeline and to be informed of the identified operator if not the same as the ROW holder.

The following form is also submitted to BSEE under subpart J. The form and its purpose is:

*BSEE–0149—Assignment of Federal OCS Pipeline Right-of-Way Grant:* BSEE uses the information to track the ownership of pipeline ROWs; as well as use the information to update the corporate database that is used to determine what leases are available for a Lease Sale and the ownership of all OCS leases.

We will protect information from respondents considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2) and under regulations at 30 CFR 250.197, ''Data and information to be made available to the public or for limited inspection.'' No items of a sensitive nature are collected. Responses are mandatory.

*Frequency:* On occasion, annual.

*Description of Respondents:* Potential respondents include lessees, operators, and holders of pipeline ROWs.

*Estimated Reporting and Recordkeeping Hour Burden:* The currently approved annual reporting burden for this collection is 76,864 hours. The following chart details the individual components and respective hour burden estimates of this ICR. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

| Citation 30 CFR 250 subpart J and related NTL(s) | Reporting and recordkeeping requirement | Hour burden / Non-hour cost burden |
|---|---|---|
| **Lease Term (L/T) Pipeline (P/L) Applications** | | |
| 1000(b)(1); 1004(b)(5); 1007(a) | Submit application and all required information and notices to install new L/T P/L | 145<br>$3,283 each |
| 1000(b)(1); 1007(b) | Submit application and all required information and notices to modify a L/T P/L | 35<br>$1,906 each |
| **Right of Way (ROW) P/L Applications and Grants** | | |
| 1000(b)(2), (d); 1004(b)(5); 1007(a); 1009(a); 1015; 1016. | Submit application and all required information and notices for new P/L ROW grant and to install a new ROW P/L. | 170<br>$2,569 each |
| 1000(b)(2), (3); 1007(b); 1017 | Submit application and all required information and notices to modify a P/L ROW grant and to modify an ROW P/L (includes route modifications, cessation of operations, partial relinquishments, hot taps, and new and modified accessory platforms). | 48<br>$3,865 each |
| 1000(b)(3); 1010(h); 1019; 1017(b)(2)(ii). | Submit application and all required information and notices to relinquish P/L ROW grant | 7 |
| 1015 | Submit application and all required information and notices for ROW grant to convert a lease-term P/L to an ROW P/L. | 18<br>$219 each |
| 1016 | Request opportunity to eliminate conflict when an application has been rejected | 2 |
| 1018 | Submit application and all required information and notices for assignment of a pipeline ROW grant using Form BSEE–0149 (burden includes approximately 30 minutes to fill out form). | 16<br>$186 each |
| **Notifications and Reports** | | |
| 1004(b)(5) | In lieu of a continuous volumetric comparison system, request substitution; submit any supporting documentation if requested/required. | 36 |
| 1007(a)(4)(i)(A); (B); (C) | Provide specified information in your pipeline application if using unbonded flexible pipe | 4 |
| 1007(a)(4)(i)(D) | Provide results of third party IVA review in your pipeline application if using unbonded flexible pipe. | 40 |
| 1007(a)(4)(ii) | Provide specified information in your pipeline application | 30 |

| Citation 30 CFR 250 subpart J and related NTL(s) | Reporting and recordkeeping requirement | Hour burden / Non-hour cost burden |
|---|---|---|
| 1008(a) | Notify BSEE before constructing or relocating a pipeline | ½ |
| 1008(a) | Notify BSEE before conducting a pressure test | ½ |
| 1008(b) | Submit L/T P/L construction report | 17 |
| 1008(b) | Submit ROW P/L construction report | 17 |
| 1008(c) | Notify BSEE of any pipeline taken out of service | ½ |
| 1008(d) | Notify BSEE of any pipeline safety equipment taken out of service more than 12 hours | ⅕ |
| 1008(e) | Notify BSEE of any repair and include procedures | 2 |
| | | $360 each |
| 1008(e) | Submit repair report | 3 |
| 1008(f) | Submit report of pipeline failure analysis | 30 |
| 1008(g) | Submit plan of corrective action and report of any remedial action | 12 |
| 1008(h) | Submit the results and conclusions of pipe-to-electrolyte potential measurements | ½ |
| 1010(c) | Notify BSEE of any archaeological resource discovery | 4 |
| 1010(d) | Notify BSEE of P/L ROW holder's name and address changes. Not considered IC under 5 CFR 1320.3(h). | 0 |
| **General** | | |
| 1000(c)(2) | Identify in writing P/L operator on ROW if different from ROW grant holder | ¼ |
| 1000(c)(3) | Mark specific point on P/L where operating responsibility transfers to transporting operator or depict transfer point on a schematic located on the facility. One-time requirement after final rule published; now part of application or construction process involving no additional burdens. | 0 |
| 1000(c)(4) | Petition BSEE for exceptions to general operations transfer point description | 5 |
| 1000(c)(8) | Request BSEE recognize valves landward of last production facility but still located on OCS as point where BSEE regulatory authority begins (none received to date). | 1 |
| 1000(c)(12) | Petition BSEE to continue to operate under DOT regulations upstream of last valve on last production facility (one received to date). | 40 |
| 1000(c)(13) | Transporting P/L operator petition to DOT and BSEE to continue to operate under BSEE regulations (none received to date). | 40 |
| 1004(c) | Place sign on safety equipment identified as ineffective and removed from service | 0 |
| 1007(a)(4) | Submit required documentation for unbonded flexible pipe | 150 |
| 1000–1019 | General departure and alternative compliance requests not specifically covered elsewhere in subpart J regulations. | 2 |
| **Recordkeeping** | | |
| 1000–1008 | Make available to BSEE design, construction, operation, maintenance, testing, and repair records on lease-term P/Ls [2]. | 5 |
| 1005(a) | Inspect P/L routes for indication of leakage,[1] record results, maintain records 2 years [2] | 24 |
| 1010(g) | Make available to BSEE design, construction, operation, maintenance, testing, and repair records on P/L ROW area and improvements [2]. | 5 |

[1] These activities are usual and customary practices for prudent operators.
[2] Retaining these records is usual and customary business practice; required burden is minimal to make available to BSEE.

*Estimated Reporting and Recordkeeping Non-Hour Cost Burden:* We have identified seven non-hour paperwork cost burdens for this collection. The non-hour cost burdens required in 30 CFR 250, subpart J (and

respective cost-recovery fee amount per transaction) are required under:

§ 250.1000(b)—New Pipeline Application (lease term)—$3,283.
§ 250.1000(b)—Pipeline Application Modification (lease term)—$1,906.
§ 250.1000(b)—Pipeline Application Modification (ROW)—$3,865.
§ 250.1008(e)—Pipeline Repair Notification—$360.
§ 250.1015(a)—Pipeline ROW Grant Application—$2,569.
§ 250.1015(a)—Pipeline Conversion from Lease term to ROW—$219.
§ 250.1018(b)—Pipeline ROW Assignment—$186.

*Public Disclosure Statement:* The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

**Comments**

Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *". Agencies must specifically solicit comments to: (a) Evaluate whether the collection is necessary or useful; (b) evaluate the accuracy of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of technology.

Agencies must also estimate the non-hour paperwork cost burdens to respondents or recordkeepers resulting from the collection of information. Therefore, if you have other than hour burden costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. For further information on this burden, refer to 5 CFR 1320.3(b)(1) and (2), or contact the Bureau representative listed previously in this notice.

We will summarize written responses to this notice and address them in our submission for OMB approval. As a result of your comments, we will make any necessary adjustments to the burden in our submission to OMB.

**Public Comment Procedures**

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.

*Acting BSEE Information Collection Clearance Officer:* Cheryl Blundon (703) 787–1607.

Dated: November 18, 2011.

**Douglas W. Morris,**

*Chief, Office of Offshore Regulatory Programs.*

[FR Doc. 2011–31084 Filed 12–2–11; 8:45 am]

BILLING CODE 4310–MR–P

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

**[FWS–R2–ES–2011–N247; FXES11130200000F5–123–FF02ENEH00]**

## Endangered and Threatened Species Permit Applications

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

**ACTION:** Notice of receipt of applications; request for public comment.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered or threatened species. The Endangered Species Act of 1973, as amended (Act), prohibits activities with endangered and threatened species unless a Federal permit allows such activities. The Act and the National Environmental Policy Act also require that we invite public comment before issuing these permits.

**DATES:** To ensure consideration, written comments must be received on or before January 4, 2012.

**ADDRESSES:** Marty Tuegel, Section 10 Coordinator, by U.S. mail at Division of Endangered Species, U.S. Fish and Wildlife Service, P.O. Box 1306, Room 6034, Albuquerque, NM 87103, or by telephone at (505) 248–6920. Please refer to the respective permit number for each application when submitting comments.

**FOR FURTHER INFORMATION CONTACT:** Susan Jacobsen, Chief, Endangered Species Division, P.O. Box 1306, Albuquerque, NM 87103; (505) 248–6920.

**SUPPLEMENTARY INFORMATION:**

**Public Availability of Comments**

The Act (16 U.S.C. 1531 *et seq.*) prohibits activities with endangered and threatened species unless a Federal permit allows such activities. Along with our implementing regulations in the Code of Federal Regulations (CFR) at 50 CFR 17, the Act provides for permits, and requires that we invite public comment before issuing these permits.

A permit granted by us under section 10(a)(1)(A) of the Act authorizes applicants to conduct activities with U.S. endangered or threatened species for scientific purposes, enhancement of survival or propagation, or interstate commerce. Our regulations regarding implementation of section 10(a)(1)(A) permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

**Applications Available for Review and Comment**

We invite local, State, and Federal agencies, and the public to comment on the following applications. Please refer to the appropriate permit number (e.g., Permit No. TE–123456) when requesting application documents and when submitting comments.

Documents and other information the applicants have submitted with these applications are available for review, subject to the requirements of the Privacy Act (5 U.S.C. 552a) and Freedom of Information Act (5 U.S.C. 552).

**Permit TE–54884A**

*Applicant:* Gabriela Casares, Austin, Texas.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys for golden-cheeked warbler (*Dendroica chrysoparia*) and black-capped vireo (*Vireo atricapilla*) within Texas.

**Permit TE–52419A**

*Applicant:* EA Engineering, Science, and Technology, Lewisville, Texas.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys for interior least tern (*Sterna antillarum*) and red-cockaded woodpecker (*Picoides borealis*) within Texas.

**Permit TE–57473A**

*Applicant:* Stephen Ramirez, San Marcos, Texas.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys for golden-cheeked warbler (*Dendroica*

*chrysoparia*) and black-capped vireo (*Vireo atricapilla*) within Texas.

**Permit TE–189566**

*Applicant:* Monica Geick, Austin, Texas.

Applicant requests a renewal to a current permit for research and recovery purposes to conduct presence/absence surveys for golden-cheeked warbler (*Dendroica chrysoparia*) and black-capped vireo (*Vireo atricapilla*) within Texas.

**Permit TE–37047A**

*Applicant:* Sea World Parks and Entertainment, San Antonio, Texas.

Applicant requests an amendment to a current permit for husbandry and holding of Kemp's ridley (*Lepidochelys kempii*) and hawksbill (*Eretmochelys imbricata*) sea turtles within Sea World, San Antonio, Texas.

**Permit TE–58781A**

*Applicant:* University of Arizona, Tucson, Arizona.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys, camera surveys, scat collection, and genetic analysis for ocelot (*Leopardus pardalis*), jaguarundi (*Herpailurus yagouaroundi*), and jaguar (*Pathera onca*) within Arizona.

**Public Availability of Comments**

All comments and materials we receive in response to this request will be available for public inspection, by appointment, during normal business hours at the address listed in the **ADDRESSES** section of this notice.

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.

**Authority:** We provide this notice under section 10 of the Act (16 U.S.C. 1531 *et seq.*)

Dated: *November 23, 2011.*

**Joy E. Nicholopoulos,**

*Regional Director, Southwest Region.*

[FR Doc. 2011–31107 Filed 12–2–11; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS–R9–EA–2011–N246; FF09X60000–FVWF979209000005D–XXX]**

### Sport Fishing and Boating Partnership Council

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

**ACTION:** Notice of Teleconference.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce a public teleconference of the Sport Fishing and Boating Partnership Council (Council).

**DATES:** We will hold the teleconference on Tuesday, December 20, 2011, from 2 p.m. to 4 p.m. (Eastern Daylight Time). If you wish to listen to or participate in the teleconference proceedings, or submit written material for the Council to consider during the teleconference, notify Douglas Hobbs by Tuesday, December 13, 2011. See instructions under **SUPPLEMENTARY INFORMATION.**

**FOR FURTHER INFORMATION CONTACT:** Douglas Hobbs, Council Coordinator, 4401 N. Fairfax Dr., Mailstop 3103–AEA, Arlington, VA 22203; (703) 358–2336 (phone); (703) 358–2548 (fax); or *doug_hobbs@fws.gov* (email).

**SUPPLEMENTARY INFORMATION:** In accordance with the requirements of the Federal Advisory Committee Act, 5 U.S.C. App., we give notice that the Council will hold a teleconference (see **DATES**).

**Background**

The Council was formed in January 1993 to advise the Secretary of the Interior, through the Director of the U.S. Fish and Wildlife Service, on nationally significant recreational fishing, boating, and aquatic resource conservation issues. The Council represents the interests of the public and private sectors of the sport fishing, boating, and conservation communities and is organized to enhance partnerships among industry, constituency groups, and government. The 18-member Council, appointed by the Secretary of the Interior, includes the Service Director and the president of the Association of Fish and Wildlife Agencies, who both serve in *ex officio* capacities. Other Council members are directors from State agencies responsible for managing recreational fish and wildlife resources and individuals who represent the interests of saltwater and freshwater recreational fishing, recreational boating, the recreational fishing and boating industries, recreational fisheries resource conservation, Native American tribes, aquatic resource outreach and education, and tourism. Background information on the Council is available at *http://www.fws.gov/sfbpc.*

**Teleconference Agenda**

The Council will convene by telephone to: (1) Approve recommendations to the Director of the Fish and Wildlife Service for funding Fiscal Year 2012 Boating Infrastructure Grant proposals; and (2) to consider other Council business. We will post the final agenda on the Internet at *http://www.fws.gov/sfbpc.*

**Procedures for Public Input**

Individuals or groups can listen to or make an oral presentation at the public Council teleconference. Oral presentations will be limited to 2 minutes per speaker, with no more than a total of 30 minutes for all speakers. In order to listen to or participate in this teleconference, you must register by close of business on December 13, 2011. Please submit your name, email address, and phone number to Douglas Hobbs, Council Coordinator (see **FOR FURTHER INFORMATION CONTACT**).

Written statements must be received by December 13, 2011, so that the information may be made available to the Council for their consideration prior to this meeting. Written statements must be supplied to the Council Coordinator in both of the following formats: One hard copy with original signature, and one electronic copy via email (acceptable file format: Adobe Acrobat PDF, WordPerfect, MS Word, MS PowerPoint, or Rich Text files in IBM–PC/Windows 98/2000/XP format). Please submit your statement to Douglas Hobbs, Council Coordinator (see **FOR FURTHER INFORMATION CONTACT**).

**Teleconference Summary Minutes**

The Council Coordinator will maintain the teleconference's summary minutes, which will be available for public inspection at the location under **FOR FURTHER INFORMATION CONTACT** during regular business hours within 90 days after the teleconference. You may purchase personal copies for the cost of duplication.

Dated: November 23, 2011.

**Cynthia T. Martinez,**

*Acting Director.*

[FR Doc. 2011–31104 Filed 12–2–11; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

### Announcement of Vacancy on the Osage Tribal Education Committee

**AGENCY:** Bureau of Indian Education, Interior.

**ACTION:** Notice.

**SUMMARY:** The Bureau of Indian Education is announcing that a vacancy has occurred on the Osage Tribal Education Committee. This vacancy is the Hominy Village Representative. The purpose of this notice is to solicit nominations from individuals or Osage organizations who would like to nominate persons for the vacancy.

**DATES:** Applications and nominations must be received on or before December 30, 2011.

**ADDRESSES:** You may send applications and nominations to: Osage Tribal Education Committee, c/o Oklahoma Area Education Office, 200 N. W. 4th Street, Suite 4049, Oklahoma City, OK 73102.

**FOR FURTHER INFORMATION CONTACT:** Joy Martin, Oklahoma Education Line Officer, at (405) 605–6051.

**SUPPLEMENTARY INFORMATION:** Pursuant to 25 CFR 122.5 and the Overall Plan of Operation for the Osage Tribal Education Committee, the Bureau is seeking nominations from individuals or Osage organizations who would like to nominate persons for the vacancy. The requirements of the Hominy Village Representative are:

(a) Must be an adult person of Osage Indian blood who is an allottee or a descendant of an allottee; and

(b) Must be a legal resident and/or live within a 20-mile radius of the Hominy Indian village.

The nominee or his/her representative organization should submit a brief statement requesting that he/she be considered as a candidate for the vacancy and the reason for desiring to serve on the committee. If nominated by an Osage organization, a written statement from the nominee stating his/her willingness to serve on the committee must be included with the Osage organization's nomination.

Applications and nominations must be received no later than December 30, 2011. Nominations shall be delivered by registered mail to the address listed in the **ADDRESSES** section.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Dated: November 21, 2011.

**Larry Echo Hawk,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 2011–31116 Filed 12–2–11; 8:45 am]

**BILLING CODE 4310–6W–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[AA–9915, AA–9916, AA–9921, AA–9936, AA–9937, AA–9965; LLAK–965000–L14100000–HY0000–P]**

### Alaska Native Claims Selection

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Decision Approving Lands for Conveyance.

**SUMMARY:** As required by 43 CFR 2650.7(d), notice is hereby given that the Bureau of Land Management (BLM) will issue an appealable decision to Calista Corporation. The decision will approve the conveyance of the surface and subsurface estates in certain lands pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*). The lands are located south of Tuntutuliak, Alaska, and contain 23.70 acres. Notice of the decision will also be published four times in the *Anchorage Daily News.*

**DATES:** Any party claiming a property interest in the lands affected by the decision may appeal the decision within the following time limits:

1. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who fail or refuse to sign their return receipt, and parties who receive a copy of the decision by regular mail which is not certified, return receipt requested, shall have until January 4, 2012 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

3. Notices of appeal transmitted by electronic means, such as facsimile or email, will not be accepted as timely filed.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

**ADDRESSES:** A copy of the decision may be obtained from:

Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504

**FOR FURTHER INFORMATION CONTACT:** The BLM by phone at (907) 271–5960 or by email at *ak.blm.conveyance@blm.gov.* Persons who use a Telecommunications Device for the Deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1 (800) 877–8339 to contact the BLM during normal business hours. In addition, the FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the BLM. The BLM will reply during normal business hours.

**Dina L. Torres,**

*Land Transfer Resolution Specialist, Branch of Land Transfer Adjudication II.*

[FR Doc. 2011–31125 Filed 12–2–11; 8:45 am]

**BILLING CODE 4310–JA–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[AA–6654–G; LLAK964000–L14100000–KC0000–P]**

### Alaska Native Claims Selection

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Decision Approving Lands for Conveyance.

**SUMMARY:** As required by 43 CFR 2650.7(d), notice is hereby given that the Bureau of Land Management (BLM) will issue an appealable decision to Chignik Lagoon Native Corporation. The decision approves the surface estate in the lands described below for conveyance pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601, *et seq.*). The subsurface estate in these lands will be conveyed to Bristol Bay Native Corporation when the surface estate is conveyed to Chignik Lagoon Native Corporation. The lands are in the vicinity of Chignik Lagoon, Alaska, and are located in:

**Seward Meridian, Alaska**

T. 46 S., R. 59 W.,
Tracts H and I.
Containing approximately 308 acres.

T. 46 S., R. 60 W.,
Tracts C, D and E;
Sec. 36.
Containing approximately 2,327 acres.

T. 47 S., R. 60 W.,
Sec. 4, lots 1 to 4;
Sec. 5.
Containing approximately 515 acres.

T. 46 S., R. 61 W.,
Sec. 36.
Containing approximately 634 acres.
Aggregating approximately 3,784 acres.

Notice of the decision will also be published four times in the *Anchorage Daily News.*

**DATES:** Any party claiming a property interest in the lands affected by the

decision may appeal the decision within the following time limits:

1. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who fail or refuse to sign their return receipt, and parties who receive a copy of the decision by regular mail which is not certified, return receipt requested, shall have until January 4, 2012 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

3. Notices of appeal transmitted by electronic means, such as facsimile or email, will not be accepted as timely filed.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

**ADDRESSES:** A copy of the decision may be obtained from:

Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

**FOR FURTHER INFORMATION, CONTACT:** The BLM by phone at (907) 271–5960 or by email at *ak.blm.conveyance@blm.gov.* Persons who use a Telecommunications Device for the Deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1 (800) 877–8339 to contact the BLM during normal business hours. In addition, the FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the BLM. The BLM will reply during normal business hours.

**Jason Robinson,**

*Land Law Examiner, Land Transfer Adjudication II Branch.*

[FR Doc. 2011–31123 Filed 12–2–11; 8:45 am]

**BILLING CODE 4310–JA–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLWY–920000–L14300000–ET0000; WYW 28908]**

### Notice of Application for Withdrawal Extension and Opportunity for Public Meeting; Wyoming

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The United States Forest Service (USFS) has filed an application with the Department of the Interior, Bureau of Land Management (BLM) to extend the duration of Public Land Order (PLO) No. 6928 for an additional 20-year term. PLO No. 6928 withdrew 30 acres of National Forest System land in the Shoshone National Forest from mining in order to protect the USFS Crandall Creek Administrative Site. The withdrawal created by PLO No. 6928 will expire on May 28, 2012, unless extended. This notice also provides an opportunity to comment on the application and proposed action and to request a public meeting.

**DATES:** Comments and requests for a public meeting must be received by March 5, 2012.

**ADDRESSES:** Comments and meeting requests should be sent to the State Director, BLM, Wyoming State Office, 5353 Yellowstone Road, Cheyenne, Wyoming 82009.

**FOR FURTHER INFORMATION CONTACT:** Daniel Aklufi, USFS Rocky Mountain Region, (307) 578–5151, or Diane Schurman, BLM Wyoming State Office, (307) 775–6189.

**SUPPLEMENTARY INFORMATION:** The USFS has filed an application requesting that the Secretary of the Interior extend the duration of PLO No. 6928 (57 FR 22659 (1992)), which withdrew 30 acres of National Forest System land in the Shoshone National Forest from location and entry under the United States mining laws, but not from leasing under the mineral leasing laws, for an additional 20-year term, subject to valid existing rights. PLO No. 6928 is incorporated herein by reference.

The purpose of the proposed withdrawal extension is to continue the protection of the significant capital improvements associated with the Crandall Creek Administrative Site.

The use of a right-of-way, interagency agreement, or cooperative agreement would not provide adequate protection.

The USFS would not need to acquire water rights to fulfill the purpose of the requested withdrawal extension.

Records related to the extension application may be examined by contacting Diane Schurman at the above BLM address or phone number, or email *dschurma@blm.gov.*

For a period until March 5, 2012, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal extension may present their views in writing to the BLM Wyoming State Director at the address indicated above.

Comments, including names and street addresses of respondents, will be available for public review at the address indicated above during regular business hours.

Individual respondents may request confidentiality. Before including your address, phone number, email address, or other personal identifying information in your comment, be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal extension. All interested parties who desire a public meeting for the purpose of being heard on the proposed withdrawal extension must submit a written request to the BLM Wyoming State Director at the address indicated above by March 5, 2012. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** and a local newspaper at least 30 days before the scheduled date of the meeting. The application will be processed in accordance with regulations set forth in 43 CFR 2310.4.

**Authority:** 43 CFR 2310.3–1.

**Larry Claypool,**

*Acting State Director.*

[FR Doc. 2011–31121 Filed 12–2–11; 8:45 am]

**BILLING CODE 4310–11–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLOR–936000–L14300000–ET0000; HAG–11–0301; OROR–47267]**

### Notice of Application for Withdrawal Extension and Opportunity for Public Meeting; Oregon

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The United States Forest Service (USFS) has filed an application with the Bureau of Land Management (BLM) requesting that the Secretary of the Interior extend the duration of Public Land Order (PLO) No. 6947 for an additional 20-year term. PLO No. 6947 withdrew approximately 150 acres of National Forest System land from location and entry under the United States mining laws in order to protect the USFS recreational rock hounding area at Thunder Egg Lake Agate Beds. The withdrawal created by PLO No. 6947 will expire on September 21, 2012, unless it is extended. This notice also gives an opportunity to comment on the

application and proposed action and to request a public meeting.

**DATES:** Comments and requests for a public meeting must be received by March 5, 2012.

**ADDRESSES:** Comments and meeting requests should be sent to the Oregon/Washington State Director, BLM, 333 SW. 1st Avenue, P.O. Box 2965, Portland, Oregon 97208–2965.

**FOR FURTHER INFORMATION CONTACT:** Michael L. Barnes, BLM Oregon/Washington State Office, (503) 808–6155, or Dianne Torpin, USFS Pacific Northwest Region, (503) 808–2422. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-(800) 877–8339 to reach either the BLM or USFS contact during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with either of the above individuals. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** The USFS has filed an application requesting that the Secretary of the Interior extend PLO No. 6947 (57 FR 43618 (1992)), which withdrew 150 acres of National Forest System land in the Fremont National Forest from location and entry under the United States mining laws, but not from leasing under the mineral leasing laws, for an additional 20-year term, subject to valid existing rights. PLO No. 6947 is incorporated herein by reference.

The purpose of the proposed withdrawal extension is to continue the protection of the USFS recreational rock hounding area at the Thunder Egg Lake Agate Beds.

The use of a right-of-way, interagency agreement, or cooperative agreement would not provide adequate protection.

The USFS would not need to acquire water rights to fulfill the purpose of the requested withdrawal extension.

Records related to the application may be examined by contacting Michael L. Barnes at the above address or phone number.

All persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal extension may present their views in writing to the BLM State Director at the address indicated above until March 5, 2012.

Comments, including names and street addresses of respondents, will be available for public review at the address indicated above during regular business hours.

Individual respondents may request confidentiality. Before including your address, phone number, email address, or other personal identifying information in your comment, be advised 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 from public review your personal identifying information, we cannot guarantee that we will be able to do so.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal extension application. All interested parties who desire a public meeting for the purpose of being heard on the proposed withdrawal extension application must submit a written request to the BLM State Director at the address indicated above by March 5, 2012. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** and a local newspaper at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2310.4.

**Authority:** 43 CFR 2310.3–1.

**Fred O'Ferrall,**

*Chief, Branch of Land, Mineral, and Energy Resources.*

[FR Doc. 2011–31119 Filed 12–2–11; 8:45 am]

BILLING CODE 4310–11–P

## DEPARTMENT OF THE INTERIOR

## National Park Service

**[2253–665]**

## Notice of Intent To Repatriate a Cultural Item: Kingman Museum, Inc., Battle Creek, MI

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The Kingman Museum, Inc., in consultation with the appropriate Indian tribe, has determined that a cultural item meets the definition of sacred object and repatriation to the Indian tribe stated below may occur if no additional claimants come forward. Representatives of any Indian tribe that believes itself to be culturally affiliated with the cultural item may contact the Kingman Museum, Inc.

**DATES:** Representatives of any Indian tribe that believes it has a cultural affiliation with the cultural item should contact the Kingman Museum, Inc. at the address below by January 4, 2012.

**ADDRESSES:** Beth Yahne, Kingman Museum, Inc., Battle Creek, MI 49037, telephone (269) 965–5117.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate a cultural item in the possession of the Kingman Museum, Inc. that meets the definition of sacred object under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural item. The National Park Service is not responsible for the determinations in this notice.

### History and Description of the Cultural Item

The snapping turtle rattle was purchased by Kingman Museum Inc. in January of 1975 from Iroqrafts Ltd. in Ontario, Canada. At the time of its purchase, the rattle was estimated to be 83 years old, putting the date of its creation in the late 19th century. It was made by the Gana hna ''City'' for the Deer Clan of the Onondaga Nation of New York. The head and neck of the turtle acts as the handle while the shell acts as the rattle. According to information given at the time of purchase, the rattle had been used once by the False Face Society.

Through consultation with representatives on the Haudenosaunee Standing Committee on Burial Rules and Regulations (representing the Tonawanda Seneca Nation and the Onondaga Nation), and review of museum records, the rattle has been identified as Native American and cultural affiliation has been determined between the rattle and the Onondaga Nation of New York. The aforementioned consultation also determined that the rattle is a sacred object.

### Determinations Made by the Kingman Museum, Inc.

Officials of the Kingman Museum, Inc. have determined that:

- Pursuant to 25 U.S.C. 3001(3)(C), the one cultural item described above is a specific ceremonial object needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced

between the sacred object and the Onondaga Nation of New York.

**Additional Requestors and Disposition**

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the sacred object should contact Beth Yahne, Kingman Museum, Inc., Battle Creek, MI 49037, telephone (269) 965–5117, before January 4, 2012. Repatriation of the sacred object to the Onondaga Nation of New York may proceed after that date if no additional claimants come forward.

The Kingman Museum, Inc. is responsible for notifying the Onondaga Nation of New York that this notice has been published.

Dated: November 29, 2011.

**Sherry Hutt,**

*Manager, National NAGPRA Program.*

[FR Doc. 2011–31070 Filed 12–2–11; 8:45 am]

**BILLING CODE 4312–50–P**

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## DEPARTMENT OF THE INTERIOR

## National Park Service

**[2253–665]**

## Notice of Inventory Completion: Minnesota Indian Affairs Council, Bemidji, MN

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The Minnesota Indian Affairs Council has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian tribes, and has determined that there is no cultural affiliation between the human remains and any present-day Indian tribe. Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains may contact the Minnesota Indian Affairs Council. Disposition of the human remains and associated funerary objects to the Indian tribes stated below may occur if no additional requestors come forward.

**DATES:** Representatives of any Indian tribe that believes it has a cultural affiliation with the human remains should contact the Minnesota Indian Affairs Council at the address below by January 4, 2012.

**ADDRESSES:** James L. (Jim) Jones, Cultural Resource Director, Minnesota Indian Affairs Council, 3801 Bemidji Avenue NW., Suite 5, Bemidji, MN 56601, telephone (218) 755–3223.

**SUPPLEMENTARY INFORMATION:** Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the Minnesota Indian Affairs Council (MIAC). The human remains and associated funerary objects were removed from the following counties in MN: Brown, Carver, Dakota, Fillmore, Freeborn, Goodhue, Grant, Hennepin, Kandiyohi, Murray, Nicollet, Nobles, Olmsted, Sibley, Traverse, and Wright.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

**Consultation**

A detailed assessment of the human remains was made by the MIAC professional staff in consultation with representatives of the Flandreau Santee Sioux Tribe of South Dakota; Lower Sioux Indian Community in the State of Minnesota; Prairie Island Indian Community in the State of Minnesota; Santee Sioux Nation, Nebraska; Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota; Spirit Lake Tribe, North Dakota; and the Upper Sioux Community, Minnesota (hereinafter referred to as ''The Tribes'').

**History and Description of the Remains**

Between 1994 and 1996, human remains representing, at minimum, 16 individuals were discovered at the Helget site, 21–BW–82, in Brown County, MN, as a result of inadvertent backhoe disturbance on private property by the landowner. The remains were subsequently recovered by the Minnesota Office of the State Archaeologist. In 1995 and 1997, the human remains were transferred to the MIAC and assigned case number H291. No known individuals were identified. No associated funerary objects are present.

The burial context and cranial morphology identify these human remains as pre-contact American Indian. These human remains have no archeological classification and cannot be identified with any present-day Indian tribe.

In 1958, human remains representing, at minimum, one individual were recovered from an undesignated site in Carver County, MN, by Mr. Bleichner while rock collecting in a gravel pit. In 2002, Mr. Bleichner donated the remains to the Carver County Historical Society. The remains were then transferred to the Minnesota Office of the State Archaeologist and then to the MIAC (H407). No known individual was identified. No associated funerary objects are present.

The condition of the human remains suggests they are from a pre-contact time period and femora morphology identifies them as American Indian. These human remains have no archeological classification and cannot be associated with any present-day Indian tribe.

In 1955 and 1956, human remains representing, at minimum, 15 individuals were recovered from site, 21–DK–5, Bremer Mound in Dakota County, MN, during archeological excavations conducted by Elden Johnson and Louis Powell of the Science Museum of Minnesota. In 1994 and 2010, the human remains were transferred from the Science Museum of Minnesota to the MIAC and assigned case number H259. No known individuals were identified. The two associated funerary objects include a small triangular projectile point and a bone bead.

Records at the Science Museum of Minnesota, including a M.A. thesis by Peter Jensen (''The Bremer Village and Mound Site,'' 1959) suggest the human remains and associated funerary objects are associated with the Late Woodland Tradition based on the similarity between the objects and artifactual material in the mound fill (ceramic sherds) with material found at the Late Woodland component of a nearby (¼ mile) village site, 21–DK–6. These human remains are associated with the Late Woodland Tradition, an archeological classification which cannot be identified with any present-day Indian tribe.

In 1990, human remains representing, at minimum, one individual were transferred from the Fillmore County Museum to the MIAC's laboratory at Hamline University where they were assigned case number H175. Information with the transfer indicates the human remains were from a display in a doctor's office in Fillmore County. No known individual was identified. No associated funerary objects are present.

The condition and cranial morphology of the human remains identify them as pre-contact American Indian. These human remains have no archeological classification and cannot be associated with any present-day Indian tribe.

In the 1950s, human remains representing, at minimum, three individuals were recovered by unknown person(s) from an outlet of Albert Lea

Lake in Freeborn County, MN. Records research suggests the human remains may be from site 21–FE–4. In 2007 the human remains were transferred to the Minnesota State Archaeologist's Office from the Albert Lea, MN Police Department and then to the MIAC where they were assigned case number H434. No known individuals were identified. No associated funerary objects are present.

Site records in the Minnesota Office of the State Archaeologist record 22 mounds at 21–FE–4 and indicate a Woodland Period temporal affiliation. These human remains are associated with the Woodland Tradition, a broad archeological classification which cannot be associated with any present-day Indian tribe.

In 1948, human remains representing, at minimum, two individuals were removed by unknown person(s) from two burial mounds on the isthmus leading to Big Island, on the north shore of Albert Lea Lake in Freeborn County, MN. In 1974, the human remains were transferred to J. Oothoudt of the Minnesota Historical Society, who reported the human remains may be from site 21–FE–50. In 2007, the remains were posthumously donated by J. Oothoudt to the MIAC's laboratory at Hamline University where they were assigned case number H388. No known individuals were identified. No associated funerary objects are present.

According to site records in the Minnesota Office of the State Archaeologist, site 21–FE–50 is a prehistoric artifact scatter with no specific archeological designation. Burial mounds are known to be present in the vicinity and are considered to be Woodland Tradition. These human remains are probably associated with the Woodland Tradition, a broad archeological classification which cannot be associated with any present-day Indian tribe.

At an unknown date, human remains representing, at minimum, nine individuals were removed from unidentified archeological sites in Goodhue County, MN, by Prof. E.W. Schmidt and donated to the Goodhue County Historical Society. In 1991, the human remains were transferred from the Goodhue County Historical Society to the MIAC's laboratory at Hamline University where they were assigned case number H188. No known individuals were identified. No associated funerary objects are present.

These human remains lack documentation about provenience and the context in which they were uncovered in Goodhue County. Based on the condition of the bones, the remains are ancient and dental morphology identifies their American Indian ancestry. These human remains have no archeological classification and cannot be associated with any present-day Indian tribe.

In 1951, human remains representing, at minimum, three individuals were removed from site 21–GD–12, Hauge Lutheran Seminary Mounds in Goodhue County, MN in the process of house construction and donated to the Goodhue County Historical Society by R.F. Hedin. In 1991, the human remains were transferred to the MIAC and assigned case number H188. No known individuals were identified. No associated funerary objects are present.

Site records in the Office of the Minnesota State Archaeologist record two mounds at this site and indicate a probable Woodland Period temporal affiliation. These human remains are associated with the Woodland Tradition, a broad archeological classification which cannot be associated with any present-day Indian tribe.

In the early 1900s, human remains representing, at minimum, four individuals were removed from site 21–GD–72, Belle Creek Mounds in Goodhue County, MN, by E.W. Schmidt, an amateur archeologist, and donated to the Goodhue County Historical Society. In 1991, the human remains were transferred to the MIAC and assigned case number H188. No known individuals were identified. No associated funerary objects are present.

Site records in the Minnesota Office of the State Archaeologist record 67 mounds at this site and indicate an association with the Woodland Tradition. These human are associated with the Woodland Tradition, a broad archeological classification which cannot be associated with any present-day Indian tribe.

In 1931, human remains representing, at minimum, one individual were removed from a gravel pit, site 21–GR–51, in Grant County, MN, by unknown person(s). At an unknown date, the human remains were donated to the Minnesota Historical Society by private citizen, Kent Skaar. The human remains were transferred to the MIAC in 1991 (H193) and in 1993 (H246). No known individuals were identified. No associated funerary objects are present.

The context of the burial site identifies these human remains as pre-contact American Indian. These human remains have no archeological classification and cannot be associated with any present-day Indian tribe.

In 1964, human remains representing, at minimum, one individual were disturbed from site 21–GR–4, Peterson Lake in Grant County, MN, by unknown person(s) during agricultural activity on the Peterson farm. The remains were recovered by William Goetzinger of the Grant County Historical Society. In 1990, the Grant County Historical Society donated the remains to the MIAC (H189). No known individual was identified. The 24 associated funerary objects include a circular limestone disc, an end scraper, a knife, 14 small, flat disk beads of shell, two round marine shell beads and a cluster of 5 worked beaver incisors.

Site 21–GR–4 has been identified as possibly associated with the Archaic Tradition, a broad archeological classification which cannot be associated with any present-day Indian tribe.

In 1995, human remains representing, at minimum, one individual were recovered by unknown person(s) from bluffs along the Minnesota River Valley in the city of Bloomington in Hennepin County, MN. The human remains were recovered by the Bloomington Minnesota Police Department and transferred to the Hennepin County Medical Examiner's Office for identification. In 1995, the human remains were transferred to the MIAC (H292). The Minnesota Office of the State Archaeologist assigned site number 21–HE–154 to the locale to identify the presence of a burial site. No known individual was identified. No associated funerary objects are present.

The human remains were determined to represent an individual from the pre-contact period based on the condition of the remains and observed dental pathology. They have been determined to be of American Indian ancestry based on cranial morphology. These human remains from have no archeological classification and cannot be associated with any present-day Indian tribe.

In 1996, human remains representing, at minimum, one individual were recovered from the surface on the north half of Gale Island in Hennepin County, MN. The remains were discovered by Robert Louis Naas while walking on a paved path on the island and recovered by the Hennepin Country Crime Lab and Sheriff's Department. The human remains were transferred to the Hennepin County Medical Examiner's Office (HCMEO 96–1624) for identification and then transferred to the MIAC's laboratory at Hamline University (H303). Investigation by the Minnesota Office of the State Archaeologist concluded that the remains were likely exposed as a result of earlier landscaping and/or erosion activities. Archaeological site number

21–HE–271 was assigned to document the presence of a burial location. No known individual was identified. No associated funerary objects are present.

The condition of the human remains suggests an ancient context and the morphology of femora identifies American Indian ancestry. The human remains have no archeological classification and cannot be associated with any present-day Indian tribe.

In the 1920s, human remains representing, at minimum, two individuals were recovered from Enchanted Island in Lake Minnetonka, Hennepin County, MN by George Cole. In 1999 the human remains were transferred to the Minnesota Office of the State Archaeologist by Mr. Cole's nephew, Lyle Chapman. In 2002, the remains were transferred to the MIAC (H381). No known individuals were identified. No associated funerary objects are present.

The context and condition of the human remains suggest an ancient, pre-contact time period and the morphology of the skull and femora indicate American Indian ancestry. These human remains have no archeological classification and cannot be associated with any present-day Indian tribe.

In 1922, human remains representing, at minimum, nine individuals were removed from private property on Lake Florida in Kandiyohi County, MN, by unknown person(s) and donated to the Kandiyohi County Historical Society (Acc. 1405). In 1990, the human remains were transferred to the MIAC (H176). No known individuals were identified. No associated funerary objects are present.

The context and condition of the remains identify these human remains as pre-contact American Indian affiliation. These human remains have no archeological classification and cannot be associated with any present-day Indian tribe.

In 1885, human remains representing, at minimum, one individual were recovered from a mound in an unknown location in Kandiyohi County, MN, by unknown person(s) and donated to the Meeker County Historical Society. In 1997, David Nystuen of the Minnesota Historical Society transferred the human remains from the Meeker County Historical Society to the Minnesota Office of the State Archaeologist. In 1999, the human remains were transferred to the MIAC (H368–1). No known individual was identified. No associated funerary objects are present.

These human remains were reportedly recovered from a mound which suggests an association with the Woodland Tradition, a broad archeological classification which cannot be associated with any present-day Indian tribe.

In the1930s, human remains representing, at minimum, two individuals were recovered from a mound in an unknown location in Kandiyohi County, MN, by unknown person(s) and donated to the Meeker County Historical Society. In 1997, David Nystuen of the Minnesota Historical Society transferred the human remains from the Meeker County Historical Society to the Minnesota Office of the State Archaeologist. In 1999, the human remains were transferred to the MIAC (H368–2, H368–3). No known individuals were identified. No associated funerary objects are present.

These human remains were reportedly recovered from a mound which suggests an association with the Woodland Tradition and femoral morphology identifies these remains as American Indian. The Woodland Tradition is a broad archeological classification which cannot be associated with any present-day Indian tribe.

In 1971, human remains representing, at minimum, one individual were recovered from the Great Oasis type site or Nelson site (21–MU–2) in Murray County, MN, during archeological excavations by Dale Henning and personnel from the University of Minnesota and the University of Nebraska. The human remains were transferred to the University of Iowa. At an unknown date the human remains were transferred to the University of Minnesota. In 2002, the human remains were transferred to the MIAC (H387). No known individual was identified. No associated funerary objects are present.

Records in the Minnesota Office of the State Archaeologist identify multi-components in the habitation area of the Great Oasis type site (21–MU–2). This burial and the associated human remains have been determined to be associated with the Great Oasis phase of the Plains Village Tradition (A.D. 900–1200), an archeological classification which cannot be associated with any present-day Indian tribe.

In 1954, human remains representing, at minimum, one individual were recovered from site 21–NL–1, the Poehler Mound site in Nicollet County, MN, during archeological excavations by Lloyd Wilford of the University of Minnesota (UM384). Three burials were reportedly excavated and additional human remains were found in the mound fill but no human remains were accessioned into the University of Minnesota ledger purportedly because of the poor preservation of bone. Student field notes record leaving the remains in situ because they disintegrated upon excavation. The single human bone recorded here was erroneously identified as animal bone. In 2008, the UM384 material was transferred to the MIAC's laboratory at Hamline University, where the bone was correctly identified as human. No known individual was identified. The fifteen associated funerary objects are: two ceramic sherds, multiple sherds of a partial vessel, a chert core, a flake, a base of a corner-notched point, a biface tip, a chert scraper, a flat shell bead or gorget, an expanding stem point and five snail shells.

These human remains are associated with the Middle Prehistoric period (3000 B.C.–A.D. 900), a broad archeological classification which cannot be associated with any present-day Indian tribe.

In 1985, human remains representing, at minimum, one individual were recovered from an undesignated site in Nobles County, MN, by unknown person(s) and donated to the MIAC (H102). No known individual was identified. No associated funerary objects are present.

These human remains have no archeological classification and cannot be associated with any present-day Indian tribe.

At an unknown date, human remains representing, at minimum, eight individuals were removed from an undesignated site in Olmsted County, MN, by unknown person(s) and donated to the Olmsted County Historical Society. In 1991, the human remains were transferred to the MIAC (H190). No known individuals are identified. No associated funerary objects are present.

The condition of the human remains, femora morphology and dental attrition pattern identify these remains as pre-contact American Indian. These human remains have no archeological classification and cannot be associated with any present-day Indian tribe.

During the late 19th century, human remains representing, at minimum, one individual were removed from an unknown site in Olmsted County, MN, by unknown persons and donated to the Olmsted County Historical Society (Acc. 75.162.96). In 1994, the human remains were transferred to the MIAC (H273). No known individual was identified. No associated funerary objects are present.

The condition of the human remains suggest an ancient, pre-contact time period. These human remains have no archeological classification and cannot be associated with any present-day Indian tribe.

In 1955, human remains representing, at minimum, fifteen individuals were recovered from site 21–SB–1, High Island Mound site/Black Tortoise Mound in Sibley County, MN, during archeological excavations conducted by L.A. Wilford of the University of Minnesota (UM395). No known individuals were identified. No associated funerary objects were present.

Site 21–SB–1 consists of 52 mounds. In 1955, L.A. Wilford excavated Mound 32, which contained both an Oneota burial (intrusive to the Woodland mound) and Woodland burials. The Oneota burial was reported as ancestral to the present-day Otoe and Iowa tribes (64 FR 40040, Friday, July 23, 1999) and repatriated and reburied in 2001. These human remains are associated with the Woodland Tradition, a broad archeological classification which cannot be associated with any present-day Indian tribe.

At an unknown date, human remains representing, at minimum, one individual were recovered from Traverse County, MN, by unknown person(s). In 1999, Dave Nystuen of the Minnesota Historical Society transferred these remains to the Minnesota Office of the State Archaeologist. In 1999, the Minnesota Office of the State Archaeologist transferred these remains to the MIAC (H371). No known individual was identified. No associated funerary objects are present.

The condition of the human remains and dental patterns of attrition suggest an ancient pre-contact time period. Cranial morphology identifies the human remains as American Indian. These human remains have no archeological classification and cannot be associated with any present-day Indian tribe.

In 1937, human remains representing, at minimum, one individual were recovered from site 21–WR–19, the Waverly Lake site, Wright County, MN, by unknown person(s). In 1996, the human remains were donated to the Minnesota Office of the State Archaeologist and in 1997 transferred to the MIAC (H321). No known individual was identified. No associated funerary objects are present.

Site 21–WR–19 represents a group of mounds mapped by T.H. Lewis in 1881. In 1978, the Minnesota Statewide Archaeological Survey identified possible mound features in the area of site 21–WR–19, which suggest these human remains may be associated with the Woodland Tradition, a broad archeological classification which cannot be associated with any present-day Indian tribe.

In 1999, human remains representing, at minimum, one individual were discovered in a gravel pit in Dayton, Wright County, MN by unknown person(s). The Wright County Sheriff's Department recovered the human remains and transferred them to the Anoka County Coroner's Office/Midwest Forensic Pathology. In 2000, the remains were transferred to the Minnesota Office of the State Archaeologist and site number 21–WR–130, Dayton Quarry Burial was assigned to the location to document the presence of a burial site. In 2002, the human remains were transferred to the MIAC (H377). No known individual was identified. No associated funerary objects are present.

The context and condition of the human remains suggest a pre-contact archeological association. Residents of the land parcel report the presence of aboriginal habitation debris in the area of recovery. These human remains have no archeological classification and cannot be associated with any present-day Indian tribe.

**Determinations Made by the Minnesota Indian Affairs Council**

Officials of the Minnesota Indian Affairs Council have determined that:

- Based on non-destructive physical analysis and catalogue records, the human remains are Native American.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian tribe.
- According to final judgments of the Indian Claims Commission, the land from which the Native American human remains and associated funerary objects were removed is the aboriginal land of The Tribes.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 102 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 41 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains is to The Tribes.

**Additional Requestors and Disposition**

Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains or any other Indian tribe that believes it satisfies the criteria in 43 CFR 10.11(c)(1) should contact James L. (Jim) Jones, Cultural Resource Director, Minnesota Indian Affairs Council, 3801 Bemidji Avenue NW., Suite 5, Bemidji, MN 56601, telephone (218) 755–3223, before January 4, 2012. Disposition of the human remains to The Tribes may proceed after that date if no additional requestors come forward.

The Minnesota Indian Affairs Council is responsible for notifying The Tribes that this notice has been published.

Dated: November 29, 2011.

**Sherry Hutt,**

*Manager, National NAGPRA Program.*

[FR Doc. 2011–31077 Filed 12–2–11; 8:45 am]

**BILLING CODE 4312–50–P**

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## DEPARTMENT OF THE INTERIOR

### National Park Service

**[2253–665]**

### Notice of Inventory Completion: Minnesota Indian Affairs Council, Bemidji, MN

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The Minnesota Indian Affairs Council has completed an inventory of human remains in consultation with the appropriate Indian tribes, and has determined that there is no cultural affiliation between the remains and any present-day Indian tribe. Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains may contact the Minnesota Indian Affairs Council. Disposition of the human remains to the Indian tribes stated below may occur if no additional requestors come forward.

**DATES:** Representatives of any Indian tribe that believes it has a cultural affiliation with the human remains should contact the Minnesota Indian Affairs Council at the address below by January 4, 2012.

**ADDRESSES:** James L. (Jim) Jones, Cultural Resource Director, Minnesota Indian Affairs Council, 3801 Bemidji Avenue NW., Suite 5, Bemidji, MN 56601, telephone (218) 755–3223.

**SUPPLEMENTARY INFORMATION:** Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the Minnesota Indian Affairs Council (MIAC). The human remains were removed from Ramsey County, MN.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d).

The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

**Consultation**

A detailed assessment of the human remains was made by the MIAC professional staff in consultation with representatives of the Flandreau Santee Sioux Tribe of South Dakota; Lower Sioux Indian Community in the State of Minnesota; Prairie Island Indian Community in the State of Minnesota; Santee Sioux Nation, Nebraska; Spirit Lake Tribe, North Dakota; and the Upper Sioux Community, Minnesota (hereinafter referred to as ''The Tribes'').

**History and Description of the Remains**

At an unknown date, human remains representing, at minimum, one individual were removed from Manitou/Spirit Island, White Bear Lake, in Ramsey County, MN, and donated to the Minnesota Historical Society by Capt. E. Bell (MHS ORR#48). The human remains were transferred to the MIAC in 1987. No known individuals were identified. No associated funerary objects are present.

The condition of the remains and the location of discovery suggest pre-contact/ancient American Indian affiliation. These human remains have no archeological classification and cannot be associated with any present-day Indian tribe.

In 1997, human remains representing, at minimum, one individual were recovered from site 21–RA–44, at the base of a bluff along the Mississippi River by hikers. The human remains were recovered by the Saint Paul Police Department and turned over to the Ramsey County Medical Examiner's Office (RCMEO 97–1359) for identification. In 1997, the human remains were transferred to the MIAC (H335). No known individuals were identified. No associated funerary objects are present.

The condition of the remains and dental patterns of attrition identify these human remains as pre-contact American Indian affiliation. These human remains have no archeological classification and cannot be associated with any present-day Indian tribe.

**Determinations Made by the Minnesota Indian Affairs Council**

Officials of the MIAC have determined that:

- Based on non-destructive physical analysis and catalogue records, the human remains are Native American.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian tribe.
- According to final judgments of the Indian Claims Commission, the land from which the Native American human remains were removed is the aboriginal land of The Tribes
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of two individuals of Native American ancestry.
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains is to The Tribes.

**Additional Requestors and Disposition**

Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains or any other Indian tribe that believes it satisfies the criteria in 43 CFR 10.11(c)(1) should contact James L. (Jim) Jones, Cultural Resource Director, Minnesota Indian Affairs Council, 3801 Bemidji Avenue NW., Suite 5, Bemidji, MN 56601, telephone (218) 755–3223, before January 4, 2012. Disposition of the human remains to The Tribes may proceed after that date if no additional requestors come forward.

The Minnesota Indian Affairs Council is responsible for notifying The Tribes that this notice has been published.

Dated: November 29, 2011.

**Sherry Hutt,**

*Manager, National NAGPRA Program.*

[FR Doc. 2011–31075 Filed 12–2–11; 8:45 am]

**BILLING CODE 4312–50–P**

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## DEPARTMENT OF THE INTERIOR

### National Park Service

**[2253–665]**

### Notice of Inventory Completion: Minnesota Indian Affairs Council, Bemidji, MN

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The Minnesota Indian Affairs Council has completed an inventory of human remains in consultation with the appropriate Indian tribes, and has determined that there is no cultural affiliation between the remains and any present-day Indian tribe. Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains may contact the Minnesota Indian Affairs Council. Disposition of the human remains to the Indian tribes stated below may occur if no additional requestors come forward.

**DATES:** Representatives of any Indian tribe that believes it has a cultural affiliation with the human remains should contact the Minnesota Indian Affairs Council at the address below by January 4, 2012.

**ADDRESSES:** James L. (Jim) Jones, Cultural Resource Director, Minnesota Indian Affairs Council, 3801 Bemidji Avenue NW., Suite 5, Bemidji, MN 56601, telephone (218) 755–3223.

**SUPPLEMENTARY INFORMATION:** Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the Minnesota Indian Affairs Council (MIAC). The human remains were removed from Itasca County, MN.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

**Consultation**

A detailed assessment of the human remains was made by the MIAC professional staff in consultation with representatives of the Bois Forte Band (Nett Lake) of the Minnesota Chippewa Tribe, Minnesota; Leech Lake Band of the Minnesota Chippewa Tribe, Minnesota; Mille Lacs Band of the Minnesota Chippewa Tribe, Minnesota; Minnesota Chippewa Tribe, Minnesota; and the White Earth Band of Minnesota Chippewa Tribe, Minnesota (hereinafter referred to as ''The Tribes'').

**History and Description of the Remains**

At an unknown date, human remains representing, at minimum, one individual were recovered from the Big Fork River in Itasca County, MN. At an unknown date, Itasca County Sheriff John Muhar transferred the human remains to the Itasca County Historical Society. In 1985, the human remains were transferred to the MIAC (H108–1). No known individuals were identified. No associated funerary objects are present.

The condition of the remains and cranial morphology identify these human remains as pre-contact American Indian affiliation. These human remains

have no archeological classification and cannot be associated with any present-day Indian tribe.

In the 1970s, human remains representing, at minimum, one individual were recovered from an undesignated location in Itasca County, MN. The archeological recovery took place during the Pokegama Survey #66 conducted by archeologist Richard Lane, from St. Cloud State University. The human remains were maintained at St. Cloud State University (Acc. #106) until 2006. In 2006, the human remains were transferred to the MIAC (H418–3). No known individuals were identified. No associated funerary objects are present.

The condition of the remains and related material recovered during the archeological survey, which included ceramic and lithic habitation materials, suggests a pre-contact American Indian context. These human remains have no archeological classification and cannot be associated with any present-day Indian tribe.

**Determinations Made by the Minnesota Indian Affairs Council**

Officials of the MIAC have determined that:

- Based on non-destructive physical analysis and catalogue records, the human remains are Native American.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian tribe.
- According to final judgments of the Indian Claims Commission, the land from which the Native American human remains were removed is the aboriginal land of The Tribes.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of two individuals of Native American ancestry.
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains is to The Tribes.

**Additional Requestors and Disposition**

Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains or any other Indian tribe that believes it satisfies the criteria in 43 CFR 10.11(c)(1) should contact James L. (Jim) Jones, Cultural Resource Director, Minnesota Indian Affairs Council, 3801 Bemidji Avenue NW., Suite 5, Bemidji, MN 56601, telephone (218) 755–3223, before January 4, 2012. Disposition of the human remains to The Tribes may proceed after that date if no additional requestors come forward.

The Minnesota Indian Affairs Council is responsible for notifying The Tribes that this notice has been published.

Dated: November 29, 2011.

**Sherry Hutt,**

*Manager, National NAGPRA Program.*

[FR Doc. 2011–31074 Filed 12–2–11; 8:45 am]

BILLING CODE 4312–50–P

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## DEPARTMENT OF THE INTERIOR

## National Park Service

**[2253–665]**

## Notice of Inventory Completion: Minnesota Indian Affairs Council, Bemidji, MN

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The Minnesota Indian Affairs Council has completed an inventory of human remains and associated funerary objects in consultation with the appropriate Indian tribes, and has determined that there is no cultural affiliation between the remains and any present-day Indian tribe. Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains may contact the Minnesota Indian Affairs Council. Disposition of the human remains and associated funerary objects is to the Indian tribes stated below may occur if no additional requestors come forward.

**DATES:** Representatives of any Indian tribe that believes it has a cultural affiliation with the human remains should contact the Minnesota Indian Affairs Council at the address below by January 4, 2012.

**ADDRESSES:** James L. (Jim) Jones, Cultural Resource Director, Minnesota Indian Affairs Council, 3801 Bemidji Avenue NW., Suite 5, Bemidji, MN 56601, telephone (218) 755–3223.

**SUPPLEMENTARY INFORMATION:** Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the Minnesota Indian Affairs Council (MIAC). The human remains and associated funerary objects were removed from the following Pine County, MN.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

**Consultation**

A detailed assessment of the human remains was made by the MIAC professional staff in consultation with representatives of the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bois Forte Band (Nett Lake) of the Minnesota Chippewa Tribe, Minnesota; Fond du Lac Band of the Minnesota Chippewa Tribe, Minnesota; Grand Portage Band of the Minnesota Chippewa Tribe, Minnesota; Keweenaw Bay Indian Community, Michigan; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians, Michigan; Leech Lake Band of the Minnesota Chippewa Tribe, Minnesota; Mille Lacs Band of the Minnesota Chippewa Tribe, Minnesota; Minnesota Chippewa Tribe, Minnesota; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Sokaogon Chippewa Community, Wisconsin; St. Croix Chippewa Indians of Wisconsin; White Earth Band of Minnesota Chippewa Tribe, Minnesota (hereinafter referred to as ''The Tribes'').

**History and Description of the Remains**

At an unknown date, human remains representing, at minimum, two individuals were removed by a private citizen from an undesignated site on the Kettle River, near Hinckley in Pine County, MN. Some years later, a relative brought the human remains to the cultural resource department of the Shakopee Mdewakanton Dakota Community, who transferred the human remains to the Minnesota Office of the State Archaeologist in 2001. In 2002, the human remains were transferred to the MIAC (H386). No known individuals were identified. The one associated funerary object is a piece of birch bark.

Birch bark is found in both pre-contact and post-contact burial contexts in Minnesota. It is a known traditional American Indian burial practice to wrap human remains in birch bark as part of the internment process. These human remains have no temporal context and no archeological classification and cannot be associated with any present-day Indian tribe.

**Determinations Made by the Minnesota Indian Affairs Council**

Officials of the MIAC have determined that:

- Based on non-destructive physical analysis and catalogue records, the human remains are Native American.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian tribe.
- According to final judgments of the Indian Claims Commission, the land from which the Native American human remains and associated funerary objects were removed is the aboriginal land of The Tribes.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of two individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the one object described above is reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains is to The Tribes.

**Additional Requestors and Disposition**

Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains or any other Indian tribe that believes it satisfies the criteria in 43 CFR 10.11(c)(1) should contact James L. (Jim) Jones, Cultural Resource Director, Minnesota Indian Affairs Council, 3801 Bemidji Avenue NW., Suite 5, Bemidji, MN 56601, telephone (218) 755–3223, before January 4, 2012. Disposition of the human remains to The Tribes may proceed after that date if no additional requestors come forward.

The Minnesota Indian Affairs Council is responsible for notifying The Tribes that this notice has been published.

Dated: November 29, 2011.

**Sherry Hutt,**

*Manager, National NAGPRA Program.*

[FR Doc. 2011–31072 Filed 12–2–11; 8:45 am]

**BILLING CODE 4312–50–P**

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## DEPARTMENT OF THE INTERIOR

## National Park Service

**[2253–665]**

## Notice of Inventory Completion: The University of California, San Diego, San Diego, CA

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The Regents of the University of California on behalf of the University of California, San Diego, have completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian tribes, and have determined that there is no cultural affiliation between the remains and any present-day Indian tribe. Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains may contact the University of California, San Diego. Disposition of the human remains and associated funerary objects to the Indian tribes stated below may occur if no additional requestors come forward.

**DATES:** Representatives of any Indian tribe that believes it has a cultural affiliation with the human remains should contact the University of California, San Diego at the address below by January 4, 2012.

**ADDRESSES:** Gary C. Matthews, Vice Chancellor Resource Management & Planning, University of California, San Diego, 9500 Gilman Drive #0057, La Jolla, CA 92093–0057, telephone (858) 534–6820.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the University of California, San Diego. The human remains and associated funerary objects were removed from the University of California, San Diego's University House site in San Diego County, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

**Consultation**

A detailed assessment of the human remains was made by University of California professional staff in consultation with representatives of the Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, California; Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, California; Ewiiaapaayp Band of Kumeyaay Indians, California; Iipay Nation of Santa Ysabel, California (formerly the Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation); Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California; Jamul Indian Village of California; La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California; Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California; Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, California; San Pasqual Band of Diegueno Mission Indians of California; Sycuan Band of the Kumeyaay Nation; and the Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California (herein after referred to as ''The Tribes'').

**History and Description of the Remains**

In 1976, human remains representing, at minimum, two individuals were removed from the University of California, San Diego's University House site, in San Diego, CA. The site is variously referred to as the Black, William House; SDM–W–12A (as recorded by the San Diego Museum of Man); CA–SDI–4669 (as recorded with the State of California); and NPS No.: 08000343. No known individuals were identified. The approximately 25 associated funerary objects consist of shell, stone, charcoal, and bone.

**Determinations Made by the University of California, San Diego**

Officials of the University of California, San Diego have determined that:

- The calibrated dates for the human remains are believed to fall between 8,977 and 9,603 years B.P.
- The human remains are Native American.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian tribe.
- Evidence indicates that the land from which the Native American human remains were removed is the aboriginal land of the Diegueno (Kumeyaay) Tribe. As noted in the Schedule of Indian Land Cessions, on or about January 7, 1852, the Diegueno (Kumeyaay) ceded to the United States an area that includes present-day San Diego County.
- The present-day descendants of the Diegueno (Kumeyaay) are The Tribes.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of two

individuals of Native American ancestry.

• Pursuant to 25 U.S.C. 3001(3)(A), the approximately 25 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.

• Pursuant to 43 CFR 10.11(c)(1), and based upon request from the Kumeyaay Cultural Repatriation Committee, on behalf of The Tribes, disposition of the human remains is to the La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California.

**Additional Requestors and Disposition**

Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains or any other Indian tribe that believes it satisfies the criteria in 43 CFR 10.11(c)(1) should contact Gary C. Matthews, Vice Chancellor Resource Management & Planning, University of California, San Diego, 9500 Gilman Drive #0057, La Jolla, CA 92093–0057, telephone (858) 534–6820, before January 4, 2012. Disposition of the human remains to the La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California may proceed after that date if no additional requestors come forward.

The University of California, San Diego is responsible for notifying The Tribes that this notice has been published.

Dated: November 29, 2011.

**Sherry Hutt,**

*Manager, National NAGPRA Program.*

[FR Doc. 2011–31068 Filed 12–2–11; 8:45 am]

**BILLING CODE 4312–50–P**

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## DEPARTMENT OF THE INTERIOR

### National Park Service

**[2253–665]**

### Notice of Inventory Completion: Minnesota Indian Affairs Council, Bemidji, MN

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The Minnesota Indian Affairs Council has completed an inventory of human remains in consultation with the appropriate Indian tribes, and has determined that there is no cultural affiliation between the remains and any present-day Indian tribe. Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains may contact the Minnesota Indian Affairs Council. Disposition of the human remains to the Indian tribes stated below may occur if no additional requestors come forward.

**DATES:** Representatives of any Indian tribe that believes it has a cultural affiliation with the human remains should contact the Minnesota Indian Affairs Council at the address below by January 4, 2012.

**ADDRESSES:** James L. (Jim) Jones, Cultural Resource Director, Minnesota Indian Affairs Council, 3801 Bemidji Avenue NW., Suite 5, Bemidji, MN 56601, telephone (218) 755–3223.

**SUPPLEMENTARY INFORMATION:** Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the Minnesota Indian Affairs Council (MIAC). The human remains were removed from Marshall County, MN.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

**Consultation**

A detailed assessment of the human remains was made by the MIAC professional staff in consultation with representatives of the Lower Sioux Indian Community in the State of Minnesota; Prairie Island Indian Community in the State of Minnesota; Red Lake Band of Chippewa Indians, Minnesota; Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota; Turtle Mountain Band of Chippewa Indians of North Dakota (hereinafter referred to as ''The Tribes'').

**History and Description of the Remains**

In 1998, human remains representing, at minimum, three individuals were recovered from site 21–MA–70, Wright Quarry, in Marshall County during gravel quarrying operations by the Marshall County Highway Department. In 1999, the human remains were transferred to the Minnesota Office of the State Archaeologist. In 2002, the human remains were transferred to the MIAC (H375). No known individuals were identified. No associated funerary objects are present.

Examination of the site context by professional staff of the Minnesota Office of the State Archaeologist suggests a pre-contact burial site. Additionally, a number of pre-historic sites are recorded in the immediate vicinity. Cranial, dental and femora morphology identify the human remains as American Indian. These human remains have no archeological classification and cannot be associated with any present-day Indian tribe.

In 2009, human remains representing, at minimum, one individual were unearthed from an unknown site in Warren, MN, during new home construction. The human remains were transferred to the Marshall County Sheriff's Department, to the Minnesota Bureau of Criminal Apprehension Laboratory, and then to the Human Identification Laboratory at the University of North Dakota for identification. The human remains were then transferred to the MIAC (H443). No known individuals were identified. No associated funerary objects are present.

The burial context and morphology of the human remains suggest identification as pre-contact American Indian. These human remains have no archeological classification and cannot be associated with any present-day Indian tribe.

**Determinations Made by the Minnesota Indian Affairs Council**

Officials of the MIAC have determined that:

• Based on non-destructive physical analysis and catalogue records, the human remains are Native American.

• Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian tribe.

• According to final judgments of the Indian Claims Commission, the land from which the Native American human remains were removed is the aboriginal land of The Tribes.

• Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of four individuals of Native American ancestry.

• Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains is to The Tribes.

**Additional Requestors and Disposition**

Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains or any other Indian tribe that believes it satisfies the criteria in 43 CFR 10.11(c)(1) should contact James L. (Jim) Jones, Cultural Resource Director, Minnesota Indian Affairs Council, 3801 Bemidji Avenue NW., Suite 5, Bemidji, MN 56601, telephone (218) 755–3223, before January 4, 2012. Disposition of

the human remains to The Tribes may proceed after that date if no additional requestors come forward.

The Minnesota Indian Affairs Council is responsible for notifying The Tribes that this notice has been published.

Dated: November 29, 2011.

**Sherry Hutt,**

*Manager, National NAGPRA Program.*

[FR Doc. 2011–31071 Filed 12–2–11; 8:45 am]

**BILLING CODE 4312–50–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 337–TA–730]**

### Certain Inkjet Ink Supplies and Components Thereof; Final Determination of Violation; Termination of Investigation; Issuance of General Exclusion Order

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has found a violation of section 337 in the above-captioned investigation and has issued a general exclusion order. The investigation is terminated.

**FOR FURTHER INFORMATION CONTACT:** Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–3106. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

**SUPPLEMENTARY INFORMATION:** The Commission instituted this investigation on August 3, 2010, based on a complaint filed by Hewlett-Packard Company of Palo Alto, California and Hewlett-Packard Development Company, L.P. of Houston, Texas (collectively, ''HP'') alleging a violation of section 337 in the importation, sale for importation, and sale within the United States after importation of certain inkjet ink supplies and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 6,959,985 and 7,104,630. 75 FR 45663 (Aug. 3, 2010).

Complainant named Mipo International, Ltd. of Atlanta, Georgia (''Mipo''); Mextec Group Inc. of Miami, Florida (''Mextec''); Shanghai Angel Printer Supplies Co., Ltd. of Shanghai, China (''Shanghai Angel''); Shenzhen Print Media Co., Ltd. of Guangdong, China (''Shenzhen''); Zhuhai National Resources & Jingjie Imaging Products Co., Ltd. of Guangdong, China (''Zhuhai National''); Tatrix International of Guangdong, China (''Tatrix''); and Ourway Image Co. Ltd. of Guangdong, China (''Ourway'') as respondents. Subsequently, Mipo, Mextec, and Shenzhen were terminated from the investigation based on either a settlement agreement with HP or because HP withdrew its allegations against them. The remaining respondents, *i.e.,* Shanghai Angel, Zhuhai National, Tatrix, and Ourway (collectively, ''Defaulting Respondents''), failed to answer the Complaint and Notice of Investigation and default judgments were granted against all the Defaulting Respondents.

On March 7, 2011, complainant HP filed a paper entitled ''Motion for Summary Determination That a Domestic Industry Exists and That There Have Been Violations of Section 337 of the Tariff Act of 1930 (Amended) By the Defaulting Respondents and Complainants' Request for a General Exclusion Order.'' Complainant sought a determination that a domestic industry exists and that there has been a violation of Section 337 and requested a recommendation for a general exclusion order (''GEO''). On August 3, 2011, the ALJ issued an initial determination (''ID'') (Order No. 14) granting complainant's motion for summary determination. The ID contained the ALJ's recommended determination on remedy and bonding including a recommendation for issuance of a GEO against the Defaulting Respondents. The ALJ also recommended that the Commission set a bond of 100 percent during the period of Presidential review.

On September 1, 2011, the Commission determined not to review the ID and requested briefing on remedy, the public interest, and bonding. Only HP and the Commission investigative attorney timely filed their respective submissions, containing proposed GEOs.

The Commission has determined that the appropriate form of relief is a GEO under 19 U.S.C. 1337(d)(2), prohibiting the unlicensed entry of inkjet cartridges and components thereof covered by one or more of claims 1–5, 7, 22–25, 27 and 28 of the '985 patent and claims 1–7, 11–12, 14, 26–30, 32, 34 and 35 of the '630 patent.

The Commission has further determined that the public interest factors enumerated in Section 337(d) (19 U.S.C. 1337(d)) do not preclude issuance of the GEO. The Commission has determined that the bond for temporary importation during the period of Presidential review (19 U.S.C. 1337(j)) shall be in the amount of 100 percent of the value of the imported articles that are subject to the order. The Commission's order was delivered to the President and the United States Trade Representative on the day of its issuance.

The authority for the Commission's determination is contained in Section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.42–50 of the Commission's Rules of Practice and Procedure (19 CFR 210.42–50).

By order of the Commission.

Issued: November 29, 2011.

**James R. Holbein,**

*Secretary to the Commission.*

[FR Doc. 2011–31132 Filed 12–2–11; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 337–TA–726]**

### Certain Electronic Imaging Devices; Commission Determination To Affirm Finding of No Violation; Termination of the Investigation

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined to affirm the final initial determination (''ID'') issued by the presiding administrative law judge (''ALJ'') on July 27, 2011 finding no violation of section 337 in the above-captioned investigation.

**FOR FURTHER INFORMATION CONTACT:** Jia Chen, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 708–4737. Copies of non-confidential documents filed in connection with this investigation are or will be available for

inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

**SUPPLEMENTARY INFORMATION:** The Commission instituted this investigation on July 8, 2010, based on a complaint filed by Flashpoint Technology, Inc. (''Flashpoint'') of Peterborough, New Hampshire. 75 FR 39971 (Jul. 8, 2010). The complaint alleges violations of Section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain electronic imaging devices by reason of infringement of claims 1, 11, and 21 of U.S. Patent No. 6,134,606 (''the '606 patent''), claims 1–7, 11–13, 16–23, 26, 30–32, 40, and 41 of U.S. Patent No. 6,262,769 (''the '769 patent''), and claims 1–14 and 16 of U.S. Patent No. 6,163,816 (''the '816 patent''). On April 7, 2011, the ALJ issued Order No. 36 terminating the investigation as to all claims of the '606 patent. The proposed respondents are Nokia Corporation of Espoo, Finland and Nokia, Inc. of Irving, Texas (collectively, ''Nokia''); Research In Motion of Waterloo, Ontario, Canada and Research In Motion Corp. of Irving, Texas (collectively, ''RIM''); LG Electronics, Inc. of South Korea, LG Electronic U.S.A., Inc. of Englewood Cliffs, New Jersey, and LG Electronics MobileComm U.S.A. of San Diego, California (collectively, ''LG''); and HTC Corporation of Taiwan and HTC America, Inc. of Bellevue, Washington (collectively, ''HTC''). Nokia, RIM, and LG were terminated from the investigation on the basis of settlement agreements.

On March 8, 2011, the Commission determined not to review the ALJ's Order No. 18 granting Flashpoint's motion for summary determination that it has satisfied the economic prong of the domestic industry requirement. On July 28, 2011, the ALJ issued the subject ID finding no violation of Section 337 by HTC. Specifically, the ALJ found that the accused HTC Android smartphones and the accused HTC Windows Phone 7 (''WP7'') smartphones do not infringe the asserted claims of the '769 patent or the asserted claims of the '816 patent. The ALJ also found that HTC has not established that the asserted claims of the '769 patent are invalid for obviousness in view of the prior art and that Flashpoint has not established that the asserted claims of the '769 patent are entitled to an earlier date of invention than that of the patent's filing date. The ALJ further found that HTC has not established that the asserted claims of the '816 patent are anticipated by the prior art, but that HTC has established that the asserted claims of the '816 patent are invalid under the on-sale bar of 35 U.S.C. 102(b). On July 10, 2011, Flashpoint, HTC and the Commission investigative attorney each filed a petition for review.

On September 26, 2011, the Commission determined to review (1) Infringement of the asserted claims of the '769 patent by the accused HTC Android smartphones, (2) infringement of the asserted claims of the '769 patent by the accused HTC WP7 smartphones, (3) the technical prong of the domestic industry requirement for the '769 patent with respect to the licensed Motorola smartphones, (4) the technical prong of the domestic industry requirement for the '769 patent with respect to the licensed Apple smartphones, and (5) the enforceability of the asserted patents under the doctrines of implied license and exhaustion. The Commission also determined to review and to take no position on (a) anticipation of the asserted claims of the '816 patent under 35 U.S.C. 102 in view of the prior art references and (b) obviousness of the asserted claims of the '816 patent under 35 U.S.C. 103 in view of the prior art references. Finally, the Commission determined to deny complainant's request for oral argument. The Commission requested that the parties brief their positions on the issues on review with reference to the applicable law and the evidentiary record.

Having examined the record of this investigation, including the ALJ's final ID and the submissions of the parties, the Commission has determined to affirm the ALJ's determination of no violation of Section 337 with respect to the '769 patent on the bases that (1) the accused HTC Android smartphones and the accused HTC WP7 smartphones do not infringe the '769 patent, and (2) respondent has established that it has an implied license to practice the '769 patent with respect to the accused WP7 smartphones. The Commission has determined to take no position on the ALJ's finding that respondent has not established the right to practice the '769 patent with respect to the accused WP7 smartphones under the defense of patent exhaustion. The Commission has also determined to take no position on the ALJ's finding that complainant has not met the technical prong of the domestic industry requirement for the '769 patent.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.42–46 and 210.50 of the Commission's Rules of Practice and Procedure (19 CFR 210.42–46 and 210.50).

By order of the Commission.

Issued: November 29, 2011.

**James R. Holbein,**

*Secretary to the Commission.*

[FR Doc. 2011–31134 Filed 12–2–11; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 337–TA–743]**

## Certain Video Game Systems and Controllers; Investigations: Terminations, Modifications and Rulings

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

Section 337 of the Tariff Act of 1930 provides that if the Commission finds a violation it shall exclude the articles concerned from the United States:

> unless, after considering the effect of such exclusion upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, it finds that such articles should not be excluded from entry.

19 U.S.C. 1337(d)(1). A similar provision applies to cease and desist orders. 19 U.S.C. 1337(f)(1).

The Commission is interested in further development of the record on the public interest in its investigations. Accordingly, the parties are invited to file submissions of no more than five (5) pages concerning the public interest in light of the administrative law judge's Recommended Determination on Remedy and Bonding issued in this investigation on November 2, 2011. Comments should address whether issuance of a limited exclusion order and/or a cease and desist order in this investigation could affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like

or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) Identify any public health, safety, or welfare concerns in the United States relating to the requested orders;

(iii) Identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States or are otherwise available in the United States, which could replace the subject articles if they were to be excluded;

(iv) Indicate whether the complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested remedial orders within a commercially reasonable time; and

(v) State how the requested remedial orders would impact United States consumers.

Any submissions are due on December 7, 2011.

By order of the Commission.

Issued: November 30, 2011.

**James R. Holbein,**

*Secretary to the Commission.*

[FR Doc. 2011–31135 Filed 12–2–11; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

**[USITC SE–11–035]**

### Sunshine Act Meeting Notice

**AGENCY HOLDING THE MEETING:** United States International Trade Commission.

**TIME AND DATE:** December 9, 2011 at 11 a.m.

**PLACE:** Room 111, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

**STATUS:** Open to the public.

**Matters To Be Considered**

1. *Agendas for future meetings:* None.
2. Minutes.
3. Ratification List.
4. Vote in Inv. Nos. 701–TA–482–485 and 731–TA–1191–1194 (Preliminary)(Circular Welded Carbon-Quality Steel Pipe from India, Oman, United Arab Emirates, and Vietnam). The Commission is currently scheduled to transmit its determinations to the Secretary of Commerce on or before December 12, 2011; Commissioners' opinions are currently schedule to be transmitted to the Secretary of Commerce on or before December 19, 2011.
5. *Outstanding action jackets:* None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: November 29, 2011.

**William R. Bishop,**

*Hearings and Meetings Coordinator.*

[FR Doc. 2011–31320 Filed 12–1–11; 4:15 pm]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

**[USITC SE–11–036]**

### Sunshine Act Meeting Notice

**ACTION:** Change of time of Government in the Sunshine Meeting.

**AGENCY HOLDING THE MEETING:** United States International Trade Commission.

**ORIGINAL DATE AND TIME:** December 5, 2011 at 2 p.m.

**NEW DATE AND TIME:** December 5, 2011 at 11 a.m.

**PLACE:** Room 100, 500 E Street SW., Washington, DC 20436. Telephone: (202) 205–2000.

In accordance with 19 CFR 201.35(d)(1), the Commission has determined to change the time for the meeting which was scheduled for December 5, 2011 at 2 p.m. to December 5, 2011 at 11 a.m. to vote on Inv. Nos. 701–TA–388–391 and 731–TA–817–821 (Third Review)(Cut-to-Length Carbon-Quality Steel Plate from India, Indonesia, Italy, Japan, and Korea). Earlier announcement of this change was not possible.

By order of the Commission.

Issued: December 1, 2011.

**William R. Bishop,**

*Hearings and Meeting Coordinator.*

[FR Doc. 2011–31321 Filed 12–1–11; 4:15 pm]

**BILLING CODE 7020–02–P**

## JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

### Meeting of the Advisory Committee

**AGENCY:** Joint Board for the Enrollment of Actuaries.

**ACTION:** Notice of Federal Advisory Committee meeting.

**SUMMARY:** The Executive Director of the Joint Board for the Enrollment of Actuaries gives notice of a meeting of the Advisory Committee on Actuarial Examinations (portions of which will be open to the public) in Washington, DC, on January 9–10, 2012.

**DATES:** Monday, January 9, 2012, from 9 a.m. to 5 p.m., and Tuesday, January 10, 2012, from 8:30 a.m. to 5 p.m.

**ADDRESS:** The meeting will be held at the Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Patrick W. McDonough, Executive Director of the Joint Board for the Enrollment of Actuaries, (202) 622–8225.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet at the Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC, on Monday, January 9, 2012, from 9 a.m. to 5 p.m., and Tuesday, January 10, 2012, from 8:30 a.m. to 5 p.m.

The purpose of the meeting is to discuss topics and questions that may be recommended for inclusion on future Joint Board examinations in actuarial mathematics and methodology referred to in 29 U.S.C. 1242(a)(1)(B) and to review the November 2011 Pension (EA–2A) Examination in order to make recommendations relative thereto, including the minimum acceptable pass score. Topics for inclusion on the syllabus for the Joint Board's examination program for the May 2012 Basic (EA–1) Examination and the May 2012 Pension (EA–2B) Examination will be discussed.

A determination has been made as required by section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App., that the portions of the meeting dealing with the discussion of questions that may appear on the Joint Board's examinations and the review of the November 2011 Pension (EA–2A) Examination fall within the exceptions to the open meeting requirement set forth in 5 U.S.C. 552b(c)(9)(B), and that the public interest requires that such portions be closed to public participation.

The portion of the meeting dealing with the discussion of the other topics will commence at 1 p.m. on January 10, 2012, and will continue for as long as necessary to complete the discussion, but not beyond 3 p.m. Time permitting, after the close of this discussion by Committee members, interested persons may make statements germane to this subject. Persons wishing to make oral statements should notify the Executive

Director in writing prior to the meeting in order to aid in scheduling the time available and should submit the written text, or at a minimum, an outline of comments they propose to make orally. Such comments will be limited to 10 minutes in length. All persons planning to attend the public session should notify the Executive Director in writing to obtain building entry. Notifications of intent to make an oral statement or to attend must be faxed, no later than January 3, 2012, to (202) 622–8300, Attn: Executive Director. Any interested person also may file a written statement for consideration by the Joint Board and the Committee by sending it to: Mr. Patrick W. McDonough, Executive Director; Joint Board for the Enrollment of Actuaries SE:RPO; Room 7550; Internal Revenue Service; 1111 Constitution Avenue NW.; Washington, DC 20224.

Dated: November 28, 2011.

**Patrick W. McDonough,**

*Executive Director, Joint Board for the Enrollment of Actuaries.*

[FR Doc. 2011–31192 Filed 12–2–11; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Under the Clean Water Act

Notice is hereby given that on November 29, 2011, a proposed Consent Decree in *United States of America et al.* v. *Lafarge North America Inc., et al.,* Civil Action No. RDB 11–cv–3426 was lodged with the United States District Court for the District of Maryland.

The Consent Decree resolves the United States' claims of Clean Water Act (''Act'') violations at 21 facilities in Alabama, Colorado, Georgia, Maryland, and New York owned and operated by Lafarge North America Inc., Lafarge Building Materials, Inc., Lafarge West, Inc., Lafarge Mid-Atlantic, LLC, and/or Redland Quarries NY, Inc. (''Lafarge''). Under the terms of the settlement, Lafarge will pay a penalty of $740,000, implement two Supplemental Environmental Projects (''SEP'') protecting as green space property now valued at $2,950,000, implement one State Environmentally Beneficial Project (''EBP'') valued at $10,000, and perform injunctive relief at all of its related facilities in the United States to ensure that they are in compliance with the Act. The States of Maryland and Colorado are co-plaintiffs and have joined the proposed settlement.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Decree. Comments should be addressed to the Assistant Attorney General, Environmental 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 of America et al.* v. *Lafarge North America Inc., et al.,* Civil Action No. RDB 11–cv–3426 (D. MD), D.J. Ref. 90–5–1–1–09027.

During the public comment period, the Decree may be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the 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 $34.75 (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.

**Robert Brook,**

*Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 2011–31098 Filed 12–2–11; 8:45 am]

**BILLING CODE 4410–15–P**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Modification of Consent Decree Under the Clean Water Act

Notice is hereby given that on November 28, 2011, a proposed Modification to Consent Decree (''Modification'') in *United States* v. *Bacardi Corporation,* Civil Action No. 3:08–cv–1825 was lodged with the United States District Court for the District of Puerto Rico.

The Consent Decree requires Bacardi Corporation (''Bacardi'') to address violations of the Clean Water Act, 33 U.S.C. 1251 *et seq.,* at its rum production facility in Cataño, Puerto Rico (''Facility'') by, among other things, developing and implementing a plan of action to address exceedances of effluent limitations for certain bacterial pollutants (''Regulated Bacteria'') and to comply with interim effluent limitations for those pollutants. The proposed Modification provides new, more stringent interim effluent limitations for Regulated Bacteria and requires Bacardi to develop and implement a new plan of action to bring discharges into compliance with the final effluent limitations for Regulated Bacteria set forth in the Facility's National Pollutant Discharge Elimination System Permit PR0000591.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the Modification. 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, United States Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Bacardi Corporation,* D.J. Ref. 90–5–1–1–08983.

During the public comment period, the Modification may be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Modification may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, United States 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 $2.75 (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.

**Ronald G. Gluck,**

*Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 2011–31145 Filed 12–2–11; 8:45 am]

**BILLING CODE 4410–15–P**

## DEPARTMENT OF JUSTICE

### Parole Commission

### Sunshine Act Meeting

**TIME AND DATE:** 12 p.m., Thursday, December 8, 2011.

**PLACE:** U.S. Parole Commission, 90 K Street NE., 3rd Floor, Washington, DC

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Determinations on four original jurisdiction cases.

**CONTACT PERSON FOR MORE INFORMATION:** Patricia W. Moore, Staff Assistant to the

Chairman, U.S. Parole Commission, 90 K Street NE., 3rd Floor, Washington, DC 20530, (202) 346–7001.

Dated: November 30, 2011.

**Rockne Chickinell,**

*General Counsel, U.S. Parole Commission.*

[FR Doc. 2011–31200 Filed 12–1–11; 11:15 am]

BILLING CODE 4410–31–P

## DEPARTMENT OF JUSTICE

### Parole Commission

### Sunshine Act Meeting

**TIME AND DATE:** 10 a.m., Thursday, December 8, 2011.

**PLACE:** U.S. Parole Commission, 90 K Street NE., 3rd Floor, Washington, DC

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** Approval of September 8, 2011 meeting minutes; reports from the Chairman, the Commissioners, and senior staff.

**CONTACT PERSON FOR MORE INFORMATION:** Patricia W. Moore, Staff Assistant to the Chairman, U.S. Parole Commission, 90 K Street NE., 3rd Floor, Washington, DC 20530, (202) 346–7001.

Dated: November 30, 2011.

**Rockne Chickinell,**

*General Counsel, U.S. Parole Commission.*

[FR Doc. 2011–31202 Filed 12–1–11; 11:15 am]

BILLING CODE 4410–31–P

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice: (11–117)]**

### NASA Advisory Council; Science Committee; Planetary Science Subcommittee; Meeting

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Planetary Science Subcommittee of the NASA Advisory Council (NAC). This Subcommittee reports to the Science Committee of the NAC. The meeting will be held via Teleconference and WebEx for the purpose of soliciting, from the scientific community and other persons, scientific and technical information relevant to program planning.

**DATES:** Wednesday, December 21, 2011, 11 a.m. to 4 p.m., local time.

**ADDRESSES:** This meeting will take place telephonically and by WebEx. Any interested person may call the USA toll free conference call number (888) 942–8138, pass code PSS, to participate in this meeting by telephone. The WebEx link is *https://nasa.webex.com/,* meeting number 398 120 190, and password PSS@Dec21.

**FOR FURTHER INFORMATION CONTACT:** Ms. Marian Norris, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–4452, fax (202) 358–4118, or *mnorris@nasa.gov.*

**SUPPLEMENTARY INFORMATION:** The agenda for the meeting includes the following topics:

— Status of Budget and Programmatic Impacts on the Planetary Science Division.
— Status of the Joint NASA-European Space Agency Mars Program.
— Update on Europa Jupiter System Mission Descope Options.
— Status of European Space Agency's Potential JUpitor ICy moon Explorer Mission.
— Status of Planetary Research and Analysis Program.
— Status of the Planetary Science Subcommittee ''Assessment'' Report.
— Assessment Group Reports.

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Dated: November 29, 2011.

**P. Diane Rausch,**

*Advisory Committee Management Officer, National Aeronautics and Space Administration.*

[FR Doc. 2011–31185 Filed 12–2–11; 8:45 am]

BILLING CODE P

## NATIONAL COUNCIL ON DISABILITY

### Sunshine Act Meetings; Correction

**SUMMARY:** The National Council on Disability published a notice in the **Federal Register** of November 22, 2011, concerning a meeting of the Council. This document contains a correction to the times of the meeting to provide additional time for policy discussion as well as a correction to the call-in phone number and passcode.

**FOR FURTHER INFORMATION CONTACT:** Anne Sommers, NCD, 1331 F Street NW., Suite 850, Washington, DC 20004; (202) 272–2004 (V), (202) 272–2074 (TTY).

In the **Federal Register** of November 22, 2011, in FR Doc. 11–30224, on page 72220, in the first column, correct the ''Times and Dates'' caption to read:

**TIME AND DATES:** The Members of the National Council on Disability (NCD) will meet by phone on Thursday, December 8, 2011, 1 p.m.–6 p.m., ET.

In the same **Federal Register** of November 22, 2011, in FR Doc. 11–30224, on page 72220, in the first column, please correct the ''Place'' caption to read:

*Place:* The meeting will occur by phone. NCD staff will participate in the call from the Access Board Conference Room, 1331 F Street NW., Suite 800, Washington, DC. Interested parties may join the meeting in person at the Access Board Conference Room or may join the phone line in a listening-only capacity (with the exception of the public comment period at 4 p.m., Eastern) using the following call-in information: Call-in number: 1–(800) 533–9703; Meeting Name: NCD Meeting; Confirmation #: 3941503; Host Name: Aaron Bishop.

Dated: November 30, 2011.

**Aaron Bishop,**

*Executive Director.*

[FR Doc. 2011–31203 Filed 12–1–11; 11:15 am]

BILLING CODE 6820–MA–P

## NATIONAL CREDIT UNION ADMINISTRATION

### Agency Information Collection Activities: Submission to OMB for New Collection; Comment Request

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Request for comment.

**SUMMARY:** The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public.

**DATES:** Comments will be accepted until January 4, 2012.

**ADDRESSES:** Interested parties are invited to submit written comments to NCUA contact or OMB Reviewer listed below:

*NCUA:* Tracy Crews, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. (703) 837–2861, Email: *ociomail@ncua.gov.*

*OMB:* Office of Management and Budget, Attn: Desk Officer for the National Credit Union Administration, Office of Information and Regulatory Affairs, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or a

copy of the information collection request should be directed to Tracy Crews at the National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, or at (703) 518–6444.

**SUPPLEMENTARY INFORMATION:** Proposal for the following collection of information:

*Title:* Consumer Response Center.

*OMB Number:* 3133–NEW.

*Form Number:* None.

*Type of Review:* New collection.

*Description:* The general public may complete the form online and submit their request to the NCUA via the Internet. The information would be used to improve the way NCUA communicates with consumers requesting assistance in resolving their inquiry or complaint. NCUA would use the information to determine the nature of the inquiry or complaint, and which Federal credit union is involved. It will also assist the NCUA Consumer Assistance Center (respondent) to determine the relevant response for the requestor.

*Respondents:* Federal credit unions.

*Estimated Number of Respondents/Recordkeepers:* 3,000.

*Estimated Burden Hours per Response:* 30 minutes.

*Frequency of Response:* Recordkeeping.

*Estimated Total Annual Burden Hours:* 1,500 hours.

*Estimated Total Annual Cost:* None.

By the National Credit Union Administration Board, November 29, 2011.

**Mary Rupp,**

*Secretary of the Board.*

[FR Doc. 2011–31086 Filed 12–2–11; 8:45 am]

**BILLING CODE 7535–01–P**

## NATIONAL CREDIT UNION ADMINISTRATION

### Agency Information Collection Activities: Submission to OMB for a New Collection; Comment Request

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Request for comment.

**SUMMARY:** The NCUA is submitting the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public.

**DATES:** Comments will be accepted until January 4, 2012.

**ADDRESSES:** Interested parties are invited to submit written comments to the NCUA and OMB contacts listed below:

*NCUA Contact:* Tracy Crews, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, Fax No. (703) 837–2861, Email: *OCIOMail@ncua.gov*.

*OMB Contact:* Desk Officer for the National Credit Union Administration, Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or a copy of the information collection request should be directed to Tracy Crews at the National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, or at (703) 518–6444.

**SUPPLEMENTARY INFORMATION:** Proposal for the following collection of information:

*Title:* Corporate Federal Credit Union Chartering Guidelines.

*OMB Number:* 3133–NEW.

*Form Number:* NCUA Forms 4001, 4008, 4012, 9500, 9501.

*Type of Review:* New collection.

*Description:* The proposed interpretive ruling and policy statement sets forth the requirements and process for chartering corporate federal credit unions.

*Respondents:* Natural person credit unions seeking to establish a new corporate FCU.

*Estimated Number of Respondents/Recordkeepers:* 1.

*Estimated Burden Hours per Response:* 328 hours.

*Frequency of Response:* Once.

*Estimated Total Annual Burden Hours:* 328 hours.

*Estimated Total Annual Cost:* 0.

By the National Credit Union Administration Board.

November 29, 2011.

**Mary Rupp,**

*Secretary of the Board.*

[FR Doc. 2011–31087 Filed 12–2–11; 8:45 am]

**BILLING CODE 7535–01–P**

## NATIONAL CREDIT UNION ADMINISTRATION

### Agency Information Collection Activities: Submission to OMB for Review; Comment Request

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Request for comment.

**SUMMARY:** The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public.

**DATES:** Comments will be accepted until February 3, 2012.

**ADDRESSES:** Interested parties are invited to submit written comments to NCUA and OMB Contacts as listed below:

*NCUA Contact:* Tracy Crews, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, Fax No. (703) 837–2861, Email: *OCIOMail@ncua.gov.*

*OMB Contact:* Desk Officer for National Credit Union Administration, Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or a copy of the information collection request, should be directed to Tracy Crews at the National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, or at (703) 518–6444.

**SUPPLEMENTARY INFORMATION:** Proposal for the following collection of information:

*OMB Number:* 3133–0174.

*Form Number:* N/A.

*Type of Review:* Reinstatement, without change, of a previously approved collection.

*Title:* NCUA Economic Development Specialist Direct Assistance Survey.

*Description:* The survey will provide federally insured credit unions with an opportunity to give NCUA feedback on direct assistance provided by economic development specialists. NCUA will use the information to evaluate and improve the National Small Credit Union Program.

*Respondents:* Small Credit Unions.

*Estimated Number of Respondents/Record keepers:* 300.

*Estimated Burden Hours per Response:* 15 minutes.

*Frequency of Response:* Semi-annually.

*Estimated Total Annual Burden Hours:* 150 hours.

*Estimated Total Annual Cost:* $0.

By the National Credit Union Administration Board on November 29, 2011.

**Mary Rupp,**

*Secretary of the Board.*

[FR Doc. 2011–31088 Filed 12–2–11; 8:45 am]

**BILLING CODE 7535–01–P**

## NATIONAL SCIENCE FOUNDATION

### Proposal Review; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces its intent to hold proposal review meetings throughout the year. The purpose of these meetings is to provide advice and recommendations concerning proposals submitted to the NSF for financial support. The agenda for each of these meetings is to review and evaluate proposals as part of the selection process for awards. The review and evaluation may also include assessment of the progress of awarded proposals. The majority of these meetings will take place at NSF, 4201 Wilson Blvd., Arlington, Virginia 22230.

These meetings will be closed to the public. The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act. NSF will continue to review the agenda and merits of each meeting for overall compliance of the Federal Advisory Committee Act.

These closed proposal review meetings will not be announced on an individual basis in the **Federal Register**. NSF intends to publish a notice similar to this on a quarterly basis. For an advance listing of the closed proposal review meetings that include the names of the proposal review panel and the time, date, place, and any information on changes, corrections, or cancellations, please visit the NSF Web site: *http://www.nsf.gov.* This information may also be requested by telephoning, (703) 292–8182.

Dated: November 29, 2011.

**Susanne Bolton,**

*Committee Management Officer.*

[FR Doc. 2011–31067 Filed 12–2–11; 8:45 am]

**BILLING CODE 7555–01–P**

## NATIONAL SCIENCE FOUNDATION

### National Science Board; Sunshine Act Meetings; Notice

The National Science Board's *ad hoc* Committee on Honorary Awards, pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of meetings for the transaction of National Science Board business and other matters specified, as follows:

**DATE AND TIME:** Monday, December 5, 2011, at 3 p.m., EST.

**SUBJECT MATTER:** Continued discussion of candidates for the 2012 Vannevar Bush Award and 2012 National Science Board Public Service Award.

The meeting has been cancelled.

**Ann Bushmiller,**

*NSB Senior Legal Counsel.*

[FR Doc. 2011–31219 Filed 12–1–11; 11:15 am]

**BILLING CODE 7555–01–P**

## POSTAL REGULATORY COMMISSION

**[Docket No. A2012–61; Order No. 1002]**

### Post Office Closing

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** This document informs the public that an appeal of the closing of the Prince, West Virginia 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 23, 2011: Administrative record due (from Postal Service);

December 23, 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 November 8, 2011, the Commission received a petition for review of the Postal Service's determination to close the Prince post office in Prince, West Virginia. The petition for review was filed by Charles Armentrout (Petitioner) and is postmarked November 1, 2011. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2012–61 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 13, 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)); and (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)).

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 is within 15 days after the date in which the petition for review was filed with the Commission. *See* 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service is also within 15 days after the date in which the petition for review was filed with the Commission.

*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 23, 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 procedural schedule listed below is hereby adopted.

2. Pursuant to 39 U.S.C. 505, Derrick Dennis is designated officer of the Commission (Public Representative) to represent the interests of the general public.

3. 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

| | |
|---|---|
| November 8, 2011 | Filing of Appeal. |
| November 23, 2011 | Deadline for the Postal Service to file the applicable administrative record in this appeal. |
| November 23, 2011 | Deadline for the Postal Service to file any responsive pleading. |
| December 23, 2011 | Deadline for notices to intervene (*see* 39 CFR 3001.111(b)). |
| December 13, 2011 | Deadline for Petitioners' Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)). |
| January 3, 2012 | Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)). |
| January 18, 2012 | Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)). |
| January 25, 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 29, 2012 | Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)). |

[FR Doc. 2011–31127 Filed 12–2–11; 8:45 am]

**BILLING CODE 7710–FW–P**

## POSTAL REGULATORY COMMISSION

**[Docket No. A2012–63; Order No. 1004]**

## Post Office Closing

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** This document informs the public that an appeal of the closing of the Fort Meade, South Dakota 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 23, 2011: Administrative record due (from Postal Service); December 23, 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 November 8, 2011, the Commission received a petition for review of the Postal Service's determination to close the Fort Meade post office in Fort Meade, South Dakota. The petition for review was filed by Darla Burge and Glenda Hildebrand (Petitioners) and is postmarked October 27, 2011. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2012–63 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 13, 2011.

*Categories of issues apparently raised.* Petitioners contend that (1) The Postal Service failed to consider the effect of the closing on the community (*see* 39 U.S.C. 404(d)(2)(A)(i)); and (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)).

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 is within 15 days after the date in which the petition for review was filed with the Commission. *See* 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service is also within 15 days after the date in which the petition for review was filed with the Commission.

*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 23, 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 procedural schedule listed below is hereby adopted.

2. Pursuant to 39 U.S.C. 505, Brent W. Peckham is designated officer of the Commission (Public Representative) to represent the interests of the general public.

3. 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

| | |
|---|---|
| November 8, 2011 | Filing of Appeal. |
| November 23, 2011 | Deadline for the Postal Service to file the applicable administrative record in this appeal. |
| November 23, 2011 | Deadline for the Postal Service to file any responsive pleading. |
| December 23, 2011 | Deadline for notices to intervene (*see* 39 CFR 3001.111(b)). |
| December 13, 2011 | Deadline for Petitioners' Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)). |
| January 3, 2012 | Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)). |
| January 18, 2012 | Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)). |
| January 25, 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 24, 2012 | Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)). |

[FR Doc. 2011–31129 Filed 12–2–11; 8:45 am]

**BILLING CODE 7710–FW–P**

## POSTAL REGULATORY COMMISSION

**[Docket No. A2012–62; Order No. 1003]**

### Post Office Closing

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** This document informs the public that an appeal of the closing of the Lanagan, Missouri 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 23, 2011: Administrative record due (from Postal Service); December 23, 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 November 8, 2011, the Commission received a petition for review of the Postal Service's determination to close the Lanagan post office in Lanagan, Missouri. The petition for review was filed by David and Donna Willet (Petitioners) and is postmarked October 17, 2011. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2012–62 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 13, 2011.

*Categories of issues apparently raised.* Petitioners contend that (1) The Postal

Service failed to consider the effect of the closing on the community (*see* 39 U.S.C. 404(d)(2)(A)(i)).

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 is within 15 days after the date in which the petition for review was filed with the Commission. *See* 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service is also within 15 days after the date in which the petition for review was filed with the Commission.

*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 23, 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 procedural schedule listed below is hereby adopted.

2. Pursuant to 39 U.S.C. 505, Getachew Mekonnen is designated officer of the Commission (Public Representative) to represent the interests of the general public.

3. 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

| | |
|---|---|
| November 8, 2011 | Filing of Appeal. |
| November 23, 2011 | Deadline for the Postal Service to file the applicable administrative record in this appeal. |
| November 23, 2011 | Deadline for the Postal Service to file any responsive pleading. |
| December 23, 2011 | Deadline for notices to intervene (*see* 39 CFR 3001.111(b)). |
| December 13, 2011 | Deadline for Petitioners' Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)). |
| January 3, 2012 | Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)). |
| January 18, 2012 | Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)). |
| January 25, 2012 | Deadline for motions by any party requesting oral argument; the Commission will schedule oral argument only when it is a necessary addition to the written filings (*see* 39 CFR 3001.116). |
| February 14, 2012 | Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)). |

[FR Doc. 2011–31128 Filed 12–2–11; 8:45 am]

**BILLING CODE 7710–FW–P**

## OFFICE OF SCIENCE AND TECHNOLOGY POLICY

### President's Council of Advisors on Science and Technology Meeting

**AGENCY:** Office of Science and Technology Policy.

**ACTION:** Notice of meeting.

**SUMMARY:** This notice sets forth the schedule and summary agenda for a partially closed meeting of the President's Council of Advisors on Science and Technology (PCAST), and describes the functions of the Council. Notice of this meeting is required under the Federal Advisory Committee Act (FACA), 5 U.S.C., App.

**DATES:** January 6, 2012.

**ADDRESSES:** The meeting will be held at the Carnegie Endowment for International Peace, 1779 Massachusetts Avenue NW., Washington, DC in the Root Room.

**FOR FURTHER INFORMATION CONTACT:** Information regarding the meeting agenda, time, location, and how to register for the meeting is available on the PCAST Web site at: *http://whitehouse.gov/ostp/pcast.* A live video webcast and an archive of the webcast after the event are expected to be available at *http://whitehouse.gov/ostp/pcast.* The archived video will be available within one week of the meeting. Questions about the meeting should be directed to Dr. Deborah D. Stine, PCAST Executive Director, at *dstine@ostp.eop.gov,* (202) 456–6006. Please note that public seating for this meeting is limited and is available on a first-come, first-served basis.

**SUPPLEMENTARY INFORMATION:** The President's Council of Advisors on

Science and Technology (PCAST) is an advisory group of the nation's leading scientists and engineers, appointed by the President to augment the science and technology advice available to him from inside the White House and from cabinet departments and other Federal agencies. See the Executive Order at *http://www.whitehouse.gov/ostp/pcast.* PCAST is consulted about and provides analyses and recommendations concerning a wide range of issues where understandings from the domains of science, technology, and innovation may bear on the policy choices before the President. PCAST is co-chaired by Dr. John P. Holdren, Assistant to the President for Science and Technology, and Director, Office of Science and Technology Policy, Executive Office of the President, The White House; and Dr. Eric S. Lander, President, Broad Institute of the Massachusetts Institute of Technology and Harvard.

*Type of Meeting:* Open and Closed.

*Proposed Schedule and Agenda:* The President's Council of Advisors on Science and Technology (PCAST) is scheduled to meet in open session on January 6, 2012 from 10 a.m. to 5 p.m.

*Open Portion of Meeting:* During this open meeting, PCAST is tentatively scheduled to hear from speakers who will provide an overview of a Secretary of Energy Advisory Board report on shale gas production, and an overview of the activities of the Science and Technology Adviser to the Secretary of State. PCAST will also receive an update on the status of several of its studies. Additional information and the agenda, including any changes that arise, will be posted at the PCAST Web site at: *http://whitehouse.gov/ostp/pcast.*

*Closed Portion of the Meeting:* PCAST may hold a closed meeting of approximately 1 hour with the President on January 6, 2012, which must take place in the White House for the President's scheduling convenience and to maintain Secret Service protection. This meeting will be closed to the public because such portion of the meeting is likely to disclose matters that are to be kept secret in the interest of national defense or foreign policy under 5 U.S.C. 552b(c)(1).

*Public Comments:* It is the policy of the PCAST to accept written public comments of any length, and to accommodate oral public comments whenever possible. The PCAST expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements.

The public comment period for this meeting will take place on January 6, 2012 at a time specified in the meeting agenda posted on the PCAST Web site at *http://whitehouse.gov/ostp/pcast.* This public comment period is designed only for substantive commentary on PCAST's work, not for business marketing purposes.

*Oral Comments:* To be considered for the public speaker list at the meeting, interested parties should register to speak at *http://whitehouse.gov/ostp/pcast,* no later than 12 p.m. Eastern Time on January 3, 2012. Phone or email reservations will not be accepted. To accommodate as many speakers as possible, the time for public comments will be limited to two (2) minutes per person, with a total public comment period of 30 minutes. If more speakers register than there is space available on the agenda, PCAST will randomly select speakers from among those who applied. Those not selected to present oral comments may always file written comments with the committee. Speakers are requested to bring at least 25 copies of their oral comments for distribution to the PCAST members.

*Written Comments:* Although written comments are accepted until the date of the meeting, written comments should be submitted to PCAST no later than 12 p.m. Eastern Time on December 20, 2011 so that the comments may be made available to the PCAST members prior to the meeting for their consideration. Information regarding how to submit comments and documents to PCAST is available at *http://whitehouse.gov/ostp/pcast* in the section entitled ''Connect with PCAST.''

Please note that because PCAST operates under the provisions of FACA, all public comments and/or presentations will be treated as public documents and will be made available for public inspection, including being posted on the PCAST Web site.

*Meeting Accommodations:* Individuals requiring special accommodation to access this public meeting should contact Dr. Stine at least ten business days prior to the meeting so that appropriate arrangements can be made.

**Ted Wackler,**

*Deputy Chief of Staff.*

[FR Doc. 2011–31187 Filed 12–2–11; 8:45 am]

BILLING CODE P

## SECURITIES AND EXCHANGE COMMISSION

### Proposed Collection; Comment Request

*Upon Written Request, Copies Available From:* Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

*Extension:*

Regulation BTR, OMB Control No. 3235–0579, SEC File No. 270–521.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Regulation Blackout Trade Restriction (''Regulation BTR'') (17 CFR 245.100—245.104) clarifies the scope and application of Section 306(a) of the Sarbanes-Oxley Act of 2002 (''Act'') (15 U.S.C. 7244(a)). Section 306(a) (15 U.S.C. 7244(a)) of the Act prohibits any director or executive officer of an issuer of any equity security, directly or indirectly, from purchasing, selling or otherwise acquiring or transferring any equity security of the issuer during any blackout period with respect to such equity security, if the director or executive officer acquired the equity security in connection with his or her service or employment. Under Regulation BTR, an issuer is required to provide timely notice to its directors and executive officers and to the Commission of the imposition of a blackout period. Approximately 1,230 issuers file Regulation BTR notices annually. We estimate that it takes 2 hours per response for an issuer to draft a notice to directors and executive officers for a total annual burden of 2,460 hours. The issuer prepares 75% of the 2,460 annual burden hours for a total reporting burden of (1,230 × 2 × 0.75) 1,845 hours. In addition, we estimate that an issuer distributes a notice to five directors and executive officers at an estimated 5 minutes per notice (1,230 blackout period × 5 notices × 5 minutes) for a total reporting burden of 512 hours. The combined annual reporting burden is (1,845 hours + 512 hours) 2,357 hours.

Written comments are invited on: (a) Whether this collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have

practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, Virginia 22312; or send an email to: *PRA_Mailbox@sec.gov*.

Dated: November 29, 2011.

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2011–31101 Filed 12–2–11; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

### Submission for OMB Review; Comment Request

*Upon Written Request, Copies Available From:* Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

*Extension:*

Rule 17a–5(c), SEC File No. 270–199, OMB Control No. 3235–0199.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of extension of the previously approved collection of information provided for in Rule 17a–5(c) (17 CFR 240.17a–5(c)) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Rule 17a–5(c) generally requires broker-dealers who carry customer accounts to provide statements of the broker-dealer's financial condition to their customers. Paragraph (5) of Rule 17a-5(c) provides a conditional exemption from this requirement. A broker-dealer that elects to take advantage of the exemption must publish its statements on its Web site in a prescribed manner, and must maintain a toll-free number that customers can call to request a copy of the statements.

The purpose of the Rule is to ensure that customers of broker-dealers are provided with information concerning the financial condition of the firm that may be holding the customers' cash and securities. The Commission, when adopting the Rule in 1972, stated that the goal was to ''directly'' send a customer essential information so that the customer could ''judge whether his broker or dealer is financially sound.'' The Commission adopted the Rule in response to the failure of several broker-dealers holding customer funds and securities in the period between 1968 and 1971.

The Commission estimates that approximately 244 broker-dealer respondents carrying approximately 101 million public customer accounts incur an average burden of 128,000 hours per year to comply with the Rule.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

The public may view the background documentation for this information collection at the following Web site, *http://www.reginfo.gov* . Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312 or send an email to: *PRA_Mailbox@sec.gov* . Comments must be submitted to OMB within 30 days of this notice.

Dated: November 29, 2011.

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2011–31103 Filed 12–2–11; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

### Submission for OMB Review; Comment Request

*Upon Written Request Copies Available From:* Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

*Extension:*

Rule 15c2–1; SEC File No. 270–418; OMB Control No. 3235–0485.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for approval of extension of the previously approved collection of information provided for in Rule 15c2–1, (17 CFR 240.15c2–1), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Rule 15c2–1 (17 CFR 240.15c2–1) prohibits the commingling under the same lien of securities of margin customers (a) With other customers without their written consent and (b) with the broker or dealer. The rule also prohibits the rehypothecation of customers' margin securities for a sum in excess of the customer's aggregate indebtedness. Pursuant to Rule 15c2–1, respondents must collect information necessary to prevent the rehypothecation of customer securities in contravention of the rule, issue and retain copies of notices of hypothecation of customer securities in accordance with the rule, and collect written consents from customers in accordance with the rule. The information is necessary to ensure compliance with the rule and to advise customers of the rule's protections.

There are approximately 102 respondents (*i.e.,* broker-dealers that carry or clear customer accounts that also have bank loans) that require an aggregate total of 2,295 hours to comply with the rule. Each of these approximately 102 registered broker-dealers makes an estimated 45 annual responses. Each response takes approximately 0.5 hours to complete. Thus, the total compliance burden per year is 2,295 burden hours.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

The public may view the background documentation for this information collection at the following Web site, *http://www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an

email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312 or send an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: November 29, 2011.

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2011–31102 Filed 12–2–11; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

### Submission for OMB Review; Comment Request

*Upon Written Request, Copies Available From:* Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

*Extension:*

Form N–PX, SEC File No. 270–524, OMB Control No. 3235–0582.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

The title for the collection of information is ''Form N–PX (17 CFR 274.129) under the Investment Company Act of 1940, Annual Report of Proxy Voting Record.'' Rule 30b1–4 (17 CFR 270.30b1–4) under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) requires every registered management investment company, other than a small business investment company registered on Form N–5 (''Funds''), to file Form N–PX not later than August 31 of each year. Funds use Form N–PX to file annual reports with the Commission containing their complete proxy voting record for the most recent twelve-month period ended June 30.

The Commission estimates that there are approximately 2,500 Funds registered with the Commission, representing approximately 10,000 Fund portfolios, which are required to file Form N–PX.[1] The 10,000 portfolios are comprised of 6,200 portfolios holding equity securities and 3,800 portfolios holding no equity securities. The staff estimates that portfolios holding no equity securities require approximately a 0.17 hour burden per response and those holding equity securities require 7.2 hours per response. The overall estimated annual burden is therefore approximately 45,300 hours ((6,200 responses × 7.2 hours per response for equity holding portfolios) + (3,800 responses × 0.17 hours per response for non-equity holding portfolios)). Based on the estimated wage rate, the total cost to the industry of the hour burden for complying with Form N–PX would be approximately $14.5 million.

The Commission also estimates that portfolios holding equity securities will bear an external cost burden of $1,000 per portfolio to prepare and update Form N–PX. Based on this estimate, the Commission estimates that the total annualized cost burden for Form N–PX is $6.2 million (6,200 responses × $1,000 per response = $6,200,000).

The collection of information under Form N–PX is mandatory. The information provided under the form is not kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The public may view the background documentation for this information collection at the following Web site: *http://www.reginfo.gov*. Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov*; and (ii) Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312, or send an email to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: November 29, 2011.

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2011–31100 Filed 12–2–11; 8:45 am]

**BILLING CODE 8011–01–P**

[1] The estimate of 2,500 Funds is based on the number of management investment companies currently registered with the Commission. We estimate, based on data from the Investment Company Institute and other sources, that there are approximately 5,700 Fund portfolios that invest primarily in equity securities, 500 ''hybrid'' or bond portfolios that may hold some equity securities, 3,200 bond Funds that hold no equity securities, and 600 money market Funds, for a total of 10,000 portfolios required to file Form N–PX.

## SECURITIES AND EXCHANGE COMMISSION

**[Investment Company Act Release No. 29876; File No. 812–13939]**

### AllianceBernstein Cap Fund, Inc., et al.; Notice of Application

November 29, 2011.

**AGENCY:** Securities and Exchange Commission (''Commission'').

**ACTION:** Notice of an application under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from rule 12d1–2(a) under the Act.

**SUMMARY:**

**SUMMARY OF APPLICATION:** Applicants request an order to permit open-end management investment companies relying on rule 12d1–2 under the Act to invest in certain financial instruments.

**APPLICANTS:** AllianceBernstein Cap Fund, Inc. (the ''Fund''), AllianceBernstein L.P. (''AllianceBernstein''), and AllianceBernstein Investments, Inc. (''ABI'').

**DATES:** *Filing Dates*: The application was filed on August 9, 2011. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on December 20, 2011, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090; *Applicants:* 1345 Avenue of the Americas, New York, New York 10105.

**FOR FURTHER INFORMATION CONTACT:** Lewis B. Reich, Senior Counsel, at (202)

551–6919, or Jennifer L. Sawin, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

*Applicants' Representations*

1. The Fund is organized as a Maryland corporation and is registered under the Act as an open-end management investment company. The existing Applicant Fund (as defined below) is a separate investment portfolio of the Fund and will invest in other registered investment companies in reliance on Section 12(d)(1)(G) of the Act. AllianceBernstein, a Delaware limited partnership, is an investment adviser registered under the Investment Advisers Act of 1940, as amended (the ''Advisers Act'') and currently serves as investment adviser to the existing Applicant Fund. ABI is a Delaware corporation, registered as a broker-dealer under the Securities Exchange Act of 1934, as amended, and serves as the distributor for the existing Applicant Fund.

2. Applicants request the exemption to the extent necessary to permit an existing or future series of the Fund and any other existing or future registered open-end investment company or series thereof that (i) is advised by AllianceBernstein or any person controlling, controlled by or under common control with AllianceBernstein that is registered as an investment adviser under the Advisers Act (any such adviser or AllianceBernstein, an ''Adviser''); (ii) that invests in other registered open-end investment companies (''Underlying Funds'') in reliance on section 12(d)(1)(G) of the Act; and (iii) is also eligible to invest in securities (as defined in section 2(a)(36) of the Act) in reliance on rule 12d1–2 under the Act (each an ''Applicant Fund''), to also invest, to the extent consistent with its investment objectives, policies, strategies and limitations, in financial instruments that may not be securities within the meaning of section 2(a)(36) of the Act (''Other Investments'').[1] Applicants also request that the order exempt any entity controlling, controlled by or under common control with ABI that now or in the future acts as principal underwriter with respect to the transactions described in the application.

3. Consistent with its fiduciary obligations under the Act, each Applicant Fund's board of directors will review the advisory fees charged by the Applicant Fund's Adviser to ensure that they are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to the advisory agreement of any investment company in which the Applicant Fund may invest.

*Applicants' Legal Analysis*

1. Section 12(d)(1)(A) of the Act provides that no registered investment company (''acquiring company'') may acquire securities of another investment company (''acquired company'') if such securities represent more than 3% of the acquired company's outstanding voting stock or more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities to another investment company if the sale would cause the acquiring company to own more than 3% of the acquired company's voting stock, or cause more than 10% of the acquired company's voting stock to be owned by investment companies and companies controlled by them.

2. Section 12(d)(1)(G) of the Act provides, in part, that section 12(d)(1) will not apply to securities of an acquired company purchased by an acquiring company if: (i) The acquired company and acquiring company are part of the same group of investment companies; (ii) the acquiring company holds only securities of acquired companies that are part of the same group of investment companies, government securities, and short-term paper; (iii) the aggregate sales loads and distribution-related fees of the acquiring company and the acquired company are not excessive under rules adopted pursuant to section 22(b) or section 22(c) of the Act by a securities association registered under section 15A of the Exchange Act or by the Commission; and (iv) the acquired company has a policy that prohibits it from acquiring securities of registered open-end investment companies or registered unit investment trusts in reliance on section 12(d)(1)(F) or (G) of the Act.

3. Rule 12d1–2 under the Act permits a registered open-end investment company or a registered unit investment trust that relies on section 12(d)(1)(G) of the Act to acquire, in addition to securities issued by another registered investment company in the same group of investment companies, government securities, and short-term paper: (i) Securities issued by an investment company that is not in the same group of investment companies, when the acquisition is in reliance on section 12(d)(1)(A) or 12(d)(1)(F) of the Act; (ii) securities (other than securities issued by an investment company); and (iii) securities issued by a money market fund, when the investment is in reliance on rule 12d1–1 under the Act. For the purposes of rule 12d1–2, ''securities'' means any security as defined in section 2(a)(36) of the Act.

4. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction from any provision of the Act, or from any rule under the Act, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act.

5. Applicants state that the Applicant Funds will comply with rule 12d1–2 under the Act, but for the fact that the Applicant Funds may invest a portion of their assets in Other Investments. Applicants request an order under section 6(c) of the Act for an exemption from rule 12d1–2(a) to allow the Applicant Funds to invest in Other Investments while investing in Underlying Funds. Applicants assert that permitting the Applicant Funds to invest in Other Investments as described in the application would not raise any of the concerns that the requirements of section 12(d)(1) were designed to address.

*Applicants' Condition*

Applicants agree that the order granting the requested relief will be subject to the following condition:

Applicants will comply with all provisions of rule 12d1–2 under the Act, except for paragraph (a)(2) to the extent that it restricts any Applicant Fund from investing in Other Investments as described in the application.

[1] Every existing entity that currently intends to rely on the requested order is named as an applicant. Any existing or future entity that relies on the requested order will do so only in accordance with the terms and condition in the application.

For the Commission, by the Division of Investment Management, under delegated authority.

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2011–31099 Filed 12–2–11; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, December 8, 2011, at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Gallagher, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session.

The subject matter of the Closed Meeting scheduled for Thursday, December 8, 2011, will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Adjudicatory matters; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: December 1, 2011.

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. 2011–31264 Filed 12–1–11; 4:15 pm]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–65841; File No. SR–PHLX–2011–140]**

### Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Order Approving Proposed Rule Change To Amend the By-Laws of The NASDAQ OMX Group, Inc.

November 28, 2011.

On October 11, 2011, NASDAQ OMX PHLX LLC (''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the by-laws of its parent corporation, The NASDAQ OMX Group, Inc. (''NASDAQ OMX''). The proposed rule change was published for comment in the **Federal Register** on October 28, 2011.[3] The Commission received no comments on the proposal.

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange [4] and, in particular, the requirements of Section 6(b)(5) of the Act.[5] The proposal will allow the NASDAQ OMX Board of Directors (''Board'') to determine the size of its Audit Committee, so long as the Audit Committee includes at least three directors, as well as the size of its Nominating & Governance Committee, so long as the Nominating & Governance Committee includes at least two directors. The proposal is intended to provide greater flexibility to the NASDAQ OMX Board to determine the appropriate size for these committees. The Commission notes that the proposed rule change maintains compliance with the Exchange's listing standards. The proposal does not change any other compositional requirements of either the Audit Committee or the Nominating & Governance Committee, including independence requirements. Moreover, the Commission notes that the proposal does not alter the application of Section 10A of the Exchange Act [6] and Rule 10A–3 thereunder [7] to the NASDAQ OMX Audit Committee. The proposal also deletes an obsolete section from, and corrects a typographical error in, the NASDAQ OMX by-laws, which are clarifying revisions. For the foregoing reasons, the Commission believes that the proposed rule change is consistent with the Act.

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–PHLX–2011–140) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2011–31043 Filed 12–2–11; 8:45 am]

**BILLING CODE 8011–01–P**

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 65605 (October 21, 2011), 76 FR 67015.

[4] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78j–1.

[7] 17 CFR 240.10A–3.

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–65851; File No. SR–NASDAQ–2011–157]**

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt the QView Service

November 30, 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 22, 2011, The NASDAQ Stock Market LLC (''Exchange''), 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 the Substance of the Proposed Rule Change**

The Exchange proposes to adopt QView, a new service that will provide subscribing member firms with increased transparency over their trading activity on the Exchange by allowing the member to track its Exchange order flow.

The text of the proposed rule change is below. Proposed new language is in italics.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

**7058. QView**

*QView is a web-based tool designed to give a subscribing member the ability to track its order flow on Nasdaq, and create both real-time and historical reports of such order flow. Members may subscribe to QView at no cost.*

* * * * *

## 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 Exchange is proposing to adopt a new Web-based, front-end application called QView, which will provide subscribing member firms with increased transparency over their trading activity on the Exchange by allowing the member to track its Exchange order flow.[3] In particular, a QView subscriber would be able to track all of its trading activity on the Exchange through detailed order and execution summaries. QView will provide a subscribing member with statistics concerning the total number of executions, total volume, dollar value of executions, executions by symbol, add versus remove, buy versus sell, display versus non-display, number of open orders, use of routing strategies and liquidity code designation. The data provided by QView will be available to the subscribing member both in real-time and historically. Subscribing members will also be able export such data from QView to other systems.

QView will also allow a subscriber to track executions and open orders in real-time using the QView dashboard. The QView dashboard allows a subscribing member to view its executions and open orders as an overall summary, with all totals displayed by quantity, share volume, or dollar value. In conjunction with NASDAQ TradeInfo,[4] a QView subscriber will also be able to filter down to the specific order or execution information of the orders and executions provided in the QView dashboard. As such, QView provides both an overall summary of a subscribing member's activity, as well as detailed order and execution information, thus providing the member a comprehensive tool to track its trading activity.[5]

The Exchange is proposing to offer QView at no cost to members at this time.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)(5) of the Act,[6] which requires that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest. The Exchange believes the proposed rule change is consistent with these requirements because the proposed service provides subscribing members with a useful analytical tool with which they may access information concerning their order and trade activity occurring on the Exchange. With this information, subscribing members may more closely monitor and analyze such activity, and make more informed investment decisions. Accordingly, the Exchange believes that the proposed service will further goals of the Act by providing subscribing members with greater transparency with respect to their order activity on the Exchange. The Exchange notes that the QView service is similar to the services offered by the BATS exchange through its online member portal.[7]

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and subparagraph (f)(6) of Rule 19b–4 thereunder.[9]

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act[10] normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay because it would permit the Exchange to offer the QView service on December 1, 2011, the beginning of the Exchange's next monthly rollout cycle for such services. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest and designates the proposal operative upon filing.[11] Waiving the 30-day operative delay will enable the Exchange to make this web-based tool

[3] A subscribing member possessing multiple MPIDs must designate the MPIDs for which it would like to receive QView information. A subscribing member, however, may elect to monitor only the activity occurring through certain ports associated with a subscribed MPID.

[4] TradeInfo is an Internet-based tool that, among other things, allows users access to all of the NASDAQ order and execution information for their entire firm for both equities and options through a single interface. TradeInfo is offered complimentary as part of the NASDAQ Workstation or separately for a fee of $95 per user per month.

[5] For example, QView will inform a subscribing member of its executions in a particular day and provide a link to the details of those executions, which is provided by TradeInfo.

[6] 15 U.S.C. 78f(b)(5).

[7] *See http://batstrading.com/resources/features/bats_exchange_webproducts.pdf.*

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 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.

[10] 17 CFR 240.19b–4(f)(6).

[11] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

available to its members on December 1, 2011, providing members with a tool to track their order flow on the Exchange.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2011–157 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–2011–157. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2011–157, and should be submitted on or before December 27, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2011–31110 Filed 12–2–11; 8:45 am]

**BILLING CODE 8011–01–P**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–65847; File No. SR–NYSEArca–2011–81]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to the Listing and Trading of the Guggenheim Enhanced Short Duration High Yield Bond ETF Under NYSE Arca Equities Rule 8.600

November 29, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on November 14, 2011, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') 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 Exchange proposes to list and trade the following under NYSE Arca Equities Rule 8.600 (''Managed Fund Shares''): Guggenheim Enhanced Short Duration High Yield Bond ETF. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to list and trade the following Managed Fund Shares[3] (''Shares'') under NYSE Arca Equities Rule 8.600: Guggenheim Enhanced Short Duration High Yield Bond ETF (''Fund'').[4] The Shares will be offered by the Claymore Exchange-Traded Fund Trust (''Trust''), a statutory trust organized under the laws of the State of Delaware and registered with the Commission as an open-end management investment company.[5]

[3] A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a) (''1940 Act'') organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

[4] The Commission has previously approved listing and trading on the Exchange of actively managed funds under Rule 8.600. *See* Securities Exchange Act Release Nos. 57801 (May 8, 2008), 73 FR 27878 (May 14, 2008) (SR–NYSEArca-2008–31) (order approving Exchange listing and trading of twelve actively-managed funds of the WisdomTree Trust); 61365 (January 15, 2010), 75 FR 4124 (January 26, 2010) (SR–NYSEArca-2009–114) (order approving listing and trading of Grail McDonnell Fixed Income ETFs); 60981 (November 10, 2009), 74 FR 59594 (November 18, 2009) (SR–NYSEArca-2009–79) (order approving listing of five fixed income funds of the PIMCO ETF Trust); 63329 (November 17, 2010), 75 FR 71760 (November 24, 2010) (SR–NYSEArca-2010–86) (order approving listing of Peritus High Yield ETF).

[5] The Trust is registered under the 1940 Act. On December 8, 2010, the Trust filed with the Commission Form N–1A under the Securities Act of 1933 (15 U.S.C. 77a) relating to the Fund (File Nos. 333–134551 and 811–21906) (''Registration Statement''). The description of the operation of the Trust and the Fund herein is based, in part, on the Registration Statement. In addition, the Commission has issued an order granting certain

The investment adviser for the Fund is Guggenheim Funds Investment Advisors, LLC (''Adviser''). The Bank of New York Mellon is the custodian and transfer agent for the Fund. Guggenheim Funds Distributors, Inc. is the distributor for the Fund.

Commentary .06 to Rule 8.600 provides that, if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a ''fire wall'' between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio.[6] In addition, Commentary .06 further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the open-end fund's portfolio. The Adviser is affiliated with a broker-dealer and has represented that it has implemented a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio. In the event (a) The Adviser or any sub-adviser becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser becomes affiliated with a broker-dealer, it will implement a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

According to the Registration Statement, the investment objective of the Fund is to seek to maximize total return, through monthly income and capital appreciation, consistent with capital preservation.

The Fund will use an actively managed strategy that seeks to maximize total return, comprised of income and capital appreciation, and risk-adjusted returns in excess of the 3-month LIBOR while maintaining a low risk profile relative to below investment grade rated, longer-term, fixed income investments. The Fund will primarily invest in below investment grade rated bonds while opportunistically allocating to investment grade bonds and other select securities. The Fund's portfolio will maintain an effective duration of one year or less.

Primary Investments

As a principal investment strategy, under normal market circumstances,[7] the Fund will invest at least 80% of its net assets in debt securities which are below investment grade (''high yield'' bonds or ''junk bonds'').[8] Bonds are considered to be below investment grade if they have a Standard & Poor's or Fitch credit rating of ''BB+'' or lower or a Moody's credit rating of ''Ba1'' or lower (collectively or individually, ''Below Investment Grade'') or bonds that are unrated and deemed to be of below investment grade quality as determined by the Adviser.[9] The Fund's primary investments also may include floating rate or adjustable rate bonds,[10] callable bonds with, as determined by the Adviser, a high probability of being redeemed prior to maturity,[11] ''putable'' bonds (bonds that give the holder the right to sell the bond to the issuer prior to the bond's maturity) when the put date is within a 24 month period, ''busted'' convertible securities (a convertible security that is trading well below its conversion value minimizing the likelihood that it will ever reach its convertible price prior to maturity), and other types of securities, all of which may be rated at or below investment grade. The Fund will not invest in securities in default at the time of investment. According to the Registration Statement, the management process is intended to be highly flexible and responsive to market opportunities. For example, when interest rates are low and credit markets are healthy, the Fund may be overweight in callable bonds, which generally have a lower yield-to-call than yield-to-maturity, as well as bonds that are subject to company repurchases and tender offers. In weaker credit markets, the Fund may be overweight in bonds that are at maturity or have putable features. The Adviser anticipates that under normal market circumstances the Fund will invest approximately 20% of its assets in securities that will be called, tendered, or mature within 60 to 90 days.

The Adviser will commence the investment review process with a top-down, macroeconomic outlook to determine both investment themes and relative value within each market sector and industry. Within these parameters, the Adviser will then apply detailed bottom-up security selection to select individual portfolio securities that the Adviser believes can add value from income and/or the potential for capital

exemptive relief to the Trust under the 1940 Act. *See* Investment Company Act Release No. 29271 (May 18, 2010) (File No. 812–13534) (''Exemptive Order'').

[6] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (''Advisers Act''). As a result, the Adviser and its related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) Adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[7] The term ''under normal market circumstances'' includes, but is not limited to, the absence of extreme volatility or trading halts in the fixed income markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance. Email from Timothy J. Malinowski, Senior Director, NYSE Euronext, to Edward Y. Cho, Special Counsel, Division of Trading and Markets, Commission, dated November 22, 2011.

[8] As of August 30, 2011, the Adviser represents that there were approximately 1,100 high yield bond issues that mature on or before December 2016, representing $420 billion or approximately 40% of the total amount of high yield bonds outstanding. (Source: Barclays Capital). As of August 1, 2011, floating rate bank loans outstanding were $637 billion. (Source regarding floating rate bank loans: Credit Suisse Leveraged Finance Strategy Update, August 1, 2011).

[9] The Fund's investments will be subject to credit risk. According to the Registration Statement, credit risk is the risk that issuers or guarantors of debt instruments or the counterparty to a derivatives contract, repurchase agreement or loan of portfolio securities is unable or unwilling to make timely interest and/or principal payments or otherwise honor its obligations. Debt instruments are subject to varying degrees of credit risk, which may be reflected in credit ratings. Credit rating downgrades and defaults (failure to make interest or principal payment) may potentially reduce the Fund's income and Share price.

[10] The Fund may invest in debt securities that have variable or floating interest rates which are readjusted on set dates (such as the last day of the month or calendar quarter) in the case of variable rates or whenever a specified interest rate change occurs in the case of a floating rate instrument. Variable or floating interest rates generally reduce changes in the market price of securities from their original purchase price because, upon readjustment, such rates approximate market rates. Accordingly, as interest rates decrease or increase, the potential for capital appreciation or depreciation is less for variable or floating rate securities than for fixed rate obligations.

[11] During periods of falling interest rates, an issuer of a callable bond may exercise its right to pay principal on an obligation earlier than expected, which may result in the Fund reinvesting proceeds at lower interest rates, resulting in a decline in the Fund's income.

appreciation. Credit research may include an assessment of an issuer's profitability, its competitive positioning and management strength, as well as industry characteristics, liquidity, growth and other factors. The Adviser may sell a portfolio security due to changes in credit characteristics or outlook, as well as changes in portfolio strategy or cash flow needs. A portfolio security may also be sold and replaced with one that presents a better value or risk/reward profile. Except during periods of temporary defensive positioning, the Adviser generally expects to be fully-invested.

The Adviser aims to manage the Fund so as to provide investors with a higher degree of principal stability than is typically available in a portfolio of lower-rated longer-term, fixed income investments. The Adviser intends to invest the Fund's assets in the securities of issuers in many different industries and intends to invest a maximum of 2–3% of the Fund's assets in the securities of any one issuer, though the Fund is not restricted from maintaining positions of greater weight based upon the outlook for an issuer or during periods of relatively small asset levels of the Fund.

The Fund may invest a portion of its assets in various types of U.S. Government obligations. The Fund also may invest in convertible securities, including bonds, debentures, notes, preferred stocks and other securities that may be converted into a prescribed amount of common stock or other equity securities at a specified price and time. The Fund may invest in municipal securities, and certificates of deposit.

While the Adviser anticipates that the Fund will invest primarily in the debt securities of U.S.-registered companies, it may also invest in those of foreign companies in developed countries.[12] The Fund may invest in U.S.-registered, dollar-denominated bonds of foreign corporations, governments, agencies and supra-national agencies.[13]

The Fund will be managed in accordance with the principal investment strategies stated above, subject to the following investment restrictions: The Fund will not employ any leverage in order to meet its investment objective, and, consistent with the Exemptive Order, the Fund will not invest in derivatives including options, swaps or futures.

Other Investments

As non-principal investment strategies, the Fund may invest its remaining assets in money market instruments (including other funds which invest exclusively in money market instruments), preferred securities, insurance-linked securities and structured notes (notes on which the amount of principal repayment and interest payments are based on the movement of one or more specified factors, such as the movement of a particular security or security index). The Fund may, from time to time, invest in money market instruments or other cash equivalents as part of a temporary defensive strategy to protect against temporary market declines. When the Fund takes a temporary defensive position that is inconsistent with its principal investment strategies, the Fund may not achieve its investment objective. The Fund may also invest, to a limited extent, in other pooled investment vehicles which are not registered investment companies under the 1940 Act; however, the Fund will not invest in hedge funds or commodity pools.

The Fund may invest in commercial interests, including commercial paper and other short-term corporate instruments. Commercial paper consists of short-term promissory notes issued by corporations and may be traded in the secondary market after its issuance.

The Fund may invest in zero-coupon or pay-in-kind securities. These securities are debt securities that do not make regular cash interest payments. Zero-coupon securities are sold at a deep discount to their face value. Pay-in-kind securities pay interest through the issuance of additional securities. Because zero-coupon and pay-in-kind securities do not pay current cash income, the price of these securities can be volatile when interest rates fluctuate.

The Fund may invest up to 10% of its net assets in asset-backed securities issued or guaranteed by private issuers.

The Fund may invest in the aggregate up to 15% of its net assets (taken at the time of investment) in: (1) Illiquid securities [14] and (2) Rule 144A securities. Illiquid securities include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets.[15] Rule 144A securities are securities which, while privately placed, are eligible for purchase and

[12] The Adviser considers developed countries to include Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Hong Kong, Ireland, Israel, Italy, Japan, Netherlands, New Zealand, Norway, Portugal, Singapore, Spain, Sweden, Switzerland, the United Kingdom and the United States.

[13] According to the Registration Statement, such bonds have different risks than investing in U.S. companies. These include differences in accounting, auditing and financial reporting standards, the possibility of expropriation or confiscatory taxation, adverse changes in investment or exchange control regulations, political instability which could affect U.S. investments in foreign countries, and potential restrictions of the flow of international capital. Foreign companies may be subject to less governmental regulation than U.S. issuers. Moreover, individual foreign economies may differ favorably or unfavorably from the U.S. economy in such respects as growth of gross domestic product, rate of inflation, capital investment, resource self-sufficiency and balance of payment options.

[14] The Fund may invest in master notes, which are demand notes that permit the investment of fluctuating amounts of money at varying rates of interest pursuant to arrangements with issuers who meet the quality criteria of the Fund. The interest rate on a master note may fluctuate based upon changes in specified interest rates, be reset periodically according to a prescribed formula or be a set rate. Although there is no secondary market in master demand notes, if such notes have a demand future, the payee may demand payment of the principal amount of the note upon relatively short notice. Master notes are generally illiquid and therefore subject to the Fund's percentage limitations for investments in illiquid securities. The Fund may invest up to 15% of its net assets in bank loans, which include participation interests (as described below). Any bank loans will be broadly syndicated and may be first or second liens; the Fund will not invest in third lien or mezzanine loans. The interest rate on bank loans and other adjustable rate securities typically resets every 90 days based upon then current interest rates. The Fund may purchase participations in corporate loans. Participation interests generally will be acquired from a commercial bank or other financial institution (''Lender'') or from other holders of a participation interest (''Participant''). The purchase of a participation interest either from a Lender or a Participant will not result in any direct contractual relationship with the borrowing company (''Borrower''). The Fund generally will have no right directly to enforce compliance by the Borrower with the terms of the credit agreement. Instead, the Fund will be required to rely on the Lender or the Participant that sold the participation interest, both for the enforcement of the Fund's rights against the Borrower and for the receipt and processing of payments due to the Fund under the loans. Under the terms of a participation interest, the Fund may be regarded as a member of the Participant, and thus the Fund is subject to the credit risk of both the Borrower and a Participant. Participation interests are generally subject to restrictions on resale. Generally, the Fund considers participation interests to be illiquid and therefore subject to the Fund's percentage limitations for investments in illiquid securities.

[15] The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. *See* Investment Company Act Release No. 28193 (March 11, 2008), 73 FR 14617 (March 18, 2008), footnote 34. *See also* Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding ''Restricted Securities''); Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N–1A). A fund's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the ETF. *See* Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a–7 under the 1940 Act); Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the Securities Act of 1933).

resale pursuant to Rule 144A under the Securities Act of 1933 (''Securities Act''). Rule 144A permits certain qualified institutional buyers, such as the Fund, to trade in privately placed securities even though such securities are not registered under the Securities Act.

The Fund may invest in the securities of other investment companies (including money market funds). Under Section 12(d) of the 1940 Act, or as otherwise permitted by the Commission, the Fund's investment in investment companies is limited to, subject to certain exceptions, (i) 3% of the total outstanding voting stock of any one investment company, (ii) 5% of the Fund's total assets with respect to any one investment company and (iii) 10% of the Fund's total assets of [sic] investment companies in the aggregate.[16]

The Fund may enter into repurchase [17] and reverse repurchase agreements.[18] The Fund also may invest in the securities of real estate investment trusts to the extent allowed by law, which pool investors' funds for investments primarily in commercial real estate properties.

The Fund may not invest 25% or more of the value of its total assets in securities of issuers in any one industry or group of industries. This restriction does not apply to obligations issued or guaranteed by the U.S. Government, its agencies or instrumentalities.[19]

The Fund's portfolio holdings will be disclosed on its Web site (*http://www.guggenheimfunds.com*) daily after the close of trading on the Exchange and prior to the opening of trading on the Exchange the following day.

The Fund intends to maintain the level of diversification necessary to qualify as a regulated investment company (''RIC'') under Subchapter M of the Internal Revenue Code of 1986, as amended.[20]

The Fund represents that the portfolio will include a minimum of 13 non-affiliated issuers.

The Fund will only purchase performing securities, not distressed debt. Distressed debt is debt that is currently in default and is not expected to pay the current coupon.

The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600. The Exchange represents that, for initial and/or continued listing, the Fund will be in compliance with Rule 10A–3 under the Exchange Act,[21] as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares of the Fund will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the net asset value (''NAV'') per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.

The Fund will not invest in non-U.S.-registered equity securities.

Creations and Redemptions of Shares

Investors may create or redeem in Creation Unit size of 100,000 Shares or aggregations thereof (''Creation Unit Aggregation'') through an Authorized Participant, as described in the Registration Statement. In order to purchase Creation Units of a Fund, an investor must generally deposit a designated portfolio of securities (''Deposit Securities'') (and/or an amount in cash in lieu of some or all of the Deposit Securities) per each Creation Unit Aggregation constituting a substantial replication, or representation, of the securities included in the Fund's portfolio as selected by the Adviser (''Fund Securities'') and generally make a cash payment referred to as the ''Cash Component.'' The list of the names and the amounts of the Deposit Securities will be made available by the Fund's custodian through the facilities of the National Securities Clearing Corporation (''NSCC'') immediately prior to the opening of business each day of the NYSE Arca. The Cash Component represents the difference between the net asset value of a Creation Unit and the market value of the Deposit Securities.

Shares may be redeemed only in Creation Unit size at their NAV on a day the NYSE Arca is open for business. The Fund's custodian will make available immediately prior to the opening of business each day of the NYSE Arca, through the facilities of NSCC, the list of the names and the amounts of the Fund's portfolio securities that will be applicable that day to redemption requests in proper form. Fund Securities received on redemption may not be identical to Deposit Securities which are applicable to purchases of Creation Units.

Net Asset Value

The NAV per Share of the Fund will be determined once daily as of the close of the New York Stock Exchange (''NYSE''), usually 4 p.m. Eastern time (''E.T.''), each day the NYSE is open for trading, provided that any assets or

[16] 15 U.S.C. 80a–12(d).

[17] Repurchase agreements are agreements pursuant to which securities are acquired by the Fund from a third party with the understanding that they will be repurchased by the seller at a fixed price on an agreed date. These agreements may be made with respect to any of the portfolio securities in which the Fund is authorized to invest. Repurchase agreements may be characterized as loans secured by the underlying securities. The Fund may enter into repurchase agreements with (i) Member banks of the Federal Reserve System having total assets in excess of $500 million and (ii) securities dealers (''Qualified Institutions''). The Adviser will monitor the continued creditworthiness of Qualified Institutions.

[18] Reverse repurchase agreements involve the sale of securities with an agreement to repurchase the securities at an agreed-upon price, date and interest payment and have the characteristics of borrowing. The securities purchased with the funds obtained from the agreement and securities collateralizing the agreement will have maturity dates no later than the repayment date. Generally the effect of such transactions is that the Fund can recover all or most of the cash invested in the portfolio securities involved during the term of the reverse repurchase agreement, while in many cases the Fund is able to keep some of the interest income associated with those securities.

[19] *See* Form N–1A, Item 9. The Commission has taken the position that a fund is concentrated if it invests more than 25% of the value of its total assets in any one industry. *See, e.g.,* Investment Company Act Release No. 9011 (October 30, 1975), 40 FR 54241 (November 21, 1975).

[20] 26 U.S.C. 851. As a RIC, the Fund will not be subject to U.S. federal income tax on the portion of its taxable investment income and capital gains that it distributes to its shareholders. To qualify for treatment as a RIC, a company must annually distribute at least 90% of its net investment company taxable income (which includes dividends, interest and net short-term capital gains) and meet several other requirements relating to the nature of its income and the diversification of its assets. If the Fund fails to qualify for any taxable year as a RIC, all of its taxable income will be subject to tax at regular corporate income tax rates without any deduction for distributions to shareholders, and such distributions generally will be taxable to shareholders as ordinary dividends to the extent of the Fund's current and accumulated earnings and profits. In addition, in order to requalify for taxation as a RIC, the Fund may be required to recognize unrealized gains, pay substantial taxes and interest and make certain distributions. One of several requirements for RIC qualification is that the Fund must receive at least 90% of the Fund's gross income each year from dividends, interest, [sic] payments with respect to securities loans, gains from the sale or other disposition of stock, securities or foreign currencies, or other income derived with respect to the Fund's investments in stock, securities, foreign currencies and net income from an interest in a qualified publicly traded partnership (''90% Test''). A second requirement for qualification as a RIC is that the Fund must diversify its holdings so that, at the end of each fiscal quarter of the Fund's taxable year: (a) at least 50% of the market value of the Fund's total assets is represented by cash and cash items, U.S. Government securities, securities of other RICs, and other securities, with these other securities limited, in respect to any one issuer, to an amount not greater than 5% of the value of the Fund's total assets or 10% of the outstanding voting securities of such issuer; and (b) not more than 25% of the value of its total assets are invested in the securities (other than U.S. Government securities or securities of other RICs) of any one issuer or two or more issuers which the Fund controls and which are engaged in the same, similar, or related trades or businesses, or the securities of one or more qualified publicly traded partnership [sic] (''Asset Test'').

[21] 17 CFR 240.10A–3.

liabilities denominated in currencies other than the U.S. dollar shall be translated into U.S. dollars at the prevailing market rates on the date of valuation as quoted by one or more major banks or dealers that makes a two-way market in such currencies (or a data service provider based on quotations received from such banks or dealers); and U.S. fixed income instruments may be valued as of the announced closing time for trading in fixed income instruments on any day that the Securities Industry and Financial Markets Association announces an early closing time.

NAV per Share will be determined by dividing the value of the Fund's portfolio securities, cash and other assets (including accrued interest), less all liabilities (including accrued expenses), by the total number of Shares outstanding. Debt securities will be valued at the mean between the last available bid and ask prices for such securities or, if such prices are not available, at prices for securities of comparable maturity, quality, and type. The Fund's debt securities may also be valued based on price quotations or other equivalent indications of value provided by a third-party pricing service.

Short-term securities for which market quotations are not readily available will be valued at amortized cost, which approximates market value. To the extent the Fund invests in bank loans, the loans will generally be fair valued using evaluated quotes provided by an independent pricing service. Prices provided by the pricing services may be determined without exclusive reliance on quoted prices, and may reflect appropriate factors such as, among others, market quotes, ratings, tranche type, industry, company performance, spread, individual trading characteristics and other market data. Equity securities will be valued at the last reported sale price on the principal exchange or on the principal OTC market on which such securities are traded, as of the close of regular trading on the NYSE on the day the securities are being valued or, if there are no sales, at the mean of the most recent bid and ask prices. Equity securities that are traded primarily on the NASDAQ Stock Market will be valued at the NASDAQ Official Closing Price.

Securities for which market quotations are not readily available, including restricted securities, will be valued by the Adviser by a method that the Adviser believes accurately reflects fair value, pursuant to policies adopted by the Board of Trustees. Securities will be valued at fair value when market quotations are not readily available or are deemed unreliable, such as when a security's value or meaningful portion of the Fund's portfolio is believed to have been materially affected by a significant event. Such events may include a natural disaster, an economic event like a bankruptcy filing, a trading halt in a security, an unscheduled early market close or a substantial fluctuation in domestic and foreign markets that has occurred between the close of the principal exchange and the NYSE Arca.

Availability of Information

The Fund's Web site, which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund that may be downloaded. The Fund's Web site will include additional quantitative information updated on a daily basis, including, for the Fund, (1) Daily trading volume, the prior business day's reported closing price, NAV and mid-point of the bid/ask spread at the time of calculation of such NAV (the ''Bid/Ask Price''),[22] and a calculation of the premium and discount of the Bid/Ask Price against the NAV, and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund will disclose on its Web site the Disclosed Portfolio as defined in NYSE Arca Equities Rule 8.600(c)(2) that will form the basis for each Fund's calculation of NAV at the end of the business day.[23]

On a daily basis, the Adviser will disclose on the Fund's Web site for each portfolio security or other financial instrument of the Fund the following information: Ticker symbol (if applicable), name of security or financial instrument, number of shares or dollar value of financial instruments held in the portfolio, and percentage weighting of the security or financial instrument in the portfolio. The Web site information will be publicly available at no charge. In addition, price information for the debt securities held by the Fund will be available through major market data vendors.

In addition, a basket composition file, which includes the security names and share quantities required to be delivered in exchange for Fund Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the NYSE via NSCC. The basket represents one Creation Unit of the Fund.

Investors can also obtain the Trust's Statement of Additional Information (''SAI''), the Fund's Shareholder Reports, and Form N–CSR and Form N–SAR, filed twice a year. The Trust's SAI and Shareholder Reports are available free upon request from the Trust, and those documents and the Form N–CSR and Form N–SAR may be viewed on-screen or downloaded from the Commission's Web site at *http://www.sec.gov.* Information regarding market price and trading volume for the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Quotation and last sale information for the Shares will be available via the Consolidated Tape Association (''CTA'') high-speed line. In addition, the Portfolio Indicative Value, as defined in NYSE Arca Equities Rule 8.600(c)(3), will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session.[24] The dissemination of the Portfolio Indicative Value, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of the Fund on a daily basis and to provide a close estimate of that value throughout the trading day.

Additional information regarding the Trust and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, distributions and taxes is included in the Registration Statement.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of

[22] The Bid/Ask Price of the Fund will be determined using the midpoint of the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

[23] Under accounting procedures followed by the Fund, trades made on the prior business day (''T'') will be booked and reflected in NAV on the current business day (''T+1''). Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

[24] Currently, it is the Exchange's understanding that several major market data vendors display and/or make widely available Portfolio Indicative Values published on CTA or other data feeds.

the Fund.[25] Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4 a.m. to 8 p.m. E.T. in accordance with NYSE Arca Equities Rule 7.34 (Opening, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Equities Rule 7.6, Commentary .03, the minimum price variation (''MPV'') for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is $0.01, with the exception of securities that are priced less than $1.00 for which the MPV for order entry is $0.0001.

Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products (which include Managed Fund Shares) to monitor trading in the Shares. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

The Exchange's current trading surveillance focuses on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange may obtain information via the Intermarket Surveillance Group (''ISG'') from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement.[26]

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit (''ETP'') Holders in an Information Bulletin (''Bulletin'') of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Unit Aggregations (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated Portfolio Indicative Value will not be calculated or publicly disseminated; (4) how information regarding the Portfolio Indicative Value is disseminated; (5) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Bulletin will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Exchange Act. The Bulletin will also disclose that the NAV for the Shares will be calculated after 4 p.m. E.T. each trading day.

2. Statutory Basis

The basis under the Exchange Act for this proposed rule change is the requirement under Section 6(b)(5)[27] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 8.600. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The Exchange may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. According to the Registration Statement, the Fund will not employ any leverage in order to meet its investment objective; and the Fund will not invest in derivative securities including options, swaps or futures. The Fund will not invest in securities in default at the time of investment.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Adviser is affiliated with a broker-dealer and has represented that it has implemented a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. In addition, a large amount of information is publicly available regarding the Fund and the Shares, thereby promoting market transparency. The Fund's portfolio holdings will be disclosed on its Web site daily after the close of trading on the Exchange and prior to the opening of trading on the Exchange the following day. Moreover, the Portfolio Indicative Value will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Core Trading Session. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund will disclose on its Web site the Disclosed Portfolio that will form the basis for the Fund's calculation of NAV at the end of the business day. Information regarding market price and trading volume of the Shares is and will be continually available on a real-time basis throughout

[25] *See* NYSE Arca Equities Rule 7.12, Commentary .04.

[26] For a list of the current members of ISG, see *http://www.isgportal.org.* The Exchange notes that not all components of the Disclosed Portfolio for the Fund may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

[27] 15 U.S.C. 78f(b)(5).

the day on brokers' computer screens and other electronic services, and quotation and last sale information will be available via the CTA high-speed line. The Web site for the Fund will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information. Moreover, prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable, and trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the Portfolio Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the Portfolio Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov. Please include File Number SR–NYSEArca–2011–81 on the subject line.*

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number *SR–NYSEArca–2011–81.* This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The 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–NYSEArca–2011–81* and should be submitted on or before December 27, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2011–31045 Filed 12–2–11; 8:45 am]

**BILLING CODE 8011–01–P**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–65846; File No. SR–NYSEArca–2011–82]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to the Listing and Trading of Shares of the WisdomTree Emerging Markets Inflation Protection Bond Fund Under NYSE Arca Equities Rule 8.600

November 29, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on November 14, 2011, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') 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.

[28] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C.78s(b)(1).

[2] 17 CFR 240.19b–4.

## I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade the shares of the following fund of the WisdomTree Trust (''Trust'') under NYSE Arca Equities Rule 8.600 (''Managed Fund Shares''): WisdomTree Emerging Markets Inflation Protection Bond Fund (''Fund''). The shares of the Fund are collectively referred to herein as the ''Shares.'' The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to list and trade the Shares of the WisdomTree Emerging Markets Inflation Protection Bond Fund under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares on the Exchange.[3] The Fund will be an actively managed exchange traded fund (''ETF''). The Shares will be offered by the Trust, which was established as a Delaware statutory trust on December 15, 2005. The Fund is registered with the Commission as an investment company and the Fund has filed a registration statement on Form N–1A (''Registration Statement'') with the Commission.[4]

Description of the Shares and the Fund

WisdomTree Asset Management, Inc. (''WisdomTree Asset Management'') is the investment adviser (''Adviser'') to the Fund.[5] Mellon Capital Management serves as sub-adviser for the Fund (''Sub-Adviser'').[6] The Bank of New York Mellon is the administrator, custodian and transfer agent for the Trust. ALPS Distributors, Inc. (''Distributor'') serves as the distributor for the Trust.[7]

Commentary .06 to Rule 8.600 provides that, if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a ''fire wall'' between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio.[8] In addition, Commentary .06 further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the open-end fund's portfolio. Commentary .06 to Rule 8.600 is similar to Commentary .03(a)(i) and (iii) to NYSE Arca Equities Rule 5.2(j)(3); however, Commentary .06 in connection with the establishment of a ''fire wall'' between the investment adviser and the broker-dealer reflects the applicable open-end fund's portfolio, not an underlying benchmark index, as is the case with index-based funds. WisdomTree Asset Management is not affiliated with any broker-dealer. The Sub-Adviser is affiliated with multiple broker-dealers and has implemented a ''fire wall'' with respect to such broker-dealers regarding access to information concerning the composition and/or changes to the Fund's portfolio. In addition, Sub-Adviser personnel who make decisions regarding the Fund's portfolio are subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the Fund's portfolio. In the event (a) the Adviser or the Sub-Adviser becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser becomes affiliated with a broker-dealer, it will implement a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

WisdomTree Emerging Markets Inflation Protection Bond Fund

According to the Registration Statement, the Fund seeks to provide a high level of income and capital appreciation representative of investments in inflation-linked debt of

[3] The Commission has approved listing and trading on the Exchange of a number of actively managed funds under Rule 8.600. *See, e.g.,* Securities Exchange Act Release Nos. 57801 (May 8, 2008), 73 FR 27878 (May 14, 2008) (SR–NYSEArca–2008–31) (order approving Exchange listing and trading of twelve actively-managed funds of the WisdomTree Trust); 58564 (September 17, 2008), 73 FR 55194 (September 24, 2008) (SR–NYSEArca–2008–86) (order approving Exchange listing and trading of WisdomTree Dreyfus Emerging Markets Fund); 62604 (July 30, 2010), 75 FR 47323 (August 5, 2010) (SR–NYSEArca–2010–49) (order approving Exchange listing and trading of WisdomTree Emerging Markets Local Debt Fund); 63919 (February 16, 2011), 76 FR 10073 (February 23, 2011) (SR–NYSEArca–2010–116) (order approving Exchange listing and trading of WisdomTree Asia Local Debt Fund); 65458 (September 30, 2011), 76 FR 62112 (October 6, 2011) (SR–NYSEArca–2011–54) (order approving Exchange listing and trading of WisdomTree Dreyfus Australia and New Zealand Debt Fund).

[4] *See* Post-Effective Amendment No. 54 to Registration Statement on Form N–1A for the Trust, dated July 1, 2011 (File Nos. 333–132380 and 811–21864). The descriptions of the Fund and the Shares contained herein are based, in part, on information in the Registration Statement.

[5] WisdomTree Investments, Inc. (''WisdomTree Investments'') is the parent company of WisdomTree Asset Management.

[6] The Sub-Adviser is responsible for day-to-day management of the Fund and, as such, typically makes all decisions with respect to portfolio holdings. The Adviser has ongoing oversight responsibility.

[7] The Commission has issued an order granting certain exemptive relief to the Trust under the Investment Company Act of 1940 (15 U.S.C. 80a–1) (''1940 Act''). *See* Investment Company Act Release No. 28171 (October 27, 2008) (File No. 812–13458) (''Exemptive Order''). In compliance with Commentary .05 to NYSE Arca Equities Rule 8.600, which applies to Managed Fund Shares based on an international or global portfolio, the Trust's application for exemptive relief under the 1940 Act states that the Fund will comply with the federal securities laws in accepting securities for deposits and satisfying redemptions with redemption securities, including that the securities accepted for deposits and the securities used to satisfy redemption requests are sold in transactions that would be exempt from registration under the Securities Act of 1933 (15 U.S.C. 77a).

[8] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (''Advisers Act''). As a result, the Adviser and Sub-Adviser and their related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

emerging market issuers.[9] To achieve its objective, the Fund will invest in Fixed Income Securities (defined below) and other instruments designed to provide protection against inflation.

Fixed Income Securities

The Fund intends to achieve its investment objectives through direct and indirect investments in inflation-protected Fixed Income Securities of emerging market countries.[10] For these purposes, Fixed Income Securities include bonds, notes or other debt obligations, such as government or corporate bonds, denominated in local currencies or U.S. dollars, as well as issues denominated in emerging market local currencies that are issued by ''supranational issuers,'' such as the International Bank for Reconstruction and Development and the International Finance Corporation, as well as development agencies supported by other national governments. The Fund expects that it will have at least 70% of its assets invested in Fixed Income Securities. The Fund will invest in Fixed Income Securities linked to inflation rates in emerging markets throughout the world. The Fund may invest in Fixed Income Securities that are not linked to inflation, such as U.S. or non-U.S. government bonds, as well as Fixed Income Securities that pay variable or floating rates. The Fund may also invest in Money Market Securities and derivative instruments, as described below.

The Fund intends to invest in inflation-linked Fixed Income Securities of issuers in the following regions: Asia, Latin America, Eastern Europe, Africa and the Middle East. Within these regions, the Fund is likely to invest in countries such as Brazil, Chile, Colombia, Hungary, Indonesia, Malaysia, Mexico, Peru, Philippines, Poland, Russia, South Africa, South Korea, Thailand and Turkey, although this list may change as market developments occur and may include additional emerging market countries that conform to selected ratings, liquidity and other criteria. As a general matter, and subject to the Fund's investment guideline to provide exposure across geographic regions and countries, the Fund generally will invest a higher percentage of its assets in countries with larger and more liquid debt markets. The Fund's exposure to any single country generally will be limited to 20% of the Fund's assets. The percentage of Fund assets invested in a specific region, country or issuer will change from time to time. While the Fund is permitted to invest in developed market economies, this is not a focus of the Fund.[11]

The Fund expects that it will have at least 70% of its assets invested in investment grade securities, and no more than 30% of its assets invested in non-investment grade securities. Because the debt ratings of issuers will change from time to time, the exact percentage of the Fund's investments in investment grade and non-investment grade Fixed Income Securities will change from time to time in response to economic events and changes to the credit ratings of such issuers. Within the non-investment grade category some issuers and instruments are considered to be of lower credit quality and at higher risk of default. In order to limit its exposure to these more speculative credits, the Fund will not invest more than 10% of its assets in securities rated BB or below by Moody's, or equivalently rated by S&P or Fitch. The Fund does not intend to invest in unrated securities. However, it may do so to a limited extent, such as where a rated security becomes unrated, if such security is determined by the Adviser and Sub-Adviser to be of comparable quality. In determining whether a security is of ''comparable quality'', the Adviser and Sub-Adviser will consider, for example, whether the issuer of the security has issued other rated securities.

While the Fund intends to focus its investments in Fixed Income Securities on bonds and other obligations of governments and agencies of emerging market countries, the Fund may invest up to 20% of its net assets in corporate bonds. The Fund will invest only in corporate bonds that the Adviser or Sub-Adviser deems to be sufficiently liquid.[12] Generally a corporate bond must have $200 million or more par amount outstanding and significant par value traded to be considered as an eligible investment. Economic and other conditions may, from time to time, lead to a decrease in the average par amount outstanding of bond issuances. Therefore, although the Fund does not

[9] According to the Adviser, while there is no universally accepted definition of what constitutes an ''emerging market,'' in general, emerging market countries are characterized by developing commercial and financial infrastructure with significant potential for economic growth and increased capital market participation by foreign investors. The Adviser and Sub-Adviser look at a variety of commonly-used factors when determining whether a country is an ''emerging'' market. In general, the Adviser and Sub-Adviser consider a country to be an emerging market if:

(1) It is either (a) classified by the World Bank in the lower middle or upper middle income designation for one of the past 3 years (*i.e.,* per capita gross national product of less than U.S. $9,385), or (b) classified by the World Bank as high income in each of the last three years, but with a currency that has been primarily traded on a non-delivered basis by offshore investors (*e.g.,* Korea and Taiwan);

(2) the country's debt market is considered relatively accessible by foreign investors in terms of capital flow and settlement considerations; and

(3) the country has issued the equivalent of $5 billion in local currency sovereign debt. The criteria used to evaluate whether a country is an ''emerging market'' will change from time to time based on economic and other events.

[10] As of October 31, 2011, the total market capitalization of inflation-linked bonds in the Barclays Capital World Inflation Linked Index, a leading index of inflation-linked bonds in developed markets outside the United States, was approximately $1.06 trillion. As of October 31, 2011, the total market capitalization of inflation-linked bonds in the Barclays Capital Emerging Markets Government Inflation Linked Bond Index, a leading index of inflation-linked debt issued by emerging market governments, was approximately $452.9 billion. The Adviser represents that inflation-linked bonds outside the United States are issued in large par size (*i.e.,* $200 million or more) and tend to be liquid. Locally-denominated debt issued by supra-national entities, such as the European Investment Bank or the International Bank for Reconstruction and Development, is also actively traded. Email from Timothy J. Malinowski, Senior Director, NYSE Euronext, to Edward Y. Cho, Special Counsel, and Daniel T. Gien, Special Counsel, Division of Trading and Markets, Commission, dated November 23, 2011.

[11] The Fund expects that it will initially hold inflation-linked debt issued by the following emerging market governments: Brazil ($255,861 million outstanding); Chile ($12,689 million outstanding); Colombia ($2,583 million outstanding); Israel ($38,757 million outstanding); Mexico ($50,506 million outstanding); Poland ($5,611 million outstanding); South Africa ($29,316 million outstanding); South Korea ($4,371 million outstanding); Thailand ($1,343 million outstanding); and Turkey ($39,048 million outstanding). Outstanding amounts of debt are as of October 31, 2011 (Sources: Barclays Capital Emerging Markets Government Inflation linked Bond Index; and *http://www.channelnewsasia.com/stories/singaporebusinessnews/view/1141179/1/.html* (for Thailand)). Email from Timothy J. Malinowski, Senior Director, NYSE Euronext, to Edward Y. Cho, Special Counsel, and Daniel T. Gien, Special Counsel, Division of Trading and Markets, Commission, dated November 23, 2011.

[12] The Adviser represents that the size and liquidity of the global market for corporate bonds of emerging market issuers generally has been increasing in recent years. The aggregate dollar amount of emerging market corporate bonds traded in the second quarter of 2011 ($221 billion) was comparable to the volumes seen in the first quarter of 2010 ($201 billion). The $514 billion traded in 2009 represented a substantial increase over the amount traded in 2008 ($380 billion). Turnover in emerging market corporate debt as an overall percentage of emerging market debt has also increased significantly. Turnover in emerging market corporate debt for 2010 was approximately 13.0% of the overall volume of emerging market debt of $6.765 trillion for the same period. This is similar to calendar year 2009 where turnover in emerging market corporate debt accounted for 12% of the overall volume of emerging market debt of $6 trillion in 2009, an increase over the 9% share in 2008 (Source: Emerging Markets Traders Association Press Release(s), March 22, 2011, December 8, 2010, August 12, 2010, May 20, 2010 and March 8, 2010). Email from Timothy J. Malinowski, Senior Director, NYSE Euronext, to Edward Y. Cho, Special Counsel, and Daniel T. Gien, Special Counsel, Division of Trading and Markets, Commission, dated November 23, 2011.

intend to do so, the Fund may invest up to 5% of its net assets in corporate bonds with less than $200 million par amount outstanding if (i) the Adviser or Sub-Adviser deems such security to be sufficiently liquid based on its analysis of the market for such security (based on, for example, broker-dealer quotations or its analysis of the trading history of the security or the trading history of other securities issued by the issuer), (ii) such investment is deemed by the Adviser or Sub-Adviser to be in the best interest of the Fund, and (iii) such investment is deemed consistent with the Fund's goal of providing broad exposure to inflation-linked Fixed Income Securities.

The Fund may invest in Fixed Income Securities with effective or final maturities of any length. The Fund will seek to keep the average effective duration of its portfolio between 2 and 8 years. Effective duration is an indication of an investment's interest rate risk or how sensitive an investment or a fund is to changes in interest rates. Generally, a fund or instrument with a longer effective duration is more sensitive to interest rate fluctuations, and, therefore, more volatile, than a fund with a shorter effective duration. The Fund's actual portfolio duration may be longer or shorter depending on market conditions.

The Fund intends to invest in Fixed Income Securities of at least 13 non-affiliated issuers. The Fund will not concentrate 25% or more of the value of its total assets (taken at market value at the time of each investment) in any one industry, as that term is used in the 1940 Act (except that this restriction does not apply to obligations issued by the U.S. government, or any non-U.S. government, or their respective agencies and instrumentalities or government-sponsored enterprises).[13]

The Fund intends to qualify each year as a regulated investment company (''RIC'') under Subchapter M of the Internal Revenue Code of 1986, as amended.[14] The Fund will invest its assets, and otherwise conduct its operations, in a manner that is intended to satisfy the qualifying income, diversification and distribution requirements necessary to establish and maintain RIC qualification under Subchapter M. The Subchapter M diversification tests generally require that (i) the Fund invest no more than 25% of its total assets in securities (other than securities of the U.S. government or other RICs) of any one issuer or two or more issuers that are controlled by the Fund and that are engaged in the same, similar or related trades or businesses, and (ii) at least 50% of the Fund's total assets consist of cash and cash items, U.S. government securities, securities of other RICs and other securities, with investments in such other securities limited in respect of any one issuer to an amount not greater than 5% of the value of the Fund's total assets and 10% of the outstanding voting securities of such issuer.

In addition to satisfying the above referenced RIC diversification requirements, no portfolio security held by the Fund (other than U.S. government securities and non-U.S. government securities) will represent more than 30% of the weight of the Fund's portfolio and the five highest weighted portfolio securities of the Fund (other than U.S. government securities and/or non-U.S. government securities) will not in the aggregate account for more than 65% of the weight of the Fund's portfolio. For these purposes, the Fund may treat repurchase agreements collateralized by U.S. government securities or non-U.S. government securities as U.S. or non-U.S. government securities, as applicable.

Money Market Securities

The Fund intends to invest in Money Market Securities in order to help manage cash flows in and out of the Fund, such as in connection with payment of dividends or expenses, and to satisfy margin requirements, to provide collateral or to otherwise back investments in derivative instruments. For these purposes, Money Market Securities include: Short-term, high-quality obligations issued or guaranteed by the U.S. Treasury or the agencies or instrumentalities of the U.S. government; short-term, high-quality securities issued or guaranteed by non-U.S. governments, agencies and instrumentalities; repurchase agreements backed by short-term U.S. government securities or non-U.S. government securities; money market mutual funds; and deposits and other obligations of U.S. and non-U.S. banks and financial institutions. All Money Market Securities acquired by the Fund will be rated investment grade. The Fund does not intend to invest in any unrated Money Market Securities. However, it may do so to a limited extent, such as where a rated Money Market Security becomes unrated, if such Money Market Security is determined by the Adviser and Sub-Adviser to be of comparable quality.

Derivative Instruments and Other Investments

Consistent with the Exemptive Order, the Fund may use derivative instruments as part of its investment strategies. Examples of derivative instruments include exchange-listed futures contracts, forward currency contracts, non-deliverable forward currency contracts, currency swaps, interest rate swaps, inflation rate swaps, currency options, options on futures contracts, swap agreements and structured notes. The Fund's use of derivatives contracts (other than structured notes) will be collateralized or otherwise backed by investments in short-term, high quality U.S. Money Market Securities.

The Fund expects that no more than 30% of the value of the Fund's net assets will be invested in derivative instruments. Such investments will be consistent with the Fund's investment objective and will not be used to enhance leverage. For example, the Fund may engage in swap transactions that provide exposure to inflation rates, inflation-linked bonds, inflation-sensitive indices or interest rates.[15] The Fund also may buy or sell listed futures contracts on U.S. Treasury securities, non-U.S. government securities and major non-U.S. currencies.[16]

With respect to certain kinds of derivative transactions entered into by the Fund that involve obligations to make future payments to third parties, including, but not limited to, futures and forward contracts, swap contracts, the purchase of securities on a when-issued or delayed delivery basis, or reverse repurchase agreements, the Fund, in accordance with applicable federal securities laws, rules, and

[13] *See* Form N–1A, Item 9. The Commission has taken the position that a fund is concentrated if it invests more than 25% of the value of its total assets in any one industry. *See, e.g.,* Investment Company Act Release No. 9011 (October 30, 1975), 40 FR 54241 (November 21, 1975).

[14] 26 U.S.C. 851.

[15] An inflation-linked swap is an agreement between two parties to exchange payments at a future date based on the difference between a fixed payment and a payment linked to an inflation rate or value at a future date. A typical interest rate swap involves the exchange of a floating interest rate payment for a fixed interest payment.

[16] The exchange-listed futures contracts in which the Fund may invest may be listed on exchanges in the U.S., London, Hong Kong or Singapore. Each of the United Kingdom's primary financial markets regulator, the Financial Services Authority, Hong Kong's primary financial markets regulator, the Securities and Futures Commission, and Singapore's primary financial markets regulator, the Monetary Authority of Singapore, are signatories to the International Organization of Securities Commissions (''IOSCO'') Multilateral Memorandum of Understanding (''MMOU''), which is a multi-party information sharing arrangement among financial regulators. Both the Commission and the Commodity Futures Trading Commission are signatories to the IOSCO MMOU.

interpretations thereof, will ''set aside'' liquid assets, or engage in other measures to ''cover'' open positions with respect to such transactions.[17]

The Fund may engage in foreign currency transactions, and may invest directly in foreign currencies in the form of bank and financial institution deposits, certificates of deposit, and bankers acceptances denominated in a specified non-U.S. currency. The Fund may enter into forward currency contracts in order to ''lock in'' the exchange rate between the currency it will deliver and the currency it will receive for the duration of the contract.[18]

The Fund may invest in the securities of other investment companies (including money market funds and ETFs). The Fund may invest up to an aggregate amount of 15% of its net assets in (a) illiquid securities and (2) Rule 144A securities. The Commission staff has interpreted the term ''illiquid'' in this context to mean a security that cannot be sold or disposed of within seven days in the ordinary course of business at approximately the amount at which a fund has valued such security.[19]

The Fund will not invest in any non-U.S. equity securities.

The Shares

The Fund will issue and redeem Shares on a continuous basis at net asset value (''NAV'')[20] only in large blocks of Shares (''Creation Units'') in transactions with Authorized Participants. Creation Units generally consist of 100,000 Shares, though this may change from time to time. Creation Units are not expected to consist of less than 50,000 Shares. The Fund will issue and redeem Creation Units in exchange for a portfolio of Fixed Income Securities closely approximating the holdings of the Fund or a designated basket of non-U.S. currency and/or an amount of U.S. cash. Once created, Shares of the Fund will trade on the secondary market in amounts less than a Creation Unit.

Creations and redemptions must be made by an Authorized Participant or through a firm that is either a member of the National Securities Clearing Corporation or a Depository Trust Company participant, and in each case, must have executed an agreement with the Distributor with respect to creations and redemptions of Creation Unit aggregations.

Additional information regarding the Shares and the Fund, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, distributions and taxes, is included in the Registration Statement.

Availability of Information

The Fund's Web site (*http://www.wisdomtree.com*), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund that may be downloaded. The Web site will include additional quantitative information updated on a daily basis, including, for the Fund: (1) The prior business day's reported NAV, mid-point of the bid/ask spread at the time of calculation of such NAV (''Bid/Ask Price''),[21] and a calculation of the premium and discount of the Bid/Ask Price against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day, before commencement of trading in Shares in the Core Trading Session[22] on the Exchange, the Trust will disclose on its Web site the identities and quantities of the portfolio of securities and other assets (''Disclosed Portfolio'') held by the Fund that will form the basis for the Fund's calculation of NAV at the end of the business day.[23] The Disclosed Portfolio will include, as applicable, the names, quantity, percentage weighting and market value of Fixed Income Securities, and other assets held by the Fund and the characteristics of such assets. The Web site information will be publicly available at no charge.

Intra-day, executable price quotations on emerging market Fixed Income Securities, as well as Money Market Securities and derivative instruments are available from major broker-dealer firms. Intra-day price information is available through subscription services, such as Bloomberg and Thomson Reuters, which can be accessed by authorized participants and other investors. Information regarding market price and volume of the Shares is and will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. The previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Quotation and last sale information for the Shares will be available via the Consolidated Tape Association (''CTA'') high-speed line.

In addition, for the Fund, an estimated value, defined in Rule 8.600 as the Portfolio Indicative Value (''PIV'') that reflects an estimated intraday value of the Fund's portfolio, will be disseminated. The PIV will be based upon the current value for the components of the Disclosed Portfolio and will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core

[17] *See* 15 U.S.C. 80a–18; Investment Company Act Release No. 10666 (April 18, 1979), 44 FR 25128 (April 27, 1979); Dreyfus Strategic Investing, Commission No-Action Letter (June 22, 1987); Merrill Lynch Asset Management, L.P., Commission No-Action Letter (July 2, 1996).

[18] The Fund will invest only in currencies, and instruments that provide exposure to such currencies, that are have significant foreign exchange turnover and are included in the Bank for International Settlements, *Triennial Central Bank Survey, Report on Global Foreign Exchange Market Activity in 2010* (December 2010) (''BIS Survey''). The Fund may invest in currencies, and instruments that provide exposure to such currencies, selected from the top 40 currencies (as measured by percentage share of average daily turnover for the applicable month and year) included in the BIS Survey.

[19] The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. *See* Investment Company Act Release No. 28193 (March 11, 2008), 73 FR 14617 (March 18, 2008), footnote 34. *See also,* Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding ''Restricted Securities''); Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N–1A). A fund's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the fund. *See* Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a–7 under the 1940 Act); Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the Securities Act of 1933).

[20] The NAV of the Fund's Shares generally will be calculated once daily Monday through Friday as of the close of regular trading on the New York Stock Exchange, generally 4 p.m. Eastern time (''NAV Calculation Time''). NAV per Share will be calculated by dividing the Fund's net assets by the number of Fund Shares outstanding. For more information regarding the valuation of Fund investments in calculating the Fund's NAV, *see* Registration Statement.

[21] The Bid/Ask Price of the Fund will be determined using the midpoint of the highest bid and the lowest offer on the Exchange as of the time of calculation of such Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

[22] The Core Trading Session is 9:30 a.m. to 4 p.m. Eastern time.

[23] Under accounting procedures to be followed by the Fund, trades made on the prior business day (''T'') will be booked and reflected in NAV on the current business day (''T+1''). Notwithstanding the foregoing, portfolio trades that are executed prior to the opening of the Exchange on any business day may be booked and reflected in NAV on such business day. Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

Trading Session on the Exchange.[24] In addition, during hours when the markets for Fixed Income Securities in the Fund's portfolio are closed, the PIV will be updated at least every 15 seconds during the Core Trading Session to reflect currency exchange fluctuations.

The dissemination of the PIV, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of the Fund on a daily basis and to provide a close estimate of that value throughout the trading day.

Initial and Continued Listing

The Shares will be subject to Rule 8.600, which sets forth the initial and continued listing criteria applicable to Managed Fund Shares. The Exchange represents that, for initial and/or continued listing, the Fund must be in compliance with Rule 10A–3 under the Exchange Act,[25] as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund. Shares of the Fund will be halted if the ''circuit breaker'' parameters in NYSE Arca Equities Rule 7.12 are reached. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares will be subject to Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4 a.m. to 8 p.m. Eastern time in accordance with NYSE Arca Equities Rule 7.34 (Opening, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Equities Rule 7.6, Commentary .03, the minimum price variation (''MPV'') for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is $0.01, with the exception of securities that are priced less than $1.00 for which the MPV for order entry is $0.0001.

Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products (which includes Managed Fund Shares) to monitor trading in the Shares. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

The Exchange's current trading surveillance focuses on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange may obtain information via the Intermarket Surveillance Group (''ISG'') from other exchanges who are members of the ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement.[26]

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit (''ETP'') Holders in an Information Bulletin (''Bulletin'') of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated PIV will not be calculated or publicly disseminated; (4) how information regarding the PIV is disseminated; (5) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Bulletin will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Exchange Act. The Bulletin will also disclose that the NAV for the Shares will be calculated after 4 p.m. Eastern time each trading day.

2. Statutory Basis

The basis under the Exchange Act for this proposed rule change is the requirement under Section 6(b)(5)[27] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 8.600. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The Exchange may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. The Sub-Adviser is affiliated with multiple broker-dealers and has implemented a ''fire wall'' with

[24] Currently, it is the Exchange's understanding that several major market data vendors display and/or make widely available PIVs published on CTA or other data feeds.

[25] *See* 17 CFR 240.10A–3.

[26] For a list of the current members of ISG, *see http://www.isgportal.org*. The Exchange notes that not all of the components of the Disclosed Portfolio for the Fund may trade on exchanges that are members of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

[27] 15 U.S.C. 78f(b)(5).

respect to such broker-dealers regarding access to information concerning the composition and/or changes to the Fund's portfolio. In addition, Sub-Adviser personnel who make decisions regarding the Fund's portfolio are subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the Fund's portfolio. According to the Registration Statement, the Fund expects that it will have at least 70% of its assets invested in Fixed Income Securities. The Fund's exposure to any single country generally will be limited to 20% of the Fund's assets. The Fund expects that it will have at least 70% of its assets invested in investment grade securities, and no more than 30% of its assets invested in non-investment grade securities. The Fund will not invest more than 10% of its assets in securities rated BB or below by Moody's, or equivalently rated by S&P or Fitch. The Fund may invest up to 20% of its net assets in corporate bonds. The Fund will invest only in corporate bonds that the Adviser or Sub-Adviser deems to be sufficiently liquid and, generally, a corporate bond must have $200 million or more par amount outstanding and significant par value traded to be considered as an eligible investment. The Fund expects that no more than 30% of the value of the Fund's net assets will be invested in derivative instruments. Such investments will be consistent with the Fund's investment objective. Such investments also will not be used to enhance leverage. The Fund will not invest in any non-U.S. equity securities.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. In addition, a large amount of information is publicly available regarding the Fund and the Shares, thereby promoting market transparency. The Fund's portfolio holdings will be disclosed on its Web site daily after the close of trading on the Exchange and prior to the opening of trading on the Exchange the following day. Moreover, the PIV will be widely by one or more major market data vendors at least every 15 seconds during the Exchange's Core Trading Session. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund will disclose on its Web site the Disclosed Portfolio that will form the basis for the Fund's calculation of NAV at the end of the business day. Information regarding market price and trading volume of the Shares is and will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and quotation and last sale information will be available via the CTA high-speed line. The Web site for the Fund will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information. Moreover, prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable, and trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the PIV, the Disclosed Portfolio, and quotation and last sale information for the Shares.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the PIV, the Disclosed Portfolio, and quotation and last sale information for the Shares.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2011–82 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2011–82. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the

Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2011–82 and should be submitted on or before December 27, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2011–31044 Filed 12–2–11; 8:45 am]

**BILLING CODE 8011–01–P**

[28] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[ File No. 500–1]**

### ZipGlobal Holdings, Inc., Symbollon Pharmaceuticals, Inc., Microholdings US, Inc., ComCam International, Inc., Outfront Companies, Augrid Global Holdings Corp., 1st Global Financial, Corp.; Order of Suspension of Trading

December 1, 2011.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of the issuers listed below. As set forth below for each issuer, questions have arisen regarding the accuracy and adequacy of publicly available information about the issuers.

1. ZipGlobal Holdings, Inc. is a Delaware corporation with its principal place of business in Massachusetts. Questions have arisen concerning the adequacy and accuracy of its public filings concerning the company's issuance of shares in company stock and its financial statements.

2. Symbollon Pharmaceuticals, Inc. (f/k/a Symbollon Corp.) is a Delaware corporation with its principal place of business in Massachusetts. Questions have arisen concerning the adequacy and accuracy of publicly available information about the company concerning the company's issuance of shares in company stock. Questions have also arisen concerning the adequacy and accuracy of publicly available information about the company because it has not filed any periodic reports since the period ended March 31, 2011.

3. Microholdings US, Inc. is an Oklahoma corporation with its principal place of business in Washington. Questions have arisen concerning the adequacy and accuracy of publicly available information about the company concerning the company's issuance of shares in company stock.

4. ComCam International, Inc. is a Delaware company with its principal place of business in Pennsylvania. Questions have arisen concerning the adequacy and accuracy of publicly available information about the company.

5. Outfront Companies has its principal place of business in Florida. Questions have arisen concerning the adequacy and accuracy of publicly available information about the company.

6. Augrid Global Holdings Corp. has its principal place of business in Texas. Questions have arisen concerning the adequacy and accuracy of publicly available information about the company.

7. 1st Global Financial, Corp. has its principal place of business in Nevada. Questions have arisen concerning the adequacy and accuracy of publicly available information about the company.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 12 noon EST on December 1, 2011, through 11:59 p.m. EST on December 14, 2011.

By the Commission.

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. 2011–31261 Filed 12–1–11; 4:15 pm]

**BILLING CODE 8011–01–P**

## SMALL BUSINESS ADMINISTRATION

### Revocation of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration by the Wind-Up Order of the United States District Court of the Middle District Court of Georgia, Macon Division, dated December 6, 2010, the United States Small Business Administration hereby revokes the license of First Growth Capital, Inc. a Georgia Corporation, to function as a small business investment company under the Small Business Investment Company License No. 04045251 issued to First Growth Capital, Inc., on December 13, 1989 and said license is hereby declared null and void as of December 6, 2010.

Dated: October 24, 2011.

By: United States Small Business Administration.

**Sean J. Greene,**

*Associate Administrator for Investment.*

U.S. Small Business Administration
Office of Liquidation
409 Third Street SW., Sixth Floor
Washington, DC 20416

**MEMORANDUM**

Date: October 5, 2011
To: Jacqueline K. White
Chief, Administration Information Branch
From: Associate Administrator for Investment
Subject: Publication of License Surrender
First Growth Capital, Inc.
License #: 04045251

Enclosed are the original, five hard copies, and a computer disk copy of the Notice of License Surrender of a Small Business Investment Company License. I certify that the hard copy and the disk copy match.

Please have the attached Notice of Surrender of a Small Business Investment Company License published in the **Federal Register** and return one copy for our office records.

If you have any questions about this **Federal Register** Notice request, please contact Charlotte Johnson at (202) 205–6502.

Thank you in advance for your cooperation.

Sean J. Greene
*Associate Administrator for Investment*
Attachment: 5 copies and 1 disk

Legal

Date

[FR Doc. 2011–31069 Filed 12–2–11; 8:45 am]

**BILLING CODE 8025–01–P**

## DEPARTMENT OF STATE

**[Public Notice 7707]**

### Culturally Significant Objects Imported for Exhibition Determinations: ''Works of Art Coming to the U.S. for Exhibition''

**SUMMARY:** Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C.

2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''Works of Art Coming to the U.S. for Exhibition,'' imported from abroad for temporary exhibition within the United States, is of cultural significance. The objects are imported pursuant to agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The Metropolitan Museum of Art, New York, NY, from on or about January 9, 2012, until on or about January 9, 2022, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** For further information, including a list of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (*telephone:* (202) 632–6467). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: November 29, 2011.

**J. Adam Ereli,**

*Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.*

[FR Doc. 2011–31159 Filed 12–2–11; 8:45 am]

**BILLING CODE 4710–05–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2011–0275]**

### Qualification of Drivers; Exemption Applications; Vision

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of final disposition.

**SUMMARY:** FMCSA announces its decision to exempt 5 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs). The exemptions will enable these individuals to operate commercial motor vehicles (CMVs) in interstate commerce without meeting the prescribed vision requirement. The Agency has concluded that granting these exemptions will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these CMV drivers.

**DATES:** The exemptions are effective December 5, 2011. The exemptions expire on December 5, 2013.

**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:**

#### Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at *http://www.regulations.gov.*

*Docket:* For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

*Privacy Act:* Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8–785.pdf.*

#### Background

On October 17, 2011, FMCSA published a notice of receipt of exemption applications from certain individuals, and requested comments from the public (76 FR 64164). That notice listed 5 applicants' case histories. The 5 individuals applied for exemptions from the vision requirement in 49 CFR 391.41(b)(10), for drivers who operate CMVs in interstate commerce.

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the 2-year period. Accordingly, FMCSA has evaluated the 5 applications on their merits and made a determination to grant exemptions to each of them.

#### Vision and Driving Experience of the Applicants

The vision requirement in the FMCSRs provides:

A person is physically qualified to drive a commercial motor vehicle if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing requirement red, green, and amber (49 CFR 391.41(b)(10)).

FMCSA recognizes that some drivers do not meet the vision requirement, but have adapted their driving to accommodate their vision limitation and demonstrated their ability to drive safely. The 5 exemption applicants listed in this notice are in this category. They are unable to meet the vision requirement in one eye for various reasons, including amblyopia, corneal opacification, complete loss of vision and enucleation. In most cases, their eye conditions were not recently developed. Three of the applicants were either born with their vision impairments or have had them since childhood. The two individuals who sustained their vision conditions as adults have had them for periods ranging from 4 to 15 years.

Although each applicant has one eye which does not meet the vision requirement in 49 CFR 391.41(b)(10), each has at least 20/40 corrected vision in the other eye, and in a doctor's opinion, has sufficient vision to perform all the tasks necessary to operate a CMV. Doctors' opinions are supported by the applicants' possession of valid commercial driver's licenses (CDLs) or non-CDLs to operate CMVs. Before issuing CDLs, States subject drivers to knowledge and skills tests designed to evaluate their qualifications to operate a CMV.

All of these applicants satisfied the testing requirements for their State of residence. By meeting State licensing

requirements, the applicants demonstrated their ability to operate a commercial vehicle, with their limited vision, to the satisfaction of the State.

While possessing a valid CDL or non-CDL, these 5 drivers have been authorized to drive a CMV in intrastate commerce, even though their vision disqualified them from driving in interstate commerce. With their limited vision, they have driven CMVs for careers ranging from 12 to 36 years. In the past 3 years, none of the drivers was involved in crashes or convicted of moving violations in a CMV.

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the October 17, 2011, notice (76 FR 64164).

**Basis for Exemption Determination**

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the vision requirement in 49 CFR 391.41(b)(10) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. Without the exemption, applicants will continue to be restricted to intrastate driving. With the exemption, applicants can drive in interstate commerce. Thus, our analysis focuses on whether an equal or greater level of safety is likely to be achieved by permitting each of these drivers to drive in interstate commerce as opposed to restricting him or her to driving in intrastate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered the medical reports about the applicants' vision as well as their driving records and experience with the vision deficiency.

To qualify for an exemption from the vision requirement, FMCSA requires a person to present verifiable evidence that he/she has driven a commercial vehicle safely with the vision deficiency for the past 3 years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of crashes and traffic violations. Copies of the studies may be found at Docket Number FMCSA–1998–3637.

We believe we can properly apply the principle to monocular drivers, because data from the Federal Highway Administration's (FHWA) former waiver study program clearly demonstrate the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively (See 61 FR 13338, 13345, March 26, 1996). The fact that experienced monocular drivers demonstrated safe driving records in the waiver program supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that crash rates for the same individual exposed to certain risks for two different time periods vary only slightly (See Bates and Neyman, University of California Publications in Statistics, April 1952). Other studies demonstrated theories of predicting crash proneness from crash history coupled with other factors. These factors—such as age, sex, geographic location, mileage driven and conviction history—are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future crashes (See Weber, Donald C., ''Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process,'' Journal of American Statistical Association, June 1971). A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall crash predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used 3 consecutive years of data, comparing the experiences of drivers in the first 2 years with their experiences in the final year.

Applying principles from these studies to the past 3-year record of the 5 applicants, none of the applicants was involved in crashes or convicted of moving violations in a CMV. All the applicants achieved a record of safety while driving with their vision impairment, demonstrating the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants' ample driving histories with their vision deficiencies are good predictors of future performance, FMCSA concludes their ability to drive safely can be projected into the future.

We believe that the applicants' intrastate driving experience and history provide an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exists on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances between them are more compact. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions. The veteran drivers in this proceeding have operated CMVs safely under those conditions for at least 3 years, most for much longer. Their experience and driving records lead us to believe that each applicant is capable of operating in interstate commerce as safely as he/she has been performing in intrastate commerce. Consequently, FMCSA finds that exempting these applicants from the vision requirement in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption. For this reason, the Agency is granting the exemptions for the 2-year period allowed by 49 U.S.C. 31136(e) and 31315 to the 5 applicants listed in the notice of October 17, 2011 (76 FR 64164).

We recognize that the vision of an applicant may change and affect his/her ability to operate a CMV as safely as in the past. As a condition of the exemption, therefore, FMCSA will impose requirements on the 5 individuals consistent with the grandfathering provisions applied to drivers who participated in the Agency's vision waiver program.

Those requirements are found at 49 CFR 391.64(b) and include the following: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirement in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

**Discussion of Comments**

FMCSA received no comments in this proceeding.

**Conclusion**

Based upon its evaluation of the 5 exemption applications, FMCSA exempts, Michael W. Gibbs (NC), Frank E. Johnson, Jr. (FL), Michael J. Robinson (WV), Fred L. Stotts (OK) and James D. Zimmer (OH) from the vision requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above (49 CFR 391.64(b)).

In accordance with 49 U.S.C. 31136(e) and 31315, each exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: November 28, 2011.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2011–31156 Filed 12–2–11; 8:45 am]

**BILLING CODE 4910–EX–P**

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–1999–6480; FMCSA–1999–5578; FMCSA–2001–10578; FMCSA–2002–11426; FMCSA–2005–21254; FMCSA–2005–21711; FMCSA–2005–22194; FMCSA–2007–27897; FMCSA–2007–29019; FMCSA–2009–0154]**

### Qualification of Drivers; Exemption Applications; Vision

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of renewal of exemptions; request for comments.

**SUMMARY:** FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 28 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

**DATES:** This decision is effective December 27, 2011. Comments must be received on or before January 4, 2012.

**ADDRESSES:** You may submit comments bearing the Federal Docket Management System (FDMS) numbers: FMCSA–1999–6480; FMCSA–1999–5578; FMCSA–2001–10578; FMCSA–2002–11426; FMCSA–2005–21254; FMCSA–2005–21711; FMCSA–2005–22194; FMCSA–2007–27897; FMCSA–2007–29019; FMCSA–2009–0154, using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* 1–-(202) 493–2251.

*Instructions:* Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

*Docket:* For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

*Privacy Act:* Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf.*

**FOR FURTHER INFORMATION CONTACT:** Elaine M. Papp, Chief, Medical Programs 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 renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

**Exemption Decision**

This notice addresses 28 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 28 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

Anthony Brandano (MA)
William R. Braun (NM)
Stanley E. Elliott (UT)
Elmer E. Gockley (PA)
Danny R. Gray (OK)
Glenn T. Hehner (KY)
William W. Hodgins (WI)
Edward E. Hooker (NC)
Vladimir M. Kats (NC)
Alfred Keehn (AZ)
Martin D. Keough (NY)
Randall B. Laminack (TX)
Robert W. Lantis (MT)
James A. Lenhart (WV)
Jerry J. Lord (PA)
Raymond P. Madron (MD)
Michael S. Maki (MN)
Ronald S. Mallory (OK)
Eldon Miles (IN)
Norman V. Myers (WA)
Jack E. Potts, Jr. (PA)
Neal A. Richard (LA)
John E. Rogstad (WI)
Benny R. Toothman (PA)
Rene R. Trachsel (OR)
Stanley W. Tyler, Jr. (NC)
Kendle F. Waggle, Jr. (IN)
DeWayne Washington (NC).

The exemptions are extended subject to the following conditions: (1) That each individual has a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirements in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provides a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retains a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

**Basis for Renewing Exemptions**

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 28 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (64 FR 27027; 64 FR 51568;64 FR 68195; 65 FR 20251; 66 FR 48504; 66 FR 53826; 66 FR 63289; 66 FR 66966; 67 FR 10471; 67 FR 19798; 68 FR 54775;68 FR 64944; 68 FR 69434; 69 FR 19611; 70 FR 30999; 70 FR 46567; 70 FR 48797; 70 FR 53412; 70 FR 57353; 70 FR 61493; 70 FR 67776; 70 FR 72689; 70 FR 74102; 72 FR 39879; 72 FR 52422; 72 FR 58362; 72 FR 62896; 72 FR 62897; 72 FR 67344; 74 FR 37295; 74 FR 43217; 74 FR 43222; 74 FR 48343; 74 FR 49069; 74 FR 57551; 74 FR 60021). Each of these 28 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the requirement specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption requirements. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

**Request for Comments**

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by January 4, 2012.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 28 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was made on the merits of each case and made only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: November 28, 2011.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2011–31151 Filed 12–2–11; 8:45 am]

BILLING CODE 4910–EX–P

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2011–0190]**

### Qualification of Drivers; Exemption Applications; Vision

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of final disposition.

**SUMMARY:** FMCSA announces its decision to exempt 14 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs). The exemptions will enable these individuals to operate commercial motor vehicles (CMVs) in interstate commerce without meeting the prescribed vision requirement. The Agency has concluded that granting these exemptions will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these CMV drivers.

**DATES:** The exemptions are effective December 5, 2011. The exemptions expire on December 5, 2013.

**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:**

**Electronic Access**

You may see all the comments online through the Federal Document Management System (FDMS) at *http://www.regulations.gov.*

*Docket:* For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

*Privacy Act:* Anyone may search the electronic form of all comments received into any of our dockets by the

name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the FDMS published in the *Federal Register* on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8–785.pdf.*

**Background**

On October 17, 2011, FMCSA published a notice of receipt of exemption applications from certain individuals, and requested comments from the public (76 FR 64169). That notice listed 14 applicants' case histories. The 14 individuals applied for exemptions from the vision requirement in 49 CFR 391.41(b)(10), for drivers who operate CMVs in interstate commerce.

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the 2-year period. Accordingly, FMCSA has evaluated the 14 applications on their merits and made a determination to grant exemptions to each of them.

**Vision and Driving Experience of the Applicants**

The vision requirement in the FMCSRs provides:

A person is physically qualified to drive a commercial motor vehicle if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing requirement red, green, and amber (49 CFR 391.41(b)(10)).

FMCSA recognizes that some drivers do not meet the vision requirement, but have adapted their driving to accommodate their vision limitation and demonstrated their ability to drive safely. The 14 exemption applicants listed in this notice are in this category. They are unable to meet the vision requirement in one eye for various reasons, including retinal detachment, amblyopia, complete loss of vision, prosthesis, central retinal vein occlusion, postenor ureal malignant melanoma, cataract, and retinal scarring. In most cases, their eye conditions were not recently developed. Nine of the applicants were either born with their vision impairments or have had them since childhood. The 5 individuals who sustained their vision conditions as adults have had them for periods ranging from 5 to 35 years.

Although each applicant has one eye which does not meet the vision requirement in 49 CFR 391.41(b)(10), each has at least 20/40 corrected vision in the other eye, and in a doctor's opinion, has sufficient vision to perform all the tasks necessary to operate a CMV. Doctors' opinions are supported by the applicants' possession of valid commercial driver's licenses (CDLs) or non-CDLs to operate CMVs. Before issuing CDLs, States subject drivers to knowledge and skills tests designed to evaluate their qualifications to operate a CMV.

All of these applicants satisfied the testing requirements for their State of residence. By meeting State licensing requirements, the applicants demonstrated their ability to operate a commercial vehicle, with their limited vision, to the satisfaction of the State.

While possessing a valid CDL or non-CDL, these 14 drivers have been authorized to drive a CMV in intrastate commerce, even though their vision disqualified them from driving in interstate commerce. With their limited vision, they have driven CMVs for careers ranging from 3 to 33 years. In the past 3 years, none of the drivers was involved in crashes and one was convicted of two moving violations in a CMV.

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the October 17, 2011, notice (76 FR 64169).

**Basis for Exemption Determination**

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the vision requirement in 49 CFR 391.41(b)(10) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. Without the exemption, applicants will continue to be restricted to intrastate driving. With the exemption, applicants can drive in interstate commerce. Thus, our analysis focuses on whether an equal or greater level of safety is likely to be achieved by permitting each of these drivers to drive in interstate commerce as opposed to restricting him or her to driving in intrastate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered the medical reports about the applicants' vision, as well as their driving records and experience with the vision deficiency.

To qualify for an exemption from the vision requirement, FMCSA requires a person to present verifiable evidence that he/she has driven a commercial vehicle safely with the vision deficiency for the past 3 years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of crashes and traffic violations. Copies of the studies may be found at Docket Number FMCSA–1998–3637.

We believe we can properly apply the principle to monocular drivers, because data from the Federal Highway Administration's (FHWA) former waiver study program clearly demonstrate the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively (See 61 FR 13338, 13345, March 26, 1996). The fact that experienced monocular drivers demonstrated safe driving records in the waiver program supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that crash rates for the same individual exposed to certain risks for two different time periods vary only slightly (See Bates and Neyman, University of California Publications in Statistics, April 1952). Other studies demonstrated theories of predicting crash proneness from crash history coupled with other factors. These factors—such as age, sex, geographic location, mileage driven and conviction history—are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future crashes (See Weber, Donald C., ''Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process,'' Journal of American Statistical Association, June 1971). A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall crash predictor for both concurrent and nonconcurrent events is the number of

single convictions. This study used 3 consecutive years of data, comparing the experiences of drivers in the first 2 years with their experiences in the final year.

Applying principles from these studies to the past 3-year record of the 14 applicants, none of the applicants was involved in crashes and one applicant was convicted of two moving violations in a CMV for speeding. All the applicants achieved a record of safety while driving with their vision impairment, demonstrating the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants' ample driving histories with their vision deficiencies are good predictors of future performance, FMCSA concludes their ability to drive safely can be projected into the future.

We believe that the applicants' intrastate driving experience and history provide an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exists on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances between them are more compact. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions. The veteran drivers in this proceeding have operated CMVs safely under those conditions for at least 3 years, most for much longer. Their experience and driving records lead us to believe that each applicant is capable of operating in interstate commerce as safely as he/she has been performing in intrastate commerce. Consequently, FMCSA finds that exempting these applicants from the vision requirement in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption. For this reason, the Agency is granting the exemptions for the 2-year period allowed by 49 U.S.C. 31136(e) and 31315 to the 14 applicants listed in the notice of October 17, 2011 (76 FR 64169).

We recognize that the vision of an applicant may change and affect his/her ability to operate a CMV as safely as in the past. As a condition of the exemption, therefore, FMCSA will impose requirements on the 14 individuals consistent with the grandfathering provisions applied to drivers who participated in the Agency's vision waiver program.

Those requirements are found at 49 CFR 391.64(b) and include the following: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirement in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

**Discussion of Comments**

FMCSA received one comment in this proceeding. The comment was considered and discussed below.

Laura J. Krol of the Pennsylvania Department of Transportation is in favor of granting David A. Rice an exemption.

**Conclusion**

Based upon its evaluation of the 14 exemption applications, FMCSA exempts, Kevin G. Clem (SD), Richard A. Hackney (MS), Rocky J. Lachney (LA), Herman Martinez (NM), Charles L. McClendon (FL), Gerald L. Pagan (NC), Danny C Pope (IL), David A. Rice (PA), Levi A. Shelter (OH), Rick E. Smith (IL), Juan E. Sotero (FL), Randell K. Tyler (AL), Steven R. Wetlesen (AL) and Jeffrey K. Yockey (OH) from the vision requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above (49 CFR 391.64(b)).

In accordance with 49 U.S.C. 31136(e) and 31315, each exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: November 28, 2011.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2011–31164 Filed 12–2–11; 8:45 am]

BILLING CODE 4910–EX–P

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

### Safety Advisory 2011–03

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

**ACTION:** Notice of Safety Advisory; Bridge Walkway Hazards.

**SUMMARY:** FRA is issuing Safety Advisory 2011–03 to remind each railroad bridge worker, railroad, and contractor or subcontractor to a railroad of the dangers posed by walking on unsecured sections of walkway and platform gratings, especially without fall protection. This safety advisory contains various recommendations to the employers of bridge workers to ensure that this issue is addressed by appropriate policies, procedures, and employee compliance.

**FOR FURTHER INFORMATION CONTACT:** Ron Hynes, Director, Office of Safety Assurance and Compliance, Office of Railroad Safety, FRA, 1200 New Jersey Avenue SE., Washington, DC 20590, telephone (202) 493–6404; Carlo Patrick, Staff Director, Rail and Infrastructure Integrity Division, Office of Railroad Safety, FRA, 1200 New Jersey Avenue SE., Washington, DC 20590, telephone (202) 493–6399; or Alan H. Nagler, Senior Trial Attorney, Office of Chief Counsel, FRA, 1200 New Jersey Avenue SE., Washington, DC 20590, telephone (202) 493–6049.

**SUPPLEMENTARY INFORMATION:** In 1992, FRA established safety standards for the protection of those who work on railroad bridges at Title 49 Code of Federal Regulations (CFR) part 214, subpart B. The regulations require railroads and railroad contractors to provide, and employees to use, fall protection and personal protective equipment, including head, foot, eye, and face equipment for employees as they work on railroad bridges. The regulation also contains standards related to scaffolding. The purpose of FRA's bridge worker safety standards regulation is to prevent accidents and casualties to employees involved in certain railroad inspection, maintenance, and construction activities.

The purpose of this safety advisory is to focus attention on the unsafe

practices preliminarily found to be potential contributing causes in two incidents occurring this year that resulted in two workers falling from railroad bridges, one sustaining a fatal injury. In 2008, another worker fell under similar circumstances. In each of these three incidents, the fallen bridge worker was not using a personal fall arrest system and fell when stepping on an unsecured walkway or platform grating. The responsible railroads, contractors, and subcontractors had also not erected a safety net system. Furthermore, in each instance, the unsecured grating is known or presumed to have flipped or tipped as it was found to have fallen along with the worker. By focusing attention on these accidents, FRA intends to raise awareness and hopefully prevent a continuing pattern of accidents involving similar circumstances.

**Results of Preliminary Investigations**

The following discussion of the circumstances surrounding the three incidents noted above is based on FRA's preliminary investigations. FRA did not conduct full investigations of the August 25, 2008, and May 20, 2011, incidents, and does not plan to produce final findings or reports for either of these two incidents. In addition, the September 19, 2011, fatal incident described in this safety advisory is still under investigation by FRA. Because their causes and contributing factors, if any, have not been formally established, nothing in this safety advisory should be construed as placing blame or responsibility for any of these accidents on the acts or omissions of any person or entity.

*Vermillion, Ohio: August 25, 2008*

At 5:55 p.m., a Norfolk Southern Railway (NS) bridge worker fell from a Vermillion River railroad bridge, struck a concrete bridge pier, and then fell into the river. The worker fell nearly 35 feet. Fortunately, NS had hired a contractor to search for and retrieve sunken bridge ties and the contractor's employees saw the NS worker fall. The worker was reportedly in great pain and struggling to keep his head above water when a diver for the contractor, who was already in the water, rescued the worker. As a result of this accident, the worker suffered a dislocated right shoulder.

The bridge is a 3-span, deck plate girder bridge with an open deck, and upon which there are two tracks. As part of a bridge tie replacement project, workers were installing bridge tie spacing timbers on the newly installed bridge ties on Track 1. Track 1 was occupied by on-track equipment. The worker had worked alongside an assistant foreman (*i.e.,* the roadway worker-in-charge of the working limits) for most of the work period in order to learn how to permit train movements past the stop boards on adjacent Track 2. As the stop boards were in effect until 5 p.m., the worker took the stop boards down soon thereafter and an alternative form of Roadway Worker Protection was established.

After the worker took the stop boards down, he began walking on sections of a walkway grating located on the bridge between the two tracks so that he could drill holes in the timber tie spacers. The grating on that walkway was mainly in 20-foot-long sections. The walkway sections were not secured to the bridge ties as the usual practice was to secure the metal walkway grating at the end of the work day.

One section of grating was only approximately 8 feet long. This shorter section of walkway was supported in the middle with a 14-foot long ''outrigger'' tie. The worker stepped on one end of the 8-foot section of walkway, which was overlapping a 19-foot section of walkway on the opposite end. There was no tie support underneath the end that the worker stepped on. As a result, the employee's body weight caused the 8-foot section of walkway to pivot downward on the 14-foot long ''outrigger'' tie. This action allowed the grating to drop between the tracks and the worker to fall into the river.

*Minooka, Illinois: May 20, 2011*

An accident occurred in Minooka, Illinois, at approximately 7:30 a.m. when a bridge worker stepped on a section of unsecured platform grating and fell approximately 11 feet to a cross-brace. The worker landed on his back, and, at the time of the accident, appeared to have bruises on his back and shoulders. A subcontractor, hired by the general contractor, employed the worker primarily to torque bolts on a railroad bridge owned by Canadian National Railway (CN). On May 25, 2011, the worker died. Although the coroner did not determine that the injuries sustained in the fall from the bridge were the primary cause of death, the coroner found that the blunt trauma due to the fall may have been a significant condition contributing to death but not related to the underlying cause of death.

On May 16, 2011, 5 days prior to the accident, the worker had raised safety concerns with the safety manager for the general contractor regarding that the grating on the platform was not properly installed. The safety manager agreed with the worker that the grating was not installed properly and consulted the subcontractor responsible for installing grating for platforms on this job. A coworker of the involved worker noticed that there were up to 6-inch gaps between several of the pieces of grating and that nothing was fastening the individual pieces to the structure on this platform located 103 feet above the water at the top of a vertical lift bridge counterweight tower. The safety manager reported back to the involved worker that it would be difficult to properly install the grating with all of the heavy tools and machinery on the platform and that the weight of all the tools and machinery was holding the grating in place. The safety manager believed that workers did not need fall protection or restraints because the platform had a 42-inch-high hand railing surrounding the perimeter. The coworker of the involved worker noticed that between May 16 and May 19, the tool boxes and heavy equipment on the platform were gradually removed so the machinists could use the tools and equipment at other locations. Although the two workers had previously used fall protection on a different platform while working on this same bridge, the coworker did not consider using fall protection because of the presence of the hand rails on this platform.

The accident occurred approximately 15 minutes after a job briefing covering trip and fall hazards at the work site. The two workers climbed the stairs that led to the platform. Approximately 5 minutes after reaching the platform, the coworker heard a loud crash and turned around to see that the involved worker was no longer on the platform. The coworker noticed a piece of grating missing that was approximately 4 feet square. The coworker could see the worker lying on his back on an approximately 10-inch-wide horizontal I-beam that was located 11 feet below the platform. The coworker was able to help the involved worker get up a ladder to the platform before contacting the employee-in-charge for further assistance.

*Havre de Grace, Maryland: September 19, 2011*

A fatal accident occurred at approximately 1:50 p.m. when a CSX Transportation, Inc.'s (CSX) bridge worker fell approximately 75 feet from the Susquehanna River Bridge in Havre de Grace, Maryland. The deceased worker was a 58-year-old man with approximately 38 years of railroad service. The deceased worker was a

member of a six-person bridge worker team that was engaged in the replacement of bridge ties on the structure. The equipment at the work site included an on-track tie handler and a hi-rail boom truck.

Although there were no witnesses to the actual fall, FRA's preliminary investigation suggests that the deceased stepped on the unsupported end of an unsecured, 85-inch-long section (*i.e.,* 7 feet 1 inch) of steel walkway grating. The missing walkway grating location was measured at 75 inches long and was outside the rails. Aside from the 85-inch-long section of grating found on the ground near the deceased, all the grating observed in the area of the extended work site were found to be in sections that were 20 feet long. Additionally, each section of grating in the area of the extended work site was unsecured. At the accident site, the walkway railing was not in place.

The hi-rail boom truck was occupying the track next to the missing walkway grating. This truck was equipped with a horizontal life line for connecting a harness. The preliminary investigation suggests that the truck's horizontal life line may not have been long enough so that a worker could be provided with fall protection while walking along the entire side of the truck. A safety net system was not used. The deceased was wearing a harness. Preliminary findings also suggest that the deceased worker was not distracted by any personal electronic devices.

**Safety Issues**

*Fall Protection*

Generally, when bridge workers work 12 feet or more above the ground or water surface, FRA regulations require that a personal fall arrest system or safety net system be provided and used. 49 CFR 214.103. Fall protection is a system used to arrest the fall of a person from a working level. It consists of an anchorage, connectors, body harness, lanyard, deceleration device, lifeline, or a combination of these. 49 CFR 214.7 (defining ''personal fall arrest system''). Although there are some exceptions to the requirement that fall protection be used, FRA's preliminary investigations indicate that none of the exceptions applied to any of the incidents described in this safety advisory.

As stated previously, FRA's bridge worker safety standards are premised on the broad requirements that railroads and railroad contractors provide fall protection for employees as they work on railroad bridges—and that the employees, when warranted, must use the fall protection provided. In the investigation of each incident, it was preliminarily found that the railroad, contractor, or subcontractor had provided the personal fall arrest system but that the bridge worker did not use the personal fall arrest system at the time of the incident. Because the failure to use a personal fall arrest system appears to have played a role in each of these incidents, FRA believes it is necessary to stress the importance of bridge workers using the personal fall arrest system provided to them.

However, the agency in no way suggests that these incidents resulted only from each worker's failure to use a personal fall arrest system. The preliminary investigations suggest that there were a number of potential causes or contributing factors. For instance, supervisors were apprised of the unsecured grating but did not necessarily assess the dangers posed or take reasonable steps to mitigate the potential threat to worker safety. The preliminary investigations suggest that supervisors and employers could have taken additional steps to protect bridge workers by putting up safety net systems, securing the grating, ensuring that the fall protection provided would be adequate under actual working conditions, and emphasizing specific actions during the job safety briefings where the use of the provided personal fall arrest system would be required by law.

*Grating*

Typical steel bridge walkway grating is supplied in 20-foot lengths, with the standard widths of 24, 30, or 36 inches. The grating weighs about 9 pounds per square foot. Where long bridge ties are used as outriggers to support the grating, spacing of these outrigger ties normally range from 4 feet 8 inches to 5 feet 4 inches, center to center. Walkway grating sections are normally fastened to the ties or bridge structure, but during some maintenance activities, the fastenings are removed to permit access to other parts of the bridge structure. When a full, 20-foot section of grating is placed on the outrigger ties, even when one end is not fully supported and the grating has not been fastened down, there is sufficient weight behind the last supporting tie to more than counterbalance the weight of one person that steps on the portion of grating that extends beyond the last support.

In comparison, a hazard is created when shorter sections of grating are placed in such a manner that there may not be sufficient weight to counterbalance a person stepping on a cantilevered portion of grating that is not fastened to the bridge structure. If this occurs, the end of the grating where a person steps will tilt downward while the opposite end rises, causing both the person and the grating to fall to the surface below. This appears to be what occurred in all three of the incidents described in this safety advisory.

All three of the incidents occurred when bridge work was in progress and the workers involved knew, or should have known, that the grating was not secure. In the case of the subcontractor's employee in Minooka, Illinois, the preliminary investigation suggested that the employee had brought concerns about the unsecured grating to the attention of the general contractor's safety manager prior to the accident. In the other two incidents, information available to FRA suggests that the workers should have been aware that the grating was not secured because it was common practice to keep the grating unsecured until the end of each day or until all the bridge tie replacement was completed for a specific work area. Although each incident contains additional particular facts that suggest other potential contributing causes were factors in the incidents, the preliminary investigations suggest that the injured workers either decided to risk not using a personal fall arrest system or lost sight of the risk in their focus to complete the work. Given that bridge workers are exposed to serious injury or death from a fall, employers should take extra precautions to keep walkway and platform gratings fastened, especially shorter sections of gratings, whenever possible.

*Recommended Railroad Action:* In light of the foregoing concerns and in an effort to maintain safety on the Nation's railroad bridges, FRA recommends that each railroad, and contractor or subcontractor to a railroad, that employs bridge workers to work on railroad bridges that have walkways or platforms with sections of grating:

(1) Ensure that the grating be kept fastened, unless immediate work requires unfastening. Once the immediate work is complete, ensure that the fastening is reapplied.

(2) Ensure that when grating is left unfastened, particularly when sections of grating are shorter than 20 feet, the unfastened grating is identified by marking or signage.

(3) Ensure that workers on railroad bridges can safely walk around obstacles, such as on-track equipment.

(4) Employ daily safety briefings with all bridge workers of any craft who may be exposed to the hazard of unsecured grating, and specifically identify the location and nature of the unfastened grating. Such daily safety briefings

should address what fall protection is being provided and remind bridge workers of the likely specific circumstances when a personal fall arrest system is required or advised.

Failure of industry members to take action consistent with the preceding recommendations or to take other actions to ensure bridge worker safety may result in FRA pursuing other corrective measures under its rail safety authority. FRA may modify this Safety Advisory 2011–03, issue additional safety advisories, or take other appropriate action necessary to ensure the highest level of safety on the Nation's railroad bridges.

Issued in Washington, DC, on November 29, 2011.

**Jo Strang,**

*Associate Administrator for Railroad Safety/ Chief Safety Officer.*

[FR Doc. 2011–31058 Filed 12–2–11; 8:45 am]

**BILLING CODE 4910–06–P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

### Agency Information Collection Activity Under OMB Review; Reports, Forms and Recordkeeping Requirements

**AGENCY:** Maritime Administration, DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, this notice announces that the Information Collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and approval. The nature of the information collection is described as well as its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on September 8, 2011. No comments were received.

**DATES:** Comments must be submitted on or before January 4, 2012.

**FOR FURTHER INFORMATION CONTACT:** Michael C. Pucci, Maritime Administration, 1200 New Jersey Avenue SE., Washington, DC 20590. Telephone: (202) 366–5167; or Email: *Michael.Pucci@dot.gov.* Copies of this collection also can be obtained from that office.

**SUPPLEMENTARY INFORMATION:** Maritime Administration.

*Title:* Requirements for Eligibility of U.S.-Flag Vessels of 100 Feet or Greater in Registered Length to Obtain a Fishery Endorsement.

*OMB Control No.:* 2133–0530.

*Type of Request:* Extension of currently approved collection.

*Affected Public:* Vessel owners, charterers, mortgagees, mortgage trustees and managers of vessels of 100 feet or greater who seek a fishery endorsement for the vessel.

*Forms:* None.

*Abstract:* In accordance with the American Fisheries Act of 1998, owners of vessels of 100 feet or greater who wish to obtain a fishery endorsement to the vessel's documentation are required to file with the Maritime Administration (MARAD) an Affidavit of United States Citizenship and other supporting documentation.

**DATES:** Comments should be submitted on or before February 3, 2012.

*Annual Estimated Burden Hours:* 2,950 Hours.

**ADDRESSES:** Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: Maritime Administration Desk Officer. Alternatively, comments may be sent via email to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, at the following address: *oira.submissions@omb.eop.gov.*

*Comments are invited on:* Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is best assured of having its full effect, if OMB receives it within 30 days of publication.

**Authority:** 49 CFR 1.66.

By Order of the Maritime Administrator.

Dated: November 29, 2011.

**Julie P. Agarwal,**

*Secretary, Maritime Administration.*

[FR Doc. 2011–31092 Filed 12–2–11; 8:45 am]

**BILLING CODE 4910–81–P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

**[Docket No. MARAD–2011 0149]**

### Requested Administrative Waiver of the Coastwise Trade Laws: Vessel CHRYSALIS; Invitation for Public Comments

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Notice.

**SUMMARY:** As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

**DATES:** Submit comments on or before January 4, 2012.

**ADDRESSES:** Comments should refer to docket number MARAD–2011–0149. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W21–203, Washington, DC 20590. Telephone (202) 366–5979, Email *Joann.Spittle@dot.gov.*

**SUPPLEMENTARY INFORMATION:**

As described by the applicant the intended service of the vessel CHRYSALIS is:

*Intended Commercial Use of Vessel:* ''Weekly charter vessel.''

*Geographic Region:* ''Florida.''

The complete application is given in DOT docket MARAD–2011–0149 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-

flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR Part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

**Privacy Act**

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: November 29, 2011.

**Julie P. Agarwal,**

*Secretary, Maritime Administration.*

[FR Doc. 2011–31093 Filed 12–2–11; 8:45 am]

**BILLING CODE 4910–81–P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

**[Docket No. MARAD 2011 0151]**

### Requested Administrative Waiver of the Coastwise Trade Laws: Vessel NAGA; Invitation for Public Comments

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Notice.

**SUMMARY:** As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

**DATES:** Submit comments on or before January 4, 2012.

**ADDRESSES:** Comments should refer to docket number MARAD–2011–0151. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W21–203, Washington, DC 20590. Telephone (202) 366–5979, Email *Joann.Spittle@dot.gov.*

**SUPPLEMENTARY INFORMATION:** As described by the applicant the intended service of the vessel NAGA is:

*Intended Commercial Use of Vessel:* ''Skippered day charters out of Anacortes, Washington and multi-day charters for up to 6 passengers with particular emphasis on bird watching, natural history and catamaran sailing.''

*Geographic Region:* ''Washington.''

The complete application is given in DOT docket MARAD–2011–0151 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

**Privacy Act**

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: November 29, 2011.

**Julie P. Agarwal,**

*Secretary, Maritime Administration.*

[FR Doc. 2011–31076 Filed 12–2–11; 8:45 am]

**BILLING CODE 4910–81–P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

**[Docket No. MARAD–2011 0150]**

### Requested Administrative Waiver of the Coastwise Trade Laws: Vessel PANGAEA; Invitation for Public Comments

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Notice.

**SUMMARY:** As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

**DATES:** Submit comments on or before January 4, 2012.

**ADDRESSES:** Comments should refer to docket number MARAD–2011–0150. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W21–203, Washington, DC 20590. Telephone (202) 366–5979, Email *Joann.Spittle@dot.gov.*

**SUPPLEMENTARY INFORMATION:** As described by the applicant the intended service of the vessel PANGAEA is:

*Intended Commercial Use of Vessel:* ''We would like to offer Pangaea for day

sailing and weekend sailing trips throughout the Sarasota Bay waters. Sunset cruises, weekend cruises, family one-day trips.''

*Geographic Region:* ''Florida.''

The complete application is given in DOT docket MARAD–2011–0150 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

**Privacy Act**

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: November 29, 2011.

**Julie P. Agarwal,**

*Secretary, Maritime Administration.*

[FR Doc. 2011–31091 Filed 12–2–11; 8:45 am]

**BILLING CODE 4910–81–P**

## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

**[Docket No. PHMSA–2011–0303; Notice No. 11–14]**

### Hazardous Materials: Emergency Restriction/Prohibition Order

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

**ACTION:** Emergency Restriction/Prohibition Order.

**SUMMARY:** This notice publishes Emergency Restriction/Prohibition Order 2011–001 (DOT Docket Number PHMSA–2011–0303), issued on November 17, 2011 to a number of entities, including Rainbow of Hope. This Emergency Order was issued by the Office of Hazardous Materials Safety pursuant to authority granted in 49 U.S.C. 5121(d) and 49 CFR 109.17(a), and is published in accordance with 49 CFR § 109.19. Emergency Order 2011–001 prohibits the filling, offering, and transportation of cylinders containing TyLar gas, and was issued in response to a pattern of explosions that constitute an imminent hazard under 49 CFR 109.1.

**DATES:** *Effective Date:* November 17, 2011.

**FOR FURTHER INFORMATION CONTACT:** Alice Koethe, Attorney, Office of the Chief Counsel, PHMSA, (202) 366–4400.

**SUPPLEMENTARY INFORMATION:** The full text of Emergency Restriction/Prohibition Order 2011–001 is as follows:

This notice constitutes an Emergency Restriction/Prohibition Order by the United States Department of Transportation (''DOT'') pursuant to 49 U.S.C. 5121(d) and 49 CFR 109.17(a); and pursuant to delegation of authority to the Administrator, Pipeline and Hazardous Materials Safety Administration (''PHMSA''), United States Department of Transportation. This Order is issued to Rainbow of Hope, Strategic Sciences, Inc., Realm Industries AKA Realm Catalyst, Inc. (hereinafter ''Realm Industries''), Timothy A. Larson, and any other persons or business entities that manufacture or possess the experimental gas known as ''TyLar'' gas (''TyLar'').

Upon information derived from an investigation, the Administrator has found that a violation of the Federal Hazardous Materials law (51 U.S.C. 5101, *et seq.*) or the Hazardous Materials Regulations (49 CFR parts 171 to 180), an unsafe condition, or an unsafe practice is causing or otherwise constitutes an imminent hazard to the safe transportation of hazardous materials. For more detailed information see ''Background/Basis for Order'' below.

Specifically, on August 9, 2011 a large explosion occurred at a Rainbow of Hope facility at 12349 Gladstone Avenue, Sylmar, CA. Two people were seriously injured in the explosion, and a third suffered minor injuries. Subsequent investigation by law enforcement revealed that the company manufactured and offered TyLar for transportation. There is a history of explosions associated with TyLar. Specifically, on June 17, 2010, there was a fatal explosion at Realm Industries, an apparent predecessor company of Rainbow of Hope. This explosion was also linked to TyLar. In light of these facts, PHMSA believes that both the filing and offering of TyLar in cylinders in preparation of transportation and the transportation of TyLar in commerce constitute an unsafe condition that is of sufficient severity to constitute an imminent hazard.

**Effective Immediately Any Person Identified by This Order**

(1) Is prohibited from filling and offering cylinders with TyLar for transportation; and

(2) Is prohibited from transporting TyLar in commerce by any mode or causing it to be transported in commerce.

This Order applies to Rainbow of Hope, Strategic Sciences, Inc., Realm Industries (Realm Catalyst, Inc.), any other alias or successor companies, and their officers, directors, employees, subcontractors, and agents.

This Order is effective immediately and remains in effect unless withdrawn in writing by the Administrator or her designee, or until it otherwise expires by operation of law.

**Jurisdiction**

Rainbow of Hope and/or Strategic Sciences, Inc. and/or Realm Industries (Realm Catalyst, Inc.) offer for transportation or transport hazardous materials in commerce within the United States and are therefore ''persons,'' as defined by 49 U.S.C. 5102(9), in addition to being ''persons'' under 1 U.S.C. 1. Accordingly, Rainbow of Hope, Strategic Sciences, Inc., and Realm Industries (Realm Catalyst, Inc.) are subject to the authority and jurisdiction of the Administrator, including the authority to impose emergency restrictions, prohibitions, recalls, or out-of-service orders, without notice or an opportunity for hearing, to the extent necessary to abate the imminent hazard (49 U.S.C. 5121(d)).

**Basis for Order**

On August 9, 2011, a large explosion occurred at 12349 Gladstone Avenue, Sylmar, CA, at a facility occupied by Rainbow of Hope. Two people were seriously injured in the explosion, and a third person suffered minor injuries. The explosion also decimated a section of the roof of a 7,400 square foot industrial building. Subsequent investigation by law enforcement revealed that the company manufactured and offered TyLar for transportation. There is a history of explosions, and serious injuries, associated with TyLar. Specifically, on June 17, 2010, there was a fatal

explosion at Realm Industries, Inc., an apparent predecessor company of Rainbow of Hope. The June 2010 explosion, which took place at an industrial facility at 480 East Easy Street, Simi Valley, California, was also linked to TyLar. In addition, a third explosion occurred at a Realm Industries facility on December 15, 2008. A Material Safety Data Sheet (MSDS) for TyLar describes it as a flammable, colorless, odorless compressed gas that poses an immediate fire and explosive hazard when concentration exceeds 5.2% in the atmosphere. The MSDS states that TyLar is capable of self-sustained combustion and detonation creating an implosion when unadulterated by other gases, will create an explosive mixture when combined with other gases, and creates a strong sonic shock upon ignition. The MSDS does not include composition information, merely stating that the product is a ''Trade Secret'' and a ''Proprietary Mixture.''

In the hazardous materials context, an unsafe condition rises to the level of an imminent hazard when a ''substantial likelihood that death, serious illness, severe personal injury, or a substantial endangerment to health, property, or the environment may occur before the reasonably foreseeable completion date of a formal proceeding begun to lessen the risk of that death, illness, injury, or endangerment.'' 49 CFR 109.1.

TyLar-related incidents have caused two major explosions within a 14-month period. The August 9, 2011, explosion in Sylmar caused two people to suffer severe injuries and caused substantial destruction of property. The June 17, 2010, explosion in Simi Valley caused a death. Because the companies did not cease TyLar-related activities following the 2010 death, but instead changed locations and resumed work related to the TyLar gas, PHMSA believes that the companies may resume production and transportation activities. Due to the history of property damage, death, and severe personal injury related to the use and transportation of TyLar, PHMSA believes that its continued use and transportation in commerce constitutes an imminent hazard. Given these facts, PHMSA concludes that there is a substantial likelihood that TyLar-related operations may cause death, serious illness, severe personal injury, or a substantial endangerment to health, property, or the environment before the reasonably foreseeable conclusion of these proceedings.

**Remedial Action**

To eliminate or abate the imminent hazard, you must refrain from filling cylinders with TyLar and refrain from offering TyLar for transportation in commerce or transporting it in commerce. In the alternative, you may present evidence showing that you have developed adequate safety measures to mitigate the risks of explosion presented by TyLar.

**Rescission of This Order**

Before you may fill cylinders, offer and/or transport any hazardous material subject to this Order you must be able to adequately demonstrate to the Administrator that you have taken the actions listed above, or that you have taken other actions, and that the actions taken have, in fact, resulted in an imminent hazard no longer existing. After you have presented evidence showing that the imminent hazard no longer exists, the Administer will issue a Rescission Order. Until a Rescission Order is issued, you musnot offer or transport any package covered by this Order.

**Failure To Comply**

Any person failing to comply with this Emergency Order is subject to civil penalties of up to $110,000 for each violation or for each day they are found to be in violation (49 U.S.C. 5123). A person violating this Emergency Order is also subject to criminal prosecution, which may result in fines under title 18, imprisonment of up to ten years, or both (49 U.S.C. 5124).

**Right to Review**

Any person to whom the Administrator has issued an Emergency Order is entitled to review of the order pursuant to 49 U.S.C. 5121(d)(3) and in accordance with section 554 of the Administrative Procedure Act (APA), 5 U.S.C. 500 *et seq.* Any petition seeking relief must be filed within 20 calendar days of the date of this order (49 U.S.C. 5121 (d)(3)), and include one copy addressed to the Chief Safety Officer (CSO) for the Pipeline and Hazardous Materials Safety Administration, United States Department of Transportation, 1200 New Jersey Avenue SE., Washington DC 20590–0001 (*Attention:* Office of Chief Counsel) (electronically to *PHMSACHIEFCOUNSEL@DOT.GOV*) and one copy addressed to U.S. DOT Dockets, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590 (*http://Regulations.gov* under Docket #PHMSA–2011–0303). Furthermore, a petition for review must state the material facts at issue which the petitioner believes dispute the existence of an imminent hazard and must include all evidence and exhibits to be considered. The petition must also state the relief sought. Within 30 days from the date the petition for review is filed, the CSO must approve or deny the relief in writing; or find that the imminent hazard continues to exist, and extend the original Emergency Order. In response to a petition for review, the CSO may grant the requested relief in whole or in part; or may order other relief as justice may require (including the immediate assignment of the case to the Office of Hearings for a formal hearing on the record).

In order to request a formal hearing in accordance with 5 U.S.C. 554, the petition must state that a formal hearing is requested, and must identify the material facts in dispute giving rise to the request for a hearing. A petition which requests a formal hearing must include an additional copy addressed to the Chief Administrative Law Judge, U.S. Department of Transportation, Office of Hearings, M–20, Room E12–320, 1200 New Jersey Avenue SE., Washington, DC 20590 (*Fax:* (202) 366–7536).

Issued in Washington, DC, on November 17, 2011.

**Magdy El-Sibaie,**

*Associate Administrator for Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration.*

[FR Doc. 2011–31054 Filed 12–2–11; 8:45 am]

BILLING CODE 4910–60–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Taxpayer Advocacy Panel Meeting Cancellation

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of Meeting Cancellation.

**SUMMARY:** Notice is hereby given of the cancellation of the open meeting of the Taxpayer Advocacy Panel scheduled for Tuesday, December 6, 2011, and Wednesday, December 7, 2011, at the Capital Hilton Hotel in Washington, DC, which was originally published in the **Federal Register** on November 9, 2011, (Volume 76, Number 217, Page 69799).

The meeting is cancelled due to budgetary constraints.

**FOR FURTHER INFORMATION CONTACT:** Susan Gilbert at 1–(888) 912–1227 or (515) 564–6638.

Dated: November 30, 2011.

**Shawn Collins,**

*Director, Taxpayer Advocacy Panel.*

[FR Doc. 2011–31180 Filed 12–2–11; 8:45 am]

**BILLING CODE 4830–01–P**

# FEDERAL REGISTER

Vol. 76 Monday,

No. 233 December 5, 2011


Part II

## Department of Housing and Urban Development

24 CFR Parts 91, 576, 582, et al.
Homeless Emergency Assistance and Rapid Transition to Housing: Emergency Solutions Grants Program and Consolidated Plan Conforming Amendments; Defining ''Homeless''; Interim Rule and Final Rule

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**24 CFR Parts 91 and 576**

**[Docket No. FR–5474–I–01]**

**RIN 2506–AC29**

# Homeless Emergency Assistance and Rapid Transition to Housing: Emergency Solutions Grants Program and Consolidated Plan Conforming Amendments

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Interim rule.

**SUMMARY:** The Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009 (HEARTH Act), enacted into law on May 20, 2009, consolidates three of the separate homeless assistance programs administered by HUD under the McKinney-Vento Homeless Assistance Act into a single grant program, and revises the Emergency Shelter Grants program and renames it as the Emergency Solutions Grants (ESG) program. The HEARTH Act also codifies into law the Continuum of Care planning process, a longstanding part of HUD's application process to assist homeless persons by providing greater coordination in responding to their needs.

This interim rule revises the regulations for the Emergency Shelter Grants program by establishing the regulations for the Emergency Solutions Grants program, which replaces the Emergency Shelter Grants program. The change in the program's name, from Emergency Shelter Grants to Emergency Solutions Grants, reflects the change in the program's focus from addressing the needs of homeless people in emergency or transitional shelters to assisting people to quickly regain stability in permanent housing after experiencing a housing crisis and/or homelessness.

**DATES:** *Effective date:* January 4, 2012.

*Comment Due Date.* February 3, 2012.

**ADDRESSES:** Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, 451 7th Street SW., Room 10276, Department of Housing and Urban Development, Washington, DC 20410–0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

*1. 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.

*2. 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.

**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 advance appointment to review the public comments must be scheduled 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 through 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:** Ann Marie Oliva, Director, Office of Special Needs Assistance Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410–7000; telephone number (202) 708–4300 (this is not a toll-free number). Hearing- and speech-impaired persons may access this number through TTY by calling the Federal Relay Service at (800) 877–8339 (this is a toll-free number).

**SUPPLEMENTARY INFORMATION:**

## I. Background—HEARTH Act

On May 20, 2009, the President signed into law ''An Act to Prevent Mortgage Foreclosures and Enhance Mortgage Credit Availability,'' which became Public Law 111–22. This law implements a variety of measures directed toward keeping individuals and families from losing their homes. Division B of this law is the HEARTH Act, which consolidates and amends three separate homeless assistance programs carried out under title IV of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11371 *et seq.*) (McKinney-Vento Act) into a single grant program that is designed to improve administrative efficiency and enhance response coordination and effectiveness in addressing the needs of homeless persons. The HEARTH Act codifies into law and enhances the Continuum of Care planning process, the coordinated response for addressing the needs of homelessness established administratively by HUD in 1995. The single Continuum of Care program established by the HEARTH Act consolidates the following programs: the Supportive Housing program, the Shelter Plus Care program, and the Moderate Rehabilitation/Single Room Occupancy program. The Emergency Shelter Grants program is renamed the Emergency Solutions Grants program and revised to broaden existing emergency shelter and homelessness prevention activities and to add short- and medium-term rental assistance and services to rapidly re-house homeless people. In addition the new Rural Housing Stability program replaces the Rural Homelessness Grant program.

HUD commenced the process to implement the HEARTH Act with a proposed rule, which was published on April 20, 2010, (75 FR 20541) and titled ''Defining Homeless.'' That proposed rule sought to clarify and elaborate upon the new McKinney-Vento Act definitions for ''homeless'' and ''homeless individual with a disability.'' In addition, the proposed rule included recordkeeping requirements related to the revised definition of ''homeless.'' The final rule for the ''homeless'' definition and the related recordkeeping requirements appears elsewhere in today's **Federal Register**. Today's publication of the final rule for the homeless definition and this interim rule for the Emergency Solutions Grants program, which includes corresponding amendments to the Consolidated Plan, will be followed by separate proposed rules for the Continuum of Care program and the Rural Housing Stability program to implement other HEARTH Act

amendments to the McKinney-Vento Act. HUD will also soon publish a proposed rule establishing regulations for Homeless Management Information Systems (HMIS). The definition of ''homeless'' in this interim rule for the Emergency Solutions Grants program and the corresponding recordkeeping requirements are not the subject of further public comment. Public comment for this definition and the corresponding recordkeeping requirements were addressed in the Defining Homeless final rule published elsewhere in today's **Federal Register**.

## II. This Interim Rule

This interim rule revises the regulations for the Emergency Shelter Grants program at 24 CFR part 576 by establishing the new requirements for the Emergency Solutions Grants program and making corresponding amendments to HUD's Consolidated Plan regulations found at 24 CFR part 91. The Emergency Solutions Grants (ESG) program builds upon the existing Emergency Shelter Grants program, but places greater emphasis on helping people quickly regain stability in permanent housing after experiencing a housing crisis and/or homelessness. The key changes that reflect this new emphasis are the expansion of the homelessness prevention component of the program and the addition of a new rapid re-housing assistance component. The homelessness prevention component includes various housing relocation and stabilization services and short- and medium-term rental assistance to help people avoid becoming homeless. The rapid re-housing assistance component includes similar services and assistance to help people who are homeless move quickly into permanent housing and achieve stability in that housing.

In developing regulations for the ESG program, HUD is relying substantially on its experience with its administration, and that of HUD's grantees, of the Homelessness Prevention and Rapid Re-Housing Program (HPRP), authorized and funded by the American Recovery and Reinvestment Act of 2009 (Recovery Act) (Pub. L. 111–5, approved February 17, 2009). The Recovery Act language that created HPRP was directly drawn from the proposed HEARTH Act, which was under consideration by Congress at the time the Recovery Act was enacted. HPRP is the first HUD program to fund, on a large scale ($1.5 billion), homelessness prevention and rapid re-housing assistance. HUD is therefore drawing from its recent program experience with HPRP, a temporary program, to establish the regulations for the ESG program, a permanent program. Because HPRP activities will continue, the interim rule is also directed at ensuring continuity between HPRP and ESG. This interim rule provides HPRP program recipients with an opportunity to comment on the policies implemented under HPRP and continued under the ESG program.

This interim rule also implements HUD's longstanding interest in making its McKinney-Vento Act programs consistent, where appropriate, with other HUD programs such as the Community Development Block Grant (CDBG) program, the HOME Investment Partnerships (HOME) program, and the Housing Choice Voucher (HCV) program. To the extent that similar requirements in these programs can be made consistent, communities may be better able to implement coordinated plans and projects to prevent and end homelessness, while decreasing the administrative burden for recipients and subrecipients.

This interim rule will become effective 30 days after today's date. Grantees are receiving two allocations of Fiscal Year (FY) 2011 funds. The first allocation was made and is subject to the Emergency Shelter Grants program regulations. The second allocation will be made after publication of this Emergency Solutions Grants program rule and must exclusively be used for homelessness prevention assistance, rapid re-housing assistance, Homeless Management Information Systems (HMIS), and administration, in accordance with this interim rule. Each recipient may use up to 7.5 percent of its total FY 2011 amount for administrative costs as provided under this interim rule. In addition, if a recipient wishes to reprogram some or all of its first allocation funds to carry out homelessness prevention assistance, rapid re-housing assistance, or HMIS, the recipient must amend its consolidated plan in accordance with the requirements of the consolidated plan regulations as amended by this interim rule.

The following sections of this overview highlight significant differences between the interim rule and the existing regulations for the Emergency Shelter Grants program. This overview does not address every regulatory provision of the interim rule. However, the reader is requested to review the entire interim rule, and HUD welcomes comment on all aspects of the rule. As previously mentioned, the definition of ''homeless'' and the recordkeeping requirements related to that definition are included in a final rule published elsewhere in today's **Federal Register**. Note that the new definition of ''homeless'' and the related recordkeeping requirements are not subject to further public comment. Therefore, the new definition and related reporting requirements are not included in this interim rule, so as to avoid any confusion that HUD is reopening these provisions for additional public comment through this rule.

### *A. Emergency Solutions Grants Program Regulations (24 CFR Part 576)*

This interim rule amends the regulations at 24 CFR part 576, which have governed the Emergency Shelter Grants program and will govern, as revised, the Emergency Solutions Grant (ESG) program.

This interim rule reflects HUD's comprehensive review and revision of part 576. In addition to making changes to implement the HEARTH Act amendments to the McKinney-Vento Act, this interim rule includes changes to reorganize the regulations in part 576 to make the regulations more intuitive and user-friendly; removes the cross-references to the McKinney-Vento Act; provides greater elaboration of existing requirements where necessary or useful; updates requirements to reflect changes to the underlying law, such as the removal of Indian tribes as eligible grantees/recipients; builds from HUD's experience in developing and administering both the existing Emergency Shelter Grants program and HPRP; aligns the ESG program with the new Continuum of Care and Rural Housing Stability programs, to the extent feasible, in order to facilitate coordination and foster efficient use of resources; and align the requirements of the ESG program with HUD's other formula programs and rental assistance programs, to the extent feasible and beneficial, in order to increase efficiency and coordination among the different programs.

In developing the regulations for the ESG program and other programs authorized under title IV of the revised McKinney-Vento Act, HUD has sought to provide grantees with the programmatic framework to: maximize communitywide planning and strategic use of resources to prevent and end homelessness; improve coordination and integration with mainstream services to marshal all available resources, capitalize on existing strengths, and increase efficiency; improve coordination within each community's homeless services, including services funded by other programs targeted to homeless people;

build on lessons learned from years of practice and research, so that more resources are invested in demonstrated solutions to end homelessness, such as rapid re-housing; expand resources and services available to prevent homelessness; realign existing programs and systems to focus on shortening homelessness; direct funding to the most critical services to help people achieve long-term housing stability and avoid becoming homeless again; standardize eligibility determinations and improve the targeting of resources to help those most in need; improve data collection and performance measurement; and allow each community to tailor its program to the particular strengths and challenges within that community.

General Provisions (Subpart A)

The major changes to this subpart include new definitions required by the HEARTH Act amendments and revisions to existing definitions where needed to conform to the new program requirements or to improve administration of the program.

Definitions (Section 576.2)

*At Risk of Homelessness.* The interim rule clarifies the definition of ''at risk of homelessness'' under section 401(1) of the McKinney-Vento Act. The definition includes three categories under which an individual or family may qualify as ''at risk of homelessness.'' For an individual or family to qualify as ''at risk of homelessness'' under the first category of the definition, the individual or family must meet two threshold criteria and must exhibit one or more specified risk factors. The two threshold criteria, as provided in the statute, are: (1) The individual or family has income below 30 percent of median income for the geographic area; and (2) the individual or family has insufficient resources immediately available to attain housing stability. Under the interim rule, the first criterion refers specifically to annual income and to median family income for the area, as determined by HUD. The second criterion is interpreted as, ''the individual or family does not have sufficient resources or support networks, *e.g.,* family, friends, faith-based or other social networks, immediately available to prevent them from moving to an emergency shelter or another place described in paragraph (1) of the homeless definition [in § 576.2].'' These clarifications are consistent with HUD's practice in administering its homeless assistance programs and will help ensure consistent application of these criteria.

To further ensure consistency of interpretation, the interim rule also clarifies several of the risk factors that pertain to the first category of individuals and families who qualify as ''at risk of homelessness.'' As provided under the statute, the pertinent risk factors are as follows: (1) Has moved frequently because of economic reasons; (2) is living in the home of another because of economic hardship; (3) has been notified that their right to occupy their current housing or living situation will be terminated; (4) lives in a hotel or motel; (5) lives in severely overcrowded housing; (6) is exiting an institution; or (7) otherwise lives in housing that has characteristics associated with instability and an increased risk of homelessness.

Under the interim rule, the words ''has moved frequently'' in the first risk factor are interpreted as ''2 or more times during the 60 days immediately preceding the application for homelessness prevention assistance.'' This interpretation is consistent with HUD's interpretation of similar language in the ''homeless'' definition. However, HUD is still considering whether and how to clarify ''economic reasons'' in the first risk factor and ''economic hardship'' in the second risk factor. HUD believes at times, ''economic reasons'' and ''economic hardship'' can have the same meaning, HUD specifically requests comments regarding these terms.

The third risk factor, ''has been notified that their right to occupy their current housing or living situation will be terminated,'' is clarified by adding that the notice has to be in writing and that the termination has to be within 21 days after the date of application for assistance.

The fourth risk factor, ''lives in a hotel or motel,'' is clarified by adding ''and the cost of the hotel or motel is not paid for by federal, state, or local government programs for low-income individuals or by charitable organizations.'' This change is being made to avoid overlap with the conditions under which an individual or family living in a hotel or motel qualifies as homeless under paragraph (1)(ii) of the ''homeless'' definition (section 103(a)(3) of the McKinney-Vento Act).

The fifth risk factor, ''lives in severely overcrowded housing,'' is interpreted as ''lives in a single-room occupancy or efficiency apartment unit in which more than two persons, on average, reside or another type of housing in which there reside more than 1.5 persons per room, as defined by the U.S. Census Bureau.''

The sixth risk factor, ''is exiting an institution,'' is interpreted as ''a publicly funded institution or system of care, such as a health-care facility, mental health facility, foster care or other youth facility, or correction program or institution.'' This language is derived from section 406 of the McKinney-Vento Act to include all public institutions and systems of care from which people may be discharged into homelessness.

The seventh risk factor, ''otherwise lives in housing that has characteristics associated with instability and an increased risk of homelessness,'' remains as is, but requires the particular housing characteristics to be identified in the recipient's HUD-approved consolidated plan. This requirement strives to balance the need for consistent application of this risk factor with sensitivity to the differences in the conditions of each community's housing stock.

The second and third categories under which individuals and families may qualify as ''at risk of homelessness'' are based on the last sentence of section 401(1) of the McKinney-Vento Act, which provides that the term ''at risk of homelessness'' includes all families with children and youth defined as homeless under other federal statutes. The term ''families with children and youth defined as homeless under other federal statutes'' is defined under section 401(7) of the McKinney-Vento Act. Section 401(7) provides that this term means ''any children or youth that are defined as 'homeless' under any Federal statute other than this subtitle, but are not defined as homeless under section 103, and shall also include the parent, parents, or guardian of such children or youth under subtitle B of title VII this Act (42 U.S.C. 11431 *et seq.*).''

For the sake of clarity, the definition of ''at risk of homelessness'' this interim rule uses separate categories to describe the children and youth defined as homeless under other federal statutes and to describe the children and youth defined as homeless under subtitle B of title VII of the McKinney-Vento Act and their parent(s) or guardian(s). In light of comments received in response to the proposed rule concerning the definition of ''homeless'' HUD has provided specific citations to the other federal statutes that are applicable to the first of these two categories. As for the last category, the interim rule clarifies that the parent(s) or guardian(s) of the children or youth defined as homeless under subtitle B of title VII of the McKinney-Vento Act must be living with those children or youth to qualify as ''at risk of homelessness'' under that category.

*Emergency shelter.* This interim rule revises certain definitions currently found in the existing part 576 regulations. The definition of ''emergency shelter'' has been revised to distinguish this type of shelter from transitional housing. This distinction is necessitated by the McKinney-Vento Act's explicit distinction between what activities can or cannot be funded under the Continuum of Care program and the Rural Housing Stability program (see section 423(a)(2) and section 491(b)(1)(E) of the McKinney-Vento Act). However, under the definition, any project that received funding in FY 2010 as an emergency shelter may continue to be funded under the ESG program, regardless of whether the project meets the revised definition.

*Homeless.* The interim rule includes the definition of ''homeless'' which is made final by the Defining Homeless rule, published elsewhere in today's **Federal Register.** No further public comment is being solicited or taken on this definition.

*Metropolitan city.* This interim rule revises the definition of ''metropolitan city'' to clarify that the definition includes the District of Columbia, since the McKinney-Vento Act includes the District of Columbia in both its definitions of ''state'' and ''metropolitan city''. HUD has decided to resolve this conflict in favor of treating the District of Columbia under the ESG program as a metropolitan city. This interpretation will provide the District of Columbia with the flexibility afforded to metropolitan cities and urban counties for carrying out activities directly, rather than being compelled to subgrant all ESG funds. In addition, the definition of ''territory'' in 24 CFR 576.3 has been updated to exclude the Trust Territory of the Pacific Islands, which is no longer a U.S. territory.

*Private nonprofit organization; unit of general purpose local government.* The changes to the definitions of ''private nonprofit organization'' and ''unit of general local government'' are intended to make clear that governmental organizations, such as public housing agencies or state or local housing finance agencies, are not eligible subrecipients under the ESG program. To recognize these entities under either definition would be inconsistent with section 411 of the McKinney-Vento Act, which refers specifically to ''*private* nonprofit organizations'' and ''unit of *general purpose* local government.''

*Recipient and subrecipient.* In the interim rule, the terms ''recipient'' and ''subrecipient'' replace the existing terminology for entities that received grants and subgrants under the ESG program. Under the McKinney-Vento Act, ''recipient'' means ''any governmental or private nonprofit entity approved by the Secretary [of HUD] as to financial responsibility'' (Sec. 42 U.S.C. 11371(6)). The interim rule clarifies that ''recipient'' means any state, territory, metropolitan city, or urban county, or in the case of reallocation, any unit of general purpose local government, approved by HUD to assume financial responsibility and which enters into a grant agreement with HUD to administer Emergency Solutions Grant (ESG). Private nonprofit organizations are excluded from the definition, because they are not direct recipients under the program. The interim rule defines ''subrecipient'' as any unit of general purpose local government or private nonprofit organization to which a recipient awards ESG grant funds.

Allocation of Funding (Section 576.3)

Under the interim rule, the existing set-aside of funding for the territories has been changed for the Emergency Solutions Grant program to ''up to 0.2 percent, but not less than 0.1 percent'' of the total fiscal year appropriation for Emergency Solutions Grant (ESG). This change provides HUD with greater administrative discretion if there are significant increases in the annual appropriations for ESG. In addition, the formula for distributing the set-aside among the territories has been modified for this program to incorporate the rate at which each territory has completed its expenditures by the previous expenditure deadline. In all other respects, the allocation of funding will remain the same as the current practice.

Eligible Activities (Subpart B)

The major changes to this subpart of part 576 include the addition of an annual funding cap on street outreach and emergency shelter activities; clarification of the eligible costs for street outreach and emergency shelter activities; the expansion of the homelessness prevention component of the program and addition of a new rapid re-housing assistance component, which both include rental assistance and housing relocation and stabilization services; expansion of the range of eligible administrative costs; and the addition of a new category of eligible activities for Homeless Management Information Systems (HMIS), to the extent that costs are necessary to meet the new HMIS participation requirement under the McKinney-Vento Act.

*General Provisions.* In general, the interim rule allows ESG funds to be used for five program components (street outreach, emergency shelter, homelessness prevention, rapid re-housing assistance, and HMIS) and necessary administrative costs. However, in accordance with the McKinney-Vento Act, some restrictions apply to the amounts that can be spent on street outreach, emergency shelter, and administrative costs. Funds used for street outreach and emergency shelter activities will be limited to the greater of 60 percent of the recipient's total fiscal year grant for ESG or the hold-harmless amount established by the section 415(b) of the McKinney-Vento Act (''the amount expended by [the recipient] for such activities during fiscal year most recently completed before effective date under section 1503 of the [HEARTH Act]''). To reasonably and practicably implement the statute's hold-harmless language, the interim rule makes the hold-harmless amount the amount of FY 2010 grant funds committed for street outreach and emergency shelter activities in FY 2010.

In accordance with the amendments to the McKinney-Vento Act, the interim rule provides that the total funds that can be spent on administrative activities are 7.5 percent of the recipient's ESG grant. In addition, the interim rule clarifies that, subject to the cost principles in Office of Management and Budget (OMB) Circulars A–87 (2 CFR part 225) and A–122 (2 CFR part 230),[1] employee compensation and other overhead costs directly related to carrying out street outreach, emergency shelter, homelessness prevention, rapid re-housing, and HMIS activities are eligible costs of those activities and not subject to the spending limit for administrative costs. This clarification is in response to questions and concerns raised by HPRP grantees and subgrantees and the recent U.S. Government Accountability Office (GAO) study, *Homelessness: Information on Administrative Costs for HUD's Emergency Shelter Grants Program* (GAO–10–491).[2]

*Street outreach and emergency shelter components.* Consistent with section 415(a)(2) of the McKinney-Vento Act, the interim rule clarifies that the costs of essential services related to street outreach are eligible costs under the ESG program. The eligible costs for street outreach activities differ from the eligible costs for essential services

[1] OMB Circular A–87 and the regulations at 2 CFR part 225 pertain to ''Cost Principles for State, Local, and Indian Tribal Governments.'' OMB Circular A–122 and the regulations codified at 24 CFR part 230 pertain to ''Cost Principles for Non-Profit Organizations.''

[2] See *http://www.gao.gov/new.items/d10491.pdf.*

related to emergency shelter, as they are limited to those necessary to provide emergency care on the street. To the extent possible, essential services related to emergency shelter and street outreach are the same as the eligible costs for supportive services under the Continuum of Care program. This consistency across these three sets of services is intended to improve understanding of the programs' requirements, facilitate coordination, and maximize efficiency.

The interim rule revises the eligible costs for operating emergency shelters by removing the limit on staff costs, adding the cost of supplies, and allowing the cost of a hotel or motel stay under certain conditions.

The interim rule clarifies the ''maintenance of effort'' requirement in two respects. First, the references to new service and quantifiable increase in services are eliminated in favor of simply prohibiting a unit of general purpose local government from using ESG funds to replace funds the local government provided for street outreach or emergency shelter services during the immediately preceding 12-month period, unless HUD determines that the unit of general purpose local government is in a severe financial deficit. Second, the interim rule specifies how this determination would be made.

*Homelessness Prevention and Rapid Re-Housing Components.* HUD has interpreted sections 415(a)(4) and (5) of the McKinney-Vento Act to authorize ESG funds to be used for short- and medium-term rental assistance and housing relocation and stabilization services for homelessness prevention and rapid re-housing of homeless individuals and families into permanent housing. Consistent with this interpretation and to serve HUD's programmatic goals, the interim rule categorizes the eligible activities under sections 415(a)(4) and (5) of the McKinney-Vento Act under two program components—one for homelessness prevention and one for rapid re-housing assistance. This organization is intended to be function/outcome-focused and helps emphasize the integral relationship between rental assistance and housing relocation and stabilization services in both homelessness prevention and rapid re-housing assistance. This organization also provides for differentiation between the conditions for providing homelessness prevention and the conditions for providing rapid re-housing assistance. These conditions are intended to facilitate the strategic and efficient targeting of resources.

*Housing Relocation and Stabilization Services.* The eligible costs and requirements for providing housing relocation and stabilization services are based on HUD's experience in developing and administering HPRP. For the purpose of determining compliance with the statutory limit on street outreach and emergency shelter activities, housing stability case management and legal services are distinguished from the case management and legal services in the essential services sections of street outreach and emergency shelter by when and for what purpose the case management and legal services are provided. Note that ''housing relocation and stabilization services,'' the name of which comes from section 415(a)(5) of the McKinney-Vento Act, are not to be confused with the relocation assistance and payments required under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4601–4655). Costs arising under the URA are eligible for federal financial assistance in the same manner and to the same extent as other program or project costs (see 42 U.S.C. 4631(a)), and are separately listed at § 576.102 of this interim rule.

*Short-term and Medium-term Rental Assistance.* Consistent with HPRP, HUD has interpreted short-term rental assistance to be up to 3 months of assistance. Unlike HPRP, HUD has interpreted medium-term rental assistance to be up to 24 months. This change is intended for consistency with the period for transitional housing in the Continuum of Care (CoC) program.

The requirements for short- and medium-term rental assistance require that a program participant and a housing owner have a written lease for the provision of rental assistance. In addition, the interim rule also requires a rental assistance agreement between the recipient or subrecipient and the housing owner. Similar to HPRP, the interim rule gives Emergency Solutions Grant (ESG) recipients broad discretion in determining the type, amount, and duration of rental assistance a program participant can receive for homelessness prevention or rapid re-housing assistance. But where HPRP allows only tenant-based rental assistance, the interim rule allows rental assistance to be tenant-based or project-based, as provided under section 415(a)(4) of the McKinney-Vento Act. However, the requirements for project-based rental assistance under this interim rule have been specially designed to accommodate both the impermanent nature of the rental assistance and the program goal of helping people quickly re-enter permanent housing and achieve long-term stability in that housing. For example, instead of requiring an individual or family to move from an assisted unit when the individual or family's assistance ends, the interim rule provides for the assistance to be suspended, terminated, or transferred to another unit.

HUD specifically requests comments on how short- to medium-term project-based rental assistance can best be fashioned to avoid forcing each program participant to move at the end of the program participant's term of assistance and to make project-based rental assistance a feasible and useful alternative to tenant-based rental assistance.

Similar to the rules of other HUD housing programs, the interim rule prohibits rental assistance from being provided for a housing unit, unless the total rent for the unit does not exceed the fair market rent established by HUD, as provided under 24 CFR 982.503, and complies with HUD's standard of rent reasonableness, as established under 24 CFR 982.507. These rent restrictions are intended to make sure that program participants can remain in their housing after their ESG assistance ends.

*HMIS Component.* Section 416(f) of the McKinney-Vento Act requires for the first time that projects receiving funding under Emergency Solutions Grant (ESG) program participate in an HMIS. The interim rule makes certain HMIS costs eligible to the extent necessary to enable this participation. HUD will soon be publishing a proposed rule on HMIS to establish in 24 CFR part 580, the regulations that will govern HMIS. In addition to establishing HMIS regulations in a new part 580 provisions, the HMIS rule will propose corresponding amendments to this interim rule regarding the use of Emergency Solutions Grant (ESG) funds for HMIS and the incorporation of the requirements under part 580 that will apply to ESG recipients.

*Administrative Activities.* Under this interim rule, the eligible costs for administrative activities have been expanded to reflect most of the eligible administrative costs under the CDBG program. The revisions to the sharing requirement also clarify that, although not required, funds for administrative costs may be shared with private nonprofit organizations, and a reasonable amount must be shared with units of general purpose local government. This clarification is made in response to grantee and subgrantee concerns and questions raised through the recent GAO report, *Homelessness: Information on Administrative Costs for*

*HUD's Emergency Shelter Grants Program* (GAO–10–491).

*Indirect Costs.* This interim rule reflects HUD's decision to adopt a consistent policy for indirect costs for the Emergency Solutions Grant (ESG), Continuum of Care and Rural Housing Stability Programs, in response to further grantee and subgrantee questions and concerns. The interim rule provides that Emergency Solutions Grant (ESG) funds may be used to pay indirect costs in accordance with OMB Circulars A–87 (2 CFR part 225) and A–122 (2 CFR part 230), as applicable. Indirect costs may be allocated to each eligible activity, so long as the allocation is consistent with an indirect cost rate proposal developed in accordance with OMB Circulars A–87 (2 CFR part 225) and A–122 (2 CFR part 230), as applicable. The indirect costs charged to an activity subject to an expenditure limit must be added to the direct costs charged for that activity when determining the total costs subject to the expenditure limit.

Award and Use of Grant Amounts (Subpart C)

The major changes to this subpart include clarification of the submission requirements for territories, elaboration of the matching requirements, clarification of the obligation requirements, and the addition of minimum requirements for making timely drawdowns and payments to subrecipients.

*Submission Requirements.* The application requirements generally remain the same as the current application requirements, except that territories will be required to submit a consolidated plan in accordance with the requirements that apply to local governments under HUD's Consolidated Plan regulations codified in 24 CFR part 91. The interim rule also clarifies that certain changes in the recipients' Emergency Solutions Grant (ESG) programs require an amendment to the consolidated plan in accordance with 24 CFR 91.505.

*Matching Requirements.* The revisions to the matching contribution requirements (and recordkeeping requirements related to the matching requirements) integrate the matching requirements in 24 CFR 85.24 [3] and provide further clarification on how matching contributions must be counted. The interim rule also specifies that program income is to be used as a match, rather than being treated as an addition to the (ESG) grant, because of the sizable matching requirement in Emergency Solutions Grant (ESG).

*Obligation, expenditure, and payment requirements.* The interim rule clarifies the obligation of funds requirements and imposes new expenditure-of-funds requirements. The interim rule requires the recipient to draw down its funds from each year's allocation not less than once during each quarter of the recipient's program year. This requirement is based on HUD's experience in administering homeless assistance grants, and is intended to ensure the timely reimbursements from HUD to recipients. In addition, the recipient (and its subrecipients that are units of general purpose local government) will be required to make timely payments to each of its subrecipients within 30 days after the date of receiving the subrecipient's complete payment request. This requirement is also based on HUD's experience in administering homeless assistance grants and is intended to ensure timely payment of private nonprofit organizations, which may not be able to cover their expenses for as long a period as state and local governments. As in the Emergency Shelter Grants program, all of the recipient's grant must be expended for eligible activity costs within 24 months after the date HUD signs the grant agreement with the recipient.

Reallocation (Subpart D)

The interim rule makes substantial changes to the Emergency Solutions Grant (ESG) reallocation provisions in order to improve administrative efficiency. For example, if the amount of unused or returned funds is not sufficient to justify the administrative burden of reallocating those funds, whether for HUD or ESG recipients, the interim rule provides for those funds to be added to the next fiscal year allocation.

Program Requirements (Subpart E)

The major changes to this subpart include the addition of new requirements that facilitate coordination at the state and local levels as a means to prevent and reduce homelessness; elaboration on the requirements concerning the integration and use of appropriate assistance and services, termination of assistance, habitability standards, and conflicts of interest; modification of the homeless participation requirement to reasonably and practicably implement the statutory requirement; and clarification of the applicable requirements under other federal laws and regulations.

*Systems coordination.* Consistent with sections 402(f) and 413(b) of the McKinney-Vento Act, the interim rule contains a new requirement for Emergency Solutions Grant (ESG) recipients to consult with Continuums of Care in allocating funds for eligible activities; developing performance standards, evaluating outcomes of (ESG)-assisted projects and developing funding, policies, and procedures for the administration and operation of the HMIS. This requirement will be discussed in further detail in regard to the revisions of the consolidated planning requirements at 24 CFR part 91 (section II.B of this preamble).

The interim rule requires ESG recipients and subrecipients to coordinate and integrate, to the maximum extent practicable, ESG-funded activities with other programs targeted toward homeless people, as well as mainstream housing, health, social services, employment, education, and youth programs for which families and individuals at risk of homelessness and homeless individuals and families may be eligible. These requirements are consistent with recurring HUD appropriations language for the homeless assistance grants and with the *Federal Strategic Plan to Prevent and End Homelessness* (FSP).[4]

*Centralized or coordinated assessment.* This interim rule introduces a proposed requirement for ESG recipients and subrecipients to use a centralized or coordinated system to initially assess the eligibility and needs of each individual or family who seeks homeless assistance or homelessness prevention assistance. This centralized or coordinated assessment system would be developed and implemented by the Continuum of Care in accordance with minimum requirements to be established by HUD. HUD is currently developing its minimum requirements for these systems and will present these requirements for public review and comment in the upcoming proposed rule for the Continuum of Care program. Please note that this interim rule does not require any ESG recipient or subrecipient to use a centralized or coordinated assessment system until the Continuum of Care program final rule has been published and until the Continuum of Care for the area develops and implements a system that meets the minimum requirements in that final rule.

Through the administration of the Rapid Re-Housing for Families Demonstration program and the

[3] HUD's regulations in 24 CFR part 85 address administrative requirements for grants and cooperative agreements to state, local, and federally recognized Indian tribal governments.

[4] See *http://www.usich.gov/PDF/OpeningDoors_2010_FSPPreventEndHomeless.pdf.*

Homelessness Prevention and Rapid Re-Housing Program, as well as best practices identified in communities, HUD has learned that centralized or coordinated assessment systems are important in ensuring the success of homeless assistance and homeless prevention programs in communities. In particular, such assessment systems help communities systematically assess the needs of program participants and effectively match each individual or family with the most appropriate resources available to address that individual or family's particular needs.

Therefore, HUD intends to require each Continuum of Care to develop and implement a centralized or coordinated assessment system in its geographic area. Such a system must be designed locally in response to local needs and conditions. For example, rural areas will have significantly different systems than urban ones. While the common thread between typical models is the use of a common assessment tool (such as a vulnerability index), the form, detail, and use of that tool will vary from one community to the next. Some examples of centralized or coordinated assessment systems include: A central location or locations within a geographic area where individuals and families must present for homeless services; a 211 or other hotline system that screens and directly connects callers to appropriate homeless housing/service providers in the area; a ''no wrong door'' approach in which a homeless family or individual can present at any homeless service provider in the geographic area but is assessed using the same tool and methodology so that referrals are consistently completed across the Continuum of Care; a specialized team of case workers that provides assessment services to providers within the Continuum of Care; or in larger geographic areas, a regional approach in which ''hubs'' are created within smaller geographic areas.

HUD recognizes that imposing a requirement for a centralized or coordinated assessment system may have certain costs and risks. Among the risks that HUD wishes specifically to address are the risks facing individuals and families fleeing domestic violence, dating violence, sexual assault, and stalking. In developing the baseline requirements for a centralized or coordinated intake system, HUD is considering whether victim service providers should be exempt from participating in a local centralized or coordinated assessment process, or whether victim service providers should have the option to participate or not. HUD is seeking comment specifically from ESG-funded victim service providers on this question. HUD also plans to require each Continuum of Care to develop a specific policy on how its particular system will address the needs of individuals and families who are fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, or stalking, but who are seeking shelter or services from non-victim service providers. These policies could include reserving private areas at an assessment location for evaluations of individuals or families who are fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, or stalking; a separate ''track'' within the assessment framework that is specifically designed for domestic violence victims; or the co-location of victim service providers with centralized assessment teams.

HUD invites suggestions for ensuring that the requirements it imposes regarding centralized or coordinated assessment systems will best help communities use their resources effectively and best meet the needs of all families and individuals who need assistance. Some specific questions HUD asks commenters to address are: What barriers to accessing housing/services might a centralized or coordinated intake system pose to victims of domestic violence? How can those barriers be eliminated? What specific measures should be implemented to ensure safety and confidentiality for individuals and families who are fleeing or attempting to flee domestic violence situations? How should those additional standards be implemented to ensure that victims of domestic violence have immediate access to housing and services without increasing the burden on those victims? For communities that already have centralized or coordinated assessment systems in place, are victims of domestic violence and/or domestic violence service providers integrated into that system? In either scenario (they are integrated into an assessment process or they are not integrated into it), how does your community ensure the safety and confidentiality of this population, as well as access to homeless housing and services? What HUD-sponsored training would be helpful to assist communities in completing the initial assessment of victims of domestic violence in a safe and confidential manner?

In addition to comments addressing the needs of victims of domestic violence, dating violence, sexual assault, and stalking, HUD invites general comments on the use of a centralized or coordinated assessment system, particularly from those in communities that have already implemented one of these systems who can share both what has worked well and how these systems could be improved. HUD specifically seeks comment on any additional risks that a centralized or coordinated assessment system may create for victims of domestic violence, dating violence, sexual assault, or stalking who are seeking emergency shelter services due to immediate danger, regardless of whether they are seeking services through a victim service provider or non-victim service provider.

*Standards for administering assistance and minimum assistance requirements.* As discussed later in this preamble with respect to the revisions to HUD's Consolidated Plan regulations in 24 CFR part 91, this interim rule requires a number of written standards to be established by recipients and subrecipients for administering ESG assistance, in order to balance the broad discretion given to recipients in developing street outreach, emergency shelter, rapid re-housing, and homelessness prevention programs to accommodate the unique needs, strengths, and other characteristics of their communities.

The interim rule also specifies that all program participants must be assisted as needed in obtaining services and financial assistance through other homeless and public assistance programs. Furthermore, each program participant receiving homelessness prevention or rapid re-housing assistance must be required to meet regularly with a case manager (except where prohibited by Violence Against Women Act (VAWA) and the Family Violence Prevention and Services Act (FVPSA)), and the assistance provider must develop an individualized plan to help that program participant retain permanent housing after the ESG assistance ends. These requirements are intended to help ensure that the ESG-funded emergency, short-term or medium-term assistance will be effective in helping program participants regain long-term housing stability and avoid relapses into homelessness.

*Terminating Assistance.* If a program participant who receives ESG assistance violates program requirements, the recipient or subrecipient may terminate the assistance in accordance with a formal process established by the recipient or subrecipient that protects the rights of the individuals affected. This applies to all forms of ESG assistance. In this interim rule, HUD enhances the minimum process

requirements for the termination of homelessness prevention or rapid re-housing assistance, in order to reflect the process set forth in the Supportive Housing Program (SHP) regulations. These enhanced process requirements are prompted by the longer duration and higher expectations involved in homelessness prevention and rapid re-housing assistance, as compared to the duration and expectations involved in street outreach or emergency shelter activities.

To terminate rental assistance or housing relocation and stabilization services to a program participant, the minimum required formal process must consist of a written notice to the program participant containing a clear statement of the reasons for termination, a review of the decision, and a prompt written notice of the final decision to the program participant. The review of the decision must give the program participant the opportunity to present written or oral objections before a person other than the person (or a subordinate of that person) who made or approved the termination decision. In addition, the interim rule provides that the recipient or subrecipient may resume assistance to a family or individual whose assistance has been terminated.

*Shelter and Housing Standards.* The revised habitability standards incorporate lead-based paint remediation and disclosure requirements. The revised standards for emergency shelters require all shelters to meet minimum habitability standards adopted from the SHP regulations and current Emergency Solutions Grant guidance. Shelters renovated with ESG funds are also required to meet state or local government safety and sanitation standards, as applicable, include energy-efficient appliances and materials. If ESG funds are used to help a program participant remain in or move into permanent housing, that housing must meet habitability standards.

*Conflicts of Interest.* This interim rule clarifies the existing personal conflicts-of-interest provision by incorporating language from the CDBG program regulation. In addition, the interim rule adds a new provision to reduce organizational conflicts of interest, based on HUD's experience in administering HPRP.

*Homeless Participation.* The interim rule revises the current homeless participation requirement so that if a recipient is unable to meet the participation of homeless individuals requirement in section 416(d) of the McKinney-Vento Act, the recipient need not submit and obtain HUD approval of a formal waiver request, so long as the recipient develops a plan to consult with homeless or formerly homeless individuals in considering and making policies and decisions regarding any facilities, services, or other assistance that receive ESG funding; includes the plan in its annual action plan to be submitted under 24 CFR part 91; and obtains HUD's approval of its annual action plan. This revision is intended to reduce administrative burden to both recipients and to HUD.

*Other Federal Requirements.* In general, the revisions to the section on ''other Federal requirements'' clarify the degree to which certain requirements are applicable, remove certain requirements that are redundant or moved elsewhere in the rule for improved organizational purposes, and change certain requirements to correspond with changes in the McKinney-Vento Act or other changes made by this interim rule. Chief among these changes is the change to the environmental review requirements in accordance with the HEARTH Act's repeal of section 443 of the McKinney-Vento Act. Under this interim rule, Emergency Solutions Grant (ESG) activities would be made subject to environmental review by HUD under HUD's environmental regulations in 24 CFR part 50, and HUD's environmental regulations in 24 CFR part 58 will no longer be applicable to such activities.

The interim rule does not retain the provision in the current Emergency Shelter Grants program regulation specifying that for purposes of this program, the term ''dwelling units'' under 24 CFR part 8 includes ''sleeping accommodations.'' The language is being removed because it did not provide grantees with direction on how to apply this provision. Nevertheless, Section 504 of the Rehabilitation Act of 1973 and HUD's implementing regulations at 24 CFR part 8 apply to the Emergency Solutions Grants program, including accessibility requirements under Subpart C—Program Accessibility. A recipient shall operate each existing program or activity receiving federal financial assistance so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities. Grantees are also required to provide reasonable accommodations for persons with disabilities in order to enable program participants with a disability to have an equal opportunity to participate in the program or activity.

Grantees that undertake alterations to shelters may be subject to additional accessibility requirements in accordance with 24 CFR part 8. In certain instances, recipients undertaking alterations may be required to ensure that 5 percent of the total sleeping areas, such as 5 percent (or at least one) of the sleeping rooms where a number of sleeping rooms are provided, and 5 percent (or at least one) of the total number of sleeping areas, such as beds, where a number of beds are provided in a room, are accessible for persons with mobility impairments and that an additional 2 percent of the total individual sleeping areas are accessible for persons with visual impairments. The Americans with Disabilities Act may also apply and require a greater level of accessibility in certain shelters.

*Relocation and Acquisition.* The interim rule updates the relocation and acquisition requirements and makes them more consistent with the requirements in other HUD programs. Section 576.102 specifies that the cost of providing relocation assistance and payments arising out of the Uniform Act (URA) is an eligible activity, as per section 211 of the URA (42 U.S.C. 4631(a)). Temporary relocation and other alternatives to minimize displacement in other HUD programs that provide permanent housing are inapplicable due to the nature of the ESG program. Emergency shelters assisted under the ESG program provide temporary shelter for the homeless. Existing tenants would not fall within the program definition of ''homeless.'' Section 576.408(b) provides that temporary relocation is not an available alternative to permanently displacing a tenant who moves as a direct result of acquisition, demolition, or rehabilitation for a project assisted with ESG funds. Additionally, § 576.408(b) provides that an agency cannot avoid treating such tenant as a displaced person by offering the tenant a unit in the same building/complex upon project completion. Finally, § 576.408(d) of the interim rule clearly states that the URA applies to an acquisition undertaken in connection with an ESG-assisted project irrespective of the source of funding for the acquisition.

Grant Administration (Subpart F)

The changes to this subpart substantially revise the Emergency Solutions Grant (ESG) recordkeeping and reporting requirements and the enforcement provisions. The changes to the recordkeeping requirements include the addition of specific documentation requirements to demonstrate compliance with ESG regulations, as well as new requirements regarding record retention periods, confidentiality, and rights of access to

records. The reporting requirements and the enforcement provisions are each expanded and further clarified.

*Recordkeeping and reporting requirements.* Grant recipients under the ESG program have always been required to show compliance with the program's regulations through appropriate records. However, the existing regulations for the Emergency Shelter Grants program are not specific about the records to be maintained. The interim rule elaborates upon the recordkeeping requirements to provide sufficient notice and clarify the documentation that HUD requires for assessing compliance with the new requirements of the program. The recordkeeping requirements for documenting homeless status were published in the proposed rule for the homeless definition.[5] Recordkeeping requirements with similar levels of specificity will apply to documentation of ''at risk of homelessness'' and ''annual income.'' Further requirements are modeled after the recordkeeping requirements for the HOME Investment Partnerships program (24 CFR 92.508) and other HUD regulations.

Included along with these changes are new or expanded requirements regarding confidentiality, rights of access to records, record retention periods, and reporting requirements. Most significantly, to protect the safety and privacy of all program participants, the interim rule broadens program's confidentiality requirements. The McKinney-Vento Act only requires procedures to ensure the confidentiality of records pertaining to any individual provided family violence prevention or treatment services under the ESG program. The interim rule requires written procedures to ensure the security and confidentiality of all records containing personally identifying information of any individual or family who applies for and/or receives Emergency Solutions Grant (ESG) assistance.

*Enforcement.* The interim rule revises the sanctions section under the existing regulations for the Emergency Shelter Grants program, including the heading of the section on sanctions, to strengthen the enforcement procedures and the array of remedial actions and sanctions for recipients and subrecipients of Emergency Solutions Grant (ESG) funds. These revisions draw from the requirements at 24 CFR 85.43 and other HUD program regulations.

[5] See the April 20, 2010, edition of the **Federal Register** at 75 FR 20544.

*B. Consolidated Submissions for Community Planning and Development Programs (24 CFR Part 91)*

In addition to revising regulations for the Emergency Shelter Grants program at 24 CFR part 576 to establish the regulations for Emergency Solutions Grant (ESG), this interim rule revises selected sections of the consolidated planning regulations at 24 CFR part 91, in order to reflect both the HEARTH Act amendments to the McKinney-Vento Act and significant developments in HUD's homelessness policies and program administration over the last 15 years. In developing and implementing the Continuum of Care concept through the annual notices of funding availability (NOFAs) for its competitive programs, HUD sought to establish and standardize complementary planning requirements between the homeless components of the Consolidated Plan and the annual submission of the Continuum of Care Plan. The structure of the annual Continuum of Care Plan (CoC) plan and the plan's sections on community participation, needs assessment, inventory of housing and services, strategies, annual application, and performance were developed to harmonize with the Consolidated Plan's homelessness components. Many communities closely aligned the Consolidated Plan and the Continuum of Care Plan (CoC) Plan covering their jurisdiction.

The HEARTH Act amendments to the McKinney-Vento Act contain provisions requiring coordination, collaboration, and consultation between Continuums of Care and ESG state and local government recipients. The McKinney-Vento Act requires ''collaborative applicants'' under the Continuum of Care program to participate in the Consolidated Plan for the geographic areas they serve and analyze patterns of use and evaluate outcomes for ESG projects in those areas. ESG recipients in turn must consult with these collaborative applicants on the allocation of ESG funds and participate in HMIS, which the collaborative applicants are required to establish.

In describing these and related requirements for cross-program coordination, this interim rule uses the term ''Continuum of Care'' instead of ''collaborative applicant.'' The interim rule defines ''Continuum of Care'' as the group composed of representatives of relevant organizations, which generally includes nonprofit homeless providers; victim service providers; faith-based organizations; governments; businesses; advocates; public housing agencies; school districts; social service providers; mental health agencies; hospitals; universities; affordable housing developers; law enforcement; organizations that serve homeless and formerly homeless veterans, and homeless and formerly homeless persons that are organized to plan for and provide, as necessary, a system of outreach, engagement, and assessment; emergency shelter; rapid re-housing; transitional housing; permanent housing; and prevention strategies to address the various needs of homeless persons and persons at risk of homelessness for a specific geographic area.

The use of ''Continuum of Care'' instead of ''collaborative applicant'' is intended to maintain consistency with the terminology HUD has established and grantees have become familiar with in the Continuum of Care planning process for the Supportive Housing program, the Shelter Plus Care program, and the Moderate Rehabilitation/Single Room Occupancy program. The term ''collaborative applicant,'' as used in the McKinney-Vento Act, covers two distinct entities under the existing Continuum of Care planning process: One entity whose function is planning and facilitating collaboration and another entity whose function is applying for and managing the homeless assistance grant. Because HUD has always called the planning entity the Continuum of Care, HUD is continuing that practice in this interim rule.

The interim rule strengthens and standardizes the homelessness elements affecting all jurisdictions required to submit a Consolidated Plan. The changes to the Consolidated Plan sections on homelessness have been guided by the larger purposes of the HEARTH Act and the principles and priorities put forth in the *Federal Strategic Plan to Prevent and End Homelessness (FSP).* The changes to the Consolidated Plan will foster closer coordination between not only Emergency Solutions Grant (ESG) and Continuum of Care (CoC) programs, but other mainstream housing and services programs that can provide greater resources to homeless persons and people at imminent risk of homelessness.

*Definitions.* The Consolidated Plan regulations are modified to add and revise this section to conform to definitions used in this interim rule for 24 CFR part 576 and the proposed rule that will soon be published for the Continuum of Care program. A definition of rapid re-housing assistance is added to bring coverage of general homeless assistance models in 24 CFR part 91 up-to-date. Other definitions are

eliminated because they will no longer be used in part 91 after the changes in the regulations to the McKinney-Vento Act programs.

HUD specifically invites comments regarding the definition of chronically homeless. The McKinney-Vento Act defines ''chronically homeless'' as an individual or family who: (i) Is homeless and lives or resides in a place not meant for human habitation, a safe haven, or in an emergency shelter; (ii) has been homeless and living or residing in a place not meant for human habitation, a safe haven, or in an emergency shelter continuously for at least 1 year or on at least 4 separate occasions in the last 3 years; and (iii) has an adult head of household (or a minor head of household if no adult is present in the household) with a diagnosable substance use disorder, serious mental illness, developmental disability (as defined in section 102 of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15002)), post traumatic stress disorder, cognitive impairments resulting from a brain injury, or chronic physical illness or disability, including the co-occurrence of 2 or more of those conditions. Additionally, the statutory definition includes as chronically homeless a person who currently lives or resides in an institutional care facility, including a jail, substance abuse or mental health treatment facility, hospital or other similar facility, and has resided there for fewer than 90 days if such person met the other criteria for homeless prior to entering that facility. (See 42 U.S.C. 11360(2))

The regulatory definition of ''chronically homeless'' does not elaborate significantly on the statutory definition. However, HUD has determined that when an individual or family has not been continuously homeless for at least one year but has been homeless on at least four separate occasions in the last 3 years, each separate occasion must be at least 15 days in duration to ensure consistency for counting and eligibility purposes. HUD has determined that the 15-day minimum is an appropriate measure to distinguish the chronically homeless from the homeless population in general, so as to recognize chronically homeless people who have spent a significant amount of time as homeless.

The regulatory definition also clarifies that a family will qualify as chronically homeless if the head of household has met all of the requirements in paragraphs (i) through (iii) of the statutory definition, given that a family's composition may fluctuate during the course of the head of household's homeless experience.

*Consultation: Local Governments/States.* The interim rule revises the consultation requirements in 24 CFR part 91 to implement the McKinney-Vento Act's new requirement that ESG recipients consult with Continuums of Care when allocating their ESG funds to carry out eligible activities. In response to the concerns of prospective grantees under the Continuum of Care program, the interim rule includes several requirements to make it easier for Continuums of Care to meet their requirements under the McKinney-Vento Act, including participating in the Consolidated Plan for their jurisdiction and designing a collaborative process for evaluating the outcomes of ESG projects. Similar changes to facilitate the participation of Continuums of Care (CoCs) in the Consolidated Planning process are also made to the sections on citizen participation at 24 CFR 91.105 and 91.115.

The consultation sections were also revised to conform to the FSP's emphasis not only on chronically homeless people, but on families with children, veterans and their families, and unaccompanied youth, and the FSP's emphasis on strengthening collaboration with programs and entities beyond the programs targeted to homeless people. The consultation sections refer specifically to ''publicly funded institutions and systems of care that may discharge people into homelessness (such as health-care facilities, mental health facilities, foster care and other youth facilities, and corrections programs and institutions).'' This is done to be consistent with the emphasis on discharge planning in section 406 of the McKinney-Vento Act. For this same reason, HUD also refers to these publicly funded institutions and systems of care in each section of the interim rule that specifically addresses the prevention of homelessness.

*Housing Needs Assessment; Local Governments/States.* The interim rule adds a new category of persons for whom states and local jurisdictions are required to assess housing assistance needs: Formerly homeless families and individuals who are receiving rapid re-housing assistance and are nearing the termination of that assistance. The addition of this category is intended to help focus communities on helping these families stay housed after their rapid re-housing assistance ends.

*Homeless Needs Assessment; Local Government/States.* The changes under the interim rule increase HUD's flexibility in establishing and modifying standards for collecting data on homeless populations and subpopulations and performance measures. The changes also provide additional definition to the description of the characteristics and needs of persons who are currently housed but threatened with homelessness. These changes permit HUD to more closely harmonize data included in each jurisdiction's Consolidated Plan with data that the Continuum(s) of Care for that jurisdiction will be required to collect and submit under the Continuum of Care program. The collection of consistent homeless needs data in these two planning processes will permit local and national assessment of progress in meeting the goals set forth in the FSP.

*Housing Market Analysis; Facilities, Housing, and Services for Homeless Persons; Local Governments/States.* The interim rule allows HUD to establish and modify descriptions of the facilities, housing, and services for homeless persons to increase consistency between the Consolidated Plan and the Continuum of Care Plan. The interim rule adds mainstream services to the inventory of services meeting the needs of homeless persons, consistent with the overall emphasis on using and collaborating with mainstream assistance programs to prevent and end homelessness. Similar to changes made to other sections, the special focus accorded to chronically homeless people is broadened to include families with children, veterans and their families, and unaccompanied youth, in order to reflect the priorities in the FSP.

*Strategic Plan; Homelessness Strategies; Local Government/States.* The interim rule refocuses the general homelessness-related strategies on the ultimate goals of reducing and ending homelessness and aligns them with Continuum of Care planning strategies and performance measures, such as shortening the period of time that persons experience homelessness and helping persons who were recently homeless avoid becoming homeless again. The changes under the interim rule also emphasize the priorities of the FSP. The strategic framework set out in this section is carried through in conforming changes to the Action Plan and performance reporting sections of the Consolidated Plan.

*Action Plan; Local Government/States.* The changes to the Action Plan sections for local governments and States require the ESG recipient to consult with applicable Continuums of Care when allocating funds in the area(s) served by the Continuum(s) of Care and the ESG recipient and when

developing the performance standards for the assisted activities. These changes reflect the McKinney-Vento Act requirements that ESG recipients consult with Continuums of Care on their allocation of ESG funds and that Continuums of Care in turn analyze patterns of use of ESG funds and help evaluate outcomes for ESG-funded projects. These changes are also consistent with the statutory scheme of the HEARTH Act, which generally requires increased collaboration between Continuums of Care and ESG recipients.

The changes under the interim rule for the ESG portion of the action plan require each local government seeking an ESG grant to specify the standards under which homelessness prevention and rapid re-housing assistance will be administered and describe the centralized or coordinated assessments system(s) that will be used. By helping to ensure that the program is administered fairly and methodically, these requirements provide balance to the broad discretion that ESG recipients are given in the design of their ESG programs. Including these standards in the action plan allows the program design to be strengthened as the plan is developed and refined through the consultation and citizen participation stages in the planning process. The requirements for states differ slightly from those that apply to local governments, in order to accommodate for the restrictions on states' use of ESG funds and the variety of areas and Continuums of Care their programs encompass. Under the state programs, the written standards for providing ESG assistance may vary by subrecipient, Continuum of Care, or the geographic area over which services are coordinated.

*Certifications.* The changes to the ESG certifications clarify the certifications and bring them into closer conformance with the corresponding requirements under part 576 and the McKinney-Vento Act.

## III. Justification for Interim Rulemaking

In accordance with its regulations on rulemaking at 24 CFR part 10, HUD generally publishes its rules for advance public comment. Notice and public procedures may be omitted, however, if HUD determines that, in a particular case or class of cases, notice and public procedure are ''impracticable, unnecessary, or contrary to the public interest.'' (See 24 CFR 10.1.)

In this case, HUD has determined that it would be contrary to the public interest to delay promulgation of the regulations for the Emergency Solutions Grants program because Congress has provided funding for this new program in the Department of Defense and Full-Year Continuing Appropriations Act, 2011 (Pub. L. 112–10, approved April 15, 2011) (FY 2011 Appropriations Act). The FY 2011 Appropriations Act appropriates, in section 2241 of the statute, $1,905,000,000 for homeless assistance grants, of which at least $225,000,000 shall be for the Emergency Solutions Grant program. While many federal programs, including HUD programs, received a reduction in funding in the FY 2011 Appropriations Act, Congress increased funding for HUD's homeless assistance grants, and for the first time, authorized funding for a program, (the Emergency Solutions Grants program). HUD interprets this increase in funding as recognition by Congress of the significant needs that remain to help America's homeless population and the expectation of Congress that HUD will move expediently to expend this funding to assist and serve the homeless through its programs. HUD interprets the substantial funding, a minimum of $225,000,000, for the Emergency Solutions Grant program, as recognition by Congress that this program, which is an expansion of the predecessor Emergency Shelter Grants program, and includes features that were part of the Recovery Act's HPRP, is one that can have an immediate impact in helping the homeless.

Given what HUD sees as a congressional charge to move expediently, HUD is issuing this rule providing for regulations for the Emergency Solutions Grants program as an interim rule. Interim regulations in place will allow HUD to move forward in making FY 2011 funds available to grantees. As has been discussed in this preamble, the foundation for the regulations for the Emergency Solutions Grants program are those of its predecessor program, the Emergency Shelters Grant program, regulations with which HUD grantees are well familiar. HUD grantees are also familiar with the requirements of the HPRP and, as the preamble has highlighted, this interim rule adopts many of the features and requirements of HPRP.

Although for the reasons stated above, HUD is issuing this rule to take immediate effect, HUD welcomes all comments on this interim rule and all comments will be taken into consideration in the development of the final rule.

## IV. Findings and Certifications

*Regulatory Planning and Review*

OMB reviewed this rule under Executive Order 12866, *Regulatory Planning and Review.* This rule was determined to be a ''significant regulatory action,'' as defined in section 3(f) of the order (although not an economically significant regulatory action under the order). As discussed earlier in this preamble, this interim rule establishes the regulations for the Emergency Solutions Grants program, which is the successor program to the Emergency Shelter Grants program. In establishing the regulations for the Emergency Solutions Grants program, the interim rule uses as its base the regulations for the Emergency Shelter Grants program and makes such changes as necessary to reflect the changes and focus of the Emergency Solutions Grants program. While emergency shelter remains an important component of the Emergency Solutions Grants program, the new Emergency Solutions Grants program places a greater focus on homelessness prevention for persons at risk of homelessness and rapid re-housing assistance for homeless persons. Accordingly, the rule does not alter the fundamental goal of the program, which is to assist those who are homeless and in danger of becoming homeless. Therefore, the administrative changes made by this rule do not result in an economic effect equal to $100 million, which would be approximately half of the program's funding ($225 million). HUD believes that the administrative changes made by the interim rule would also have no discernible impact upon the economy.

The slight shift in emphasis from emergency shelter in the Emergency Shelter Grants program to homelessness prevention and rapid rehousing assistance in the Emergency Solutions Grants program does not represent a significant regulatory change. Rapid rehousing is already familiar to HUD's homeless grantee providers from funding received under the HPRP, a temporary program funded through the American Recovery and Reinvestment Act of 2009, and their experience with this program which continues to today. Because HPRP activities will continue through September 30, 2012, the interim rule is directed to ensuring continuity between HPRP and Emergency Solutions Grant (ESG) program.

The docket file is available for public inspection in the Regulations Division, Office of the General Counsel, 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) 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.

*Environmental 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(2)(C)). The Finding of No Significant Impact is available for public inspection between the hours of 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, please schedule an appointment to review the FONSI 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 Information Relay Service at (800) 877–8339.

*Unfunded Mandates Reform Act*

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 interim rule does not impose a federal mandate on any state, local, or tribal government, or on the private sector, within the meaning of UMRA.

*Regulatory Flexibility Act*

The Regulatory Flexibility Act (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 solely addresses the allocation and use of grant funds under the new McKinney-Vento Act homeless assistance programs as consolidated and amended by the HEARTH Act. As discussed in the preamble, the majority of the regulatory provisions in this rule track the regulatory provisions of the existing Emergency Shelter Grants program, with which prospective recipients of Emergency Solutions Grant (ESG) are familiar. Accordingly, the transition from the Emergency Shelter Grants program to the Emergency Solutions Grant program, in regard to funding and program requirements, should raise minimal issues because applicants and grantees are well-familiar with these requirements and, through the years, in soliciting information on the burden of the Emergency Solutions Grant requirements, grantees have not advised that such requirements are burdensome. Therefore, HUD has determined that this rule would not have a significant economic impact on a substantial number of small entities.

Notwithstanding that determination, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

*Executive Order 13132, Federalism*

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either: (1) Imposes substantial direct compliance costs on state and local governments and is not required by statute, or (2) preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This final rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments nor preempt state law within the meaning of the executive order.

*Paperwork Reduction Act*

The information collection requirements contained in this interim rule have been submitted to OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number.

The burden of the information collections in this interim rule is estimated as follows:

REPORTING AND RECORDKEEPING BURDEN

| Information collection | Number of respondents | Response frequency (average) | Total annual responses | Burden hours per response | Total annual hours |
|---|---|---|---|---|---|
| 576.400(a) Consultation With Continuums of Care | 360 | 1 | 360 | 6.00 | 2,160 |
| 576.400(b) Coordination With Other Targeted Homeless Services | 2,360 | 1 | 2,360 | 8.00 | 18,880 |
| 576.400(c) System and Program Coordination With Mainstream Resources | 2,360 | 1 | 2,360 | 16.00 | 37,760 |
| 576.400(d) Centralized or Coordinated Assessment | 2,000 | 1 | 2,000 | 3.00 | 6,000 |
| 576.400(e) Written Standards for Determining the Amount of Assistance | 808 | 1 | 808 | 5.00 | 4,040 |
| 576.400(f) Participation in HMIS | 78,000 | 1 | 78,000 | 0.50 | 39,000 |
| 576.401(a) Initial Evaluation | 50,000 | 1 | 30,000 | 1.00 | 30,000 |
| 576.401(b) Recertification | 20,000 | 2 | 40,000 | 0.50 | 20,000 |
| 576.401(d) Connection to Mainstream Resources | 78,000 | 3 | 234,000 | 0.25 | 58,500 |
| 576.401(e) Housing Retention Plan | 50,000 | 1 | 50,000 | 0.75 | 37,500 |
| 576.402 Terminating Assistance | 808 | 1 | 808 | 4.00 | 3,232 |
| 576.403 Habitability Review | 52,000 | 1 | 52,000 | 0.6 | 31,200 |
| 576.405 Homeless Participation | 2,360 | 12 | 28,320 | 1.00 | 28,320 |
| 576.500 Recordkeeping Requirements | 2,360 | 1 | 2,360 | 12.75 | 30,009 |
| 576.501(b) Remedial Actions | 20 | 1 | 20 | 8.00 | 160 |
| 576.501(c) Recipient Sanctions | 360 | 1 | 360 | 12.00 | 4,320 |
| 576.501(c) Subrecipient Response | 2,000 | 1 | 2,000 | 8.00 | 16,000 |

REPORTING AND RECORDKEEPING BURDEN—Continued

| Information collection | Number of respondents | Response frequency (average) | Total annual responses | Burden hours per response | Total annual hours |
|---|---|---|---|---|---|
| Total | | | | | 367,081 |

*Total estimated burden hours:* 367,081.

In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning this collection of information to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the affected 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.

Interested persons are invited to submit comments regarding the information collection requirements in this rule. Comments must refer to the proposal by name and docket number (FR–5474–I–01) and be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Fax: (202) 395–6947, and Reports Liaison Officer, Office of the Assistant Secretary for Community Planning and Development, Department of Housing and Urban Development, Room 7233, 451 Seventh Street SW., Washington, DC 20410–7000.

Interested persons may submit comments regarding the information collection requirements 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.

**List of Subjects**

*24 CFR Part 91*

Aged, Grant programs—housing and community development, Homeless, Individuals with disabilities, Low- and moderate-income housing, Reporting and recordkeeping requirements.

*24 CFR Part 576*

Community facilities, Emergency solutions grants, Grant programs—housing and community development, Grant program—social programs, Homeless, Reporting and recordkeeping requirements.

Accordingly, for the reasons described in the preamble, parts 91 and 576 of title 24 of the Code of Federal Regulations are amended as follows:

## PART 91—CONSOLIDATED SUBMISSIONS FOR COMMUNITY PLANNING AND DEVELOPMENT PROGRAMS

■ 1. The authority citation for 24 CFR part 91 continues to read as follows:

**Authority:** 42 U.S.C. 3535(d), 3601–3619, 5301–5315, 11331–11388, 12701–12711, 12741–12756, and 12901–12912.

■ 2. In § 91.2, paragraph (a)(2) is revised to read as follows:

### § 91.2 Applicability.

(a) * * *

(2) The Emergency Solutions Grants (ESG) program (see 24 CFR part 576);

■ 3. In § 91.5, the definitions of ''Chronically homeless person,'' ''Disabling condition,'' ''Homeless family with children,'' and ''Homeless subpopulations'' are removed; the definition of ''Emergency shelter'' is revised; and the definitions of ''At risk of homelessness,'' ''Chronically homeless,'' ''Continuum of Care,'' ''Homeless Management Information System (HMIS),'' ''Rapid re-housing assistance,'' and ''Victim service provider'' are added to read as follows:

### § 91.5 Definitions.

* * * * *

*At risk of homelessness.* (1) An individual or family who:

(i) Has an annual income below 30 percent of median family income for the area, as determined by HUD;

(ii) Does not have sufficient resources or support networks, *e.g.,* family, friends, faith-based or other social networks, immediately available to prevent them from moving to an emergency shelter or another place described in paragraph (1) of the ''Homeless'' definition in this section; and

(iii) Meets one of the following conditions:

(A) Has moved because of economic reasons two or more times during the 60 days immediately preceding the application for homelessness prevention assistance;

(B) Is living in the home of another because of economic hardship;

(C) Has been notified in writing that their right to occupy their current housing or living situation will be terminated within 21 days after the date of application for assistance;

(D) Lives in a hotel or motel and the cost of the hotel or motel stay is not paid by charitable organizations or by federal, State, or local government programs for low-income individuals;

(E) Lives in a single-room occupancy or efficiency apartment unit in which there reside more than two persons or lives in a larger housing unit in which there reside more than 1.5 people per room, as defined by the U.S. Census Bureau;

(F) Is exiting a publicly funded institution, or system of care (such as a health-care facility, a mental health facility, foster care or other youth facility, or correction program or institution); or

(G) Otherwise lives in housing that has characteristics associated with instability and an increased risk of homelessness, as identified in the recipient's approved consolidated plan;

(2) A child or youth who does not qualify as ''homeless'' under this section, but qualifies as ''homeless'' under section 387(3) of the Runaway and Homeless Youth Act (42 U.S.C. 5732a(3)), section 637(11) of the Head Start Act (42 U.S.C. 9832(11)), section 41403(6) of the Violence Against Women Act of 1994 (42 U.S.C. 14043e–2(6)), section 330(h)(5)(A) of the Public Health Service Act (42 U.S.C.

254b(h)(5)(A)), section 3(m) of the Food and Nutrition Act of 2008 (7 U.S.C. 2012(m)), or section 17(b)(15) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)(15)); or

(3) A child or youth who does not qualify as ''homeless'' under this section, but qualifies as ''homeless'' under section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), and the parent(s) or guardian(s) of that child or youth if living with her or him.

* * * * *

*Chronically homeless.* (1) An individual who:

(i) Is homeless and lives in a place not meant for human habitation, a safe haven, or in an emergency shelter; and

(ii) Has been homeless and living or residing in a place not meant for human habitation, a safe haven, or in an emergency shelter continuously for at least one year or on at least four separate occasions in the last 3 years, where each homeless occasion was at least 15 days; and

(iii) Can be diagnosed with one or more of the following conditions: substance use disorder, serious mental illness, developmental disability (as defined in section 102 of the Developmental Disabilities Assistance Bill of Rights Act of 2000 (42 U.S.C. 15002)), post-traumatic stress disorder, cognitive impairments resulting from brain injury, or chronic physical illness or disability;

(2) An individual who has been residing in an institutional care facility, including a jail, substance abuse or mental health treatment facility, hospital, or other similar facility, for fewer than 90 days and met all of the criteria in paragraph (1) of this definition, before entering that facility; or

(3) A family with an adult head of household (or if there is no adult in the family, a minor head of household) who meets all of the criteria in paragraph (1) of this definition, including a family whose composition has fluctuated while the head of household has been homeless.

* * * * *

*Continuum of Care.* The group composed of representatives of relevant organizations, which generally includes nonprofit homeless providers, victim service providers, faith-based organizations, governments, businesses, advocates, public housing agencies, school districts, social service providers, mental health agencies, hospitals, universities, affordable housing developers, law enforcement, organizations that serve homeless and formerly homeless veterans, and homeless and formerly homeless persons that are organized to plan for and provide, as necessary, a system of outreach, engagement, and assessment; emergency shelter; rapid re-housing; transitional housing; permanent housing; and prevention strategies to address the various needs of homeless persons and persons at risk of homelessness for a specific geographic area.

*Emergency shelter.* Any facility, the primary purpose of which is to provide a temporary shelter for the homeless in general or for specific populations of the homeless, and which does not require occupants to sign leases or occupancy agreements.

* * * * *

*Homeless Management Information System (HMIS).* The information system designated by the Continuum of Care to comply with HUD's data collection, management, and reporting standards and used to collect client-level data and data on the provision of housing and services to homeless individuals and families and persons at risk of homelessness.

* * * * *

*Rapid re-housing assistance.* The provision of housing relocation and stabilization services and short- and/or medium-term rental assistance as necessary to help a homeless individual or family move as quickly as possible into permanent housing and achieve stability in that housing.

* * * * *

*Victim service provider.* A private nonprofit organization whose primary mission is to provide services to victims of domestic violence, dating violence, sexual assault, or stalking. This term includes rape crisis centers, battered women's shelters, domestic violence transitional housing programs, and other programs.

* * * * *

■ 4. In § 91.100, paragraph (a)(2) is revised and a new paragraph (d) is added to read as follows:

**§ 91.100 Consultation; local governments.**

(a) * * *

(2) When preparing the portions of the consolidated plan describing the jurisdiction's homeless strategy and the resources available to address the needs of homeless persons (particularly chronically homeless individuals and families, families with children, veterans and their families, and unaccompanied youth) and persons at risk of homelessness, the jurisdiction must consult with:

(i) The Continuum(s) of Care that serve(s) the jurisdiction's geographic area;

(ii) Public and private agencies that address housing, health, social service, victim services, employment, or education needs of low-income individuals and families; homeless individuals and families, including homeless veterans; youth; and/or other persons with special needs;

(iii) Publicly funded institutions and systems of care that may discharge persons into homelessness (such as health-care facilities, mental health facilities, foster care and other youth facilities, and corrections programs and institutions); and

(iv) Business and civic leaders.

* * * * *

(d) Emergency Solutions Grants (ESG). A jurisdiction that receives an ESG grant must consult with the Continuum of Care in determining how to allocate its ESG grant for eligible activities; in developing the performance standards for, and evaluating the outcomes of, projects and activities assisted by ESG funds; and in developing funding, policies, and procedures for the operation and administration of the HMIS.

* * * * *

■ 5. In § 91.105, paragraph (a)(2) is revised to read as follows:

**§ 91.105 Citizen participation plan; local governments.**

(a) * * *

(2) *Encouragement of citizen participation.* (i) The citizen participation plan must provide for and encourage citizens to participate in the development of any consolidated plan, any substantial amendment to the consolidated plan, and the performance report. These requirements are designed especially to encourage participation by low- and moderate-income persons, particularly those living in slum and blighted areas and in areas where CDBG funds are proposed to be used, and by residents of predominantly low- and moderate-income neighborhoods, as defined by the jurisdiction. A jurisdiction is also expected to take whatever actions are appropriate to encourage the participation of all its citizens, including minorities and non-English speaking persons, as well as persons with disabilities.

(ii) The jurisdiction shall encourage the participation of local and regional institutions, the Continuum of Care and other organizations (including businesses, developers, nonprofit organizations, philanthropic organizations, and community-based

and faith-based organizations) in the process of developing and implementing the consolidated plan.

(iii) The jurisdiction shall encourage, in conjunction with consultation with public housing agencies, the participation of residents of public and assisted housing developments, in the process of developing and implementing the consolidated plan, along with other low-income residents of targeted revitalization areas in which the developments are located. The jurisdictions shall make an effort to provide information to the public housing agency (PHA) about consolidated plan activities related to its developments and surrounding communities so that the PHA can make this information available at the annual public hearing required for the PHA Plan.

(iv) The jurisdiction should explore alternative public involvement techniques and quantitative ways to measure efforts that encourage citizen participation in a shared vision for change in communities and neighborhoods, and the review of program performance; *e.g.,* use of focus groups and the Internet.

* * * * *

■ 6. Section 91.110 is revised to read as follows:

**§ 91.110 Consultation; States.**

(a) When preparing the consolidated plan, the State shall consult with other public and private agencies that provide assisted housing (including any state housing agency administering public housing), health services, and social and fair housing services (including those focusing on services to children, elderly persons, persons with disabilities, persons with HIV/AIDS and their families, and homeless persons) during preparation of the consolidated plan.

(b) When preparing the portions of the consolidated plan describing the State's homeless strategy and the resources available to address the needs of homeless persons (particularly chronically homeless individuals and families, families with children, veterans and their families, and unaccompanied youth) and persons at risk of homelessness, the State must consult with:

(1) Each Continuum of Care within the state;

(2) Public and private agencies that address housing, health, social services, victim services, employment, or education needs of low-income individuals and families; of homeless individuals and families, including homeless veterans; youth; and/or of other persons with special needs;

(3) Publicly funded institutions and systems of care that may discharge persons into homelessness (such as health-care facilities, mental health facilities, foster care and other youth facilities, and corrections programs and institutions); and

(4) Business and civic leaders.

(c) When preparing the portion of its consolidated plan concerning lead-based paint hazards, the State shall consult with state or local health and child welfare agencies and examine existing data related to lead-based paint hazards and poisonings, including health department data on the addresses of housing units in which children have been identified as lead-poisoned.

(d) When preparing its method of distribution of assistance under the CDBG program, a State must consult with local governments in nonentitlement areas of the state.

(e) The State must also consult with each Continuum of Care within the state in determining how to allocate its ESG grant for eligible activities; developing the performance standards for, and evaluating the outcomes of, projects and activities assisted by ESG funds; and developing funding, policies, and procedures for the operation and administration of the HMIS.

■ 7. In § 91.115, paragraph (a)(2) is revised to read as follows:

**§ 91.115 Citizen participation plan; States.**

(a) * * *

(2) *Encouragement of citizen participation.* (i) The citizen participation plan must provide for and encourage citizens to participate in the development of the consolidated plan, any substantial amendments to the consolidated plan, and the performance report. These requirements are designed especially to encourage participation by low- and moderate-income persons, particularly those living in slum and blighted areas and in areas where CDBG funds are proposed to be used, and by residents of predominantly low- and moderate-income neighborhoods. A State is also expected to take whatever actions are appropriate to encourage the participation of all its citizens, including minorities and non-English speaking persons, as well as persons with disabilities.

(ii) The State shall encourage the participation of local, regional, and statewide institutions, Continuums of Care, and other organizations (including businesses, developers, nonprofit organizations, philanthropic organizations, and community-based and faith-based organizations) that are involved with or affected by the programs or activities covered by the consolidated plan in the process of developing and implementing the consolidated plan.

(iii) The state should explore alternative public involvement techniques that encourage a shared vision of change for the community and the review of program performance; *e.g.,* the use of focus groups and the Internet.

* * * * *

■ 8. In § 91.200, paragraph (b) is revised to read as follows:

**§ 91.200 General.**

* * * * *

(b) The jurisdiction shall describe:

(1) The lead agency or entity responsible for overseeing the development of the plan and the significant aspects of the process by which the consolidated plan was developed;

(2) The identity of the agencies, groups, organizations, and others who participated in the process; and

(3) A jurisdiction's consultations with:

(i) The Continuum of Care that serves the jurisdiction's geographic area;

(ii) Public and private agencies that address housing, health, social services, employment, or education needs of low-income individuals and families, of homeless individuals and families, of youth, and/or of other persons with special needs;

(iii) Publicly funded institutions and systems of care that may discharge persons into homelessness (such as health-care facilities, mental health facilities, foster care and other youth facilities, and corrections programs and institutions);

(iv) Other entities.

* * * * *

■ 9. In § 91.205, paragraph (b)(1) and paragraph (c) are revised to read as follows:

**§ 91.205 Housing and homeless needs assessment.**

* * * * *

(b)(1)(i) The plan shall estimate the number and type of families in need of housing assistance for:

(A) Extremely low-income, low-income, moderate-income, and middle-income families;

(B) Renters and owners;

(C) Elderly persons;

(D) Single persons;

(E) Large families;

(F) Public housing residents;

(G) Families on the public housing and Section 8 tenant-based waiting list;

(H) Persons with HIV/AIDS and their families;

(I) Victims of domestic violence, dating violence, sexual assault, and stalking;

(J) Persons with disabilities; and

(K) Formerly homeless families and individuals who are receiving rapid re-housing assistance and are nearing the termination of that assistance.

(ii) The description of housing needs shall include a concise summary of the cost burden and severe cost burden, overcrowding (especially for large families), and substandard housing conditions being experienced by extremely low-income, low-income, moderate-income, and middle-income renters and owners compared to the jurisdiction as a whole. (The jurisdiction must define in its consolidated plan the terms ''standard condition'' and ''substandard condition but suitable for rehabilitation.'')

* * * * *

(c) *Persons who are homeless or at risk of homelessness.* (1) The plan must describe, in a form prescribed by HUD, the nature and extent of unsheltered and sheltered homelessness, including rural homelessness, within the jurisdiction. At a minimum, the recipient must use data from the Homeless Management Information System (HMIS) and data from the Point-In-Time (PIT) count conducted in accordance with HUD standards.

(i) The description must include, for each category of homeless persons specified by HUD (including chronically homeless individuals and families, families with children, veterans and their families, and unaccompanied youth), the number of persons experiencing homelessness on a given night, the number of persons who experience homelessness each year, the number of persons who lose their housing and become homeless each year, the number of persons who exit homelessness each year, the number of days that persons experience homelessness, and other measures specified by HUD.

(ii) The plan also must contain a brief narrative description of the nature and extent of homelessness by racial and ethnic group, to the extent information is available.

(2) The plan must include a narrative description of the characteristics and needs of low-income individuals and families with children (especially extremely low-income) who are currently housed but threatened with homelessness. This information may be evidenced by the characteristics and needs of individuals and families with children who are currently entering the homeless assistance system or appearing for the first time on the streets. The description must also specify particular housing characteristics that have been linked with instability and an increased risk of homelessness.

* * * * *

10. In § 91.210, paragraph (c) is revised to read as follows:

**§ 91.210 Housing market analysis.**

* * * * *

(c) *Facilities, housing, and services for homeless persons.* The plan must include a brief inventory of facilities, housing, and services that meet the needs of homeless persons within the jurisdiction, particularly chronically homeless individuals and families, families with children, veterans and their families, and unaccompanied youth.

(1) The inventory of facilities and housing (*e.g.,* emergency shelter, transitional housing, and permanent supportive housing) must be presented in a form specified by HUD.

(2) The inventory of services must include both services targeted to homeless persons and mainstream services, such as health, mental health, and employment services to the extent those services are used to complement services targeted to homeless persons.

* * * * *

■ 11. In § 91.215, paragraphs (b), (d), (k), and (l) are revised to read as follows:

**§ 91.215 Strategic plan.**

* * * * *

(b) *Affordable housing.* With respect to affordable housing, the consolidated plan must include the priority housing needs table prescribed by HUD and must do the following:

(1) The affordable housing section shall describe how the characteristics of the housing market and the severity of housing problems and needs of extremely low-income, low-income, and moderate-income renters and owners, persons at risk of homelessness, and homeless persons identified in accordance with § 91.205 provided the rationale for establishing allocation priorities and use of funds made available for rental assistance, production of new units, rehabilitation of existing units, or acquisition of existing units (including preserving affordable housing units that may be lost from the assisted housing inventory for any reason). Household and income types may be grouped together for discussion where the analysis would apply to more than one of them. If the jurisdiction intends to use HOME funds for tenant-based assistance, the jurisdiction must specify local market conditions that led to the choice of that option.

(2) The affordable housing section shall include specific objectives that describe proposed accomplishments, that the jurisdiction hopes to achieve and must specify the number of extremely low-income, low-income, and moderate-income families, and homeless persons to whom the jurisdiction will provide affordable housing as defined in 24 CFR 92.252 for rental housing and 24 CFR 92.254 for homeownership over a specific time period.

* * * * *

(d) *Homelessness.* The consolidated plan must include the priority homeless needs table prescribed by HUD and must describe the jurisdiction's strategy for reducing and ending homelessness through:

(1) Reaching out to homeless persons (especially unsheltered persons) and assessing their individual needs;

(2) Addressing the emergency shelter and transitional housing needs of homeless persons;

(3) Helping homeless persons (especially chronically homeless individuals and families, families with children, veterans and their families, and unaccompanied youth) make the transition to permanent housing and independent living, including shortening the period of time individuals and families experience homelessness, facilitating access for homeless individuals and families to affordable housing units, and preventing individuals and families who were recently homeless from becoming homeless again; and

(4) Helping low-income individuals and families avoid becoming homeless, especially extremely low-income individuals and families who are:

(i) Likely to become homeless after being discharged from publicly funded institutions and systems of care into homelessness (such as health-care facilities, mental health facilities, foster care and other youth facilities, and corrections programs and institutions) or

(ii) Receiving assistance from public and private agencies that address housing, health, social services, employment, education, or youth needs.

* * * * *

(k) *Institutional structure.* The consolidated plan must provide a concise summary of the institutional structure, including private industry; nonprofit organizations; community and faith-based organizations; philanthropic organizations; the Continuum of Care; and public institutions, departments and agencies through which the jurisdiction will carry out its housing, homeless, and community development plan; a brief assessment of the strengths

and gaps in that delivery system; and a concise summary of what the jurisdiction will do to overcome gaps in the institutional structure for carrying out its strategy for addressing its priority needs.

(l) *Coordination.* The consolidated plan must provide a concise summary of the jurisdiction's activities to enhance coordination among the Continuum of Care, public and assisted housing providers, and private and governmental health, mental health, and service agencies. The summary must address the jurisdiction's efforts to coordinate housing assistance and services for homeless persons (especially chronically homeless individuals and families, families with children, veterans and their families, and unaccompanied youth) and persons who were recently homeless but now live in permanent housing. With respect to the public entities involved, the plan must describe the means of cooperation and coordination among the State and any units of general local government in the metropolitan area in the implementation of its consolidated plan. With respect to economic development, the jurisdiction should describe efforts to enhance coordination with private industry, businesses, developers, and social service agencies.

■ 12. In § 91.220, paragraph (i) is revised and a new paragraph (l)(4) is added to read as follows:

**§ 91.220 Action plan.**

* * * * *

(i) *Homeless and other special needs activities.* (1) The jurisdiction must describe its one-year goals and specific actions steps for reducing and ending homelessness through:

(i) Reaching out to homeless persons (especially unsheltered persons) and assessing their individual needs;

(ii) Addressing the emergency shelter and transitional housing needs of homeless persons; and

(iii) Helping homeless persons (especially chronically homeless individuals and families, families with children, veterans and their families, and unaccompanied youth) make the transition to permanent housing and independent living, including shortening the period of time that individuals and families experience homelessness, facilitating access for homeless individuals and families to affordable housing units, and preventing individuals and families who were recently homeless from becoming homeless again; and

(iv) Helping low-income individuals and families avoid becoming homeless, especially extremely low-income individuals and families who are:

(A) Being discharged from publicly funded institutions and systems of care, such as health-care facilities, mental health facilities, foster care and other youth facilities, and corrections programs and institutions; or

(B) Receiving assistance from public and private agencies that address housing, health, social services, employment, education, or youth needs.

(2) The jurisdiction must specify the activities that it plans to undertake during the next year to address the housing and supportive service needs identified in accordance with § 91.215(e) with respect to persons who are not homeless but have other special needs.

* * * * *

(l) * * *

(4) *ESG.* (i) The jurisdiction must include its written standards for providing ESG assistance. The minimum requirements regarding these standards are set forth in 24 CFR 576.400(e)(1) and (e)(3).

(ii) If the Continuum of Care for the jurisdiction's area has established a centralized or coordinated assessment system that meets HUD requirements, the jurisdiction must describe that centralized or coordinated assessment system. The requirements for using a centralized or coordinated assessment system, including the exception for victim service providers, are set forth under 24 CFR 576.400(d).

(iii) The jurisdiction must identify its process for making subawards and a description of how the jurisdiction intends to make its allocation available to private nonprofit organizations (including community and faith-based organizations), and in the case of urban counties, funding to participating units of local government.

(iv) If the jurisdiction is unable to meet the homeless participation requirement in 24 CFR 576.405(a), the jurisdiction must specify its plan for reaching out to and consulting with homeless or formerly homeless individuals in considering and making policies and decisions regarding any facilities or services that receive funding under ESG.

(v) The jurisdiction must describe the performance standards for evaluating ESG activities.

(vi) The jurisdiction must describe its consultation with each Continuum of Care that serves the jurisdiction in determining how to allocate ESG funds each program year; developing the performance standards for, and evaluating the outcomes of, projects and activities assisted by ESG funds; and developing funding, policies, and procedures for the administration and operation of the HMIS.

■ 13. In § 91.225, paragraph (c) is revised to read as follows:

**§ 91.225 Certifications.**

* * * * *

(c) *ESG.* For jurisdictions that seek ESG funding under 24 CFR part 576, the following certifications are required:

(1) If an emergency shelter's rehabilitation costs exceed 75 percent of the value of the building before rehabilitation, the jurisdiction will maintain the building as a shelter for homeless individuals and families for a minimum of 10 years after the date the building is first occupied by a homeless individual or family after the completed rehabilitation;

(2) If the cost to convert a building into an emergency shelter exceeds 75 percent of the value of the building after conversion, the jurisdiction will maintain the building as a shelter for homeless individuals and families for a minimum of 10 years after the date the building is first occupied by a homeless individual or family after the completed conversion;

(3) In all other cases where ESG funds are used for renovation, the jurisdiction will maintain the building as a shelter for homeless individuals and families for a minimum of 3 years after the date the building is first occupied by a homeless individual or family after the completed renovation;

(4) In the case of assistance involving shelter operations or essential services related to street outreach or emergency shelter, the jurisdiction will provide services or shelter to homeless individuals and families for the period during which the ESG assistance is provided, without regard to a particular site or structure, so long as the jurisdiction serves the same type of persons (*e.g.,* families with children, unaccompanied youth, disabled individuals, or victims of domestic violence) or persons in the same geographic area;

(5) Any renovation carried out with ESG assistance shall be sufficient to ensure that the building involved is safe and sanitary;

(6) The jurisdiction will assist homeless individuals in obtaining permanent housing, appropriate supportive services (including medical and mental health treatment, victim services, counseling, supervision, and other services essential for achieving independent living), and other Federal, State, local, and private assistance available for these individuals;

(7) The jurisdiction will obtain matching amounts required under 24 CFR 576.201;

(8) The jurisdiction has established and is implementing procedures to ensure the confidentiality of records pertaining to any individual provided family violence prevention or treatment services under any project assisted under the ESG program, including protection against the release of the address or location of any family violence shelter project, except with the written authorization of the person responsible for the operation of that shelter;

(9) To the maximum extent practicable, the jurisdiction will involve, through employment, volunteer services, or otherwise, homeless individuals and families in constructing, renovating, maintaining, and operating facilities assisted under the ESG program, in providing services assisted under the program, and in providing services for occupants of facilities assisted under the program;

(10) All activities the jurisdiction undertakes with assistance under ESG are consistent with the jurisdiction's consolidated plan; and

(11) The jurisdiction will establish and implement, to the maximum extent practicable and where appropriate, policies and protocols for the discharge of persons from publicly funded institutions or systems of care (such as health-care facilities, mental health facilities, foster care or other youth facilities, or correction programs and institutions) in order to prevent this discharge from immediately resulting in homelessness for these persons.

* * * * *

■ 14. In § 91.300, paragraph (b) is revised to read as follows:

**§ 91.300 General.**

* * * * *

(b) The State shall describe:

(1) The lead agency or entity responsible for overseeing the development of the plan and the significant aspects of the process by which the consolidated plan was developed;

(2) The identity of the agencies, groups, organizations, and others who participated in the process;

(3) The State's consultations with:

(i) Continuums of Care;

(ii) Public and private agencies that address housing, health, social services, employment, or education needs of low-income individuals and families, homeless individuals and families, youth, and/or other persons with special needs;

(iii) Publicly funded institutions and systems of care that may discharge persons into homelessness (such as health-care facilities, mental health facilities, foster care and other youth facilities, and corrections programs and institutions); and

(iv) Other entities.

* * * * *

■ 15. In § 91.305, paragraphs (b)(1) and (c) are revised to read as follows:

**§ 91.305 Housing and homeless needs assessment.**

* * * * *

(b)(1)(i) The plan shall estimate the number and type of families in need of housing assistance for:

(A) Extremely low-income, low-income, moderate-income, and middle-income families;

(B) Renters and owners;

(C) Elderly persons;

(D) Single persons;

(E) Large families;

(F) Public housing residents;

(G) Families on the public housing and Section 8 tenant-based waiting list;

(H) Persons with HIV/AIDS and their families;

(I) Victims of domestic violence, dating violence, sexual assault, and stalking;

(J) Persons with disabilities; and

(K) Formerly homeless families and individuals who are receiving rapid re-housing assistance and are nearing the termination of that assistance.

(ii) The description of housing needs shall include a concise summary of the cost burden and severe cost burden, overcrowding (especially for large families), and substandard housing conditions being experienced by extremely low-income, low-income, moderate-income, and middle-income renters and owners compared to the state as a whole. (The state must define in its consolidated plan the terms ''standard condition'' and ''substandard condition but suitable for rehabilitation.'')

* * * * *

(c) *Persons who are homeless or at risk of homelessness.* (1) The plan must describe, in a form prescribed by HUD, the nature and extent of homelessness, including rural homelessness, within the state.

(i) The description must include, for each category of homeless persons specified by HUD (including chronically homeless individuals and families, families with children, veterans and their families, and unaccompanied youth), the number of persons experiencing homelessness on a given night, the number of persons who experience homelessness each year, the number of persons who lose their housing and become homeless each year, the number of persons who exit homelessness each year, and the number of days that persons experience homelessness, and any other measures specified by HUD.

(ii) The plan also must contain a brief narrative description of the nature and extent of homelessness by racial and ethnic group, to the extent that information is available.

(2) The plan must include a narrative description of the characteristics and needs of low-income individuals and families with children (especially extremely low-income) who are currently housed but threatened with homelessness. This information may be evidenced by the characteristics and needs of individuals and families with children who are currently entering the homeless assistance system or appearing for the first time on the streets. The description must also include specific housing characteristics linked to instability and an increased risk of homelessness.

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■ 16. In § 91.310, paragraph (b) is revised to read as follows:

**§ 91.310 Housing market analysis.**

* * * * *

(b) *Facilities, housing, and services for homeless persons.* The plan must include a brief inventory of facilities and services that meet the needs of homeless persons within the state, particularly chronically homeless individuals and families, families with children, veterans and their families, and unaccompanied youth.

(1) The inventory of facilities and housing (*e.g.,* emergency shelter, transitional housing, and permanent supportive housing) must be presented in a form specified by HUD.

(2) The inventory of services must include both services targeted to homeless persons and mainstream services, such as health, mental health, and employment services to the extent those services are used to complement services targeted to homeless persons.

* * * * *

■ 17. In § 91.315, paragraphs (b), (d), (k), and (l) are revised to read as follows:

**§ 91.315 Strategic plan.**

* * * * *

(b) *Affordable housing.* With respect to affordable housing, the consolidated plan must include the priority housing needs table prescribed by HUD and the following:

(1) The affordable housing section shall describe how the characteristics of

the housing market and the severity of housing problems and needs of extremely low-income, low-income, and moderate-income renters and owners, persons at risk of homelessness, and homeless persons identified in accordance with § 91.305 provided the rationale for establishing allocation priorities and use of funds made available for rental assistance, production of new units, rehabilitation of existing units, or acquisition of existing units (including preserving affordable housing units that may be lost from the assisted housing inventory for any reason). Household and income types may be grouped together for discussion where the analysis would apply to more than one of them. If the State intends to use HOME funds for tenant-based rental assistance, the State must specify local market conditions that led to the choice of that option.

(2) The affordable housing section shall include specific objectives that describe proposed accomplishments that the jurisdiction hopes to achieve and must specify the number of extremely low-income, low-income, and moderate-income families, and homeless persons to whom the jurisdiction will provide affordable housing as defined in 24 CFR 92.252 for rental housing and 24 CFR 92.254 for homeownership over a specific time period.

* * * * *

(d) *Homelessness.* The consolidated plan must include the priority homeless needs table prescribed by HUD and must describe the State's strategy for reducing and ending homelessness through:

(1) Reaching out to homeless persons (especially unsheltered persons) and assessing their individual needs;

(2) Addressing the emergency shelter and transitional housing needs of homeless persons;

(3) Helping homeless persons (especially chronically homeless individuals and families, families with children, veterans and their families, and unaccompanied youth) make the transition to permanent housing and independent living, including shortening the period of time individuals and families experience homelessness, facilitating access for homeless individuals and families to affordable housing units, and preventing individuals and families who were recently homeless from becoming homeless again; and

(4) Helping low-income individuals and families avoid becoming homeless, especially extremely low-income individuals and families who are:

(i) Likely to become homeless after being discharged from publicly funded institutions and systems of care (such as health-care facilities, mental health facilities, foster care and other youth facilities, and corrections programs and institutions); or

(ii) Receiving assistance from public or private agencies that address housing, health, social services, employment, education, or youth needs.

* * * * *

(k) *Institutional structure.* The consolidated plan must provide a concise summary of the institutional structure, including businesses, developers, nonprofit organizations, philanthropic organizations, community-based and faith-based organizations, the Continuum of Care, and public institutions, departments, and agencies through which the State will carry out its housing, homeless, and community development plan; a brief assessment of the strengths and gaps in that delivery system; and a concise summary of what the State will do to overcome gaps in the institutional structure for carrying out its strategy for addressing its priority needs.

(l) *Coordination.* The consolidated plan must provide a concise summary of the jurisdiction's activities to enhance coordination among Continuums of Care, public and assisted housing providers, and private and governmental health, mental health, and service agencies. The summary must include the jurisdiction's efforts to coordinate housing assistance and services for homeless persons (especially chronically homeless individuals and families, families with children, veterans and their families, and unaccompanied youth) and persons who were recently homeless but now live in permanent housing. With respect to the public entities involved, the plan must describe the means of cooperation and coordination among the State and any units of general local government in the implementation of its consolidated plan. With respect to economic development, the State should describe efforts to enhance coordination with private industry, businesses, developers, and social service agencies.

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■ 18. In § 91.320, paragraphs (h) and (k)(3) are revised to read as follows:

**§ 91.320 Action plan.**

* * * * *

(h) *Homeless and other special needs activities.* (1) The State must describe its one-year goals and specific actions steps for reducing and ending homelessness through:

(i) Reaching out to homeless persons (especially unsheltered persons) and assessing their individual needs;

(ii) Addressing the emergency shelter and transitional housing needs of homeless persons;

(iii) Helping homeless persons (especially chronically homeless individuals and families, families with children, veterans and their families, and unaccompanied youth) make the transition to permanent housing and independent living, including shortening the period of time that individuals and families experience homelessness, facilitating access for homeless individuals and families to affordable housing units, and preventing individuals and families who were recently homeless from becoming homeless again; and

(iv) Helping low-income individuals and families avoid becoming homeless, especially extremely low-income individuals and families who are:

(A) Being discharged from publicly funded institutions and systems of care (such as health-care facilities, mental health facilities, foster care and other youth facilities, and corrections programs and institutions); or

(B) Receiving assistance from public or private agencies that address housing, health, social services, employment, education, or youth needs.

(2) The State must specify the activities that it plans to undertake during the next year to address the housing and supportive service needs identified in accordance with § 91.315(e) with respect to persons who are not homeless but have other special needs.

* * * * *

(k) * * *

(3) *ESG.* (i) The State must either include its written standards for providing Emergency Solutions Grant (ESG) assistance or describe its requirements for its subrecipients to establish and implement written standards for providing ESG assistance. The minimum requirements regarding these standards are set forth in 24 CFR 576.400(e)(2) and (e)(3).

(ii) For each area of the State in which a Continuum of Care has established a centralized or coordinated assessment system that meets HUD requirements, the State must describe that centralized or coordinated assessment system. The requirements for using a centralized or coordinated assessment system, including the exception for victim service providers, are set forth under 24 CFR 576.400(d).

(iii) The State must identify its process for making subawards and a

description of how the State intends to make its allocation available to units of general local government and private nonprofit organizations, including community and faith-based organizations.

(iv) The State must describe the performance standards for evaluating ESG activities.

(v) The State must describe its consultation with each Continuum of Care in determining how to allocate ESG funds each program year; developing the performance standards for, and evaluating the outcomes of, projects and activities assisted by ESG funds; and developing funding, policies and procedures for the administration and operation of the HMIS.

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■ 19. In § 91.325, paragraph (c) is revised to read as follows:

**§ 91.325 Certifications.**

* * * * *

(c) *ESG.* Each State that seeks funding under ESG must provide the following certifications:

(1) The State will obtain any matching amounts required under 24 CFR 576.201 in a manner so that its subrecipients that are least capable of providing matching amounts receive the benefit of the exception under 24 CFR 576.201(a)(2);

(2) The State will establish and implement, to the maximum extent practicable and where appropriate, policies, and protocols for the discharge of persons from publicly funded institutions or systems of care (such as health-care facilities, mental health facilities, foster care or other youth facilities, or correction programs and institutions) in order to prevent this discharge from immediately resulting in homelessness for these persons;

(3) The State will develop and implement procedures to ensure the confidentiality of records pertaining to any individual provided family violence prevention or treatment services under any project assisted under the ESG program, including protection against the release of the address or location of any family violence shelter project, except with the written authorization of the person responsible for the operation of that shelter; and

(4) The State will ensure that its subrecipients comply with the following criteria:

(i) If an emergency shelter's rehabilitation costs exceed 75 percent of the value of the building before rehabilitation, the building will be maintained as a shelter for homeless individuals and families for a minimum of 10 years after the date the building is first occupied by a homeless individual or family after the completed rehabilitation;

(ii) If the cost to convert a building into an emergency shelter exceeds 75 percent of the value of the building after conversion, the building will be maintained as a shelter for homeless individuals and families for a minimum of 10 years after the date the building is first occupied by a homeless individual or family after the completed conversion;

(iii) In all other cases where ESG funds are used for renovation, the building will be maintained as a shelter for homeless individuals and families for a minimum of 3 years after the date the date the building is first occupied by a homeless individual or family after the completed renovation;

(iv) If ESG funds are used for shelter operations or essential services related to street outreach or emergency shelter, the subrecipient will provide services or shelter to homeless individuals and families for the period during which the ESG assistance is provided, without regard to a particular site or structure, so long as the applicant serves the same type of persons (*e.g.,* families with children, unaccompanied youth, veterans, disabled individuals, or victims of domestic violence) or persons in the same geographic area;

(v) Any renovation carried out with ESG assistance shall be sufficient to ensure that the building involved is safe and sanitary;

(vi) The subrecipient will assist homeless individuals in obtaining permanent housing, appropriate supportive services (including medical and mental health treatment, counseling, supervision, and other services essential for achieving independent living), and other Federal, State, local, and private assistance available for such individuals;

(vii) To the maximum extent practicable, the subrecipient will involve, through employment, volunteer services, or otherwise, homeless individuals and families in constructing, renovating, maintaining, and operating facilities assisted under ESG, in providing services assisted under ESG, and in providing services for occupants of facilities assisted under ESG; and

(viii) All activities the subrecipient undertakes with assistance under ESG are consistent with the State's current HUD-approved consolidated plan.

* * * * *

■ 20. In § 91.520, paragraph (b) is revised, paragraphs (c), (d), (e), (f), and (g) are redesignated as paragraphs (d), (e), (f), (h), and (i), respectively, and new paragraphs (c) and (g) are added to read as follows:

**§ 91.520 Performance reports.**

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(b) *Affordable housing.* The report shall include an evaluation of the jurisdiction's progress in meeting its specific objective of providing affordable housing, including the number and types of families served. This element of the report must include the number of extremely low-income, low-income, moderate-income, middle-income, and homeless persons served.

(c) *Homelessness.* The report must include, in a form prescribed by HUD, an evaluation of the jurisdiction's progress in meeting its specific objectives for reducing and ending homelessness through:

(1) Reaching out to homeless persons (especially unsheltered persons) and assessing their individual needs;

(2) Addressing the emergency shelter and transitional housing needs of homeless persons;

(3) Helping homeless persons (especially chronically homeless individuals and families, families with children, veterans and their families, and unaccompanied youth) make the transition to permanent housing and independent living, including shortening the period of time that individuals and families experience homelessness, facilitating access for homeless individuals and families to affordable housing units, and preventing individuals and families who were recently homeless from becoming homeless again; and

(4) Helping low-income individuals and families avoid becoming homeless, especially extremely low-income individuals and families and those who are

(i) Likely to become homeless after being discharged from publicly funded institutions and systems of care (such as health-care facilities, mental health facilities, foster care and other youth facilities, and corrections programs and institutions);

(ii) Receiving assistance from public or private agencies that address housing, health, social services, employment, education, or youth needs.

* * * * *

(g) *ESG.* For jurisdictions receiving funding under the ESG program provided in 24 CFR part 576, the report, in a form prescribed by HUD, must include the number of persons assisted, the types of assistance provided, and the project or program outcomes data measured under the performance

standards developed in consultation with the Continuum(s) of Care.

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■ 21. Part 576 is revised to read as follows:

## PART 576—EMERGENCY SOLUTIONS GRANTS PROGRAM

### Subpart A—General Provisions

Sec.
576.1 Applicability and purpose.
576.2 Definitions.
576.3 Allocation of funding.

### Subpart B—Program Components and Eligible Activities

576.100 General provisions and expenditure limits.
576.101 Street outreach component.
576.102 Emergency shelter component.
576.103 Homelessness prevention component.
576.104 Rapid re-housing assistance component.
576.105 Housing relocation and stabilization services.
576.106 Short-term and medium-term rental assistance.
576.107 HMIS component.
576.108 Administrative activities.
576.109 Indirect costs.

### Subpart C—Award and Use of Funds

576.200 Submission requirements and grant approval.
576.201 Matching requirement.
576.202 Means of carrying out grant activities.
576.203 Obligation, expenditure, and payment requirements.

### Subpart D—Reallocations

576.300 In general.
576.301 Metropolitan cities and urban counties.
576.302 States.
576.303 Territories.
576.304 Alternative method.

### Subpart E—Program Requirements

576.400 Area-wide systems coordination requirements.
576.401 Evaluation of program participant eligibility and needs.
576.402 Terminating assistance.
576.403 Shelter and housing standards.
576.404 Conflicts of interest.
576.405 Homeless participation.
576.406 Faith-based activities.
576.407 Other Federal requirements.
576.408 Displacement, relocation, and acquisition.

### Subpart F—Grant Administration

576.500 Recordkeeping and reporting requirements.
576.501 Enforcement.

**Authority:** 42 U.S.C. 11371 *et seq.,* 42 U.S.C. 3535(d).

## Subpart A—General Provisions

### § 576.1 Applicability and purpose.

This part implements the Emergency Solutions Grants (ESG) program authorized by subtitle B of title IV of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11371–11378). The program authorizes the Department of Housing and Urban Development (HUD) to make grants to States, units of general purpose local government, and territories for the rehabilitation or conversion of buildings for use as emergency shelter for the homeless, for the payment of certain expenses related to operating emergency shelters, for essential services related to emergency shelters and street outreach for the homeless, and for homelessness prevention and rapid re-housing assistance.

### § 576.2 Definitions.

*At risk of homelessness* means: (1) An individual or family who:

(i) Has an annual income below 30 percent of median family income for the area, as determined by HUD;

(ii) Does not have sufficient resources or support networks, *e.g.,* family, friends, faith-based or other social networks, immediately available to prevent them from moving to an emergency shelter or another place described in paragraph (1) of the ''homeless'' definition in this section; and

(iii) Meets one of the following conditions:

(A) Has moved because of economic reasons two or more times during the 60 days immediately preceding the application for homelessness prevention assistance;

(B) Is living in the home of another because of economic hardship;

(C) Has been notified in writing that their right to occupy their current housing or living situation will be terminated within 21 days after the date of application for assistance;

(D) Lives in a hotel or motel and the cost of the hotel or motel stay is not paid by charitable organizations or by Federal, State, or local government programs for low-income individuals;

(E) Lives in a single-room occupancy or efficiency apartment unit in which there reside more than two persons or lives in a larger housing unit in which there reside more than 1.5 persons reside per room, as defined by the U.S. Census Bureau;

(F) Is exiting a publicly funded institution, or system of care (such as a health-care facility, a mental health facility, foster care or other youth facility, or correction program or institution); or

(G) Otherwise lives in housing that has characteristics associated with instability and an increased risk of homelessness, as identified in the recipient's approved consolidated plan;

(2) A child or youth who does not qualify as ''homeless'' under this section, but qualifies as ''homeless'' under section 387(3) of the Runaway and Homeless Youth Act (42 U.S.C. 5732a(3)), section 637(11) of the Head Start Act (42 U.S.C. 9832(11)), section 41403(6) of the Violence Against Women Act of 1994 (42 U.S.C. 14043e–2(6)), section 330(h)(5)(A) of the Public Health Service Act (42 U.S.C. 254b(h)(5)(A)), section 3(m) of the Food and Nutrition Act of 2008 (7 U.S.C. 2012(m)), or section 17(b)(15) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)(15)); or

(3) A child or youth who does not qualify as ''homeless'' under this section, but qualifies as ''homeless'' under section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), and the parent(s) or guardian(s) of that child or youth if living with her or him.

*Consolidated plan* means a plan prepared in accordance with 24 CFR part 91. An *approved consolidated* plan means a consolidated plan that has been approved by HUD in accordance with 24 CFR part 91.

*Continuum of Care* means the group composed of representatives of relevant organizations, which generally includes nonprofit homeless providers; victim service providers; faith-based organizations; governments; businesses; advocates; public housing agencies; school districts; social service providers; mental health agencies; hospitals; universities; affordable housing developers; law enforcement; organizations that serve homeless and formerly homeless veterans, and homeless and formerly homeless persons that are organized to plan for and provide, as necessary, a system of outreach, engagement, and assessment; emergency shelter; rapid re-housing; transitional housing; permanent housing; and prevention strategies to address the various needs of homeless persons and persons at risk of homelessness for a specific geographic area.

*Emergency shelter* means any facility, the primary purpose of which is to provide a temporary shelter for the homeless in general or for specific populations of the homeless and which does not require occupants to sign leases or occupancy agreements. Any project funded as an emergency shelter

under a Fiscal Year 2010 Emergency Solutions grant may continue to be funded under ESG.

*Homeless* means:

(1) An individual or family who lacks a fixed, regular, and adequate nighttime residence, meaning:

(i) An individual or family with a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings, including a car, park, abandoned building, bus or train station, airport, or camping ground;

(ii) An individual or family living in a supervised publicly or privately operated shelter designated to provide temporary living arrangements (including congregate shelters, transitional housing, and hotels and motels paid for by charitable organizations or by federal, state, or local government programs for low-income individuals); or

(iii) An individual who is exiting an institution where he or she resided for 90 days or less and who resided in an emergency shelter or place not meant for human habitation immediately before entering that institution;

(2) An individual or family who will imminently lose their primary nighttime residence, provided that:

(i) The primary nighttime residence will be lost within 14 days of the date of application for homeless assistance;

(ii) No subsequent residence has been identified; and

(iii) The individual or family lacks the resources or support networks, *e.g.,* family, friends, faith-based or other social networks, needed to obtain other permanent housing;

(3) Unaccompanied youth under 25 years of age, or families with children and youth, who do not otherwise qualify as homeless under this definition, but who:

(i) Are defined as homeless under section 387 of the Runaway and Homeless Youth Act (42 U.S.C. 5732a), section 637 of the Head Start Act (42 U.S.C. 9832), section 41403 of the Violence Against Women Act of 1994 (42 U.S.C. 14043e–2), section 330(h) of the Public Health Service Act (42 U.S.C. 254b(h)), section 3 of the Food and Nutrition Act of 2008 (7 U.S.C. 2012), section 17(b) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)) or section 725 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a);

(ii) Have not had a lease, ownership interest, or occupancy agreement in permanent housing at any time during the 60 days immediately preceding the date of application for homeless assistance;

(iii) Have experienced persistent instability as measured by two moves or more during the 60-day period immediately preceding the date of applying for homeless assistance; and

(iv) Can be expected to continue in such status for an extended period of time because of chronic disabilities, chronic physical health or mental health conditions, substance addiction, histories of domestic violence or childhood abuse (including neglect), the presence of a child or youth with a disability, or two or more barriers to employment, which include the lack of a high school degree or General Education Development (GED), illiteracy, low English proficiency, a history of incarceration or detention for criminal activity, and a history of unstable employment; or

(4) Any individual or family who:

(i) Is fleeing, or is attempting to flee, domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening conditions that relate to violence against the individual or a family member, including a child, that has either taken place within the individual's or family's primary nighttime residence or has made the individual or family afraid to return to their primary nighttime residence;

(ii) Has no other residence; and

(iii) Lacks the resources or support networks, *e.g.,* family, friends, faith-based or other social networks, to obtain other permanent housing.

*Homeless Management Information System (HMIS)* means the information system designated by the Continuum of Care to comply with the HUD's data collection, management, and reporting standards and used to collect client-level data and data on the provision of housing and services to homeless individuals and families and persons at-risk of homelessness.

*Metropolitan city* means a city that was classified as a metropolitan city under 42 U.S.C. 5302(a) for the fiscal year immediately preceding the fiscal year for which ESG funds are made available. This term includes the District of Columbia.

*Private nonprofit organization* means a private nonprofit organization that is a secular or religious organization described in section 501(c) of the Internal Revenue Code of 1986 and which is exempt from taxation under subtitle A of the Code, has an accounting system and a voluntary board, and practices nondiscrimination in the provision of assistance. A private nonprofit organization does not include a governmental organization, such as a public housing agency or housing finance agency.

*Program income* shall have the meaning provided in 24 CFR 85.25. Program income includes any amount of a security or utility deposit returned to the recipient or subrecipient.

*Program participant* means an individual or family who is assisted under ESG program.

*Program year* means the consolidated program year established by the recipient under 24 CFR part 91.

*Recipient* means any State, territory, metropolitan city, or urban county, or in the case of reallocation, any unit of general purpose local government that is approved by HUD to assume financial responsibility and enters into a grant agreement with HUD to administer assistance under this part.

*State* means each of the several States and the Commonwealth of Puerto Rico.

*Subrecipient* means a unit of general purpose local government or private nonprofit organization to which a recipient makes available ESG funds.

*Territory* means each of the following: the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands.

*Unit of general purpose local government* means any city, county, town, township, parish, village, or other general purpose political subdivision of a State.

*Urban county* means a county that was classified as an urban county under 42 U.S.C. 5302(a) for the fiscal year immediately preceding the fiscal year for which ESG funds are made available.

*Victim service provider* means a private nonprofit organization whose primary mission is to provide services to victims of domestic violence, dating violence, sexual assault, or stalking. This term includes rape crisis centers, battered women's shelters, domestic violence transitional housing programs, and other programs.

**§ 576.3 Allocation of funding.**

(a) *Territories.* HUD will set aside for allocation to the territories up to 0.2 percent, but not less than 0.1 percent, of the total amount of each appropriation under this part in any fiscal year. HUD will allocate this set-aside amount to each territory based on its proportionate share of the total population of all territories and its rate of compliance with the most recent expenditure deadline under § 576.203.

(b) *States, metropolitan cities, and urban counties.* HUD will allocate the amounts that remain after the set-aside to territories under paragraph (a) of this section to States, metropolitan cities, and urban counties, as follows:

(1) HUD will provide that the percentage of the total amount available for allocation to each State, metropolitan city, or urban county is equal to the percentage of the total amount available under section 106 of the Housing and Community Development Act of 1974 for the prior fiscal year that was allocated to that State, metropolitan city, or urban county.

(2) Except as otherwise provided by law, if the amount a metropolitan city or urban county would be allocated under paragraph (b)(1) is less than 0.05 percent of the total fiscal year appropriation for ESG, that amount will be added to the allocation for the State in which the city or county is located.

(c) *Notification of allocation amount.* HUD will notify each State, metropolitan city, urban county, and territory that is eligible to receive an allocation under this section of the amount of its allocation.

## Subpart B—Program Components and Eligible Activities

### § 576.100 General provisions and expenditure limits.

(a) ESG funds may be used for five program components: street outreach, emergency shelter, homelessness prevention, rapid re-housing assistance, and HMIS; as well as administrative activities. The five program components and the eligible activities that may be funded under each are set forth in § 576.101 through § 576.107. Eligible administrative activities are set forth in § 576.108.

(b) The total amount of the recipient's fiscal year grant that may be used for street outreach and emergency shelter activities cannot exceed the greater of:

(1) 60 percent of the recipient's fiscal year grant; or

(2) The amount of Fiscal Year 2010 grant funds committed for homeless assistance activities.

(c) The total amount of ESG funds that may be used for administrative activities cannot exceed 7.5 percent of the recipient's fiscal year grant.

(d) Subject to the cost principles in OMB Circulars A–87 (2 CFR 225) and A–122 (2 CFR 230) and other requirements in this part, employee compensation and other overhead costs directly related to carrying out street outreach, emergency shelter, homelessness prevention, rapid re-housing, and HMIS are eligible costs of those program components. These costs are not subject to the expenditure limit in paragraph (c) of this section.

### § 576.101 Street outreach component.

(a) *Eligible costs.* Subject to the expenditure limit in § 576.100(b), ESG funds may be used for costs of providing essential services necessary to reach out to unsheltered homeless people; connect them with emergency shelter, housing, or critical services; and provide urgent, nonfacility-based care to unsheltered homeless people who are unwilling or unable to access emergency shelter, housing, or an appropriate health facility. For the purposes of this section, the term ''unsheltered homeless people'' means individuals and families who qualify as homeless under paragraph (1)(i) of the ''homeless'' definition under § 576.2. The eligible costs and requirements for essential services consist of:

(1) *Engagement.* The costs of activities to locate, identify, and build relationships with unsheltered homeless people and engage them for the purpose of providing immediate support, intervention, and connections with homeless assistance programs and/or mainstream social services and housing programs. These activities consist of making an initial assessment of needs and eligibility; providing crisis counseling; addressing urgent physical needs, such as providing meals, blankets, clothes, or toiletries; and actively connecting and providing information and referrals to programs targeted to homeless people and mainstream social services and housing programs, including emergency shelter, transitional housing, community-based services, permanent supportive housing, and rapid re-housing programs. Eligible costs include the cell phone costs of outreach workers during the performance of these activities.

(2) *Case management.* The cost of assessing housing and service needs, arranging, coordinating, and monitoring the delivery of individualized services to meet the needs of the program participant. Eligible services and activities are as follows: using the centralized or coordinated assessment system as required under § 576.400(d); conducting the initial evaluation required under § 576.401(a), including verifying and documenting eligibility; counseling; developing, securing and coordinating services; obtaining Federal, State, and local benefits; monitoring and evaluating program participant progress; providing information and referrals to other providers; and developing an individualized housing and service plan, including planning a path to permanent housing stability.

(3) *Emergency health services.* (i) Eligible costs are for the direct outpatient treatment of medical conditions and are provided by licensed medical professionals operating in community-based settings, including streets, parks, and other places where unsheltered homeless people are living.

(ii) ESG funds may be used only for these services to the extent that other appropriate health services are inaccessible or unavailable within the area.

(iii) Eligible treatment consists of assessing a program participant's health problems and developing a treatment plan; assisting program participants to understand their health needs; providing directly or assisting program participants to obtain appropriate emergency medical treatment; and providing medication and follow-up services.

(4) *Emergency mental health services.* (i) Eligible costs are the direct outpatient treatment by licensed professionals of mental health conditions operating in community-based settings, including streets, parks, and other places where unsheltered people are living.

(ii) ESG funds may be used only for these services to the extent that other appropriate mental health services are inaccessible or unavailable within the community.

(iii) Mental health services are the application of therapeutic processes to personal, family, situational, or occupational problems in order to bring about positive resolution of the problem or improved individual or family functioning or circumstances.

(iv) Eligible treatment consists of crisis interventions, the prescription of psychotropic medications, explanation about the use and management of medications, and combinations of therapeutic approaches to address multiple problems.

(5) *Transportation.* The transportation costs of travel by outreach workers, social workers, medical professionals, or other service providers are eligible, provided that this travel takes place during the provision of services eligible under this section. The costs of transporting unsheltered people to emergency shelters or other service facilities are also eligible. These costs include the following:

(i) The cost of a program participant's travel on public transportation;

(ii) If service workers use their own vehicles, mileage allowance for service workers to visit program participants;

(iii) The cost of purchasing or leasing a vehicle for the recipient or subrecipient in which staff transports program participants and/or staff serving program participants, and the cost of gas, insurance, taxes and maintenance for the vehicle; and

(iv) The travel costs of recipient or subrecipient staff to accompany or assist program participants to use public transportation.

(6) *Services for special populations.* ESG funds may be used to provide services for homeless youth, victim services, and services for people living with HIV/AIDS, so long as the costs of providing these services are eligible under paragraphs (a)(1) through (a)(5) of this section. The term *victim services* means services that assist program participants who are victims of domestic violence, dating violence, sexual assault, or stalking, including services offered by rape crisis centers and domestic violence shelters, and other organizations with a documented history of effective work concerning domestic violence, dating violence, sexual assault, or stalking.

(b) *Minimum period of use.* The recipient or subrecipient must provide services to homeless individuals and families for at least the period during which ESG funds are provided.

(c) *Maintenance of effort.* (1) If the recipient or subrecipient is a unit of general purpose local government, its ESG funds cannot be used to replace funds the local government provided for street outreach and emergency shelter services during the immediately preceding 12-month period, unless HUD determines that the unit of general purpose local government is in a severe financial deficit.

(2) Upon the recipient's request, HUD will determine whether the unit of general purpose local government is in a severe financial deficit, based on the recipient's demonstration of each of the following:

(i) The average poverty rate in the unit of general purpose local government's jurisdiction was equal to or greater than 125 percent of the average national poverty rate, during the calendar year for which the most recent data are available, as determined according to information from the U.S. Census Bureau.

(ii) The average per-capita income in the unit of general purpose local government's jurisdiction was less than 75 percent of the average national per-capita income, during the calendar year for which the most recent data are available, as determined according to information from the Census Bureau.

(iii) The unit of general purpose local government has a current annual budget deficit that requires a reduction in funding for services for homeless people.

(iv) The unit of general purpose local government has taken all reasonable steps to prevent a reduction in funding of services for homeless people. Reasonable steps may include steps to increase revenue generation, steps to maximize cost savings, or steps to reduce expenditures in areas other than services for homeless people.

**§ 576.102 Emergency shelter component.**

(a) *General.* Subject to the expenditure limit in § 576.100(b), ESG funds may be used for costs of providing essential services to homeless families and individuals in emergency shelters, renovating buildings to be used as emergency shelter for homeless families and individuals, and operating emergency shelters.

(1) *Essential services.* ESG funds may be used to provide essential services to individuals and families who are in an emergency shelter, as follows:

(i) *Case management.* The cost of assessing, arranging, coordinating, and monitoring the delivery of individualized services to meet the needs of the program participant is eligible. Component services and activities consist of:

(A) Using the centralized or coordinated assessment system as required under § 576.400(d);

(B) Conducting the initial evaluation required under § 576.401(a), including verifying and documenting eligibility;

(C) Counseling;

(D) Developing, securing, and coordinating services and obtaining Federal, State, and local benefits;

(E) Monitoring and evaluating program participant progress;

(F) Providing information and referrals to other providers;

(G) Providing ongoing risk assessment and safety planning with victims of domestic violence, dating violence, sexual assault, and stalking; and

(H) Developing an individualized housing and service plan, including planning a path to permanent housing stability.

(ii) *Child care.* The costs of child care for program participants, including providing meals and snacks, and comprehensive and coordinated sets of appropriate developmental activities, are eligible. The children must be under the age of 13, unless they are disabled. Disabled children must be under the age of 18. The child-care center must be licensed by the jurisdiction in which it operates in order for its costs to be eligible.

(iii) *Education services.* When necessary for the program participant to obtain and maintain housing, the costs of improving knowledge and basic educational skills are eligible. Services include instruction or training in consumer education, health education, substance abuse prevention, literacy, English as a Second Language, and General Educational Development (GED). Component services or activities are screening, assessment and testing; individual or group instruction; tutoring; provision of books, supplies and instructional material; counseling; and referral to community resources.

(iv) *Employment assistance and job training.* The costs of employment assistance and job training programs are eligible, including classroom, online, and/or computer instruction; on-the-job instruction; and services that assist individuals in securing employment, acquiring learning skills, and/or increasing earning potential. The cost of providing reasonable stipends to program participants in employment assistance and job training programs is an eligible cost. Learning skills include those skills that can be used to secure and retain a job, including the acquisition of vocational licenses and/or certificates. Services that assist individuals in securing employment consist of employment screening, assessment, or testing; structured job skills and job-seeking skills; special training and tutoring, including literacy training and prevocational training; books and instructional material; counseling or job coaching; and referral to community resources.

(v) *Outpatient health services.* Eligible costs are for the direct outpatient treatment of medical conditions and are provided by licensed medical professionals. Emergency Solutions Grant (ESG) funds may be used only for these services to the extent that other appropriate health services are unavailable within the community. Eligible treatment consists of assessing a program participant's health problems and developing a treatment plan; assisting program participants to understand their health needs; providing directly or assisting program participants to obtain appropriate medical treatment, preventive medical care, and health maintenance services, including emergency medical services; providing medication and follow-up services; and providing preventive and noncosmetic dental care.

(vi) *Legal services.* (A) Eligible costs are the hourly fees for legal advice and representation by attorneys licensed and in good standing with the bar association of the State in which the services are provided, and by person(s) under the supervision of the licensed attorney, regarding matters that interfere with the program participant's ability to obtain and retain housing.

(B) Emergency Solutions Grant (ESG) funds may be used only for these

services to the extent that other appropriate legal services are unavailable or inaccessible within the community.

(C) Eligible subject matters are child support, guardianship, paternity, emancipation, and legal separation, orders of protection and other civil remedies for victims of domestic violence, dating violence, sexual assault, and stalking, appeal of veterans and public benefit claim denials, and the resolution of outstanding criminal warrants.

(D) Component services or activities may include client intake, preparation of cases for trial, provision of legal advice, representation at hearings, and counseling.

(E) Fees based on the actual service performed (*i.e.,* fee for service) are also eligible, but only if the cost would be less than the cost of hourly fees. Filing fees and other necessary court costs are also eligible. If the subrecipient is a legal services provider and performs the services itself, the eligible costs are the subrecipient's employees' salaries and other costs necessary to perform the services.

(F) Legal services for immigration and citizenship matters and issues relating to mortgages are ineligible costs. Retainer fee arrangements and contingency fee arrangements are ineligible costs.

(vii) *Life skills training.* The costs of teaching critical life management skills that may never have been learned or have been lost during the course of physical or mental illness, domestic violence, substance use, and homelessness are eligible costs. These services must be necessary to assist the program participant to function independently in the community. Component life skills training are budgeting resources, managing money, managing a household, resolving conflict, shopping for food and needed items, improving nutrition, using public transportation, and parenting.

(viii) *Mental health services.* (A) Eligible costs are the direct outpatient treatment by licensed professionals of mental health conditions.

(B) ESG funds may only be used for these services to the extent that other appropriate mental health services are unavailable or inaccessible within the community.

(C) Mental health services are the application of therapeutic processes to personal, family, situational, or occupational problems in order to bring about positive resolution of the problem or improved individual or family functioning or circumstances. Problem areas may include family and marital relationships, parent-child problems, or symptom management.

(D) Eligible treatment consists of crisis interventions; individual, family, or group therapy sessions; the prescription of psychotropic medications or explanations about the use and management of medications; and combinations of therapeutic approaches to address multiple problems.

(ix) *Substance abuse treatment services.* (A) Eligible substance abuse treatment services are designed to prevent, reduce, eliminate, or deter relapse of substance abuse or addictive behaviors and are provided by licensed or certified professionals.

(B) ESG funds may only be used for these services to the extent that other appropriate substance abuse treatment services are unavailable or inaccessible within the community.

(C) Eligible treatment consists of client intake and assessment, and outpatient treatment for up to 30 days. Group and individual counseling and drug testing are eligible costs. Inpatient detoxification and other inpatient drug or alcohol treatment are not eligible costs.

(x) *Transportation.* Eligible costs consist of the transportation costs of a program participant's travel to and from medical care, employment, child care, or other eligible essential services facilities. These costs include the following:

(A) The cost of a program participant's travel on public transportation;

(B) If service workers use their own vehicles, mileage allowance for service workers to visit program participants;

(C) The cost of purchasing or leasing a vehicle for the recipient or subrecipient in which staff transports program participants and/or staff serving program participants, and the cost of gas, insurance, taxes, and maintenance for the vehicle; and

(D) The travel costs of recipient or subrecipient staff to accompany or assist program participants to use public transportation.

(xi) *Services for special populations.* ESG funds may be used to provide services for homeless youth, victim services, and services for people living with HIV/AIDS, so long as the costs of providing these services are eligible under paragraphs (a)(1)(i) through (a)(1)(x) of this section. The term *victim services* means services that assist program participants who are victims of domestic violence, dating violence, sexual assault, or stalking, including services offered by rape crisis centers and domestic violence shelters, and other organizations with a documented history of effective work concerning domestic violence, dating violence, sexual assault, or stalking.

(2) *Renovation.* Eligible costs include labor, materials, tools, and other costs for renovation (including major rehabilitation of an emergency shelter or conversion of a building into an emergency shelter). The emergency shelter must be owned by a government entity or private nonprofit organization.

(3) *Shelter operations.* Eligible costs are the costs of maintenance (including minor or routine repairs), rent, security, fuel, equipment, insurance, utilities, food, furnishings, and supplies necessary for the operation of the emergency shelter. Where no appropriate emergency shelter is available for a homeless family or individual, eligible costs may also include a hotel or motel voucher for that family or individual.

(4) *Assistance required under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA).* Eligible costs are the costs of providing URA assistance under § 576.408, including relocation payments and other assistance to persons displaced by a project assisted with ESG funds. Persons that receive URA assistance are not considered ''program participants'' for the purposes of this part, and relocation payments and other URA assistance are not considered ''rental assistance'' or ''housing relocation and stabilization services'' for the purposes of this part.

(b) *Prohibition against involuntary family separation.* The age, of a child under age 18 must not be used as a basis for denying any family's admission to an emergency shelter that uses Emergency Solutions Grant (ESG) funding or services and provides shelter to families with children under age 18.

(c) *Minimum period of use.* (1) *Renovated buildings.* Each building renovated with ESG funds must be maintained as a shelter for homeless individuals and families for not less than a period of 3 or 10 years, depending on the type of renovation and the value of the building. The ''value of the building'' is the reasonable monetary value assigned to the building, such as the value assigned by an independent real estate appraiser. The minimum use period must begin on the date the building is first occupied by a homeless individual or family after the completed renovation. A minimum period of use of 10 years, required for major rehabilitation and conversion, must be enforced by a recorded deed or use restriction.

(i) *Major rehabilitation.* If the rehabilitation cost of an emergency

shelter exceeds 75 percent of the value of the building before rehabilitation, the minimum period of use is 10 years.

(ii) *Conversion.* If the cost to convert a building into an emergency shelter exceeds 75 percent of the value of the building after conversion, the minimum period of use is 10 years.

(iii) *Renovation other than major rehabilitation or conversion.* In all other cases where ESG funds are used for renovation, the minimum period of use is 3 years.

(2) *Essential services and shelter operations.* Where the recipient or subrecipient uses ESG funds solely for essential services or shelter operations, the recipient or subrecipient must provide services or shelter to homeless individuals and families at least for the period during which the ESG funds are provided. The recipient or subrecipient does not need to limit these services or shelter to a particular site or structure, so long as the site or structure serves the same type of persons originally served with the assistance (*e.g.,* families with children, unaccompanied youth, disabled individuals, or victims of domestic violence) or serves homeless persons in the same area where the recipient or subrecipient originally provided the services or shelter.

(d) *Maintenance of effort.* The maintenance of effort requirements under § 576.101(c), which apply to the use of ESG funds for essential services related to street outreach, also apply for the use of such funds for essential services related to emergency shelter.

**§ 576.103 Homelessness prevention component.**

ESG funds may be used to provide housing relocation and stabilization services and short- and/or medium-term rental assistance necessary to prevent an individual or family from moving into an emergency shelter or another place described in paragraph (1) of the ''homeless'' definition in § 576.2. This assistance, referred to as homelessness prevention, may be provided to individuals and families who meet the criteria under the ''at risk of homelessness'' definition, or who meet the criteria in paragraph (2), (3), or (4) of the ''homeless'' definition in § 576.2 and have an annual income below 30 percent of median family income for the area, as determined by HUD. The costs of homelessness prevention are only eligible to the extent that the assistance is necessary to help the program participant regain stability in the program participant's current permanent housing or move into other permanent housing and achieve stability in that housing. Homelessness prevention must be provided in accordance with the housing relocation and stabilization services requirements in § 576.105, the short-term and medium-term rental assistance requirements in § 576.106, and the written standards and procedures established under § 576.400.

**§ 576.104 Rapid re-housing assistance component.**

ESG funds may be used to provide housing relocation and stabilization services and short- and/or medium-term rental assistance as necessary to help a homeless individual or family move as quickly as possible into permanent housing and achieve stability in that housing. This assistance, referred to as rapid re-housing assistance, may be provided to program participants who meet the criteria under paragraph (1) of the ''homeless'' definition in § 576.2 or who meet the criteria under paragraph (4) of the ''homeless'' definition and live in an emergency shelter or other place described in paragraph (1) of the ''homeless'' definition. The rapid re-housing assistance must be provided in accordance with the housing relocation and stabilization services requirements in § 576.105, the short- and medium-term rental assistance requirements in § 576.106, and the written standards and procedures established under § 576.400.

**§ 576.105 Housing relocation and stabilization services.**

(a) *Financial assistance costs.* Subject to the general conditions under § 576.103 and § 576.104, ESG funds may be used to pay housing owners, utility companies, and other third parties for the following costs:

(1) *Rental application fees.* ESG funds may pay for the rental housing application fee that is charged by the owner to all applicants.

(2) *Security deposits.* ESG funds may pay for a security deposit that is equal to no more than 2 months' rent.

(3) *Last month's rent.* If necessary to obtain housing for a program participant, the last month's rent may be paid from ESG funds to the owner of that housing at the time the owner is paid the security deposit and the first month's rent. This assistance must not exceed one month's rent and must be included in calculating the program participant's total rental assistance, which cannot exceed 24 months during any 3-year period.

(4) *Utility deposits.* ESG funds may pay for a standard utility deposit required by the utility company for all customers for the utilities listed in paragraph (5) of this section.

(5) *Utility payments.* ESG funds may pay for up to 24 months of utility payments per program participant, per service, including up to 6 months of utility payments in arrears, per service. A partial payment of a utility bill counts as one month. This assistance may only be provided if the program participant or a member of the same household has an account in his or her name with a utility company or proof of responsibility to make utility payments. Eligible utility services are gas, electric, water, and sewage. No program participant shall receive more than 24 months of utility assistance within any 3-year period.

(6) *Moving costs.* ESG funds may pay for moving costs, such as truck rental or hiring a moving company. This assistance may include payment of temporary storage fees for up to 3 months, provided that the fees are accrued after the date the program participant begins receiving assistance under paragraph (b) of this section and before the program participant moves into permanent housing. Payment of temporary storage fees in arrears is not eligible.

(b) *Services costs.* Subject to the general restrictions under § 576.103 and § 576.104, ESG funds may be used to pay the costs of providing the following services:

(1) *Housing search and placement.* Services or activities necessary to assist program participants in locating, obtaining, and retaining suitable permanent housing, include the following:

(i) Assessment of housing barriers, needs, and preferences;

(ii) Development of an action plan for locating housing;

(iii) Housing search;

(iv) Outreach to and negotiation with owners;

(v) Assistance with submitting rental applications and understanding leases;

(vi) Assessment of housing for compliance with Emergency Solutions Grant (ESG) requirements for habitability, lead-based paint, and rent reasonableness;

(vii) Assistance with obtaining utilities and making moving arrangements; and

(viii) Tenant counseling.

(2) *Housing stability case management.* ESG funds may be used to pay cost of assessing, arranging, coordinating, and monitoring the delivery of individualized services to facilitate housing stability for a program participant who resides in permanent housing or to assist a program participant in overcoming immediate barriers to obtaining housing. This

assistance cannot exceed 30 days during the period the program participant is seeking permanent housing and cannot exceed 24 months during the period the program participant is living in permanent housing. Component services and activities consist of:

(A) Using the centralized or coordinated assessment system as required under § 576.400(d), to evaluate individuals and families applying for or receiving homelessness prevention or rapid re-housing assistance;

(B) Conducting the initial evaluation required under § 576.401(a), including verifying and documenting eligibility, for individuals and families applying for homelessness prevention or rapid re-housing assistance;

(C) Counseling;

(D) Developing, securing, and coordinating services and obtaining Federal, State, and local benefits;

(E) Monitoring and evaluating program participant progress;

(F) Providing information and referrals to other providers;

(G) Developing an individualized housing and service plan, including planning a path to permanent housing stability; and

(H) Conducting re-evaluations required under § 576.401(b).

(3) *Mediation.* ESG funds may pay for mediation between the program participant and the owner or person(s) with whom the program participant is living, provided that the mediation is necessary to prevent the program participant from losing permanent housing in which the program participant currently resides.

(4) *Legal services.* ESG funds may pay for legal services, as set forth in § 576.102(a)(1)(vi), except that the eligible subject matters also include landlord/tenant matters, and the services must be necessary to resolve a legal problem that prohibits the program participant from obtaining permanent housing or will likely result in the program participant losing the permanent housing in which the program participant currently resides.

(5) *Credit repair.* ESG funds may pay for credit counseling and other services necessary to assist program participants with critical skills related to household budgeting, managing money, accessing a free personal credit report, and resolving personal credit problems. This assistance does not include the payment or modification of a debt.

(c) *Maximum amounts and periods of assistance.* The recipient may set a maximum dollar amount that a program participant may receive for each type of financial assistance under paragraph (a) of this section. The recipient may also set a maximum period for which a program participant may receive any of the types of assistance or services under this section. However, except for housing stability case management, the total period for which any program participant may receive the services under paragraph (b) of this section must not exceed 24 months during any 3-year period. The limits on the assistance under this section apply to the total assistance an individual receives, either as an individual or as part of a family.

(d) *Use with other subsidies.* Financial assistance under paragraph (a) of this section cannot be provided to a program participant who is receiving the same type of assistance through other public sources or to a program participant who has been provided with replacement housing payments under the URA, during the period of time covered by the URA payments.

**§ 576.106 Short-term and medium-term rental assistance.**

(a) *General provisions.* Subject to the general conditions under § 576.103 and § 576.104, the recipient or subrecipient may provide a program participant with up to 24 months of rental assistance during any 3-year period. This assistance may be short-term rental assistance, medium-term rental assistance, payment of rental arrears, or any combination of this assistance.

(1) Short-term rental assistance is assistance for up to 3 months of rent.

(2) Medium-term rental assistance is assistance for more than 3 months but not more than 24 months of rent.

(3) Payment of rental arrears consists of a one-time payment for up to 6 months of rent in arrears, including any late fees on those arrears.

(4) Rental assistance may be tenant-based or project-based, as set forth in paragraphs (h) and (i) of this section.

(b) *Discretion to set caps and conditions.* Subject to the requirements of this section, the recipient may set a maximum amount or percentage of rental assistance that a program participant may receive, a maximum number of months that a program participant may receive rental assistance, or a maximum number of times that a program participant may receive rental assistance. The recipient may also require program participants to share in the costs of rent.

(c) *Use with other subsidies.* Except for a one-time payment of rental arrears on the tenant's portion of the rental payment, rental assistance cannot be provided to a program participant who is receiving tenant-based rental assistance, or living in a housing unit receiving project-based rental assistance or operating assistance, through other public sources. Rental assistance may not be provided to a program participant who has been provided with replacement housing payments under the URA during the period of time covered by the URA payments.

(d) *Rent restrictions.* (1) Rental assistance cannot be provided unless the rent does not exceed the Fair Market Rent established by HUD, as provided under 24 CFR part 888, and complies with HUD's standard of rent reasonableness, as established under 24 CFR 982.507.

(2) For purposes of calculating rent under this section, the rent shall equal the sum of the total monthly rent for the unit, any fees required for occupancy under the lease (other than late fees and pet fees) and, if the tenant pays separately for utilities, the monthly allowance for utilities (excluding telephone) established by the public housing authority for the area in which the housing is located.

(e) *Rental assistance agreement.* The recipient or subrecipient may make rental assistance payments only to an owner with whom the recipient or subrecipient has entered into a rental assistance agreement. The rental assistance agreement must set forth the terms under which rental assistance will be provided, including the requirements that apply under this section. The rental assistance agreement must provide that, during the term of the agreement, the owner must give the recipient or subrecipient a copy of any notice to the program participant to vacate the housing unit, or any complaint used under state or local law to commence an eviction action against the program participant.

(f) *Late payments.* The recipient or subrecipient must make timely payments to each owner in accordance with the rental assistance agreement. The rental assistance agreement must contain the same payment due date, grace period, and late payment penalty requirements as the program participant's lease. The recipient or subrecipient is solely responsible for paying late payment penalties that it incurs with non-ESG funds.

(g) *Lease.* Each program participant receiving rental assistance must have a legally binding, written lease for the rental unit, unless the assistance is solely for rental arrears. The lease must be between the owner and the program participant. Where the assistance is solely for rental arrears, an oral agreement may be accepted in place of a written lease, if the agreement gives the program participant an enforceable leasehold interest under state law and

the agreement and rent owed are sufficiently documented by the owner's financial records, rent ledgers, or canceled checks. For program participants living in housing with project-based rental assistance under paragraph (i) of this section, the lease must have an initial term of one year.

(h) *Tenant-based rental assistance.* (1) A program participant who receives tenant-based rental assistance may select a housing unit in which to live and may move to another unit or building and continue to receive rental assistance, as long as the program participant continues to meet the program requirements.

(2) The recipient may require that all program participants live within a particular area for the period in which the rental assistance is provided.

(3) The rental assistance agreement with the owner must terminate and no further rental assistance payments under that agreement may be made if:

(i) The program participant moves out of the housing unit for which the program participant has a lease;

(ii) The lease terminates and is not renewed; or

(iii) The program participant becomes ineligible to receive ESG rental assistance.

(i) *Project-based rental assistance.* If the recipient or subrecipient identifies a permanent housing unit that meets ESG requirements and becomes available before a program participant is identified to lease the unit, the recipient or subrecipient may enter into a rental assistance agreement with the owner to reserve the unit and subsidize its rent in accordance with the following requirements:

(1) The rental assistance agreement may cover one or more permanent housing units in the same building. Each unit covered by the rental assistance agreement (''assisted unit'') may only be occupied by program participants, except as provided under paragraph (i)(4) of this section.

(2) The recipient or subrecipient may pay up to 100 percent of the first month's rent, provided that a program participant signs a lease and moves into the unit before the end of the month for which the first month's rent is paid. The rent paid before a program participant moves into the unit must not exceed the rent to be charged under the program participant's lease and must be included when determining that program participant's total rental assistance.

(3) The recipient or subrecipient may make monthly rental assistance payments only for each whole or partial month an assisted unit is leased to a program participant. When a program participant moves out of an assisted unit, the recipient or subrecipient may pay the next month's rent, *i.e.,* the first month's rent for a new program participant, as provided in paragraph (i)(2) of this section.

(4) The program participant's lease must not condition the term of occupancy to the provision of rental assistance payments. If the program participant is determined ineligible or reaches the maximum number of months over which rental assistance can be provided, the recipient or subrecipient must suspend or terminate the rental assistance payments for the unit. If the payments are suspended, the individual or family may remain in the assisted unit as permitted under the lease, and the recipient or subrecipient may resume payments if the individual or family again becomes eligible and needs further rental assistance. If the payments are terminated, the rental assistance may be transferred to another available unit in the same building, provided that the other unit meets all ESG requirements.

(5) The rental assistance agreement must have an initial term of one year. When a new program participant moves into an assisted unit, the term of the rental assistance agreement may be extended to cover the initial term of the program participant's lease. If the program participant's lease is renewed, the rental assistance agreement may be renewed or extended, as needed, up to the maximum number of months for which the program participant remains eligible. However, under no circumstances may the recipient or subrecipient commit ESG funds to be expended beyond the expenditure deadline in § 576.203 or commit funds for a future ESG grant before the grant is awarded.

(j) *Changes in household composition.* The limits on the assistance under this section apply to the total assistance an individual receives, either as an individual or as part of a family.

**§ 576.107 HMIS component.**

(a) *Eligible costs.*

(1) The recipient or subrecipient may use ESG funds to pay the costs of contributing data to the HMIS designated by the Continuum of Care for the area, including the costs of:

(i) Purchasing or leasing computer hardware;

(ii) Purchasing software or software licenses;

(iii) Purchasing or leasing equipment, including telephones, fax machines, and furniture;

(iv) Obtaining technical support;

(v) Leasing office space;

(vi) Paying charges for electricity, gas, water, phone service, and high-speed data transmission necessary to operate or contribute data to the HMIS;

(vii) Paying salaries for operating HMIS, including:

(A) Completing data entry;

(B) Monitoring and reviewing data quality;

(C) Completing data analysis;

(D) Reporting to the HMIS Lead;

(F) Training staff on using the HMIS or comparable database; and

(G) Implementing and complying with HMIS requirements;

(viii) Paying costs of staff to travel to and attend HUD-sponsored and HUD-approved training on HMIS and programs authorized by Title IV of the McKinney-Vento Homeless Assistance Act;

(ix) Paying staff travel costs to conduct intake; and

(x) Paying participation fees charged by the HMIS Lead, if the recipient or subrecipient is not the HMIS Lead. The HMIS Lead is the entity designated by the Continuum of Care to operate the area's HMIS.

(2) If the recipient is the HMIS lead agency, as designated by the Continuum of Care in the most recent fiscal year Continuum of Care Homeless Assistance Grants Competition, it may also use ESG funds to pay the costs of:

(i) Hosting and maintaining HMIS software or data;

(ii) Backing up, recovering, or repairing HMIS software or data;

(iii) Upgrading, customizing, and enhancing the HMIS;

(iv) Integrating and warehousing data, including development of a data warehouse for use in aggregating data from subrecipients using multiple software systems;

(v) Administering the system;

(vi) Reporting to providers, the Continuum of Care, and HUD; and

(vii) Conducting training on using the system or a comparable database, including traveling to the training.

(3) If the subrecipient is a victim services provider or a legal services provider, it may use ESG funds to establish and operate a comparable database that collects client-level data over time (*i.e.,* longitudinal data) and generates unduplicated aggregate reports based on the data. Information entered into a comparable database must not be entered directly into or provided to an HMIS.

(b) *General restrictions.* Activities funded under this section must comply with HUD's standards on participation, data collection, and reporting under a local HMIS.

**§ 576.108 Administrative activities.**

(a) *Eligible costs.* The recipient may use up to 7.5 percent of its ESG grant for the payment of administrative costs related to the planning and execution of ESG activities. This does not include staff and overhead costs directly related to carrying out activities eligible under § 576.101 through § 576.107, because those costs are eligible as part of those activities. Eligible administrative costs include:

(1) *General management, oversight and coordination.* Costs of overall program management, coordination, monitoring, and evaluation. These costs include, but are not limited to, necessary expenditures for the following:

(i) Salaries, wages, and related costs of the recipient's staff, the staff of subrecipients, or other staff engaged in program administration. In charging costs to this category, the recipient may either include the entire salary, wages, and related costs allocable to the program of each person whose *primary* responsibilities with regard to the program involve program administration assignments, or the pro rata share of the salary, wages, and related costs of each person whose job includes *any* program administration assignments. The recipient may use only one of these methods for each fiscal year grant. Program administration assignments include the following:

(A) Preparing program budgets and schedules, and amendments to those budgets and schedules;

(B) Developing systems for assuring compliance with program requirements;

(C) Developing interagency agreements and agreements with subrecipients and contractors to carry out program activities;

(D) Monitoring program activities for progress and compliance with program requirements;

(E) Preparing reports and other documents directly related to the program for submission to HUD;

(F) Coordinating the resolution of audit and monitoring findings;

(G) Evaluating program results against stated objectives; and

(H) Managing or supervising persons whose primary responsibilities with regard to the program include such assignments as those described in paragraph (a)(1)(i)(A) through (G) of this section.

(ii) Travel costs incurred for monitoring of subrecipients;

(iii) Administrative services performed under third-party contracts or agreements, including general legal services, accounting services, and audit services; and

(iv) Other costs for goods and services required for administration of the program, including rental or purchase of equipment, insurance, utilities, office supplies, and rental and maintenance (but not purchase) of office space.

(2) *Training on ESG requirements.* Costs of providing training on ESG requirements and attending HUD-sponsored ESG trainings.

(3) *Consolidated plan.* Costs of preparing and amending the ESG and homelessness-related sections of the consolidated plan in accordance with ESG requirements and 24 CFR part 91.

(4) *Environmental review.* Costs of carrying out the environmental review responsibilities under § 576.407.

(b) *Sharing requirement.* (1) *States.* If the recipient is a State, the recipient must share its funds for administrative costs with its subrecipients that are units of general purpose local government. The amount shared must be reasonable under the circumstances. The recipient may share its funds for administrative costs with its subrecipients that are private nonprofit organizations.

(2) *Territories, metropolitan cities, and urban counties.* If the recipient is a territory, metropolitan city, or urban county, the recipient may share its funds for administrative costs with its subrecipients.

**§ 576.109 Indirect costs.**

(a) *In general.* ESG grant funds may be used to pay indirect costs in accordance with OMB Circular A–87 (2 CFR part 225), or A–122 (2 CFR part 230), as applicable.

(b) *Allocation.* Indirect costs may be allocated to each eligible activity under § 576.101 through § 576.108, so long as that allocation is consistent with an indirect cost rate proposal developed in accordance with OMB Circular A–87 (2 CFR part 225), or A–122 (2 CFR part 230), as applicable.

(c) *Expenditure limits.* The indirect costs charged to an activity subject to an expenditure limit under § 576.100 must be added to the direct costs charged for that activity when determining the total costs subject to the expenditure limit.

## Subpart C—Award and Use of Funds

**§ 576.200 Submission requirements and grant approval.**

(a) *Application submission and approval.* In addition to meeting the application submission requirements in 24 CFR part 5, subpart K, each State, urban county, or metropolitan city must submit and obtain HUD approval of a consolidated plan in accordance with the requirements in 24 CFR part 91, and each territory must submit and obtain HUD approval of a consolidated plan in accordance with the requirements that apply to local governments under 24 CFR part 91. As provided under 24 CFR 85.12, HUD may impose special conditions or restrictions on a grant, if the recipient is determined to be high risk.

(b) *Amendments.* The recipient must amend its approved consolidated plan in order to make a change in its allocation priorities; make a change in its method of distributing funds; carry out an activity not previously described in the plan; or change the purpose, scope, location, or beneficiaries of an activity. The amendment must be completed and submitted to HUD in accordance with the requirements under 24 CFR 91.505.

**§ 576.201 Matching requirement.**

(a) *Required amount of matching contributions.* (1) Except as provided under paragraphs (a)(2) and (a)(3) of this section, the recipient must make matching contributions to supplement the recipient's ESG program in an amount that equals the amount of ESG funds provided by HUD.

(2) If the recipient is a State, the first $100,000 of the fiscal year grant is not required to be matched. However, the recipient must transfer the benefit of this exception to its subrecipients that are least capable of providing the recipient with matching contributions.

(3) This matching requirement does not apply if the recipient is a territory.

(b) *Eligible sources of matching contributions.* (1) Subject to the requirement for States under paragraph (a)(2) of this section, the recipient may require its subrecipients to make matching contributions consistent with this section to help meet the recipient's matching requirement.

(2) Matching contributions may be obtained from any source, including any Federal source other than the ESG program, as well as state, local, and private sources. However, the following requirements apply to matching contributions from a Federal source of funds:

(i) The recipient must ensure the laws governing any funds to be used as matching contributions do not prohibit those funds from being used to match Emergency Solutions Grant (ESG) funds.

(ii) If ESG funds are used to satisfy the matching requirements of another Federal program, then funding from that program may not be used to satisfy the matching requirements under this section.

(c) *Recognition of matching contributions.* (1) In order to meet the matching requirement, the matching contributions must meet all requirements that apply to the ESG funds provided by HUD, except for the expenditure limits in § 576.100.

(2) The matching contributions must be provided after the date that HUD signs the grant agreement.

(3) To count toward the required match for the recipient's fiscal year grant, cash contributions must be expended within the expenditure deadline in § 576.203, and noncash contributions must be made within the expenditure deadline in § 576.203.

(4) Contributions used to match a previous ESG grant may not be used to match a subsequent ESG grant.

(5) Contributions that have been or will be counted as satisfying a matching requirement of another Federal grant or award may not count as satisfying the matching requirement of this section.

(d) *Eligible types of matching contributions.* The matching requirement may be met by one or both of the following:

(1) *Cash contributions.* Cash expended for allowable costs, as defined in OMB Circulars A–87 (2 CFR part 225) and A–122 (2 CFR part 230), of the recipient or subrecipient.

(2) *Noncash contributions.* The value of any real property, equipment, goods, or services contributed to the recipient's or subrecipient's ESG program, provided that if the recipient or subrecipient had to pay for them with grant funds, the costs would have been allowable. Noncash contributions may also include the purchase value of any donated building.

(e) *Calculating the amount of noncash contributions.* (1) To determine the value of any donated material or building, or of any lease, the recipient must use a method reasonably calculated to establish the fair market value.

(2) Services provided by individuals must be valued at rates consistent with those ordinarily paid for similar work in the recipient's or subrecipient's organization. If the recipient or subrecipient does not have employees performing similar work, the rates must be consistent with those ordinarily paid by other employers for similar work in the same labor market.

(3) Some noncash contributions are real property, equipment, goods, or services that, if the recipient or subrecipient had to pay for them with grant funds, the payments would have been indirect costs. Matching credit for these contributions must be given only if the recipient or subrecipient has established, along with its regular indirect cost rate, a special rate for allocating to individual projects or programs the value of those contributions.

(f) *Costs paid by program income.* Costs paid by program income shall count toward meeting the recipient's matching requirements, provided the costs are eligible ESG costs that supplement the recipient's ESG program.

**§ 576.202 Means of carrying out grant activities.**

(a) *States.* If the recipient is a State, the recipient may use an amount consistent with the restrictions in § 576.100 and § 576.108 to carry out administrative activities through its employees or procurement contracts. If the recipient is a State, and has been identified as the HMIS lead by the Continuum of Care, the State may use funds to carry out HMIS activities set forth in § 576.107(a)(2). The recipient must subgrant the remaining funds in its fiscal year grant to:

(1) Units of general purpose local government in the State, which may include metropolitan cities and urban counties that receive ESG funds directly from HUD; or

(2) Private nonprofit organizations, provided that for emergency shelter activities the recipient obtains a certification of approval from the unit of general purpose local government for the geographic area in which those activities are to be carried out.

(b) *Recipients other than States; subrecipients.* The recipient, if it is not a State, and all subrecipients may carry out all eligible activities through their employees, procurement contracts, or subgrants to private nonprofit organizations. If the recipient is an urban county, it may carry out activities through any of its member governments, so long as the county applies to its members the same requirements that are applicable to local government subrecipients under this part.

**§ 576.203 Obligation, expenditure, and payment requirements.**

(a) *Obligation of funds.* (1) *Funds allocated to States.* (i) Within 60 days from the date that HUD signs the grant agreement with the State (or grant amendment for reallocated funds), the recipient must obligate the entire grant, except the amount for its administrative costs. This requirement is met by a subgrant agreement with, or a letter of award requiring payment from the grant to, a subrecipient.

(ii) Within 120 days after the date that the State obligates its funds to a unit of general purpose local government, the subrecipient must obligate all of those funds by a subgrant agreement with, or a letter of award requiring payment to, a private nonprofit organization; a procurement contract; or the written designation of a department within the government of the subrecipient to directly carry out an eligible activity.

(2) *Funds allocated to metropolitan cities, urban counties, and territories.* Within 180 days after the date that HUD signs the grant agreement (or a grant amendment for reallocation of funds) with the metropolitan city, urban county, or territory, the recipient must obligate all the grant amount, except the amount for its administrative costs. This requirement is met by an agreement with, or a letter of award requiring payment to, a subrecipient; a procurement contract; or a written designation of a department within the government of the recipient to directly carry out an eligible activity. If the recipient is an urban county, this requirement may also be met with an agreement with, or letter of award requiring payment to, a member government, which has designated a department to directly carry out an eligible activity.

(b) *Expenditures.* The recipient must draw down and expend funds from each year's grant not less than once during each quarter of the recipient's program year. All of the recipient's grant must be expended for eligible activity costs within 24 months after the date HUD signs the grant agreement with the recipient. For the purposes of this paragraph, expenditure means either an actual cash disbursement for a direct charge for a good or service or an indirect cost or the accrual of a direct charge for a good or service or an indirect cost.

(c) *Payments to subrecipients.* The recipient must pay each subrecipient for allowable costs within 30 days after receiving the subrecipient's complete payment request. This requirement also applies to each subrecipient that is a unit of general purpose local government.

## Subpart D—Reallocations

**§ 576.300 In general.**

(1) Funds not awarded by HUD due to failure by the recipient to submit and obtain HUD approval of a consolidated plan will be reallocated in accordance with §§ 576.301 through 576.303.

(2) Recaptured funds will be awarded by formula. In October and April each year, HUD will determine if the amount of recaptured funds is at least 30 percent of the most recent fiscal year

appropriation. If so, HUD will amend all existing grants and reallocate the funds. If the amount is less than 30 percent of the most recent fiscal year appropriation, the funds will be reallocated in conjunction with the next fiscal year's allocation of funding.

**§ 576.301 Metropolitan cities and urban counties.**

Grant funds returned by a metropolitan city or urban county will be reallocated as follows:

(a) *Eligible recipient.* HUD will make the funds available to the State in which the city or county is located.

(b) *Notification of availability.* HUD will promptly notify the State of the availability of the amounts to be reallocated.

(c) *Application requirement.* Within 45 days after the date of notification, the State must submit to HUD a substantial amendment to its consolidated plan in accordance with 24 CFR part 91.

(d) *Restrictions that apply to reallocated amounts.* The same requirements that apply to grant funds allocated under § 576.3 apply to grant funds reallocated under this section, except that the State must distribute the reallocated funds:

(1) To private nonprofit organizations and units of general purpose local government in the geographic area in which the metropolitan city or urban county is located;

(2) If funds remain, to private nonprofit organizations and units of general purpose local government located throughout the State.

**§ 576.302 States.**

Grant funds returned by a State will be reallocated as follows:

(a) *Eligible recipients.* HUD will make the funds available:

(1) To metropolitan cities and urban counties in the State that were not allocated funds under § 576.3 because the amount they would have been allocated did not meet the minimum requirement under § 576.3(b)(2);

(2) If funds remain, to county governments in the State other than urban counties;

(3) Then, if funds remain, to metropolitan cities and urban counties in the State that were allocated funds under § 576.3.

(b) *Notification of availability.* HUD will notify eligible recipients of the availability of the funds by a notification letter or **Federal Register** notice, which will specify how the awards of funds will be made.

(c) *Application requirements.* Within 45 days after the date of notification, the eligible recipient must submit to HUD:

(1) A substantial amendment to its approved consolidated plan in accordance with 24 CFR part 91; or

(2) If the eligible recipient does not have an approved consolidated plan, an abbreviated consolidated plan that meets the requirements in the **Federal Register** notice or notification letter from HUD.

(d) *Restrictions that apply to reallocated amounts.* The same requirements that apply to grant funds allocated under § 576.3 apply to grant funds reallocated under this section.

**§ 576.303 Territories.**

(a) *General.* Grant funds returned by a territory will be reallocated to other territories, then if funds remain, to States.

(b) *Allocation method.* The funds will be allocated as follows:

(1) For territories, the funds will be allocated among the territories in direct proportion with each territory's share of the total population of all of the eligible territories. If HUD determines that a territory failed to spend its funds in accordance with ESG requirements, then HUD may exclude the territory from the allocation of reallocation amounts under this section.

(2) For States, the funds will be allocated to each State in direct proportion with each State's share of the total amount of funds allocated to States under § 576.3.

(c) *Notification of availability.* HUD will notify eligible recipients of the availability of the fund by a letter or **Federal Register** notice, which will specify how the awards of funds will be made.

(d) *Application requirements.* Within 45 days after the date of notification, the eligible recipient must submit to HUD a substantial amendment to its consolidated plan in accordance with 24 CFR part 91.

(e) *Restrictions that apply to reallocated amounts.* The same requirements that apply to grant funds allocated under § 576.3 apply to grant funds reallocated under this section.

## Subpart E—Program Requirements

**§ 576.400 Area-wide systems coordination requirements.**

(a) *Consultation with Continuums of Care.* The recipient must consult with each Continuum of Care that serves the recipient's jurisdiction in determining how to allocate ESG funds each program year; developing the performance standards for, and evaluating the outcomes of, projects and activities assisted by ESG funds; and developing funding, policies, and procedures for the administration and operation of the HMIS.

(b) *Coordination with other targeted homeless services.* The recipient and its subrecipients must coordinate and integrate, to the maximum extent practicable, ESG-funded activities with other programs targeted to homeless people in the area covered by the Continuum of Care or area over which the services are coordinated to provide a strategic, community-wide system to prevent and end homelessness for that area. These programs include:

(1) Shelter Plus Care Program (24 CFR part 582);

(2) Supportive Housing Program (24 CFR part 583);

(3) Section 8 Moderate Rehabilitation Program for Single Room Occupancy Program for Homeless Individuals (24 CFR part 882);

(4) HUD—Veterans Affairs Supportive Housing (HUD–VASH) (division K, title II, Consolidated Appropriations Act, 2008, Pub. L. 110–161 (2007), 73 FR 25026 (May 6, 2008));

(5) Education for Homeless Children and Youth Grants for State and Local Activities (title VII–B of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 *et seq.*));

(6) Grants for the Benefit of Homeless Individuals (section 506 of the Public Health Services Act (42 U.S.C. 290aa–5));

(7) Healthcare for the Homeless (42 CFR part 51c);

(8) Programs for Runaway and Homeless Youth (Runaway and Homeless Youth Act (42 U.S.C. 5701 *et seq.*));

(9) Projects for Assistance in Transition from Homelessness (part C of title V of the Public Health Service Act (42 U.S.C. 290cc–21 *et seq.*));

(10) Services in Supportive Housing Grants (section 520A of the Public Health Service Act);

(11) Emergency Food and Shelter Program (title III of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11331 *et seq.*));

(12) Transitional Housing Assistance Grants for Victims of Sexual Assault, Domestic Violence, Dating Violence, and Stalking Program (section 40299 of the Violent Crime Control and Law Enforcement Act (42 U.S.C. 13975));

(13) Homeless Veterans Reintegration Program (section 5(a)(1)) of the Homeless Veterans Comprehensive Assistance Act (38 U.S.C. 2021);

(14) Domiciliary Care for Homeless Veterans Program (38 U.S.C. 2043);

(15) VA Homeless Providers Grant and Per Diem Program (38 CFR part 61);

(16) Health Care for Homeless Veterans Program (38 U.S.C. 2031);

(17) Homeless Veterans Dental Program (38 U.S.C. 2062);

(18) Supportive Services for Veteran Families Program (38 CFR part 62); and

(19) Veteran Justice Outreach Initiative (38 U.S.C. 2031).

(c) *System and program coordination with mainstream resources.* The recipient and its subrecipients must coordinate and integrate, to the maximum extent practicable, ESG-funded activities with mainstream housing, health, social services, employment, education, and youth programs for which families and individuals at risk of homelessness and homeless individuals and families may be eligible. Examples of these programs include:

(1) Public housing programs assisted under section 9 of the U.S. Housing Act of 1937 (42 U.S.C. 1437g) (24 CFR parts 905, 968, and 990);

(2) Housing programs receiving tenant-based or project-based assistance under section 8 of the U.S. Housing Act of 1937 (42 U.S.C. 1437f) (respectively 24 CFR parts 982 and 983);

(3) Supportive Housing for Persons with Disabilities (Section 811) (24 CFR part 891);

(4) HOME Investment Partnerships Program (24 CFR part 92);

(5) Temporary Assistance for Needy Families (TANF) (45 CFR parts 260–265);

(6) Health Center Program (42 CFR part 51c);

(7) State Children's Health Insurance Program (42 CFR part 457):

(8) Head Start (45 CFR chapter XIII, subchapter B);

(9) Mental Health and Substance Abuse Block Grants (45 CFR part 96); and

(10) Services funded under the Workforce Investment Act (29 U.S.C. 2801 *et seq.*).

(d) *Centralized or coordinated assessment.* Once the Continuum of Care has developed a centralized assessment system or a coordinated assessment system in accordance with requirements to be established by HUD, each ESG-funded program or project within the Continuum of Care's area must use that assessment system. The recipient and subrecipient must work with the Continuum of Care to ensure the screening, assessment and referral of program participants are consistent with the written standards required by paragraph (e) of this section. A victim service provider may choose not to use the Continuum of Care's centralized or coordinated assessment system.

(e) *Written standards for providing ESG assistance.* (1) If the recipient is a metropolitan city, urban county, or territory, the recipient must have written standards for providing Emergency Solutions Grant (ESG) assistance and must consistently apply those standards for all program participants. The recipient must describe these standards in its consolidated plan.

(2) If the recipient is a state:

(i) The recipient must establish and consistently apply, or require that its subrecipients establish and consistently apply, written standards for providing ESG assistance. If the written standards are established by the subrecipients, the recipient may require these written standards to be:

(A) Established for each area covered by a Continuum of Care or area over which the services are coordinated and followed by each subrecipient providing assistance in that area; or

(B) Established by each subrecipient and applied consistently within the subrecipient's program.

(ii) Written standards developed by the state must be included in the state's Consolidated Plan. If the written standards are developed by its subrecipients, the recipient must describe its requirements for the establishment and implementation of these standards in the state's Consolidated Plan.

(3) At a minimum these written standards must include:

(i) Standard policies and procedures for evaluating individuals' and families' eligibility for assistance under Emergency Solutions Grant (ESG);

(ii) Standards for targeting and providing essential services related to street outreach;

(iii) Policies and procedures for admission, diversion, referral, and discharge by emergency shelters assisted under ESG, including standards regarding length of stay, if any, and safeguards to meet the safety and shelter needs of special populations, *e.g.,* victims of domestic violence, dating violence, sexual assault, and stalking; and individuals and families who have the highest barriers to housing and are likely to be homeless the longest;

(iv) Policies and procedures for assessing, prioritizing, and reassessing individuals' and families' needs for essential services related to emergency shelter;

(v) Policies and procedures for coordination among emergency shelter providers, essential services providers, homelessness prevention, and rapid re-housing assistance providers; other homeless assistance providers; and mainstream service and housing providers (see § 576.400(b) and (c) for a list of programs with which ESG-funded activities must be coordinated and integrated to the maximum extent practicable);

(vi) Policies and procedures for determining and prioritizing which eligible families and individuals will receive homelessness prevention assistance and which eligible families and individuals will receive rapid re-housing assistance;

(vii) Standards for determining what percentage or amount of rent and utilities costs each program participant must pay while receiving homelessness prevention or rapid re-housing assistance;

(viii) Standards for determining how long a particular program participant will be provided with rental assistance and whether and how the amount of that assistance will be adjusted over time; and

(ix) Standards for determining the type, amount, and duration of housing stabilization and/or relocation services to provide to a program participant, including the limits, if any, on the homelessness prevention or rapid re-housing assistance that each program participant may receive, such as the maximum amount of assistance, maximum number of months the program participant receive assistance; or the maximum number of times the program participant may receive assistance.

(f) *Participation in HMIS.* The recipient must ensure that data on all persons served and all activities assisted under ESG are entered into the applicable community-wide HMIS in the area in which those persons and activities are located, or a comparable database, in accordance with HUD's standards on participation, data collection, and reporting under a local HMIS. If the subrecipient is a victim service provider or a legal services provider, it may use a comparable database that collects client-level data over time (*i.e.,* longitudinal data) and generates unduplicated aggregate reports based on the data. Information entered into a comparable database must not be entered directly into or provided to an HMIS.

**§ 576.401 Evaluation of program participant eligibility and needs.**

(a) *Evaluations.* The recipient or its subrecipient must conduct an initial evaluation to determine the eligibility of each individual or family's eligibility for ESG assistance and the amount and types of assistance the individual or family needs to regain stability in permanent housing. These evaluations must be conducted in accordance with the centralized or coordinated

assessment requirements set forth under § 576.400(d) and the written standards established under § 576.400(e).

(b) *Re-evaluations for homelessness prevention and rapid re-housing assistance.* (1) The recipient or subrecipient must re-evaluate the program participant's eligibility and the types and amounts of assistance the program participant needs not less than once every 3 months for program participants receiving homelessness prevention assistance, and not less than once annually for program participants receiving rapid re-housing assistance. At a minimum, each re-evaluation of eligibility must establish that:

(i) The program participant does not have an annual income that exceeds 30 percent of median family income for the area, as determined by HUD; and

(ii) The program participant lacks sufficient resources and support networks necessary to retain housing without ESG assistance.

(2) The recipient or subrecipient may require each program participant receiving homelessness prevention or rapid re-housing assistance to notify the recipient or subrecipient regarding changes in the program participant's income or other circumstances (*e.g.,* changes in household composition) that affect the program participant's need for assistance under ESG. When notified of a relevant change, the recipient or subrecipient must re-evaluate the program participant's eligibility and the amount and types of assistance the program participant needs.

(c) *Annual income.* When determining the annual income of an individual or family, the recipient or subrecipient must use the standard for calculating annual income under 24 CFR 5.609.

(d) *Connecting program participants to mainstream and other resources.* The recipient and its subrecipients must assist each program participant, as needed, to obtain:

(1) Appropriate supportive services, including assistance in obtaining permanent housing, medical health treatment, mental health treatment, counseling, supervision, and other services essential for achieving independent living; and

(2) Other Federal, State, local, and private assistance available to assist the program participant in obtaining housing stability, including:

(i) Medicaid (42 CFR chapter IV, subchapter C):

(ii) Supplemental Nutrition Assistance Program (7 CFR parts 271–283);

(iii) Women, Infants and Children (WIC) (7 CFR part 246);

(iv) Federal-State Unemployment Insurance Program (20 CFR parts 601–603, 606, 609, 614–617, 625, 640, 650);

(v) Social Security Disability Insurance (SSDI) (20 CFR part 404);

(vi) Supplemental Security Income (SSI) (20 CFR part 416);

(vii) Child and Adult Care Food Program (42 U.S.C. 1766(t) (7 CFR part 226));

(viii) Other assistance available under the programs listed in § 576.400(c).

(e) *Housing stability case management.* (1) While providing homelessness prevention or rapid re-housing assistance to a program participant, the recipient or subrecipient must:

(i) Require the program participant to meet with a case manager not less than once per month to assist the program participant in ensuring long-term housing stability; and

(ii) Develop a plan to assist the program participant to retain permanent housing after the ESG assistance ends, taking into account all relevant considerations, such as the program participant's current or expected income and expenses; other public or private assistance for which the program participant will be eligible and likely to receive; and the relative affordability of available housing in the area.

(2) The recipient or subrecipient is exempt from the requirement under paragraph (e)(1)(i) of this section if the Violence Against Women Act of 1994 (42 U.S.C. 13701 *et seq.*) or the Family Violence Prevention and Services Act (42 U.S.C. 10401 *et seq.*) prohibits that recipient or subrecipient from making its shelter or housing conditional on the participant's acceptance of services.

**§ 576.402 Terminating assistance.**

(a) *In general.* If a program participant violates program requirements, the recipient or subrecipient may terminate the assistance in accordance with a formal process established by the recipient or subrecipient that recognizes the rights of individuals affected. The recipient or subrecipient must exercise judgment and examine all extenuating circumstances in determining when violations warrant termination so that a program participant's assistance is terminated only in the most severe cases.

(b) *Program participants receiving rental assistance or housing relocation and stabilization services.* To terminate rental assistance or housing relocation and stabilization services to a program participant, the required formal process, at a minimum, must consist of:

(1) Written notice to the program participant containing a clear statement of the reasons for termination;

(2) A review of the decision, in which the program participant is given the opportunity to present written or oral objections before a person other than the person (or a subordinate of that person) who made or approved the termination decision; and

(3) Prompt written notice of the final decision to the program participant.

(c) *Ability to provide further assistance.* Termination under this section does not bar the recipient or subrecipient from providing further assistance at a later date to the same family or individual.

**§ 576.403 Shelter and housing standards.**

(a) *Lead-based paint remediation and disclosure.* The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations in 24 CFR part 35, subparts A, B, H, J, K, M, and R apply to all shelters assisted under ESG program and all housing occupied by program participants.

(b) *Minimum standards for emergency shelters.* Any building for which Emergency Solutions Grant (ESG) funds are used for conversion, major rehabilitation, or other renovation, must meet state or local government safety and sanitation standards, as applicable, and the following minimum safety, sanitation, and privacy standards. Any emergency shelter that receives assistance for shelter operations must also meet the following minimum safety, sanitation, and privacy standards. The recipient may also establish standards that exceed or add to these minimum standards.

(1) *Structure and materials.* The shelter building must be structurally sound to protect residents from the elements and not pose any threat to health and safety of the residents. Any renovation (including major rehabilitation and conversion) carried out with ESG assistance must use Energy Star and WaterSense products and appliances.

(2) *Access.* The shelter must be accessible in accordance with Section 504 of the Rehabilitation Act (29 U.S.C. 794) and implementing regulations at 24 CFR part 8; the Fair Housing Act (42 U.S.C. 3601 *et seq.*) and implementing regulations at 24 CFR part 100; and Title II of the Americans with Disabilities Act (42 U.S.C. 12131 *et seq.*) and 28 CFR part 35; where applicable.

(3) *Space and security.* Except where the shelter is intended for day use only,

the shelter must provide each program participant in the shelter with an acceptable place to sleep and adequate space and security for themselves and their belongings.

(4) *Interior air quality.* Each room or space within the shelter must have a natural or mechanical means of ventilation. The interior air must be free of pollutants at a level that might threaten or harm the health of residents.

(5) *Water supply.* The shelter's water supply must be free of contamination.

(6) *Sanitary facilities.* Each program participant in the shelter must have access to sanitary facilities that are in proper operating condition, are private, and are adequate for personal cleanliness and the disposal of human waste.

(7) *Thermal environment.* The shelter must have any necessary heating/cooling facilities in proper operating condition.

(8) *Illumination and electricity.* The shelter must have adequate natural or artificial illumination to permit normal indoor activities and support health and safety. There must be sufficient electrical sources to permit the safe use of electrical appliances in the shelter.

(9) *Food preparation.* Food preparation areas, if any, must contain suitable space and equipment to store, prepare, and serve food in a safe and sanitary manner.

(10) *Sanitary conditions.* The shelter must be maintained in a sanitary condition.

(11) *Fire safety.* There must be at least one working smoke detector in each occupied unit of the shelter. Where possible, smoke detectors must be located near sleeping areas. The fire alarm system must be designed for hearing-impaired residents. All public areas of the shelter must have at least one working smoke detector. There must also be a second means of exiting the building in the event of fire or other emergency.

(c) *Minimum standards for permanent housing.* The recipient or subrecipient cannot use ESG funds to help a program participant remain or move into housing that does not meet the minimum habitability standards provided in this paragraph (c). The recipient may also establish standards that exceed or add to these minimum standards.

(1) *Structure and materials.* The structures must be structurally sound to protect residents from the elements and not pose any threat to the health and safety of the residents.

(2) *Space and security.* Each resident must be provided adequate space and security for themselves and their belongings. Each resident must be provided an acceptable place to sleep.

(3) *Interior air quality.* Each room or space must have a natural or mechanical means of ventilation. The interior air must be free of pollutants at a level that might threaten or harm the health of residents.

(4) *Water supply.* The water supply must be free from contamination.

(5) *Sanitary facilities.* Residents must have access to sufficient sanitary facilities that are in proper operating condition, are private, and are adequate for personal cleanliness and the disposal of human waste.

(6) *Thermal environment.* The housing must have any necessary heating/cooling facilities in proper operating condition.

(7) *Illumination and electricity.* The structure must have adequate natural or artificial illumination to permit normal indoor activities and support health and safety. There must be sufficient electrical sources to permit the safe use of electrical appliances in the structure.

(8) *Food preparation.* All food preparation areas must contain suitable space and equipment to store, prepare, and serve food in a safe and sanitary manner.

(9) *Sanitary conditions.* The housing must be maintained in a sanitary condition.

(10) *Fire safety.* (i) There must be a second means of exiting the building in the event of fire or other emergency.

(ii) Each unit must include at least one battery-operated or hard-wired smoke detector, in proper working condition, on each occupied level of the unit. Smoke detectors must be located, to the extent practicable, in a hallway adjacent to a bedroom. If the unit is occupied by hearing impaired persons, smoke detectors must have an alarm system designed for hearing-impaired persons in each bedroom occupied by a hearing-impaired person.

(iii) The public areas of all housing must be equipped with a sufficient number, but not less than one for each area, of battery-operated or hard-wired smoke detectors. Public areas include, but are not limited to, laundry rooms, community rooms, day care centers, hallways, stairwells, and other common areas.

**§ 576.404 Conflicts of interest.**

(a) *Organizational conflicts of interest.* The provision of any type or amount of ESG assistance may not be conditioned on an individual's or family's acceptance or occupancy of emergency shelter or housing owned by the recipient, the subrecipient, or a parent or subsidiary of the subrecipient. No subrecipient may, with respect to individuals or families occupying housing owned by the subrecipient, or any parent or subsidiary of the subrecipient, carry out the initial evaluation required under § 576.401 or administer homelessness prevention assistance under § 576.103.

(b) *Individual conflicts of interest.* For the procurement of goods and services, the recipient and its subrecipients must comply with the codes of conduct and conflict of interest requirements under 24 CFR 85.36 (for governments) and 24 CFR 84.42 (for private nonprofit organizations). For all other transactions and activities, the following restrictions apply:

(1) *Conflicts prohibited.* No person described in paragraph (b)(2) of this section who exercises or has exercised any functions or responsibilities with respect to activities assisted under the ESG program, or who is in a position to participate in a decision-making process or gain inside information with regard to activities assisted under the program, may obtain a financial interest or benefit from an assisted activity; have a financial interest in any contract, subcontract, or agreement with respect to an assisted activity; or have a financial interest in the proceeds derived from an assisted activity, either for him or herself or for those with whom he or she has family or business ties, during his or her tenure or during the one-year period following his or her tenure.

(2) *Persons covered.* The conflict-of-interest provisions of paragraph (b)(1) of this section apply to any person who is an employee, agent, consultant, officer, or elected or appointed official of the recipient or its subrecipients.

(3) *Exceptions.* Upon the written request of the recipient, HUD may grant an exception to the provisions of this subsection on a case-by-case basis, taking into account the cumulative effects of the criteria in paragraph (b)(3)(ii) of this section, provided that the recipient has satisfactorily met the threshold requirements of paragraph (b)(3)(i) of this section.

(i) *Threshold requirements.* HUD will consider an exception only after the recipient has provided the following documentation:

(A) If the recipient or subrecipient is a government, disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and

(B) An opinion of the recipient's attorney that the interest for which the

exception is sought would not violate state or local law.

(ii) *Factors to be considered for exceptions.* In determining whether to grant a requested exception after the recipient has satisfactorily met the threshold requirements under paragraph (b)(3)(i) of this section, HUD must conclude that the exception will serve to further the purposes of the ESG program and the effective and efficient administration of the recipient's or subrecipient's program or project, taking into account the cumulative effect of the following factors, as applicable:

(A) Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project that would otherwise not be available;

(B) Whether an opportunity was provided for open competitive bidding or negotiation;

(C) Whether the affected person has withdrawn from his or her functions, responsibilities or the decision-making process with respect to the specific activity in question;

(D) Whether the interest or benefit was present before the affected person was in the position described in paragraph (b)(1) of this section;

(E) Whether undue hardship results to the recipient, the subrecipient, or the person affected, when weighed against the public interest served by avoiding the prohibited conflict; and

(F) Any other relevant considerations.

(c) *Contractors.* All contractors of the recipient or subrecipient must comply with the same requirements that apply to subrecipients under this section.

**§ 576.405 Homeless participation.**

(a) Unless the recipient is a State, the recipient must provide for the participation of not less than one homeless individual or formerly homeless individual on the board of directors or other equivalent policy-making entity of the recipient, to the extent that the entity considers and makes policies and decisions regarding any facilities, services, or other assistance that receive funding under Emergency Solutions Grant (ESG).

(b) If the recipient is unable to meet requirement under paragraph (a), it must instead develop and implement a plan to consult with homeless or formerly homeless individuals in considering and making policies and decisions regarding any facilities, services, or other assistance that receive funding under Emergency Solutions Grant (ESG). The plan must be included in the annual action plan required under 24 CFR 91.220.

(c) To the maximum extent practicable, the recipient or subrecipient must involve homeless individuals and families in constructing, renovating, maintaining, and operating facilities assisted under ESG, in providing services assisted under ESG, and in providing services for occupants of facilities assisted under ESG. This involvement may include employment or volunteer services.

**§ 576.406 Faith-based activities.**

(a) Organizations that are religious or faith-based are eligible, on the same basis as any other organization, to receive ESG funds. Neither the Federal Government nor a State or local government receiving funds under ESG shall discriminate against an organization on the basis of the organization's religious character or affiliation.

(b) Organizations that are directly funded under the ESG program may not engage in inherently religious activities, such as worship, religious instruction, or proselytization as part of the programs or services funded under ESG. If an organization conducts these activities, the activities must be offered separately, in time or location, from the programs or services funded under ESG, and participation must be voluntary for program participants.

(c) Any religious organization that receives ESG funds retains its independence from Federal, State, and local governments, and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs, provided that the religious organization does not use direct ESG funds to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, faith-based organizations may use space in their facilities to provide ESG-funded services, without removing religious art, icons, scriptures, or other religious symbols. In addition, an ESG-funded religious organization retains its authority over its internal governance, and the organization may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.

(d) An organization that receives ESG funds shall not, in providing ESG assistance, discriminate against a program participant or prospective program participant on the basis of religion or religious belief.

(e) ESG funds may not be used for the rehabilitation of structures to the extent that those structures are used for inherently religious activities. Solutions ESG funds may be used for the rehabilitation of structures only to the extent that those structures are used for conducting eligible activities under the ESG program. Where a structure is used for both eligible and inherently religious activities, ESG funds may not exceed the cost of those portions of the rehabilitation that are attributable to eligible activities in accordance with the cost accounting requirements applicable to ESG funds. Sanctuaries, chapels, or other rooms that an ESG-funded religious congregation uses as its principal place of worship, however, are ineligible for funded improvements under the program. Disposition of real property after the term of the grant, or any change in use of the property during the term of the grant, is subject to government-wide regulations governing real property disposition (*see* 24 CFR parts 84 and 85).

(f) If the recipient or a subrecipient that is a local government voluntarily contributes its own funds to supplement federally funded activities, the recipient or subrecipient has the option to segregate the Federal funds or commingle them. However, if the funds are commingled, this section applies to all of the commingled funds.

**§ 576.407 Other Federal requirements.**

(a) *General.* The requirements in 24 CFR part 5, subpart A are applicable, including the nondiscrimination and equal opportunity requirements at 24 CFR 5.105(a). Section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u, and implementing regulations at 24 CFR part 135 apply, except that homeless individuals have priority over other Section 3 residents in accordance with § 576.405(c).

(b) *Affirmative outreach.* The recipient or subrecipient must make known that use of the facilities, assistance, and services are available to all on a nondiscriminatory basis. If it is unlikely that the procedures that the recipient or subrecipient intends to use to make known the availability of the facilities, assistance, and services will to reach persons of any particular race, color, religion, sex, age, national origin, familial status, or disability who may qualify for those facilities and services, the recipient or subrecipient must establish additional procedures that ensure that those persons are made aware of the facilities, assistance, and services. The recipient and its subrecipients must take appropriate steps to ensure effective communication with persons with disabilities including, but not limited to, adopting procedures

that will make available to interested persons information concerning the location of assistance, services, and facilities that are accessible to persons with disabilities. Consistent with Title VI and Executive Order 13166, recipients and subrecipients are also required to take reasonable steps to ensure meaningful access to programs and activities for limited English proficiency (LEP) persons.

(c) *Uniform Administrative Requirements.* The requirements of 24 CFR part 85 apply to the recipient and subrecipients that are units of general purpose local government, except that 24 CFR 85.24 and 85.42 do not apply, and program income is to be used as match under 24 CFR 85.25(g). The requirements of 24 CFR part 84 apply to subrecipients that are private nonprofit organizations, except that 24 CFR 84.23 and 84.53 do not apply, and program income is to be used as the nonfederal share under 24 CFR 84.24(b). These regulations include allowable costs and non-Federal audit requirements.

(d) *Environmental review responsibilities.* (1) Activities under this part are subject to environmental review by HUD under 24 CFR part 50. The recipient shall supply all available, relevant information necessary for HUD to perform for each property any environmental review required by 24 CFR part 50. The recipient also shall carry out mitigating measures required by HUD or select alternate eligible property. HUD may eliminate from consideration any application that would require an Environmental Impact Statement (EIS).

(2) The recipient or subrecipient, or any contractor of the recipient or subrecipient, may not acquire, rehabilitate, convert, lease, repair, dispose of, demolish, or construct property for a project under this part, or commit or expend HUD or local funds for eligible activities under this part, until HUD has performed an environmental review under 24 CFR part 50 and the recipient has received HUD approval of the property.

(e) *Davis-Bacon Act.* The provisions of the Davis-Bacon Act (40 U.S.C. 276a to 276a–5) do not apply to the ESG program.

(f) *Procurement of Recovered Materials.* The recipient and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired by the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

**§ 576.408 Displacement, relocation, and acquisition.**

(a) *Minimizing displacement.* Consistent with the other goals and objectives of Emergency Solutions Grant (ESG), the recipient and its subrecipients must assure that they have taken all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of a project assisted under Emergency Solutions Grant (ESG).

(b) *Temporary relocation not permitted.* No tenant-occupant of housing (a dwelling unit) that is converted into an emergency shelter may be required to relocate temporarily for a project assisted with ESG funds, or be required to move to another unit in the same building/complex. When a tenant moves for a project assisted with ESG funds under conditions that trigger the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA), 42 U.S.C. 4601–4655, as described in paragraph (c) of this section, the tenant should be treated as permanently displaced and offered relocation assistance and payments consistent with that paragraph.

(c) *Relocation assistance for displaced persons.* (1) *In general.* A displaced person (defined in paragraph (c)(2) of this section) must be provided relocation assistance at the levels described in, and in accordance with, the URA and 49 CFR part 24. A displaced person must be advised of his or her rights under the Fair Housing Act (42 U.S.C. 3601 *et seq.*). Whenever possible, minority persons shall be given reasonable opportunities to relocate to comparable and suitable decent, safe, and sanitary replacement dwellings, not located in an area of minority concentration, that are within their financial means. This policy, however, does not require providing a person a larger payment than is necessary to enable a person to relocate to a comparable replacement dwelling. (See 49 CFR 24.205(c)(2)(ii)(D).) As required by Section 504 of the Rehabilitation Act (29 U.S.C. 794) and 49 CFR part 24, replacement dwellings must also contain the accessibility features needed by displaced persons with disabilities.

(2) *Displaced Person.* (i) For purposes of paragraph (c) of this section, the term ''displaced person'' means any person (family, individual, business, nonprofit organization, or farm, including any corporation, partnership, or association) that moves from real property, or moves personal property from real property, permanently, as a direct result of acquisition, rehabilitation, or demolition for a project assisted under the ESG program. This includes any permanent, involuntary move for an assisted project, including any permanent move from the real property that is made:

(A) After the owner (or person in control of the site) issues a notice to move permanently from the property or refuses to renew an expiring lease, if the move occurs on or after:

(I) The date of the submission by the recipient (or subrecipient, as applicable) of an application for assistance to HUD (or the recipient, as applicable) that is later approved and funded if the recipient (or subrecipient, as applicable) has site control as evidenced by a deed, sales contract, or option contract to acquire the property; or

(II) The date on which the recipient (or subrecipient, as applicable) selects the applicable site, if the recipient (or subrecipient, as applicable) does not have site control at the time of the application, provided that the recipient (or subrecipient, as applicable) eventually obtains control over the site;

(B) Before the date described in paragraph (c)(2)(i)(A) of this section, if the recipient or HUD determines that the displacement resulted directly from acquisition, rehabilitation, or demolition for the project; or

(C) By a tenant-occupant of a dwelling unit and the tenant moves after execution of the agreement covering the acquisition, rehabilitation, or demolition of the property for the project.

(ii) Notwithstanding paragraph (c)(2)(i) of this section, a person does not qualify as a displaced person if:

(A) The person has been evicted for cause based upon a serious or repeated violation of the terms and conditions of the lease or occupancy agreement; violation of applicable Federal, State or local law, or other good cause; and the recipient determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance.

(B) The person moved into the property after the submission of the

application but, before signing a lease and commencing occupancy, was provided written notice of the project, its possible impact on the person (*e.g.,* the person may be displaced), and the fact that the person would not qualify as a ''displaced person'' (or for any assistance under this section) as a result of the project;

(C) The person is ineligible under 49 CFR 24.2(a)(9)(ii); or

(D) HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for the project.

(iii) The recipient or subrecipient may, at any time, request that HUD to determine whether a displacement is or would be covered by this rule.

(3) *Initiation of negotiations.* For purposes of determining the type of replacement housing payment assistance to be provided to a displaced person pursuant to this section:

(i) If the displacement is the direct result of privately undertaken rehabilitation, demolition, or acquisition of the real property, ''initiation of negotiations'' means the execution of the agreement between the recipient and the subrecipient or the agreement between the recipient (or subrecipient, as applicable) and the person owning or controlling the property;

(ii) If site control is only evidenced by an option contract to acquire the property, the ''initiation of negotiations'' does not become effective until the execution of a written agreement that creates a legally enforceable commitment to proceed with the purchase, such as a sales contract.

(d) *Real property acquisition requirements.* The acquisition of real property, whether funded privately or publicly, for a project assisted with Emergency Solutions Grant (ESG) funds is subject to the URA and Federal governmentwide regulations at 49 CFR part 24, subpart B.

(e) *Appeals.* A person who disagrees with the recipient's (or subrecipient's, if applicable) determination concerning whether the person qualifies as a displaced person, or the amount of relocation assistance for which the person may be eligible, may file a written appeal of that determination with the recipient under 49 CFR 24.10. A low-income person who disagrees with the recipient's determination may submit a written request for review of that determination by the appropriate HUD field office.

## Subpart F—Grant Administration

### § 576.500 Recordkeeping and reporting requirements.

(a) *In general.* The recipient must have policies and procedures to ensure the requirements of this part are met. The policies and procedures must be established in writing and implemented by the recipient and its subrecipients to ensure that ESG funds are used in accordance with the requirements. In addition, sufficient records must be established and maintained to enable the recipient and HUD to determine whether ESG requirements are being met.

(b) *Homeless status.* The recipient must maintain and follow written intake procedures to ensure compliance with the homeless definition in § 576.2. The procedures must require documentation at intake of the evidence relied upon to establish and verify homeless status. The procedures must establish the order of priority for obtaining evidence as third-party documentation first, intake worker observations second, and certification from the person seeking assistance third. However, lack of third-party documentation must not prevent an individual or family from being immediately admitted to emergency shelter, receiving street outreach services, or being immediately admitted to shelter or receiving services provided by a victim service provider. Records contained in an HMIS or comparable database used by victim service or legal service providers are acceptable evidence of third-party documentation and intake worker observations if the HMIS retains an auditable history of all entries, including the person who entered the data, the date of entry, and the change made; and if the HMIS prevents overrides or changes of the dates on which entries are made.

(1) If the individual or family qualifies as homeless under paragraph (1)(i) or (ii) of the homeless definition in § 576.2, acceptable evidence includes a written observation by an outreach worker of the conditions where the individual or family was living, a written referral by another housing or service provider, or a certification by the individual or head of household seeking assistance.

(2) If the individual qualifies as homeless under paragraph (1)(iii) of the homeless definition in § 576.2, because he or she resided in an emergency shelter or place not meant for human habitation and is exiting an institution where he or she resided for 90 days or less, acceptable evidence includes the evidence described in paragraph (b)(1) of this section and one of the following:

(i) Discharge paperwork or a written or oral referral from a social worker, case manager, or other appropriate official of the institution, stating the beginning and end dates of the time residing in the institution. All oral statements must be recorded by the intake worker; or

(ii) Where the evidence in paragraph (b)(2)(i) of this section is not obtainable, a written record of the intake worker's due diligence in attempting to obtain the evidence described in paragraph (b)(2)(i) and a certification by the individual seeking assistance that states he or she is exiting or has just exited an institution where he or she resided for 90 days or less.

(3) If the individual or family qualifies as homeless under paragraph (2) of the homeless definition in § 576.2, because the individual or family will imminently lose their housing, the evidence must include:

(i)(A) A court order resulting from an eviction action that requires the individual or family to leave their residence within 14 days after the date of their application for homeless assistance; or the equivalent notice under applicable state law, a Notice to Quit, or a Notice to Terminate issued under state law;

(B) For individuals and families whose primary nighttime residence is a hotel or motel room not paid for by charitable organizations or federal, state, or local government programs for low-income individuals, evidence that the individual or family lacks the resources necessary to reside there for more than 14 days after the date of application for homeless assistance; or

(C) An oral statement by the individual or head of household that the owner or renter of the housing in which they currently reside will not allow them to stay for more than 14 days after the date of application for homeless assistance. The intake worker must record the statement and certify that it was found credible. To be found credible, the oral statement must either: (I) be verified by the owner or renter of the housing in which the individual or family resides at the time of application for homeless assistance and documented by a written certification by the owner or renter or by the intake worker's recording of the owner or renter's oral statement; or (II) if the intake worker is unable to contact the owner or renter, be documented by a written certification by the intake worker of his or her due diligence in attempting to obtain the owner or renter's verification and the written certification by the individual or head of

household seeking assistance that his or her statement was true and complete;

(ii) Certification by the individual or head of household that no subsequent residence has been identified; and

(iii) Certification or other written documentation that the individual or family lacks the resources and support networks needed to obtain other permanent housing.

(4) If the individual or family qualifies as homeless under paragraph (3) of the homeless definition in § 576.2, because the individual or family does not otherwise qualify as homeless under the homeless definition but is an unaccompanied youth under 25 years of age, or homeless family with one or more children or youth, and is defined as homeless under another Federal statute or section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), the evidence must include:

(i) For paragraph (3)(i) of the homeless definition in § 576.2, certification of homeless status by the local private nonprofit organization or state or local governmental entity responsible for administering assistance under the Runaway and Homeless Youth Act (42 U.S.C. 5701 *et seq.*), the Head Start Act (42 U.S.C. 9831 *et seq.*), subtitle N of the Violence Against Women Act of 1994 (42 U.S.C. 14043e *et seq.*), section 330 of the Public Health Service Act (42 U.S.C. 254b), the Food and Nutrition Act of 2008 (7 U.S.C. 2011 *et seq.*), section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786), or subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 *et seq.*), as applicable;

(ii) For paragraph (3)(ii) of the homeless definition in § 576.2, referral by a housing or service provider, written observation by an outreach worker, or certification by the homeless individual or head of household seeking assistance;

(iii) For paragraph (3)(iii) of the homeless definition in § 576.2, certification by the individual or head of household and any available supporting documentation that the individual or family moved two or more times during the 60-day period immediately preceding the date of application for homeless assistance, including: recorded statements or records obtained from each owner or renter of housing, provider of shelter or housing, or social worker, case worker, or other appropriate official of a hospital or institution in which the individual or family resided; or, where these statements or records are unobtainable, a written record of the intake worker's due diligence in attempting to obtain these statements or records. Where a move was due to the individual or family fleeing domestic violence, dating violence, sexual assault, or stalking, then the intake worker may alternatively obtain a written certification from the individual or head of household seeking assistance that they were fleeing that situation and that they resided at that address; and

(iv) For paragraph (3)(iv) of the homeless definition in § 576.2, written diagnosis from a professional who is licensed by the state to diagnose and treat that condition (or intake staff-recorded observation of disability that within 45 days of date of the application for assistance is confirmed by a professional who is licensed by the state to diagnose and treat that condition); employment records; department of corrections records; literacy, English proficiency tests; or other reasonable documentation of the conditions required under paragraph (3)(iv) of the homeless definition.

(5) If the individual or family qualifies under paragraph (4) of the homeless definition in § 576.2, because the individual or family is fleeing domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening conditions related to violence, then acceptable evidence includes an oral statement by the individual or head of household seeking assistance that they are fleeing that situation, that no subsequent residence has been identified and that they lack the resources or support networks, *e.g.,* family, friends, faith-based or other social networks, needed to obtain other housing. If the individual or family is receiving shelter or services provided by a victim service provider, the oral statement must be documented by either a certification by the individual or head of household; or a certification by the intake worker. Otherwise, the oral statement that the individual or head of household seeking assistance has not identified a subsequent residence and lacks the resources or support networks, *e.g.,* family, friends, faith-based or other social networks, needed to obtain housing must be documented by a certification by the individual or head of household that the oral statement is true and complete, and, where the safety of the individual or family would not be jeopardized, the domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening condition must be verified by a written observation by the intake worker or a written referral by a housing or service provider, social worker, legal assistance provider, health-care provider, law enforcement agency, legal assistance provider, pastoral counselor, or any other organization from whom the individual or head of household has sought assistance for domestic violence, dating violence, sexual assault, or stalking. The written referral or observation need only include the minimum amount of information necessary to document that the individual or family is fleeing, or attempting to flee domestic violence, dating violence, sexual assault, and stalking.

(c) *At risk of homelessness status.* For each individual or family who receives Emergency Solutions Grant (ESG) homelessness prevention assistance, the records must include the evidence relied upon to establish and verify the individual or family's ''at risk of homelessness'' status. This evidence must include an intake and certification form that meets HUD specifications and is completed by the recipient or subrecipient. The evidence must also include:

(1) If the program participant meets the criteria under paragraph (1) of the ''at risk of homelessness'' definition in § 576.2:

(i) The documentation specified under this section for determining annual income;

(ii) The program participant's certification on a form specified by HUD that the program participant has insufficient financial resources and support networks; *e.g.,* family, friends, faith-based or other social networks, immediately available to attain housing stability and meets one or more of the conditions under paragraph (1)(iii) of the definition of ''at risk of homelessness'' in § 576.2;

(iii) The most reliable evidence available to show that the program participant does not have sufficient resources or support networks; *e.g.,* family, friends, faith-based or other social networks, immediately available to prevent them from moving to an emergency shelter or another place described in paragraph (1) of the ''homeless'' definition. Acceptable evidence includes:

(A) Source documents (*e.g.,* notice of termination from employment, unemployment compensation statement, bank statement, health-care bill showing arrears, utility bill showing arrears);

(B) To the extent that source documents are unobtainable, a written statement by the relevant third party (*e.g.,* former employer, public administrator, relative) or the written certification by the recipient's or subrecipient's intake staff of the oral verification by the relevant third party that the applicant meets one or both of

the criteria under paragraph (1)(ii) of the definition of ''at risk of homelessness'' in § 576.2; or

(C) To the extent that source documents and third-party verification are unobtainable, a written statement by the recipient's or subrecipient's intake staff describing the efforts taken to obtain the required evidence; and

(iv) The most reliable evidence available to show that the program participant meets one or more of the conditions under paragraph (1)(iii) of the definition of ''at risk of homelessness'' in § 576.2. Acceptable evidence includes:

(A) Source documents that evidence one or more of the conditions under paragraph (1)(iii) of the definition (*e.g.,* eviction notice, notice of termination from employment, bank statement);

(B) To the extent that source documents are unobtainable, a written statement by the relevant third party (*e.g.,* former employer, owner, primary leaseholder, public administrator, hotel or motel manager) or the written certification by the recipient's or subrecipient's intake staff of the oral verification by the relevant third party that the applicant meets one or more of the criteria under paragraph (1)(iii) of the definition of ''at risk of homelessness''; or

(C) To the extent that source documents and third-party verification are unobtainable, a written statement by the recipient's or subrecipient's intake staff that the staff person has visited the applicant's residence and determined that the applicant meets one or more of the criteria under paragraph (1)(iii) of the definition or, if a visit is not practicable or relevant to the determination, a written statement by the recipient's or subrecipient's intake staff describing the efforts taken to obtain the required evidence; or

(2) If the program participant meets the criteria under paragraph (2) or (3) of the ''at risk of homelessness'' definition in § 576.2, certification of the child or youth's homeless status by the agency or organization responsible for administering assistance under the Runaway and Homeless Youth Act (42 U.S.C. 5701 *et seq.*), the Head Start Act (42 U.S.C. 9831 *et seq.*), subtitle N of the Violence Against Women Act of 1994 (42 U.S.C. 14043e *et seq.*), section 330 of the Public Health Service Act (42 U.S.C. 254b), the Food and Nutrition Act of 2008 (7 U.S.C. 2011 *et seq.*), section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786) or subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 *et seq.*), as applicable.

(d) *Determinations of ineligibility.* For each individual and family determined ineligible to receive Emergency Solutions Grant (ESG) assistance, the record must include documentation of the reason for that determination.

(e) *Annual income.* For each program participant who receives homelessness prevention assistance, or who receives rapid re-housing assistance longer than one year, the following documentation of annual income must be maintained:

(1) Income evaluation form containing the minimum requirements specified by HUD and completed by the recipient or subrecipient; and

(2) Source documents for the assets held by the program participant and income received over the most recent period for which representative data is available before the date of the evaluation (*e.g.,* wage statement, unemployment compensation statement, public benefits statement, bank statement);

(3) To the extent that source documents are unobtainable, a written statement by the relevant third party (*e.g.,* employer, government benefits administrator) or the written certification by the recipient's or subrecipient's intake staff of the oral verification by the relevant third party of the income the program participant received over the most recent period for which representative data is available; or

(4) To the extent that source documents and third party verification are unobtainable, the written certification by the program participant of the amount of income the program participant received for the most recent period representative of the income that the program participant is reasonably expected to receive over the 3-month period following the evaluation.

(f) *Program participant records.* In addition to evidence of homeless status or ''at risk of homelessness'' status, as applicable, records must be kept for each program participant that document:

(1) The services and assistance provided to that program participant, including, as applicable, the security deposit, rental assistance, and utility payments made on behalf of the program participant;

(2) Compliance with the applicable requirements for providing services and assistance to that program participant under the program components and eligible activities provisions at § 576.101 through § 576.106, the provision on determining eligibility and amount and type of assistance at § 576.401(a) and (b), and the provision on using appropriate assistance and services at § 576.401(d) and (e); and

(3) Where applicable, compliance with the termination of assistance requirement in § 576.402.

(g) *Centralized or coordinated assessment systems and procedures.* The recipient and its subrecipients must keep documentation evidencing the use of, and written intake procedures for, the centralized or coordinated assessment system(s) developed by the Continuum of Care(s) in accordance with the requirements established by HUD.

(h) *Rental assistance agreements and payments.* The records must include copies of all leases and rental assistance agreements for the provision of rental assistance, documentation of payments made to owners for the provision of rental assistance, and supporting documentation for these payments, including dates of occupancy by program participants.

(i) *Utility allowance.* The records must document the monthly allowance for utilities (excluding telephone) used to determine compliance with the rent restriction.

(j) *Shelter and housing standards.* The records must include documentation of compliance with the shelter and housing standards in § 576.403, including inspection reports.

(k) *Emergency shelter facilities.* The recipient must keep records of the emergency shelters assisted under the ESG program, including the amount and type of assistance provided to each emergency shelter. As applicable, the recipient's records must also include documentation of the value of the building before the rehabilitation of an existing emergency shelter or after the conversion of a building into an emergency shelter and copies of the recorded deed or use restrictions.

(l) *Services and assistance provided.* The recipient must keep records of the types of essential services, rental assistance, and housing stabilization and relocation services provided under the recipient's program and the amounts spent on these services and assistance. The recipient and its subrecipients that are units of general purpose local government must keep records to demonstrate compliance with the maintenance of effort requirement, including records of the unit of the general purpose local government's annual budgets and sources of funding for street outreach and emergency shelter services.

(m) *Coordination with Continuum(s) of Care and other programs.* The recipient and its subrecipients must document their compliance with the

requirements of § 576.400 for consulting with the Continuum(s) of Care and coordinating and integrating ESG assistance with programs targeted toward homeless people and mainstream service and assistance programs.

(n) *HMIS.* The recipient must keep records of the participation in HMIS or a comparable database by all projects of the recipient and its subrecipients.

(o) *Matching.* The recipient must keep records of the source and use of contributions made to satisfy the matching requirement in § 576.201. The records must indicate the particular fiscal year grant for which each matching contribution is counted. The records must show how the value placed on third-party, noncash contributions was derived. To the extent feasible, volunteer services must be supported by the same methods that the organization uses to support the allocation of regular personnel costs.

(p) *Conflicts of interest.* The recipient and its subrecipients must keep records to show compliance with the organizational conflicts-of-interest requirements in § 576.404(a), a copy of the personal conflicts of interest policy or codes of conduct developed and implemented to comply with the requirements in § 576.404(b), and records supporting exceptions to the personal conflicts of interest prohibitions.

(q) *Homeless participation.* The recipient must document its compliance with the homeless participation requirements under § 576.405.

(r) *Faith-based activities.* The recipient and its subrecipients must document their compliance with the faith-based activities requirements under § 576.406.

(s) *Other Federal requirements.* The recipient and its subrecipients must document their compliance with the Federal requirements in § 576.407, as applicable, including:

(1) Records demonstrating compliance with the nondiscrimination and equal opportunity requirements under § 576.407(a), including data concerning race, ethnicity, disability status, sex, and family characteristics of persons and households who are applicants for, or program participants in, any program or activity funded in whole or in part with ESG funds and the affirmative outreach requirements in § 576.407(b).

(2) Records demonstrating compliance with the uniform administrative requirements in 24 CFR part 85 (for governments) and 24 CFR part 84 (for nonprofit organizations).

(3) Records demonstrating compliance with the environmental review requirements, including flood insurance requirements.

(4) Certifications and disclosure forms required under the lobbying and disclosure requirements in 24 CFR part 87.

(t) *Relocation.* The records must include documentation of compliance with the displacement, relocation, and acquisition requirements in § 576.408.

(u) *Financial records.* (1) The recipient must retain supporting documentation for all costs charged to the ESG grant.

(2) The recipient and its subrecipients must keep documentation showing that ESG grant funds were spent on allowable costs in accordance with the requirements for eligible activities under § 576.101-§ 576.109 and the cost principles in OMB Circulars A–87 (2 CFR part 225) and A–122 (2 CFR part 230).

(3) The recipient and its subrecipients must retain records of the receipt and use of program income.

(4) The recipient must keep documentation of compliance with the expenditure limits in § 576.100 and the expenditure deadline in § 576.203.

(v) *Subrecipients and contractors.* (1) The recipient must retain copies of all solicitations of and agreements with subrecipients, records of all payment requests by and dates of payments made to subrecipients, and documentation of all monitoring and sanctions of subrecipients, as applicable. If the recipient is a State, the recipient must keep records of each recapture and distribution of recaptured funds under § 576.501.

(2) The recipient and its subrecipients must retain copies of all procurement contracts and documentation of compliance with the procurement requirements in 24 CFR 85.36 and 24 CFR 84.40–84.48.

(3) The recipient must ensure that its subrecipients comply with the recordkeeping requirements specified by the recipient and HUD notice or regulations.

(w) *Other records specified by HUD.* The recipient must keep other records specified by HUD.

(x) *Confidentiality.* (1) The recipient and its subrecipients must develop and implement written procedures to ensure:

(i) All records containing personally identifying information (as defined in HUD's standards for participation, data collection, and reporting in a local HMIS) of any individual or family who applies for and/or receives ESG assistance will be kept secure and confidential;

(ii) The address or location of any domestic violence, dating violence, sexual assault, or stalking shelter project assisted under the ESG will not be made public, except with written authorization of the person responsible for the operation of the shelter; and

(iii) The address or location of any housing of a program participant will not be made public, except as provided under a preexisting privacy policy of the recipient or subrecipient and consistent with state and local laws regarding privacy and obligations of confidentiality.

(2) The confidentiality procedures of the recipient and its subrecipients must be in writing and must be maintained in accordance with this section.

(y) *Period of record retention.* All records pertaining to each fiscal year of ESG funds must be retained for the greater of 5 years or the period specified below. Copies made by microfilming, photocopying, or similar methods may be substituted for the original records.

(1) Documentation of each program participant's qualification as a family or individual at risk of homelessness or as a homeless family or individual and other program participant records must be retained for 5 years after the expenditure of all funds from the grant under which the program participant was served;

(2) Where ESG funds are used for the renovation of an emergency shelter involves costs charged to the ESG grant that exceed 75 percent of the value of the building before renovation, records must be retained until 10 years after the date that ESG funds are first obligated for the renovation; and

(3) Where ESG funds are used to convert a building into an emergency shelter and the costs charged to the ESG grant for the conversion exceed 75 percent of the value of the building after conversion, records must be retained until 10 years after the date that ESG funds are first obligated for the conversion.

(z) *Access to records.* (1) *Federal government rights.* Notwithstanding the confidentiality procedures established under paragraph (w) of this section, HUD, the HUD Office of the Inspector General, and the Comptroller General of the United States, or any of their authorized representatives, must have the right of access to all books, documents, papers, or other records of the recipient and its subrecipients that are pertinent to the ESG grant, in order to make audits, examinations, excerpts, and transcripts. These rights of access are not limited to the required retention period but last as long as the records are retained.

(2) *Public rights.* The recipient must provide citizens, public agencies, and other interested parties with reasonable access (consistent with state and local laws regarding privacy and obligations of confidentiality and the confidentiality requirements in this part) to records regarding any uses of ESG funds the recipient received during the preceding 5 years.

(aa) *Reports.* The recipient must collect and report data on its use of ESG funds in the Integrated Disbursement and Information System (IDIS) and other reporting systems, as specified by HUD. The recipient must also comply with the reporting requirements in 24 CFR parts 85 and 91 and the reporting requirements under the Federal Funding Accountability and Transparency Act of 2006, (31 U.S.C. 6101 note), which are set forth in Appendix A to 2 CFR part 170.

**§ 576.501 Enforcement.**

(a) *Performance reviews.*

(1) HUD will review the performance of each recipient in carrying out its responsibilities under this part whenever determined necessary by HUD, but at least annually. In conducting performance reviews, HUD will rely primarily on information obtained from the records and reports from the recipient and, when appropriate, its subrecipients, as well as information from onsite monitoring, audit reports, and information from IDIS and HMIS. Where applicable, HUD may also consider relevant information pertaining to the recipient's performance gained from other sources, including citizen comments, complaint determinations, and litigation. Reviews to determine compliance with specific requirements of this part will be conducted as necessary, with or without prior notice to the recipient.

(2) If HUD determines preliminarily that the recipient or one of its subrecipients has not complied with an ESG program requirement, HUD will give the recipient notice of this determination and an opportunity to demonstrate, within the time prescribed by HUD and on the basis of substantial facts and data, that the recipient has complied with Emergency Solutions Grant (ESG) requirements. HUD may change the method of payment to require the recipient to obtain HUD's prior approval each time the recipient draws down Emergency Solutions Grant (ESG) funds. To obtain prior approval, the recipient may be required to manually submit its payment requests and supporting documentation to HUD in order to show that the funds to be drawn down will be expended on eligible activities in accordance with all ESG program requirements.

(3) If the recipient fails to demonstrate to HUD's satisfaction that the activities were carried out in compliance with ESG program requirements, HUD will take one or more of the remedial actions or sanctions specified in paragraph (b) of this section.

(b) *Remedial actions and sanctions.* Remedial actions and sanctions for a failure to meet an ESG program requirement will be designed to prevent a continuation of the deficiency; mitigate, to the extent possible, its adverse effects or consequences; and prevent its recurrence.

(1) HUD may instruct the recipient to submit and comply with proposals for action to correct, mitigate, and prevent noncompliance with ESG requirements, including:

(i) Preparing and following a schedule of actions for carrying out activities affected by the noncompliance, including schedules, timetables, and milestones necessary to implement the affected activities;

(ii) Establishing and following a management plan that assigns responsibilities for carrying out the remedial actions;

(iii) Canceling or revising activities likely to be affected by the noncompliance, before expending ESG funds for the activities;

(iv) Reprogramming ESG funds that have not yet been expended from affected activities to other eligible activities;

(v) Suspending disbursement of ESG funds for some or all activities;

(vi) Reducing or terminating the remaining grant of a subrecipient and reallocating those funds to other subrecipients; and

(vii) Making matching contributions before or as draws are made from the recipient's ESG grant.

(2) HUD may change the method of payment to a reimbursement basis.

(3) HUD may suspend payments to the extent HUD deems it necessary to preclude the further expenditure of funds for affected activities.

(4) HUD may remove the recipient from participation in reallocations of funds under subpart D of this part.

(5) HUD may deny matching credit for all or part of the cost of the affected activities and require the recipient to make further matching contributions to make up for the contribution determined to be ineligible.

(6) HUD may require the recipient to reimburse its line of credit in an amount equal to the funds used for the affected activities.

(7) HUD may reduce or terminate the remaining grant of a recipient and reallocate those funds to other recipients in accordance with subpart D of this part.

(8) HUD may condition a future grant.

(9) HUD may take other remedies that are legally available.

(c) *Recipient sanctions.* If the recipient determines that a subrecipient is not complying with an ESG program requirement or its subgrant agreement, the recipient must take appropriate actions, as prescribed for HUD in paragraphs (a) and (b) of this section. If the recipient is a State and funds become available as a result of an action under this section, the recipient must reallocate those funds to other subrecipients as soon as practicable. If the recipient is a unit of general purpose local government of territory, it must either reallocate those funds to other subrecipients or reprogram the funds for other activities to be carried out by the recipient as soon as practicable. The recipient must amend its Consolidated Plan in accordance with its citizenship participation plan if funds become available and are reallocated or reprogrammed under this section. The reallocated or reprogrammed funds must be used by the expenditure deadline in § 576.203.

Dated: November 9, 2011.

**Mercedes Márquez,**

*Assistant Secretary for Community Planning and Development.*

[FR Doc. 2011–30938 Filed 12–2–11; 8:45 am]

**BILLING CODE 4210–67–P**

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### 24 CFR Parts 91, 582, and 583

**[Docket No. FR–5333–F–02]**

**RIN 2506–AC26**

## Homeless Emergency Assistance and Rapid Transition to Housing: Defining ''Homeless''

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Final rule.

**SUMMARY:** The Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009 (HEARTH Act), enacted into law on May 20, 2009, consolidates three of the separate homeless assistance programs administered by HUD under the McKinney-Vento Homeless Assistance Act into a single grant program, revises the Emergency Shelter Grants program and renames the program the Emergency Solutions Grants program,

and creates the Rural Housing Stability program to replace the Rural Homelessness Grant program. The HEARTH Act also codifies in law the Continuum of Care planning process, long a part of HUD's application process to assist homeless persons by providing greater coordination in responding to their needs.

This final rule integrates the regulation for the definition of ''homeless,'' and the corresponding recordkeeping requirements, for the Shelter Plus Care program, and the Supportive Housing Program. This final rule also establishes the regulation for the definition ''developmental disability'' and the definition and recordkeeping requirements for ''homeless individual with a disability'' for the Shelter Plus Care program and the Supportive Housing Program.

**DATES:** *Effective Date:* January 4, 2012.

**FOR FURTHER INFORMATION CONTACT:** Ann Marie Oliva, Director, Office of Special Needs Assistance Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410–7000; telephone number (202) 708–4300 (this is not a toll-free number). Hearing- and speech-impaired persons may access this number through TTY by calling the Federal Relay Service at (800) 877–8339 (this is a toll-free number).

**SUPPLEMENTARY INFORMATION:**

## I. Background—HEARTH Act

An Act to Prevent Mortgage Foreclosures and Enhance Mortgage Credit Availability was signed into law on May 20, 2009 (Pub. L. 111–22). This new law implements a variety of measures directed toward keeping individuals and families from losing their homes. Division B of this new law is the Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009 (HEARTH Act). The HEARTH Act consolidates and amends three separate homeless assistance programs carried out under title IV of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11371 *et seq.*) (McKinney-Vento Act) into a single grant program that is designed to improve administrative efficiency and enhance response coordination and effectiveness in addressing the needs of homeless persons. The single Continuum of Care program established by the HEARTH Act consolidates the following programs: The Supportive Housing Program, the Shelter Plus Care program, and the Moderate Rehabilitation/Single Room Occupancy program. The former Emergency Shelter Grant program is renamed the Emergency Solutions Grant program and revised to broaden existing emergency shelter and homelessness prevention activities and to add rapid rehousing activities. The new Rural Housing Stability program replaces the Rural Homelessness Grant program. The HEARTH Act also codifies in law and enhances the Continuum of Care planning process, the coordinated response to addressing the needs of homelessness established administratively by HUD in 1995. HUD has commenced rulemaking to implement these new and revised programs, and this final rule is central to all of the HEARTH Act rules.

## II. The April 2010 Proposed Rule

On April 20, 2010, HUD published a proposed rule (75 FR 20541) to commence HUD's implementation of the HEARTH Act. The proposed rule provided necessary clarification on terms within the statutory definitions of ''homeless,'' ''homeless individual,'' ''homeless person,'' and ''homeless individual with a disability.'' In addition, the proposed rule contained proposed recordkeeping requirements designed to assist communities appropriately document an individual or family's homeless status in the case file.

Through the proposed rule, HUD solicited public comment and suggestions on the proposed clarifications. The public comment period closed on June 21, 2010.

A more detailed discussion of HUD's April 20, 2010, proposed rule can be found at 75 CFR 20541 through 20546, of the April 20, 2010, edition of the **Federal Register,** and the discussion of public comments submitted on the proposed rule and HUD's responses to the comments are addressed later in this preamble.

This final rule is being published contemporaneously with the interim rule for the Emergency Solutions Grants (ESG) program, which establishes the regulations for the ESG program in 24 CFR part 576 and makes corresponding amendments to HUD's Consolidated Plan regulations in 24 CFR part 91. To complement the ESG interim rule, this final rule revises the definition of ''homeless'' in both 24 CFR parts 91 and adds recordkeeping requirements to part 576. While the proposed rule also included definitions for ''developmental disability'' and ''homeless individual with a disability,'' those definitions are not being adopted by this final rule. Part 576 does not use those terms, and the Consolidated Plan regulations in 24 CFR part 91 covers more than HUD's homeless assistance programs.

The definitions of ''developmental disability'' and ''homeless individual with a disability'' will be addressed in the final rule for the Continuum of Care program, which will replace the Shelter Plus Care program and the Supportive Housing Program, and in the rule for the new Rural Housing Stability Assistance program. The rulemaking for the Continuum of Care program and the Rural Housing Stability Assistance program have not yet commenced, and therefore, this final rule integrates these new definitions into the current regulations for the Shelter Plus Care program and Supportive Housing Program at 24 CFR parts 582 and 583, respectively.

## III. Overview of the Final Rule—Key Clarifications

The proposed rule, submitted for public comment, provided four possible categories under which individuals and families may qualify as homeless, corresponding to the broad categories established by the statutory language of the definition in section 103 of the McKinney-Vento Act, as amended by the HEARTH Act. The final rule maintains these four categories. The categories are: (1) Individuals and families who lack a fixed, regular, and adequate nighttime residence and includes a subset for an individual who resided in an emergency shelter or a place not meant for human habitation and who is exiting an institution where he or she temporarily resided; (2) individuals and families who will imminently lose their primary nighttime residence; (3) unaccompanied youth and families with children and youth who are defined as homeless under other federal statutes who do not otherwise qualify as homeless under this definition; and (4) individuals and families who are fleeing, or are attempting to flee, domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening conditions that relate to violence against the individual or a family member. Throughout this preamble, all references to a number ''category of homeless'' refer to this list.

After reviewing issues raised by the commenters, discussed in Section IV of this preamble, and upon HUD's further consideration of issues related to this final rule, the following highlights the changes that are made by this final rule.

*''Shelter'' includes ''Emergency Shelter'' but not ''Transitional Housing.''* The HEARTH Act defines an individual or family who resided in shelter or a place not meant for human habitation and who is exiting an institution where he or she temporarily

resided as ''homeless.'' In this final rule, HUD clarifies that ''shelter'' means ''emergency shelter'' but not ''transitional housing'' for the purposes of qualifying as homeless under this provision

*''Youth'' is defined as less than 25 years of age.* Traditionally, HUD has defined children as less than 18 years of age and adults as 18 years of age and above (as established in the *Point-in-Time (PIT) and Housing Inventory Count Reporting* and the annual Continuum of Care Competition Exhibit 1 and Exhibit 2 applications). The proposed rule did not define ''youth.'' With the inclusion of the term ''youth'' in Section 103(6), HUD determined it necessary to define youth. By establishing youth as less than 25 years of age, it is HUD's hope that the programs authorized by the HEARTH Act amendments to the McKinney-Vento Act (42 U.S.C. 11301 *et seq*), (the Act) will be able to adequately and appropriately address the unique needs of transition-aged youth, including youth exiting foster care systems to become stable in permanent housing.

*Inclusion of the ''other federal statutes'' with definitions of homelessness under which unaccompanied youth and families with children and youth could alternatively qualify as homeless under category 3 of the homeless definition.* The final rule includes references to other federal statutes with definitions of ''homeless'' under which unaccompanied youth and families with children and youth could alternatively qualify as homeless under category 3 of the definition of ''homeless.'' These statutes are the Runaway and Homeless Youth Act (42 U.S.C. 5701 *et seq.*), the Head Start Act (42 U.S.C. 9831 *et seq.*), subtitle N of the Violence Against Women Act of 1994 (42 U.S.C. 14043e *et seq.*) (VAWA), section 330 of the Public Health Service Act (42 U.S.C. 254b), the Food and Nutrition Act of 2008 (7 U.S.C. 2011 *et seq.*), section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786), and subtitle B of title VII of the McKinney-Vento Act (42 U.S.C. 11431 *et seq.*). This list represents the entire universe of statutes with definitions under which an unaccompanied youth or a family with children and youth can qualify as homeless under this category. While there may be other federal statutes with definitions of ''homeless,'' this list is intended to include only those that encompass children and youth.

*''Long-term period'' defined to mean 60 days and ''frequent moves'' is defined as two.* The term ''long-term period'' found in Section 103(6)(A) of the McKinney-Vento Act, is defined in this final rule to mean 60 days and the number of moves required during that time that are considered ''frequent,'' as established in Section 103(6)(B) of the McKinney-Vento Act, is two. HUD determined that two moves over a 60-day period strikes an appropriate balance between the statutory requirements of ''long term'' and ''frequent moves'' and identifying and addressing the needs of unaccompanied youth and families with children and youth in a manner that does not encourage instability.

*Third-party documentation, where it is available, is the preferable documentation of homeless status.* The final rule provides that, whenever possible, third-party documentation of the criteria used to establish an individual or family as homeless should be obtained. The exception to this is for recipients that provide emergency assistance, including emergency shelters that provide a bed for one night, and victim service providers. The recordkeeping requirements in the final rule reflect this requirement and exception.

*Utilizing other forms of already available documentation is acceptable evidence of an individual or family's homeless status.* HUD recognizes that verifying an individual or family's homeless status requires additional steps by housing and service providers and often requires a homeless individual or family to answer the same questions more than once. In an effort to alleviate some of this burden on both housing and service providers and homeless persons, HUD has established the recordkeeping requirements in this final rule to allow already available documentation to be used, where it is available. Already available documentation includes certification or other appropriate service transactions recorded in a Homeless Management Information System (HMIS) or other database that meet certain standards, discussed later in this preamble. This also includes discharge paperwork, to verify a stay in an institution.

*Documenting an individual's stay in an institution.* The final rule expands what is acceptable evidence of an individual's stay in an institution to include an oral statement made by a social worker, case manager, or other appropriate official at an institution that is documented by the intake worker of the housing or service program. Where the intake worker is not able to obtain a written or oral statement from a social worker, case manager, or other appropriate official at an institution, the intake worker may document his or her due diligence in attempting to obtain a statement from the appropriate official in the case file.

*Documentation of imminent loss of housing.* The final rule provides that documentation of imminent loss of housing includes not only a court order resulting from an eviction action, or the equivalent notice under applicable state law, but also a formal eviction notice, a Notice to Quit, or a Notice to Terminate, that require the individual or family to leave their residence within 14 days after the date of their application for homeless assistance.

*Documentation of homeless status of an unaccompanied youth or a family with children and youth who qualify as homeless under ''other federal statutes.''* The final rule provides that documentation of the homeless status of an unaccompanied youth or a family with children and youth who qualify as homeless under other federal statutes must be certified by the local nonprofit, state or local government entity that administers assistance under the other federal statutes. When certifying the homeless status of an unaccompanied youth or a family with children and youth who qualify as homeless under another federal statute, the case file must include a determination from the appropriate official at the appropriate administering nonprofit organization or state or local government.

*Verification of homeless status by providers serving individuals and families fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, and stalking that are not victim service providers.* The final rule imposes additional verification requirements for oral statements by individuals or families who are fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, and stalking who are seeking or receiving shelter or services from providers who are not victim service providers, as defined in section 401(32) of the McKinney-Vento Act, as amended by the HEARTH Act. Specifically, the individual or head of household must certify that he or she has not identified a subsequent residence and lacks the resources or support networks, e.g., family, friends, faith-based, or other social networks, needed to obtain housing, and, where the safety of the individual or family would not be jeopardized, the domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening condition must be verified by a written observation by the intake worker or a written referral from a housing or service provider, social worker, health-care provider, law enforcement agency, legal assistance provider, pastoral

counselor, or any other organization from whom the individual has sought assistance for domestic violence, dating violence, sexual assault, or stalking. The written referral or observation need only include the minimum amount of information necessary to document that the individual or family is fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, and stalking. HUD does not expect that the written referral contain specific details about the incidence(s) of violence that occurred prior to the victim fleeing, or attempting to flee.

*Written documentation of disability status.* The final rule provides that written documentation of disability status includes: (1) Written verification from a professional who is licensed by the state to diagnose and treat that condition, that the disability is expected to be long-continuing or of indefinite duration and that the disability substantially impedes the individual's ability to live independently; and (2) written verification from the Social Security Administration, or the receipt of a disability check (e.g., Social Security Disability Insurance check or Veteran Disability Compensation). Information on disability status should be obtained in the course of client assessment once the individual is admitted to a project, unless having a disability is an eligibility requirement for entry into the project. Where disability is an eligibility requirement, an intake staff-recorded observation of disability may be used to document disability status as long as the disability is confirmed by the aforementioned evidence within 45 days of the application for assistance.

*Technical and additional clarifying changes.* In addition to the changes highlighted above, this final rule also includes technical and minor clarifying changes to certain proposed regulatory provisions. Several of these changes are in response to requests by commenters for clarification, and are further discussed in section IV of this preamble. HUD's response to public comments discussed below identifies where the final rule makes these changes.

## IV. Discussion of the Public Comments

### *A. The Comments, Generally*

The public comment period on the proposed rule closed on June 21, 2010, and HUD received 201 public comments. HUD received public comments from a variety of sources including: Private citizens; nonprofit organizations; advocacy groups; Continuums of Care; and government, community, and affordable housing organizations. General concerns about this rule most frequently expressed by commenters were: (1) Vulnerable populations (e.g., individuals who are ''couch surfing'' and individuals and families in substandard housing) continue to be excluded from the definition of ''homeless'' used by HUD to administer its programs; and (2) the recordkeeping requirements are too burdensome.

Regarding the first concern, it is important to note that the definition of ''homeless'' must be reviewed in its entirety when attempting to confirm that an individual or family is homeless. For example, an unaccompanied youth may not meet the criteria in the third category, but if the youth is fleeing domestic violence, then the youth will meet the criteria established in the fourth category. For individuals and families who do not meet the definition of ''homeless'' under any of the categories, HUD notes that the McKinney-Vento Act was amended to allow homeless assistance to be provided to persons who are ''at risk of homelessness.'' Commenters should look for the definition of persons who are at risk of homelessness in upcoming program regulations, including the ESG program interim rule, which is published elsewhere in today's **Federal Register**.

Regarding the second concern, documentation of an individual or family's status as ''homeless'' has always been required. Failure to maintain appropriate documentation of a household's status as homeless is the monitoring finding that most often requires recipients of HUD funds to repay grant funds. The recordkeeping requirements established by this final rule are those necessary for appropriately documenting ''homeless'' status.

Specific comments most frequently expressed by commenters pertained to requests that: (1) HUD revisit the standards provided for ''long-term period'' and ''persistent instability'' and the list provided for ''barriers to employment'' and (2) HUD broaden the fourth category of ''homeless,'' ''homeless individual,'' and ''homeless person'' to include ''other dangerous or life-threatening situations'' and not limit the fourth category to individuals and families fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, stalking, or other dangerous life-threatening conditions that relate to violence against the individual or family member.

In addition to the general concerns raised and specific comments submitted regarding the definitions and the recordkeeping requirements in the proposed rule, many commenters raised questions or provided comments about topics that will be addressed in the upcoming proposed rules for the Rural Housing Stability program, the Continuum of Care program, and the Homeless Management Information System and the interim rule for the ESG program. Topics on which further clarification and guidance was requested, and which HUD intends to address in one or more of the upcoming proposed rules, or has addressed in the ESG interim rule, include the following: The definition of ''chronically homeless''; the definition of ''episode of homelessness''; the definition of ''at risk of homelessness''; the overlap between the definition of ''homeless'' and the definition of ''at risk of homelessness'' and how this impacts eligibility for programs; conducting point-in-time counts; establishing local priorities for serving homeless persons; matching requirements for recipients of funds; specific program requirements for protecting the confidentiality of victims of domestic violence, dating violence, sexual assault, and stalking; specific program requirements to ensure that recipients and subrecipients make known to lesbian, gay, bisexual, and transgendered persons the facilities, assistance, and services available within the community; confidentiality and privacy standards of HMIS; requirements for domestic violence providers with regard to HMIS; eligibility of costs necessary to participate in HMIS; further guidance on the Involuntary Separation provision in section 404 of the McKinney-Vento Act; further guidance on the provision providing communities the flexibility to serve persons identified as homeless under other federal laws established in section 422(j) of the McKinney-Vento Act; determining eligibility for rapid rehousing and homelessness prevention assistance; determining eligibility of subpopulations, specifically unaccompanied youth, in HUD's homeless assistance and homelessness prevention programs; for projects that are limited to persons with disabilities, guidance on which family member must have the disability to qualify a family for assistance; an appeal process for a person presenting as homeless who was denied assistance; information about the coordination and collaboration between recipients of ESG program funds and recipients of Continuum of Care program funds; eligibility of costs related to documenting homelessness; eligibility of costs related to documenting disability; Collaborative

Applicants; Unified Funding Agencies; discharge planning requirements; high-performing communities and the bonus available to communities selected as high-performing; guidance on the ''Use Restrictions'' as they apply to ''Conversion'' as established in section 423(c)(3) of the McKinney-Vento Act; clarification of ''renewal funding for unsuccessful applicants'' established in section 422(e) of the McKinney-Vento Act; clarification on the standards HUD will use to determine when transitional housing assistance may be extended beyond 24 months; and clarification of the other federal laws that apply to the programs in the Act. For these issues, HUD welcomes commenters to review forthcoming HEARTH Act proposed rules when published and the ESG interim rule published elsewhere in today's **Federal Register** and to submit comments.

Many commenters requested future guidance and technical assistance related to this final rule defining ''homeless,'' ''homeless person,'' ''homeless individual,'' and ''homeless individual with a disability,'' on the following topics: a simple matrix clarifying the definition; a standard set of questions that can be used to make determinations about the credibility of oral statements; a standard set of questions for determining ''imminent loss of housing;'' a simple, safe process for determining survivor eligibility, with great attention paid to the confidentiality rights and needs of victims of domestic violence, dating violence, sexual assault, and stalking; eligibility of specific subpopulations, including prisoners and youth exiting the foster care system, within the specific categories of the definition of ''homeless,'' ''homeless individual,'' and ''homeless person''; the other federal definitions of homelessness and how to integrate these definitions into intake procedures; assisting agencies and projects adjust their service delivery models to serving a broader group of homeless persons to ensure success; targeting funds from HUD's homeless assistance programs and other common funding streams; and the consequences of signing a certification that is false for both the applicant of funds and the program participant. HUD is coordinating a technical assistance strategy to assist recipients of funds who are required to use this definition adapt their projects, as necessary, and meet the requirements set forth in this proposed rule.

Many commenters noted that current funding levels for the homeless assistance programs at HUD will not be sufficient to serve the increase in individuals and families defined as homeless under this final rule and encouraged HUD to work with Congress to increase funding to the homeless programs. HUD and its federal partners, including the U.S. Interagency Council on Homelessness, the U.S. Department of Education, the U.S. Department of Health and Human Services, the U.S. Department of Veterans Affairs, and the U.S. Department of Labor, are committed to preventing and ending homelessness as evidenced in *Opening Doors: Federal Strategic Plan to Prevent and End Homelessness.* To meet the goals established in the *Federal Strategic Plan,* HUD and its federal partners will provide the resources from both targeted and nontargeted agency programs. HUD reminds its stakeholders that the availability of resources, both for targeted and nontargeted programs, are subject to appropriations by Congress.

*B. The Definition of ''Homeless'' in 24 CFR Parts 91, 582, and 583*

In General: Overarching Comments

*Comment:* The definition of ''homeless'' should be broadened to include others that continue to be left out of the definition. Several commenters noted that HUD's definition of homeless continues to leave out vulnerable persons who should be included in order for them to access needed housing and services. Several commenters requested that HUD's definition match the definition of homeless used by the U.S. Department of Education. Another commenter stated that someone who is living doubled up with others due to economic or other safety conditions should be included in the definition of homeless. One commenter requested that the definition be broadened to include those who are currently homeless, in danger of becoming homeless, or in housing where the rental or mortgage rate exceeds 30 percent of household qualifying income, while another commenter requested that the definition also include those persons who have recently experienced homelessness. Another commenter stated that a person should retain his or her homeless status if the person exited the shelter to live with family and friends.

One commenter stated that a fifth category of ''homeless'' should consist of persons with disabilities who: (1) Have resided with a relative, but by virtue of age or other circumstances of that relative is unable to continue to provide shelter to the individual with a disability; (2) reside in an institution or facility not meant for permanent human habitation such as a hospital, rehabilitation facility, nursing or board and care home, and such individual has no home to return to where that person could live independently and safely; (3) are in situations such as (1) and (2) who no longer choose to live in that circumstance and who wish to live independently.

*HUD Response:* HUD understands that there are vulnerable populations that continue to be excluded from the definition of homeless used by HUD to administer its programs; however, HUD is following the statutory guidelines established in section 103 of the McKinney-Vento Act as HUD further clarifies the definition. HUD reminds its stakeholders that the McKinney-Vento Act also includes the definition of ''at risk of homelessness'' and that funds through the ESG program, Rural Housing Stability program, and Continuum of Care program will be available to serve persons ''at risk of homelessness'' as well. Commenters should review the upcoming proposed and interim program rules when they are published, and HUD welcomes comments at that time.

*Comment:* Restore the categories established in the statute. Some commenters viewed the paragraphs of section 103 of the McKinney-Vento Act as seven separate categories of homelessness and recommended that HUD use them instead of the four categories included in the proposed rule. These commenters stated that if Congress had intended for the statutory categories to be condensed from seven to four categories, then Congress would have drafted the law differently.

One commenter stated that the proposed rule's simplification of the categories does not provide enough information and is confusing. This commenter suggested that the statutory categories be restored or be listed as examples.

Several commenters stated that HUD is effectively eliminating eligibility for persons who lack a fixed, regular and adequate nighttime residence. The commenters stated that the statute was unambiguous and that HUD has narrowed the definition.

Several commenters suggested that by maintaining the seven distinct categories from the McKinney-Vento Act, HUD's definition would match the Department of Education's definition and better align federal homelessness policy and complementary services.

*HUD Response:* The final rule clarifies that an individual or family meets the first paragraph of section 103 of the McKinney-Vento Act by meeting the second, third, or fourth paragraph. In

other words, a person ''lacks a fixed, regular and adequate nighttime residence,'' if that person ''lives in a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings,'' ''lives in a supervised publicly or privately operated shelter designated to provide temporary living arrangements,'' or ''is exiting an institution in which he or she temporarily resided after living in a shelter or a place not meant for human habitation.''

This interpretation is consistent with HUD's longstanding interpretation of the statutory language ''lacks a fixed, regular and adequate nighttime residence,'' which the HEARTH Act, in amending the McKinney-Vento Act, did not change. This longstanding interpretation has helped target HUD's limited homeless resources to those most in need of them, while directing other people, like those who are poorly housed, to other HUD housing programs. The suggested alternatives to HUD's interpretation would greatly reduce this targeting of resources.

The suggested alternatives also appear inconsistent with the statutory language. If the first paragraph were interpreted to encompass people who are poorly housed, it would undermine the McKinney-Vento Act's imposition of additional criteria for these people under the sixth paragraph of the ''homeless'' definition and the ''at risk of homelessness'' definition in section 401(1) of the McKinney-Vento Act. For example, if a person qualifies as homeless merely because she lives in housing, there would be no reason to consider the additional criteria those provisions would otherwise require the person to meet.

Although the final rule does not broaden the definition as requested by the commenters, HUD is committed to working as much as possible within its statutory parameters to facilitate coordination across all federal programs that can help prevent and end homelessness, including those administered by the Department of Education.

*Comment:* Expand the single term ''domestic violence'' to include ''domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening conditions.'' Many commenters disagreed with the proposed rule's inclusion of the term ''domestic violence'' without any accompanying mention of ''domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening conditions.'' Commenters stated that individuals and families fleeing their homes for reasons of lack of safety in their housing situation, other than domestic violence, should be included as it is specified in the statute. Commenters explained that the term domestic violence does not adequately or accurately describe each unique term. By using separate terms, commenters stated that victims of each crime are afforded the same protections and benefits. The commenters recommended that each term be identified specifically and consistently throughout the proposed rule and stated that each term is defined under VAWA.

*HUD Response:* HUD agrees that the references to ''domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening conditions'' should appear together in the final rule, wherever possible. Therefore, the final rule includes each of these unique terms in both the last category of the homeless definition and its corresponding recordkeeping requirements. However, because the term ''domestic violence'' is the only one of these terms to appear in section 103(a)(6)(C) of the Act, it remains the only one of these terms to appear in the corresponding provision in the final rule.

*Rule clarification.* HUD has revised paragraph (b)(5) of the recordkeeping requirements of the final rule to include individuals and families who are fleeing dating violence, sexual assault, stalking, or other dangerous or life-threatening conditions that relate to violence, in addition to individuals and families who are fleeing domestic violence.

*Comment:* A more detailed standard for ''lacks the resources'' is necessary. Section 577.3(b)(2)(ii) and (b)(4)(iii) of the proposed rule required that the individual or family lack the resources or support networks needed to obtain other permanent housing. One commenter asked for a clear definition of the meaning of lack of resources, as well as guidance on how to demonstrate a lack of resources, which would include examples.

*HUD Response:* Historically, HUD has not specifically defined in regulations or notices ''lacks the resources or support networks'' for the purposes of documenting eligibility for HUD's homeless and homelessness prevention programs. HUD's view is that the resources and support networks required to demonstrate this criteria can vary drastically from person to person and community to community and HUD could never capture all of the various possibilities. The final rule, therefore, does not define ''resources or support networks,'' although HUD has included examples of support networks about which recipients must inquire when determining whether an individual or family lacks the resources or support networks to obtain other permanent housing. These examples, which include friends, family, and faith-based or other social networks, are not meant to be an all-inclusive list, but rather they are designed to illustrate the kinds of support networks that people must first turn to, if they are able to, before drawing on the scarce resources targeted to homeless people. A housing situation that is unsafe due to violence is not considered a resource or support network, and providers must not disqualify an individual or family under the applicable category based on these situations.

*Rule clarification.* To clarify that family, friends, and faith-based or other social networks are examples of ''resources or support networks'' about which recipients must inquire, HUD is revising paragraphs (2)(iii) and (4)(iii) of the ''homeless'' definition.

*Comment:* Strike the word ''other'' when referring to ''other permanent housing.'' Where the proposed rule required ''The individual or family lacks the resources or support networks needed to obtain other permanent housing,'' some commenters recommended that HUD strike the word ''other.'' These commenters stated that the term ''other'' implies that housing in which one lives without paying rent or shares with others, including rooms in hotels and motels not paid for by federal, state, or local government programs for low-income individuals or by charitable organizations, is considered a permanent living arrangement as opposed to a primary nighttime residence.

*HUD Response:* HUD recognizes that the statutory language may infer permanency in a housing situation that may not exist in reality; however, ''other'' is statutory language. Therefore, in this final rule, HUD has not changed the language from the proposed rule.

Category 1: An Individual or Family Who Lacks a Fixed, Regular, and Adequate Nighttime Residence

*Comment:* Address severely substandard housing by including ''places designed for or ordinarily used as a regular sleeping accommodation that are not fit/suitable for human beings.'' Several commenters noted that the definition in the proposed rule does not address the issue of severely substandard housing. These commenters stated that by only including a ''place not designed for or ordinarily used as a regular sleeping

accommodation,'' persons living in houses that are dilapidated, or without water or electricity, will be excluded from the homeless definition because the buildings were originally designed for sleeping accommodation.

*HUD Response:* HUD recognizes that there are vulnerable populations that live in overcrowded housing and are excluded from the definition of homeless; however, the language ''place not designed for or ordinarily used as a regular sleeping accommodation'' is statutory.

*Comment:* A person staying in a hotel or motel room is homeless. Commenters recommended that a person be considered homeless regardless of who was paying the bill for the hotel or motel room—a federal, state, or local government; charitable institution; or the individual. The commenters stated that it should be recognized that these types of nighttime residences, as well as housing that is shared and in which rent is not paid, are, by their nature, temporary living arrangements.

*HUD Response:* HUD understands that some housing situations are more precarious than others; however, the language in the proposed and final rules concerning people living in hotels and motels is directly derived from the statutory language in section 103(a)(3) and (5)(A) of the McKinney-Vento Act. Therefore, HUD has not changed this language in response to the comments.

*Comment:* A clearer standard is needed for the term ''shelter.'' With respect to the term ''shelter,'' several commenters requested that HUD explicitly include both transitional housing and emergency shelter in the definition of ''shelter.'' One commenter stated that this inclusion is important for certain geographic areas where it is difficult to establish emergency shelters, but transitional housing has been more acceptable.

*HUD Response:* The proposed rule did not define the term ''shelter'' from the definition in the McKinney-Vento Act. However, after reviewing the comments, HUD agrees that more clarification is needed regarding the use of the term ''shelter'' and has further clarified that ''shelter'' means ''emergency shelter.'' HUD disagrees that transitional housing should be included in the definition of ''shelter'' for persons who are exiting institutions who have resided in such institutions for less than 90 days. Historically, projects funded through the Supportive Housing Program and Shelter Plus Care program have been allowed to maintain a unit for an individual who is temporarily residing in an institution, and HUD intends to continue this policy in the proposed rule for the Continuum of Care program; therefore, these individuals would not be ''homeless'' because they would have a unit to which they could return. HUD welcomes commenters to review the Continuum of Care proposed rule when published and to submit any comments on this issue in connection with the Continuum of Care proposed rule.

*Rule clarification.* The final rule clarifies that ''shelter'' in paragraph (1)(iii) of the definition of ''homeless'' means ''emergency shelter.''

*Comment:* More clarification is needed for the term ''institution.'' With respect to the term ''institution,'' HUD received many comments that a clear standard for this term is needed. Commenters offered suggested standards, the most common of which were: penal institutions (jails and prisons), hospitals, nursing homes, Institutes for Mental Disease (IMDs), juvenile detention centers, substance abuse facilities, publicly operated mental health facilities, state mental hospitals, youth crisis beds, and Intensive Residential Treatment Service (IRTS) facilities. One commenter said that, in the regulatory text, ''institution'' should explicitly include all possibilities, including health, mental health, and chemical dependency institutions.

*HUD Response:* HUD acknowledges that clarification of the type of facility that qualifies as an institution would aid in better understanding of the meaning of ''institution.'' However, rather than establishing a fixed set of institutions in the final rule, HUD intends to issue guidance on the meaning of ''institution.''

*Comment:* The standard for ''temporarily resided'' should be revised. With respect to the term ''temporarily resided,'' many commenters stated that the standard of 90 days or less should be lengthened. A variety of alternative time frames were suggested, the most common of which was 180 days, which is the current standard for HUD's Homelessness Prevention and Rapid Re-Housing Program (HPRP). Other commenters suggested that HUD define the term as a period of up to one year.

Other commenters recommended that HUD not limit ''temporarily resided'' by an arbitrary count of calendar days and instead allow for a length of stay in the institution that varies based on the reason the individual entered the institution. One commenter suggested that HUD not establish a time frame or any additional qualifiers for ''temporarily resided'' and instead should allow anyone who was homeless when entering an institution to be considered homeless upon exit.

One commenter suggested that ''temporarily resided'' should mean that an individual exiting an institution may be considered homeless if that individual had at least one previous episode of homelessness lasting at least 30 days in the 5 years prior to entering the institution, has no subsequent residence identified, and lacks the resources or support networks needed to obtain other permanent housing.

*HUD Response:* HUD disagrees with the conclusion that ''temporarily resided'' should be for a period of longer than 90 days. HUD has determined that 90 days strikes an appropriate balance between allowing homeless persons to maintain their homeless status while residing in an institution without undermining the considerable progress made in strengthening the discharge planning protocols and practices of institutions or state systems of care. Additionally the 90-day standard set for ''temporarily resided'' in paragraph (1)(iii) of the definition of ''homeless'' is consistent with policy established in the Fiscal Year (FY) 2008 Continuum of Care Homeless Assistance Grants Notice of Funding Availability (NOFA) and matches the ''Rule of Construction'' regarding the definition of ''chronically homeless'' in section 401(2)(B) of the McKinney-Vento Act, which states that ''a person who currently lives or resides in an institutional care facility * * * and has resided there for fewer than 90 days shall be considered chronically homeless if such person met all of the requirements.''

Category 2: An Individual or Family Who Will Imminently Lose Their Housing

*Comment:* Restore the statutory language covering people who will imminently lose their housing. Section 103(a)(5) of the McKinney-Vento Act adds a new category under which families and individuals may qualify as homeless: ''individuals or families who will imminently lose their housing, including housing they own, rent, or live in without paying rent, are sharing with others, and rooms in hotels or motels not paid for by Federal, State, or local government programs.'' The corresponding language in the proposed rule is ''an individual or family who will imminently lose their primary nighttime residence.'' Commenters stated that Congress used explicit language to ensure that there would be no confusion by HUD or other parties that a subset of doubled-up individuals and families would be allowed access to HUD's homeless assistance programs.

Many of these commenters stated that the proposed rule's rewording of the statute's language creates a risk that this subset of families will not be considered homeless as Congress intended. Commenters requested that HUD restore the language, ''(including housing they own, rent, or live in without paying rent, are sharing with others, and rooms in hotels or motels not paid for by Federal, State, or local government programs * * *)'' in the final rule. One commenter stated that HUD should be faithful to the statute and give guidance to individuals in eligibility determination roles.

*HUD Response:* HUD disagrees that any population was excluded by replacing ''housing'' with ''primary nighttime residence'' or that clarity was lost by eliminating the examples from paragraph (a)(2) of the statutory definition of ''homeless.'' It is HUD's position that the recordkeeping requirements provided in § 577.3(3)(i) of the proposed rule establish clear guidance for persons responsible for verifying and documenting homeless status for category two of the ''homeless'' definition. Accordingly, HUD did not make changes in the final rule in response to these comments.

*Comment:* Increase the time frame for the imminent loss of housing beyond 14 days. While many commenters supported the 14-day limit in § 577.2(2)(i) of the proposed rule, which pertains to the period in which an individual or family has housing, but is about to lose such housing under § 577.2(2)(i), one commenter disagreed. This commenter stated that more must be done to ensure that resources remain available to those who need them the most. The commenter stated that the 14-day limit presents a difficult time constraint on individuals and social workers trying to secure housing and resources. The commenter stated that the limit would also drastically reduce the ability to create a smooth housing transition without forcing individuals and families onto the streets. This commenter stated that many people who ''couch-surf'' would not be eligible, because these people are not considered ''street homeless.'' This commenter stated that by viewing a temporary shared living space with a friend or family as an obstacle to receiving additional housing assistance, the reality of homelessness looks more like a revolving door than a slow, steady climb to safe and suitable, permanent housing.

*HUD Response:* HUD acknowledges that 14 days may not be sufficient time in all situations to ensure a smooth housing transaction to individuals and families facing imminent loss of their housing; however, the 14-day limit is statutory. However, HUD notes that 14 days is an increase from the 7-day time frame currently allowed in HUD's homeless programs. Beginning with the publication of the 2005 NOFA, and for every year since, HUD has allowed persons who are about to lose their housing within 7 days to be considered homeless if no subsequent residence has been identified and they lack the resources and support networks needed to obtain housing. Accordingly, HUD did not make changes in the final rule in response to these comments.

*Comment:* Individuals and families who will imminently lose their housing should not be defined as ''homeless'' if the eviction was due to a lease violation. One commenter stated that being evicted should not qualify as homeless if the reason for eviction is based on a tenant's actions that violate the lease. The commenter pointed out that in public housing, it is conceivable that a family is evicted for failure to pay rent, drugs, etc. and that in such cases, the family should not qualify as homeless under this definition.

*HUD Response:* HUD recognizes that there may be situations where individuals and families could have prevented the loss of their housing; however, HUD disagrees that these persons should not be defined as homeless when all other criteria for the definition of ''homeless'' are met. HUD has not changed this language from the proposed rule based on these comments.

Category 3: Unaccompanied Youth and Families With Children and Youth Defined as Homeless Under Other Federal Statutes

*Comment:* HUD should include individuals in the category of persons defined as homeless under other federal statutes. Many commenters stated that the category for unaccompanied youth and families with children and youth defined as ''homeless'' under other federal statutes should also include adult individuals. One commenter stated that HUD unnecessarily distinguishes families with children from those without children. Another commenter stated that many individuals who experience homelessness depend on ''couch surfing,'' especially in rural areas in the winter months when it is life-threatening to sleep outside, and would meet the criteria of this category.

*HUD Response:* HUD recognizes that many adult individuals experience a long period of time without living independently and moving frequently; however, the limitation to unaccompanied youth and families with children and youth is statutory. HUD has not changed this language from the proposed rule.

*Comment:* It would be helpful to identify the specific definitions of ''homeless'' included in ''other federal statutes.'' Commenters requested further clarification on using the definitions of homeless children and youth from other federal statutes. Commenters stated that the proposed rule is not clear concerning which other federal programs have definitions of ''homeless.'' One commenter asked if the proposed rule addresses only definitions existing as of the date of this proposed rule or if future definitions by other federal programs will also be considered.

*HUD Response:* HUD agrees that further clarification is needed of the other federal statutes that have definitions of ''homeless'' that relate to children and youth. HUD has identified the following federal statutes with definitions of homelessness that apply to children and youth: the Runaway and Homeless Youth Act (42 U.S.C. 5701 *et seq.*), the Head Start Act (42 U.S.C. 9831 *et seq.*), subtitle N of the VAWA (42 U.S.C. 14043e *et seq.*), section 330 of the Public Health Service Act (42 U.S.C. 254b), the Food and Nutrition Act of 2008 (7 U.S.C. 2012(m)), the Child Nutrition Act of 1996 (42 U.S.C. 1786(b)(15)), and subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 *et seq.*). This list represents the current universe of statutes with definitions under which an unaccompanied youth or family with children and youth can qualify as homeless under this category. While there may be other federal statutes with definitions of ''homeless,'' this list is intended to include only those that encompass children and youth. This list also includes section 725(2) of the McKinney-Vento Act, which contains the definition of ''homeless children and youths'' used by the Department of Education. While this section is not actually an ''other federal statute,'' its definition of ''homeless children and youths'' is fully incorporated by reference in the definition of ''homeless children'' under section 330 of the Public Health Service Act (42 U.S.C. 254b). See 42 U.S.C. 254b(h)(5)(A). Therefore, section 725(2) of the McKinney-Vento Act would be applicable, regardless of whether it is specifically mentioned. HUD has specifically included this statutory section in order to make its applicability clear.

*Rule clarification:* To clarify the other federal statutes with definitions of ''homeless'' that apply to youth and

families with children and youth, HUD has revised paragraph (3) of the definition of ''homeless'' by listing the other federal statutes in the final rule.

*Comment:* Clarification of the terms ''unaccompanied youth,'' ''children'' and ''youth'' is needed. Many commenters suggested that HUD define an age range for youth. The suggested age in these requests varied, but the most common age suggested was 24 and under, followed by the suggestion that youth be defined as persons under the age of 21. Commenters noted that HUD traditionally has defined ''child'' as up to 18 and ''adult'' as 18 and older and wanted to ensure that the uniquely vulnerable population of persons aged 18 through 24 were explicitly included in this category. One commenter suggested that HUD rename the category as ''unaccompanied minors'' and include children up to age 18.

With respect to ''child,'' one commenter recommended that HUD define the term ''child,'' as ''an individual, the greater of not more than 18 years of age or the age of majority established by the law of the State in which the child or his or her family is seeking assistance.''

With respect to ''unaccompanied youth,'' many commenters requested that HUD define unaccompanied youth. These commenters suggested that HUD define ''unaccompanied youth'' to mean ''youth not in physical custody of a parent or guardian.''

*HUD Response:* HUD agrees that more clarification is needed regarding the use of the term ''youth.'' HUD determined that defining ''youth'' as up to age 25 for the purposes of this category will help meet the needs of this uniquely vulnerable population, especially those youth exiting the foster care system. Additionally, this age standard aligns with that provided in the Runaway and Homeless Youth Act (42 U.S.C. 5732a(3)). The final rule clarifies that an unaccompanied youth must be under 25 years of age to qualify under the category for unaccompanied youth and families with children and youth defined as homeless under other federal statutes.

HUD disagrees that additional clarification is needed regarding the terms ''unaccompanied youth'' and ''child.''

*Rule clarification:* To clarify that HUD means a youth under 25 years of age when referring to unaccompanied youth, paragraph (3) of the ''homeless'' definition is revised.

*Comment:* The standard for ''living independently'' should be revised. As reflected in the proposed rule, HUD interpreted ''without living independently in permanent housing'' under section 103(a)(6)(A) of the McKinney-Vento Act as not having ''a lease, ownership interest, or occupancy agreement in permanent housing.'' Some commenters requested that HUD change its interpretation of the statutory language to include people who ''have not resided in a place where they had a lease, ownership interest, or occupancy agreement,'' in order to account for a person whose name appears on a lease for a residence but who cannot live in that residence because of domestic violence, uninhabitable housing, or other reasons. Commenters stated that under HUD's proposed language, families whose names appear on any lease, ownership interest, or occupancy agreement cannot qualify for assistance, whether or not they have been able to reside in that unit. Commenters submitted that changing the language to specify that an individual or family must have resided in the property where they are named on the lease will increase the effectiveness of this section and ensure that families in these situations do not have to remove their names from a lease before receiving assistance.

One commenter stated that the lease language unnecessarily excludes families with children who have a rental agreement with their landlord, but are doubling up out of economic need. This commenter explained that despite the fact that such families have leases or rental agreements, they often are not living ''independently'' and, out of pressing economic need, these families often strike long-term voluntary arrangements to inhabit housing with other individuals or families as a double or triple occupancy. This commenter recommended that HUD allow these families, even if their names appear on a lease, to be considered as not living independently.

Another commenter stated that language requiring that a family not have a lease, ownership interest, or occupancy agreement should be removed altogether from the rule because it is too difficult to prove and to document that someone has not had a lease and it adds little value.

*HUD Response:* HUD disagrees that the standard for ''living independently'' in the proposed rule, ''have not had a lease, ownership interest, or occupancy agreement in permanent housing,'' needs to be revised to reflect individuals who cannot stay in their housing due to domestic violence or uninhabitable housing or to accommodate those who are living doubled up due to economic reasons. Accordingly, HUD has not changed the language in this final rule from the proposed rule.

HUD reiterates that this category is for unaccompanied youth, and families with children and youth, who do not qualify as homeless under another part of the definition. Those families who cannot stay in their housing due to domestic violence would qualify as homeless under the fourth category of the definition.

*Comment:* The standards for ''long-term period'' and ''persistent instability'' should be redefined. Commenters urged HUD to amend the time period used in the proposed rule to define ''long-term period,'' as a period which is at least 91 days. The suggested time frames varied greatly—the most commonly suggested time period was 30 days. Another common recommendation was 180 days. One commenter suggested that HUD use 14 days to define ''long-term period'' because this is the time frame that HUD's rental housing programs use for visitation rules and that HUD should be consistent across programs.

One commenter stated that there is nothing in the statutory language that required the long-term period to be continuous and suggested that the standard could be met by having several doubled up experiences over a certain longer time frame. This commenter suggested a definition similar to the chronically homeless definition, which allows four episodes over a time frame of 3 years.

Many commenters simply requested that HUD elaborate on why 91 days or less was the chosen standard. These commenters stated that it would be helpful to understand HUD's decision-making process on the 91-day standard and whether there was research to support this time frame. Commenters noted that 91 days is not a factor in the Department of Education's statutory definition of homelessness under the Education for Homeless Children and Youth programs. Commenters mentioned that having two different standards would create confusion.

With respect to ''persistent instability'' as measured by ''frequent moves,'' the proposed rule set a standard of three moves or more during a 90-day period. Many commenters had concerns about this interpretation. These commenters stated that this standard is too restrictive and suggested a variety of alternatives. The standard most frequently suggested by the commenters was two moves; however, the period of time over which those two moves should occur varied greatly among the commenters. Common suggestions were 30 days, 90 days, and

180 days. Many commenters stated that one move should be sufficient, while others stated that three moves is appropriate so long as the length of time was extended to 180 days or a year. Most commenters agreed that the initial move out of the original, permanent placement should count as the first move.

Some commenters suggested a standard not relating to a set period of time and number of moves. These commenters stated that there should be an alternate option that would combine the housing history of the family or unaccompanied youth with the current housing instability, which might be more applicable for some families and youth. One of these commenters stated that the housing history and current situation could be considered in conjunction with referrals from social workers and school counselors.

Other commenters suggested a standard that was a combination of situational and number of moves over a designated length of time. One commenter recommended that, for unaccompanied youth, the standard for persistent instability should be defined as having no viable housing resources and having been in the foster care system some time during the 90-day period immediately before applying for homeless assistance or experiencing at least two moves in 90 days. Another commenter recommended that for unaccompanied youth between the ages of 18 and 22, the following standard should apply: two moves in 90 days or having been in the care and responsibility of the child welfare or juvenile justice systems at some point in the 90-day period immediately before applying for homeless assistance.

Commenters stated that nothing in the McKinney-Vento Act requires a long period such as chronic homelessness when defining ''persistent instability'' over a ''long-term period.'' Many commenters stated that this standard would be detrimental to unaccompanied youth and children, especially when related to their performance in school. Some commenters pointed to studies that have proven that homelessness causes multiple problems for children when they lack stability and must experience multiple moves. Other commenters stated that there is little actual evidence to either support or contradict HUD's decision to provide this standard. These commenters recommended that HUD study the phenomenon of persistent instability, and modify this regulation in the future, if the need to do so is indicated by evidence.

*HUD Response:* HUD agrees that 90 days without a permanent housing placement, coupled with three moves over that period, is too long a period and too many moves for unaccompanied youth and families with children and youth before homeless status can be documented and resources can be provided. In an effort to respect the statutory language of ''long term'' and ''frequent moves'' in section 103(6)(A) and (B) of the McKinney-Vento Act while still reaching this population earlier in their instability, in the final rule, HUD has redefined the long-term period as 60 days and redefined frequent moves as two moves or more during those 60 days. Moreover, HUD would consider the move out of the initial permanent housing placement as the first move.

*Rule clarification.* To clarify that HUD means 60 days when referring to ''long-term period,'' and that HUD means two moves or more over that period when referring to ''persistent instability,'' HUD is revising paragraph (3)(i) of the definition of ''homeless.'' To clarify that HUD means persistent instability as measured by two moves or more during that 60-day period, HUD is revising paragraph (3)(ii) of the definition of ''homeless.''

*Comment:* Standards should be established for ''childhood abuse.'' With respect to ''childhood abuse,'' many commenters requested a specific definition of this term. These commenters recommended that ''childhood abuse'' be defined to include physical abuse, sexual abuse, chronic neglect, commercial sexual exploitation and human trafficking, mental abuse, and emotional or psychological abuse. In addition, commenters recommended that ''childhood abuse'' be defined without increasing the burden of proof for agencies.

*HUD Response:* HUD disagrees that the term ''childhood abuse'' requires further specificity. HUD would consider ''childhood abuse'' to include physical abuse, sexual abuse, chronic neglect, commercial sexual exploitation and human trafficking, mental abuse, and emotional or psychological abuse, without further definition. Accordingly, HUD has not changed the language from the proposed rule.

*Comment:* Fewer ''barriers to employment'' should be required. Some commenters did not agree with HUD's interpretation of ''multiple barriers to employment'' to mean two or more barriers to employment. Commenters recommended that only one barrier to employment be required. Other commenters stated that requiring youths to face two or more barriers to their employment unfairly restricts their ability to receive aid, because even well-qualified individuals, including recent college graduates, have been unable to attain employment in this economy. Commenters stated that the inherent barriers facing homeless youth are as great, and presumably greater, than those standing in the way of the average person trying to find a job.

*HUD Response:* Section 103(6)(C) of the McKinney-Vento Act specifically refers to ''*multiple* barriers to employment'' (emphasis added). HUD disagrees with comments that one barrier meets the ''multiple'' standard established by the McKinney-Vento Act. HUD has not revised the rule in response to these comments.

*Comment:* The list of ''barriers to employment'' should be expanded and be more representative of the actual experiences of youth. Commenters expressed concerns with the list of ''barriers to employment.'' Some commenters urged HUD to make the list of barriers illustrative and not exclusionary. To achieve this, commenters recommended that HUD include the phrase ''including but not limited to.'' Other commenters recommended that HUD eliminate the list altogether.

Other commenters strongly encouraged HUD to include additional barriers to employment to the list. The most common requests for inclusion were lack of child care; lack of transportation; lack of resources for necessary job-specific items (uniforms); the responsibility for care of another family member; and a history of victimization including domestic violence, stalking, dating violence, sexual assault, controlling behaviors, substance abuse, mental health issues such as post traumatic stress disorder (PTSD) and complex trauma, and other dangerous nonlife-threatening conditions. Commenters recommend that HUD include the barriers identified by the Department of Labor and Workforce Investment Act. Other commenters stated that there are barriers to employment that affect the general population, such as a high unemployment rate, plant closures, or an over-burdened Work Investment Act agency that should be included.

Within the list of barriers to employment in the proposed rule was ''a history of unstable employment.'' Several commenters stated that this term should be further clarified. Some commenters suggested that the phrase should be revised to state ''a lack of employment history or a history of unstable employment'' and should

reference the barrier created by a weak, unstable job market. Another commenter recommended that the number of jobs held within a specific time period and/or the length of periods of employment and unemployment experienced should define ''a history of unstable employment.''

Other commenters stated that ''unstable employment,'' unlike the other listed barriers, is an outcome and not necessarily a precipitating factor. These commenters suggested this term be further revised to read ''unstable employment refers to employment that is not permanent or procured on a full-time basis.'' Commenters also stated that unstable employment could be inferred as the result of a combination of the barriers to employment currently listed; therefore, these commenters recommended that lack of work experience, including vocational training, be identified in this section as it is both a barrier to employment and a factor which contributes to unstable employment.

Many commenters commented that the list of barriers to employment did not accurately reflect the experiences of youth. Specifically, commenters recommended that HUD change the inclusion of a ''history of incarceration'' in the proposed rule to a ''history of incarceration or detention.'' Other commenters stated that a ''history of incarceration'' should be more inclusive, such as including a history of institutionalization, and should also include detention or involvement with juvenile court, since these are much more likely in the case of youth.

Many commenters suggested that unaccompanied youth under the age of 18 should automatically be considered as having met the barriers to employment, because being under the age of majority and being unaccompanied by a parent or guardian each represent barriers to employment.

*HUD Response:* The list in the regulatory text of ''barriers to employment'' provides examples of possible barriers to employment that unaccompanied youth and families with children and youth might face and is not indicative of all the possible barriers. HUD has not added additional items to the list of barriers in the regulatory text, and HUD has not further defined ''a history of unstable employment.'' HUD would consider the suggestions provided in the comments (e.g., lack of child care, lack of transportation, lack of work experience) as barriers to employment without their specific inclusion in the regulatory text.

HUD agrees with comments that the list of barriers does not reflect the typical experiences of youth and has added ''detention for criminal activity'' to ''history of incarceration,'' as suggested by many commenters.

HUD also agrees that it is probable that unaccompanied youth under the age of 18 will likely meet the criteria of having multiple barriers to employment; however, intake workers cannot automatically presume eligibility for this criterion. The intake worker must document the barriers used to establish eligibility in the case file.

*Rule clarification.* To more accurately reflect the experiences of youth, HUD has revised paragraph (3)(iii) of the definition of ''homeless'' to add ''detention for criminal activity.''

*Comment:* This category should be revised to broaden the number of children, youth, and families defined as homeless that could meet the standards. Commenters appeared, through the comments submitted, to understand that lack of precision in the statute compelled HUD to elaborate on the statutory provisions; however, the commenters sought to ensure that HUD did so in a way that is inclusive of as many people considered homeless under other federal statutes as possible. One commenter stated the view that HUD's narrow interpretation of the key terms is unnecessary to meet the statutory requirements and is unreasonable. A few commenters stated that unaccompanied youth and families with children and youth should not have to meet all three criteria to qualify as ''homeless'' under this category. One commenter recommended that families be considered homeless if they: (1) Have not lived independently in the last 90 days (including doubling up) and are likely to continue to be unstably housed because of disability or barriers to employment; or (2) have moved frequently in the last 90 days (with three or more moves dispositive, but fewer moves still allowable) and are likely to continue to be unstably housed because of disability or barriers to employment; or (3) have experienced a combination of not living independently and moving frequently. The commenter stated that this language allowed the consideration of a number of conditions, but did not create a rigid formula that excludes needy families with children. Another commenter suggested that as long as the youth and families deemed homeless under this category have chronic disabilities or other similarly disabling conditions, there is no purpose served by extending the time period to be living in doubled-up conditions or requiring a certain number of moves, as it is the presence of these conditions that make it difficult for these youth and families to find stable housing.

*HUD Response:* HUD understands that there are vulnerable populations that continue to be excluded from the definition of homeless. The changes made to the standards for ''youth,'' ''long-term period,'' and ''persistent instability'' discussed above will help make the definition more inclusive. Nevertheless, the requirement that unaccompanied youth, and families with children and youth defined as homeless under other federal statutes meet the three criteria in paragraphs (3)(i), (ii), and (iii) of the definition of ''homeless'' is statutory. HUD has not made any change in the final rule in response to these comments.

Category 4: Individual or Family Who Is Fleeing, or Attempting To Flee, Domestic Violence, Dating Violence, Sexual Assault, Stalking, or Other Dangerous or Life-Threatening Conditions

*Comment:* Restore the statutory language regarding people fleeing domestic violence and other dangerous or life-threatening situations. Section 103(b) of the McKinney-Vento Act states that any individual or family ''who is fleeing, or is attempting to flee, domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening conditions in the individual's or family's current housing situation, including where the health and safety of the children are jeopardized * * *'' shall be considered homeless. The proposed rule limited the ''other dangerous or life-threatening conditions'' to those that ''relate to violence against the individual or family member that has either taken place within the individual's or family's primary nighttime residence or has made the individual or family afraid to return to their primary nighttime residence.'' Many commenters expressed concerns about the specific language of ''that relate to violence,'' noting that the McKinney-Vento Act did not require this. Commenters stated that violence is not the only dangerous environment and strongly suggested that HUD use broad language that includes unsanitary and unsafe living conditions.

Other commenters simply sought clarification regarding other dangerous or life-threatening conditions that relate to violence against an individual or family that HUD would consider as meeting this standard. One commenter asked if an arson case would qualify as a dangerous or life-threatening condition or must such condition specifically relate to domestic violence.

Many commenters expressed concerns that the proposed rule does not refer to ''where the health and safety of children are jeopardized,'' which is statutory language, given the paramount importance of protecting already vulnerable children and youth. Some commenters advised that other federal programs contain express provisions for the health and safety of children (i.e., the Childcare and Development Block Grant, and the Asbestos Control Loan programs). Commenters explained that unaccompanied youth may be vulnerable to sexual abuse or other exploitation and they should not have to experience such abuse to meet eligibility criteria for homeless services. The commenters also recommended that HUD elaborate on ''where the health and safety of children are jeopardized'' by including the following: Physical abuse, sexual abuse, mental or emotional abuse, child abuse, child neglect, commercial sexual exploitation, human trafficking, sex trafficking, discharge from the child welfare system into a nonpermanent living arrangement, discharge from juvenile justice placement into a nonpermanent living arrangement, and witness to domestic violence or sexual assault. Some commenters stated that while the current language could be interpreted to include sex exploitation and sex trafficking, there would be no debate about their inclusion if they were specifically mentioned.

Commenters stated that the statutory language uses the phrase ''in the individual's or family's current housing situation,'' but the proposed rule uses the phrase ''primary nighttime residence.'' Commenters stated that the proposed rule's simplification narrows the number of people who would be covered. For example, commenters explained that a dangerous situation could be at the house of a noncustodial parent but this would not be the custodial parent's nor the children's primary nighttime residence. One commenter stated that the language in the proposed rule did not take into account dangers to children that may exist within an apartment complex, such as actions by a known child predator. Commenters recommended that HUD use the phrase ''in the individual's or family's current housing situation.''

*HUD Response:* HUD acknowledges that the rule limits the eligibility of individuals and families living in unsanitary and unsafe living conditions. HUD's view is that persons living in these types of situations are at risk of homelessness and reiterates that persons at risk of homelessness may be served under programs created by the HEARTH Act amendments. Additionally, the Department administers other programs to serve persons who are poorly housed, such as the Housing Choice Voucher (Section 8) program, the Public Housing program, and the HOME program.

The examples that commenters recommended for inclusion for situations ''where the health and safety of children are jeopardized'' are already covered in the definition of ''homeless'' either under this category or another category within the definition. However, HUD has revised the language to state ''including a child'' to identify that the dangerous or life-threatening condition applies to the child as well as to the adult.

Further, HUD disagrees that any population has been excluded by replacing ''housing'' with ''primary nighttime residence.'' Accordingly, HUD has not revised the language from the proposed rule based on these comments.

*Rule clarification:* HUD has revised paragraph (4)(i) to state ''including a child'' in the definition of ''homeless.''

*Comment:* The phrase ''dangerous or life-threatening'' should not be construed to describe the level of violence required to qualify as ''homeless.'' Commenters expressed concern that the phrase ''dangerous or life-threatening'' could be construed as describing the level of domestic violence, dating violence, sexual assault, and stalking needed to qualify for programs. Commenters feared that this interpretation could result in the denial of assistance to domestic violence, dating violence, sexual assault, or stalking victims who may not appear to be in immediate physical danger. The commenters stated that the definition could exclude many victims of violence whose situations may not be deemed dangerous or life-threatening by untrained third parties, contrary to congressional intent. Commenters recommended that HUD ensure that dangerous or life-threatening is not applied as a determination of the level of violence experienced.

*HUD Response:* It is HUD's position that any level of domestic violence, dating violence, sexual assault, or stalking is inherently dangerous and life-threatening. Therefore, HUD did not intend the phrase ''dangerous or life-threatening'' to be interpreted as a level of violence that must occur before an individual or family can qualify as homeless. HUD interprets the intent behind section 103(a)(6) of the McKinney-Vento Act as including all individual and families fleeing, or attempting to flee domestic violence, dating violence, sexual assault, and stalking in the definition of ''homeless'' and plans to interpret this provision in such a way.

*Comment:* Unaccompanied youth should be presumed eligible under category four of the definition of ''homeless.'' Many commenters suggested that unaccompanied youth should be presumed eligible under the last category of the definition of ''homeless.'' These commenters stated that an unaccompanied youth's vulnerability to abuse should constitute a dangerous or life-threatening condition and consequently automatically qualify such youth as eligible. Some commenters limited this to unaccompanied minor youth that have left their housing and are living on the streets or seeking assistance. All of these commenters expressed the view that these youth are particularly vulnerable to victimization, sexual abuse, exploitation, and other forms of abuse.

*HUD Response:* HUD agrees that unaccompanied youth are highly vulnerable to victimization, sexual abuse, exploitation, and other forms of abuse. However, intake workers cannot automatically presume that a youth is eligible under the last category of the definition. The category under which an unaccompanied youth can qualify as homeless will depend on his or her particular situation. An unaccompanied youth who is living on the streets or in shelters will qualify as homeless under the first category of this definition. An unaccompanied youth who has been notified that she or he cannot stay in her or his current home may qualify under the second category of homeless. An unaccompanied youth who has bounced from one home to the next may qualify under the third category of the definition. If an unaccompanied youth is fleeing domestic violence, dating violence, sexual assault, or stalking, she or he will qualify under the last category of the definition. But to qualify under any of these four categories, an unaccompanied youth must meet the same criteria and evidentiary requirements that apply to all other individuals and families. The intake worker must obtain the credible evidence required to document that an unaccompanied youth is fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening conditions that relate to violence, in order to qualify the unaccompanied youth as homeless under this category.

*Comment:* The standards in the fourth category are so broad that almost anyone can qualify. One commenter suggested

that the definition of domestic violence in the proposed rule is so broad that almost anyone can qualify. This commenter suggested that the prescreening tools could be fine tuned to clearly identify those who truly need and would most likely benefit from the limited resources.

*HUD Response:* In the final rule, HUD has clarified that the lesser documentation standards for homeless status under this category shall be limited to victim service providers, as defined in section 401(32) of the McKinney-Vento Act. If the person is not being admitted to a domestic violence shelter or is not receiving services from a victim service provider, then stricter documentation requirements are imposed. Specifically, the individual or head of household must certify in writing that he or she has not identified a subsequent residence and lacks the resources or support networks e.g., family, friends, faith-based or other social networks, needed to obtain housing and, where the safety of the individual or family would not be jeopardized, the documentation must include either: (1) A written referral by a housing or service provider, social worker, health-care provider, law enforcement agency, legal assistance provider, pastoral counselor, or any other organization from whom the individual or head of household has sought assistance for domestic violence, dating violence, sexual assault, or stalking, (2) or a written observation that will verify that the individual or family is fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, stalking, or other dangerous and life-threatening situations that relate to violence. The written referral or observation need only include the minimum amount of information necessary to document that the individual or family is fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, and stalking. HUD does not expect that the written referral contain specific details about the incidence(s) of violence that occurred prior to the victim fleeing, or attempting to flee.

HUD stresses that where the safety of the individual of family fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, or stalking would be jeopardized by an intake worker's attempt to obtain third-party verification, that the intake worker must not attempt to obtain, under any circumstances, third-party verification and may accept written certification by the individual or head of household that he or she is fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, or stalking. When making this determination, homeless service providers are expected to take into account community dynamics that may impact the victim. For example, if the community is so small that any attempt to gain third-party documentation would potentially reveal the identity or location of the victim to the perpetrator of the violence, the homeless service provider must not pursue third-party documentation.

*Rule clarification:* To clarify HUD's expectations, HUD has revised the recordkeeping requirements found in paragraph (b)(5) of the final rule to accept the most minimal documentation of an oral statement only if it is made by an individual or family being admitted to a domestic violence shelter or receiving services from a victim service provider as defined in section 401(32) of the McKinney-Vento Act. Otherwise, the oral statement that the individual or head of household seeking assistance has not identified a subsequent residence and lacks the resources or support networks, e.g., family, friends, faith-based or other social networks, needed to obtain housing must be documented by a certification by the individual or head of household, and, where the safety of the individual or family would not be jeopardized, the domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening condition must be verified by a written observation by the intake worker or a written referral by a housing or service provider, social worker, health-care provider, law enforcement agency, legal assistance provider, pastoral counselor, or other organization from whom the individual or head of household has sought assistance for domestic violence, dating violence, sexual assault, or stalking. The written referral or observation need only include the minimum amount of information necessary to document that the individual or family is fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, and stalking.

*C. Recordkeeping Requirements for the Definition of ''Homeless'' in 24 CFR Parts 582 and 583*

*Comment:* In general, reduce the recordkeeping requirements. Generally, commenters recommended that HUD keep recordkeeping requirements to a minimum. These commenters stated that this would help expedite assistance and be less burdensome to providers. Other commenters emphasized that individuals claiming to be homeless under the rule should be taken at their word, unless information comes to light that casts substantial doubt on a claim of homelessness. Many commenters expressed the view that an oral statement, or self-verification, by the homeless person should suffice in order to receive housing and/or services and that the statements should not be verified in such rigid terms. Finally, many commenters stated that the verification requirements in the proposed rule will be burdensome to project sponsors, take up valuable caseworker time and resources, and will increase the burden on homeless individuals and families.

While most commenters supported reduced recordkeeping requirements, many suggested differing standards for persons seeking emergency shelter as opposed to those seeking transitional and permanent housing. Many commenters suggested that HUD allow Continuums of Care to adopt a presumptive eligibility period in which an intake worker could serve a homeless household or a household at risk of homelessness while obtaining the required evidence. These commenters explained that presumptive eligibility should apply particularly to homelessness prevention and permanent supportive housing.

*HUD Response:* HUD acknowledges that the recordkeeping requirements established in the proposed rule are detailed and have not previously been established by HUD in codified regulation. However, recipients of grants have always been required to keep records proving the eligibility of program participants. The monitoring finding that most often requires repayment of grant funds by recipients is failure to maintain adequate documentation of homeless eligibility; therefore, to assure that program compliance and funding is directed to those individuals intended to be the beneficiaries of funding under the McKinney-Vento Act programs, the recordkeeping requirements set forth in this final rule are important and necessary.

The recordkeeping requirements in paragraph (b) of the rule are included to clarify for recipients the documentation that HUD deems acceptable as proof of homelessness to assist recipients in maintaining adequate case files. For paragraphs (b)(1) and (b)(5), the rule prefaces the list of acceptable documentations with the term ''includes.'' This assures that the list is not the all-inclusive list but rather that HUD will consider other forms of evidence, in addition to those listed, for these categories. The recordkeeping requirements for all four categories of

''homeless'' contain more than one form of evidence that HUD considers satisfactory evidence.

HUD recognizes that circumstances, as well as the type of service or housing provided, will affect the ability of intake workers to obtain some forms of documentation listed in paragraph (b) of the recordkeeping requirements for the definition of ''homeless.'' For emergency shelters that require clients to present every night to gain access to a bed for just that night, HUD would not want the inability to obtain third-party documentation to prohibit access to a bed for the night. Therefore, in such instances, HUD would expect to see certification by the individual or head of household as the primary method of establishing homeless eligibility. HUD would consider a sign-in sheet, with a certification that the individual or head of household seeking assistance is homeless typed at the top, as meeting this standard. However, for permanent housing and nonemergency services, such as employment assistance, HUD will expect to see third-party documentation.

Specific changes to the recordkeeping requirements for the definition of ''homeless'' will be discussed in the remainder of this section of the preamble.

*Comment:* Create a template for communities to use to document ''homeless'' status. In the proposed rule, HUD solicited comment as to whether a HUD-approved form would assist recipients in documenting homelessness. The comments HUD received in response to this question were mixed. Some commenters requested a standard form of documentation to allow intake workers to record oral statements provided by homeless households, as well as enable applicants to self-certify statements. Some commenters stated that the HPRP Eligibility Determination and Documentation Guidance (3–17–10) was an extremely helpful tool and suggested that HUD develop a document similar to this guide.

Other commenters stated that it would be helpful if HUD provided guidelines regarding the information a self-certification should include, as well as a sample form, or template, that a provider could choose to use, but not be required to use. These commenters stated that it would be easier to comply with the rules if there was flexibility regarding the format of the statement and certification and suggested that a HUD-approved form would not lessen the recordkeeping burden. Other commenters requested that HUD create a mechanism whereby a Continuum of Care could submit one or more forms for preapproval to HUD. One commenter suggested that a government form may actually create a barrier to service for many people, especially those who have a mental illness. Many commenters requested the ability to collect intake information in a flexible manner that meets local needs.

*Response:* HUD understands that communities need flexibility at the local level to determine a household's status. Therefore, HUD will not issue a HUD-approved form that providers must use to document homelessness at this time, because HUD agrees that would be contrary to providing the flexibility needed at the local level. However, HUD intends to provide a template that can be used, or modified, by providers to certify homeless status at intake.

*Comment:* Documentation standards should be clarified and third-party documentation is preferable. While many commenters suggested that the recordkeeping standards established by HUD in the proposed rule were burdensome, other commenters recommended that oral statements should be relied upon as evidence only after all other attempts to obtain documentation have been exhausted. Another commenter, referring specifically to the standards established in § 577.3(3) of the proposed rule, stated that the standards were particularly confusing and it was unclear when an oral statement could be accepted versus one written down versus when third-party documentation must be obtained. One commenter urged HUD to establish and promulgate clear criteria for documentation to confirm eligibility and suggested that the inability to obtain a written or oral statement from a third party to document homeless status will cause providers to rely heavily on self-declaration of homelessness, which will increase the likelihood of misuse, and which is problematic because of the inability to meet current need, combined with the knowledge that few resources will be available to the current eligible population when the eligibility pool is expanded with the publication of this rule.

*HUD Response:* HUD agrees that third-party documentation should be obtained whenever possible. HUD revised paragraph (b) of the recordkeeping requirements for ''homeless status'' to clarify that the order of priority among documentation is third-party documentation first, intake worker observation second, and certification by the individual or head of household seeking assistance third. Overnight emergency shelters, where program participants line up nightly for a bed for one night and must leave at a designated time in the morning, may rely on certifications by the individual or head of household seeking assistance.

*Rule clarification.* To clarify HUD's expectations for the recordkeeping requirements, giving priority to third-party documentation, HUD has revised paragraph (b) in the recordkeeping requirements for homeless status.

*Comment:* The rule should allow intake workers to use other evidence that may be available to document homeless status of a household. Some commenters stated that the rule should include other evidence that providers could use to document homeless status. These commenters stated that this would be particularly useful when a person may be reluctant to reveal information or sign a certification because of a disability or because the person fears for his or her safety. Some commenters suggested that incorporating existing electronic technology, such as HMIS, is favorable.

*HUD Response:* HUD agrees that providers should be able to use existing evidence to document a household's status. To help reduce the burden of documentation on providers and to utilize existing resources where they are available, HUD has revised the rule to allow use of information recorded in an HMIS that retains an auditable history of all entries, including the person who entered the data, the date of entry, and the change made, and that prevents overrides of changes of the dates on which entries are made.

*Rule clarification.* HUD has revised paragraph (b) of the recordkeeping requirements for ''homeless status'' to include service transactions recorded in an HMIS or comparable database as acceptable evidence.

*Comment:* The recordkeeping requirements for persons leaving an institution should be clarified. Commenters stated that HUD should provide additional guidance on documentation that should be collected or provided by an institution under this rule to certify homeless status at entry and exit. Commenters recommended that, at a minimum, institutions should document the address and program name of the last known location, and any supportive service program a resident may have had contact with prior to entry. One commenter suggested that HUD create a form that institutions could use to certify homelessness. These commenters noted that extensive documentation requirements will create an additional burden on already stressed institutions, and that it will be important to know

what the homeless documentation requirements will be for institutions so that they can attempt to collect as much information as needed at intake.

Many commenters expressed concern that it is very difficult to obtain information from institutions. Commenters stated that many public institutions are currently in crisis mode and will not have the time or wherewithal to do this. In addition, commenters stated that once the person has left the institution, the institution is less likely to respond quickly to requests for information. Commenters said that there is often local information that would verify the stay in the institution, such as a local mental health agency or HMIS records. Commenters recommended that the rule mention other ways stays in institutions could be verified, such as via certifications by local caseworkers, discharge paperwork, or HMIS. In addition, commenters recommended that intake workers that can reach the institution by phone should be allowed to document that call. The commenters expressed the view that it was important that access to assistance for a homeless individual not be adversely impacted by the inability of a provider to obtain data from the institution.

Other commenters expressed the view that the proposed rule places a relatively light burden of documentation or proof for institutions, such as a referral letter with end dates, while provider agencies are burdened with far greater documentation requirements. These commenters requested that HUD clarify protocols whereby social workers, case managers, or other officials of institutions identify homelessness and community of origin, so that it is clear that institutions are not simply coding clients as homeless without cause.

*HUD Response:* HUD recognizes that it is often difficult for homeless providers to obtain documentation from discharging institutions and agrees that an individual should not be denied access to housing or services because the institution did not maintain the appropriate records. To accommodate these concerns while still maintaining a level of responsibility for documentation by the institution, HUD added additional methods of documenting ''homeless status'' for persons in paragraph (1)(iii) of the ''homeless'' definition to include discharge paperwork; written and oral referrals from a social worker, case manager, or other appropriate official of the institution; and a written record of the intake worker's due diligence in attempting to obtain a statement from an appropriate official at the institution as acceptable evidence when coupled with a certification by the individual seeking assistance.

*Rule clarification.* To incorporate additional methods of documenting homeless status for persons who have temporarily resided in an institution, but were homeless prior to entry, HUD has revised paragraph (b)(2) of the recordkeeping requirements for the ''homeless'' definition.

*Comment:* Additional documentation standards should be included for persons at imminent risk of losing their housing. Many commenters expressed concern with HUD's standard set in § 577.3(b)(3)(i)(A) of the proposed rule. These commenters stated that this language shows a disconnect with how the eviction process actually works, fails to recognize that eviction procedures differ by state, and lacks the understanding that many evictions are not conducted legally, and even if they are, the paperwork is not easily transferred from location to location by the evicted household. These commenters recommended that HUD incorporate a Notice to Quit/Notice to Terminate, a letter from the landlord, or other similar documentation as acceptable evidence in the final rule.

*HUD Response:* The language to which the commenters object in § 577.3(b)(3) of the proposed rule is the exact language from the statute. In response to the comments, HUD has added ''or the equivalent under applicable state law'' after ''court order resulting from an eviction action'' in recognition of differing state law. HUD agrees that the recordkeeping standards established in section § 577.3(b)(3) of the proposed rule should be expanded to incorporate a documentation standard that reflect situations that occur. Accordingly, HUD has revised the language from the proposed rule in this section to include ''or the equivalent under applicable state law'' after ''court order resulting from an eviction.'' Additionally, HUD has clarified that the ''equivalent notice under applicable state law, a Notice to Quit, or a Notice to Terminate issued under state law'' are acceptable evidence where a court order resulting from an eviction action or other equivalent under applicable state law are not available.

*Rule clarification.* HUD has revised paragraph (b)(3) of the recordkeeping requirements for the ''homeless'' definition in response to these comments.

*Comment:* Clarify the recordkeeping standards for persons staying in a hotel or motel that lack the resources to stay there for more than 14 days. One commenter stated that the requirement to prove that someone lacks the funds to continue paying for a hotel or motel established in § 577.3(b)(3)(i)(B) of the proposed rule is not realistic and is unnecessary. This commenter questioned how this could be proven and suggested that persons whose residence is a motel should automatically be assumed homeless without this requirement.

*HUD Response:* The requirement that the individual or family ''lack the resources necessary to reside there for more than 14 days'' is statutory. HUD recognizes that the methods used to establish lack of resources and lack of funds will vary by community. In order to allow for this variation, HUD has not revised the language from the proposed rule.

*Comment:* An oral statement should be sufficient without further verification. Many commenters stated that HUD should relax the verification and documentation requirements under § 577.3(b)(3)(i)(C) of the proposed rule for households that will imminently lose their housing. Most commenters stated that an oral statement should be sufficient and that requiring an intake worker to obtain records from the host family where the individual or family is living could cause friction between the families and seriously threaten the housing. In addition, many commenters expressed the view that this requirement is burdensome and stated that it would divert resources from assistance to individual and families. Other commenters stated that requiring additional documentation went against the statutory intent of the McKinney-Vento Act and would lengthen the time that persons spend homeless. Another commenter stated that requiring written, third-party documentation of an oral statement is inconsistent with and contrary to the principles of statutory interpretation articulated in *Chevron, U.S.A., Inc.* v. *N.R.D.C., Inc.,* 467 U.S. 837 (1984). Other commenters questioned the value of a written self-certification and stated that it did nothing to increase the credibility of an oral statement. Many commenters agreed with the recordkeeping requirements established in § 577.3(b)(3)(i)(C) of the proposed rule, but suggested that further elaboration of the role of the intake worker is needed and suggested that ''due diligence'' be defined. One commenter suggested that the proposed rule contain a provision that there is a legal penalty of $10,000 associated with falsifying the homeless status of a person receiving HUD funds for housing and/or services. Other

commenters suggested that time frames should be set for how long the intake worker has to complete the ''due diligence.''

*HUD Response:* The statute specifically states that ''an oral statement * * * that is found to be credible shall be considered credible evidence.'' HUD proposed implementation of this provision by providing verification requirements intended to establish a consistent standard by which an oral statement may be found credible. Some form of verification is needed to faithfully implement the statute. However, in light of the numerous comments received, HUD revised the requirements to require a written certification by the person making an oral statement only when third-party documentation is not available and the owner or renter cannot be reached. If the oral statement is verified by the owner or renter of the home where the person or family is living, the oral statement may be documented by the intake worker's certification. The final rule maintains the requirement that the intake worker document his or her due diligence in attempting to obtain the owner or renter's verification, if the owner or renter cannot be reached.

Additionally, HUD recognizes that the methods used to establish ''imminent loss of housing,'' including standards for ''due diligence,'' vary by community and often by the circumstances of the presenting household. In order to allow for a variety of appropriate processes, HUD has not revised the language from the proposed rule.

*Comment:* Provide training on eligibility criteria for other federal statutes with definitions of ''homeless.'' One commenter stated that many service providers are not familiar with eligibility criteria for other federal statutes with definitions of ''homeless'' and stated that it is one more program requirement on which they must be trained in order to effectively document homeless status under § 577.3(b)(3) of the proposed rule.

*HUD Response:* HUD does not expect its providers to become experts in applying the definitions of homeless under other federal statutes. Therefore, HUD has revised the language from the proposed rule to accept certification of homeless status by the local private nonprofit organizations or state or local government entities responsible for administering assistance under the other federal statutes (e.g., the school district) in order to determine if the youth or children meet the homeless definition under that statute.

*Rule clarification.* HUD has slightly revised § 577.3(b)(4) to incorporate language allowing the local private nonprofit organizations or state or local government entities responsible for administering assistance under the other federal statutes to certify the homeless status of an unaccompanied youth or family with children and youth.

*Comment:* Relax the standards for documenting ''persistent instability.'' Many commenters stated that the standards established for documenting homelessness of unaccompanied youth and families with children and youth in § 577.3(b)(4) were cumbersome, difficult, countered the intent of increased coordination with school liaisons, and failed to reflect the reality that unaccompanied youth are not likely to travel with documentation. One commenter posited that the criteria for establishing proof of eligibility in this category was so complex that it would cause program operators to ''work around'' this category and qualify this population as homeless under category two.

Some commenters requested that HUD adopt standards similar to those established in § 577.3(b)(5) for victims of domestic violence, dating violence, sexual assault, and stalking. These commenters stated that unaccompanied youth are often being kicked out of housing by the very people that abuse them.

Specifically, for the standards for ''persistent instability'' established in § 577.3(b)(4)(ii) of the proposed rule, many commenters stated that the requirement to obtain a statement from host households is unduly burdensome for case managers, as well as for unaccompanied youth and families with children and youth whose living situations are fragile. Other commenters expressed the fear that the requirement to obtain a statement may put host households at risk of losing their housing because they violated the terms of their lease by allowing the unaccompanied youth or family with children and youth to stay there. Some commenters requested that the standard to obtain documentation from each host household be eliminated entirely, other commenters requested that the standard be limited to the most recent owner or renter of the housing, and others requested that it be limited to those host families who still resided in the place where the unaccompanied youth or family with children and youth stayed or to those host households who have phones or email.

*HUD Response:* HUD understands that it can often be difficult to obtain verification from the owner or renter of the housing where the individual or family presenting for assistance has been staying. HUD agrees that the standard should be eliminated or scaled back where a move by the unaccompanied youth or family with children and youth was due to domestic violence, dating violence, sexual assault, or stalking. It is HUD's position that these verification steps help ensure that individuals and families meet the definition of ''homeless'' and assist in identifying resources and needs to allow providers to assist the unaccompanied youth or family with children and youth effectively; however, HUD understands the need to protect this particularly vulnerable population from their abusers.

HUD reminds readers that where an unaccompanied youth or family with children and youth is moving to immediately flee, or attempt to flee, domestic violence, dating violence, sexual assault, or stalking, the unaccompanied youth or family with children and youth will qualify as homeless under the fourth category of the homeless definition and the accompanying minimal evidentiary standards for that category will apply.

*Rule clarification:* HUD has revised paragraph (b)(4)(iii) of the recordkeeping requirements for the definition of ''homeless'' to clarify that where a move of the unaccompanied youth, or of the family with children and youth, was due to domestic violence, dating violence, sexual assault, or stalking, the provider may accept a written certification from the individual or head of household as documentation of that living arrangement.

*Comment:* Appropriate licensed professionals should be able to diagnose and document disabilities. With respect to the standards for documenting disability in § 577.3(b)(4)(iii) of the proposed rule, many commenters suggested that HUD remove the term ''medical'' and allow ''appropriate licensed professionals'' to diagnose and document disabilities. These commenters stated that a licensed nonmedical professional will be able to provide acceptable evidence of disability in many cases. Some of these commenters stated that requiring that a disability be confirmed by an ''appropriate licensed medical professional'' will cost money and HUD should pay the associated costs. These commenters recommended that HUD publish a list of professionals that can verify disability. Another commenter suggested that HUD explore the feasibility of including certification by a Center for Independent Living as

acceptable evidence of disability status if the individual or member of the household has a pre-existing consumer service record.

Other commenters suggested that the provision requiring documentation by an ''appropriate licensed medical professional'' be removed entirely and that intake workers be allowed to use self-certifications and/or documented behavioral observations by staff as evidence of a disability and that a written diagnosis is not needed.

Other commenters suggested that documentation of disability by an appropriate licensed medical professional within 45 days, as required in § 577.3(b)(4)(iii) of the proposed rule, may be impossible. One commenter urged HUD to consider the constraints of availability of medical professionals in some locations.

*HUD Response:* HUD disagrees that the requirement to verify disability should be removed from the rule completely. HUD has a responsibility to ensure that federal funds are spent wisely and having the existence of a disabling condition confirmed where required for eligibility protects against fraud and waste. However, in light of the comments, HUD clarified that the diagnosis of a disability need not be made by an appropriate licensed ''medical'' professional, but must be made by a professional who is licensed by the state to diagnose and treat that condition.

*Rule clarification.* HUD has revised the recordkeeping standards established in paragraph (b)(4)(iv) of the recordkeeping requirements for the ''homeless'' definition.

*Comment:* Revise the standards for documenting ''barriers to employment.'' Many commenters requested that HUD lessen the standards for documenting ''barriers to employment'' established in § 577.3(4)(iii) of the proposed rule. Many of these commenters suggested that an oral statement from the unaccompanied youth or family with children or youth should be acceptable. Other commenters stated that intake workers should be required to document, in their case notes, the challenges an individual faces in seeking work, but should not have to seek out employment records, department of correction records, and literacy tests. Another commenter requested that a self-certification be an acceptable form of documentation for barriers to employment.

One commenter stated that within the barriers to employment that HUD lists as examples, there are some that are easier to document than others. This commenter stated that this could cause providers to serve unaccompanied youth and families with children and youth with fewer barriers because they are easier to document and be detrimental to harder-to- serve populations with more intensive disabilities.

*HUD Response:* HUD disagrees that the standards for documenting barriers to employment are cumbersome and would cause providers to serve easier-to-serve populations for which the recordkeeping requirements are easier to meet. HUD reminds commenters that the list of barriers to employment are examples and not all-inclusive. Intake workers should use whatever evidence is available that is appropriate to the barrier to employment that is utilized for determining eligibility under category three of the definition of ''homeless.''

*Comment:* Additional guidance is needed for documenting the absence of a characteristic. Many commenters requested guidance on how to document the absence of a characteristic, such as the lack of a ''lease, ownership interest or occupancy agreement in permanent housing,'' or a ''lack of a high school degree or General Education Development (GED).''

*HUD Response:* The methods used to establish the absence of a characteristic often varies depending on the characteristic, the presenting individual's or family's situation, local processes, and local data that is available. In order to allow for a variety of appropriate documentation standards, including a note from a high school, employment counselor, or a certification signed by the individual or head of household that a characteristic does not exist, HUD has not revised the language from the proposed rule.

*Comment:* The recordkeeping standards established for victims of domestic violence, dating violence, sexual assault, stalking, and other dangerous or life-threatening conditions should be reduced. Many commenters recommended that § 577.3(b)(5) of the proposed rule should be revised to allow an oral statement to be sufficient. These commenters suggested that requiring a written certification, whether by the victim or the intake worker, creates a number of safety concerns and the proposed rule should be amended to allow service providers to accept the oral statement without the additional written documentation. One commenter stated that by granting intake workers discretion to certify statements in writing, this policy not only risks undermining the confidentiality of sensitive information, but introduces the potential for subjective judgment to result in discrimination against victims. Other commenters stated that requiring a written verification goes beyond the plain meaning of the McKinney-Vento Act.

Commenters suggested that if HUD requires service providers to implement a written certification process, it should do so in a manner that reduces the burden on survivors and staff and maximizes confidentiality. These commenters proposed that HUD issue guidance on the limited scope of any certification form, requiring only the name of the victim and family members and a box to check to indicate victim status. Some commenters suggested that the same degree of brevity should also characterize the documentation submitted by housing or service providers, social workers, hospital staff, or police when making referrals on behalf of victims.

*HUD Response:* HUD recognizes the importance of maintaining the confidentiality of all client-level information. HUD also recognizes the significant safety needs of victims of domestic violence, dating violence, sexual assault, or stalking, and for this reason, greatly limited the documentation requirements for victims of domestic violence, dating violence, sexual assault, and stalking. HUD must require some documentation to assist the Department in monitoring and oversight of projects receiving HUD funds, and the final rule presents the minimal documentation necessary. HUD will publish confidentiality and privacy standards at the time of publication of those rules.

*D. Definition of ''Persons With Disabilities'' in 24 CFR Part 582*

The proposed rule contained proposed definitions for ''developmental disability'' and ''homeless individual with a disability,'' which were intended to be included in the final regulations for the Continuum of Care program and the Rural Housing Stability program. However, because the proposed rules for those programs have not yet been published, this final rule has integrated the proposed definitions for ''developmental disability'' and ''homeless individual with a disability'' into the regulations for the Shelter Plus Care program and the Supportive Housing Program. Because the existing regulations for the Shelter Plus Care program (24 CFR part 582) use the term ''persons with disabilities,'' the substance of the proposed definition of ''homeless individual with a disability'' has been integrated into the existing definition of ''persons with disabilities''

in the Shelter Plus Care regulations while preserving language that involves requirements that go beyond the definition of ''homeless individual with a disability'' in the HEARTH Act.

*Comment:* Further define ''long-continuing or indefinite duration.'' Commenters recommended that HUD provide clear, objective guidelines and factors for determining whether a person's disability is expected to be ''long-continuing or of indefinite duration,'' to assist persons and organizations responsible for administering programs authorized in the Act. Commenters suggested that the guidelines include a set of factors to consider and forms of verifying information, and requested that the guidelines take into account circumstances in which a homeless individual with a disability may not be able to produce such documentation or relate necessary information, often because of their disabilities. These commenters expressed concern that without clear, objective guidelines, decisions on whether a person's disability is ''long-continuing or of indefinite duration'' may be based on subjective notions or stereotypes about disabilities, and will potentially exclude eligible individuals.

*HUD Response:* The definition of disability is one that currently exists for HUD's homeless programs. Historically, HUD has not further defined ''long-continuing or indefinite duration,'' and allows an appropriate licensed official to certify that the disability meets this criterion. To clarify that HUD continues to expect a professional licensed by the state to diagnose and treat that condition to certify that the disability is expected to be ''long-continuing or of indefinite duration,'' HUD has added recordkeeping requirements to the final rule.

*Rule clarification.* To clarify that HUD expects an appropriate professional licensed in the state to diagnose and treat the condition to verify that the disability of the person applying for assistance, is expected to be ''long continuing or of indefinite duration,'' this final rule adds specific recordkeeping requirements for ''disability.''

*Comment:* Include additional factors to the list for determining a disabling condition. Commenters requested that HUD include additional factors to the definition of homeless individual with a disability, including persons with intellectual, cognitive, or developmental disabilities (ICDD), who are institutionalized, at risk of institutionalization, or placed in a licensed or more restrictive setting, under the definition of a homeless individual with a disability. In addition, these commenters requested that HUD include disabled persons residing with aging caregivers. Other commenters expressed the view that the definition of homeless individual with a disability should explicitly recognize individuals with cancer as having a disability, especially those with cancer in advanced stages. Commenters stated that cancer should be explicitly recognized in the regulation because it generally falls outside the traditional notions of physical or mental disability like Human Immunodeficiency Virus (HIV)/Acquired Immune Deficiency Syndrome (AIDS), which is explicitly recognized by the proposed rule. Commenters stated that cancer is a disability when it, or its side effects, substantially limit(s) one or more of a person's major life activities, and it can lead to the occurrence of other impairments that may be considered a disability.

*HUD Response:* The definition of ''homeless individual with a disability'' in the proposed rule includes a ''physical, mental, or emotional impairment.'' Where persons with ICDD and cancer also are homeless, and where the ICDD or cancer is expected to be long-continuing or of indefinite duration, substantially impede the individual's ability to live independently, and could be improved by the provision of more suitable housing, then the individual could be considered a ''homeless individual with a disability.'' HUD has not changed the language from the proposed rule in response to these comments.

*Comment:* Remove provisions (1)(ii) and (1)(iii) from the definition of ''homeless individual with a disability.'' Commenters recommended that HUD eliminate the requirement that the homeless individual's disability be one that ''substantially impedes the individual's ability to live independently.'' Commenters expressed the view that in order to avoid unnecessary confusion and maintain consistency, HUD should utilize the federal definition of disability employed by other federal laws, such as the Fair Housing Act, Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act. These laws require only that the disability be one that causes a ''substantial limitation on one or more major life activities.'' Commenters stated that requiring additional proof that the disability ''substantially impedes'' the individual's ability to live independently is unnecessary and an extremely high burden that will needlessly preclude many deserving individuals from obtaining housing assistance based on their disabilities.

While commenters strongly recommended that HUD eliminate this requirement, if the regulation is implemented as is, commenters urged HUD to set clear, objective guidelines on how persons and organizations responsible for administering the HEARTH Act should determine whether an individual's disability is a substantial impediment to his or her ability to live independently. These guidelines should include a set of factors these persons and organizations should consider, and types of verifying information, and should also take into account circumstances in which a homeless individual with a disability may not be able to produce such documentation or relate such information, often because of his or her disability.

Some commenters recommended that HUD delete the requirement that the disability ''could be improved by the provision of more suitable housing conditions.'' These commenters stated that every homeless individual's disability improves by the provision of more suitable housing, and this factor is difficult to document and adds little value. Other commenters submitted that the rule should not condition disability eligibility for housing assistance on an expectation that homeless people with disabilities will ''improve'' their disability in housing. Commenters explained that such a notion is misguided and will exclude many people with disabilities deserving of housing assistance, and that this type of definition is based on outmoded concepts of disability. Commenters stated that while housing assistance provided through this program may improve the person's quality of life or stability, the disability itself will often remain. The commenters concluded that individuals with disabilities should not be barred from the program because their disability cannot be remediated, and barring such individuals from the program would likely violate federal nondiscrimination mandates, including those in the Americans with Disabilities Act and Section 504 of the Rehabilitation Act.

In addition, these commenters expressed the view that housing assistance should be focused on stabilizing homeless people with disabilities. The commenters stated that while suitable housing may not succeed immediately in changing the level of impairment of an individual's disability, it does succeed in stabilizing homeless people with disabilities, such as those with serious mental illness and/or

substance-related disorders who have traditionally been very difficult to house or have had great difficulty maintaining their housing. The commenters further stated that housing combined with support services can stabilize a client's financial status and promote self-sufficiency.

*HUD Response:* The language in paragraphs (1)(ii) and (1)(iii) of the definition of a ''homeless individual with a disability'' is statutory. Recordkeeping requirements have been established in this rule to assist recipients appropriately document that a disability will ''substantially impede the individual's ability to live independently,'' as will be discussed in Section IV.F of this preamble. It is HUD's position that the provision of stable housing and services will inherently improve with the provision of more stable housing conditions. Additionally, the proposed rule requires that a disability be expected to be ''long-continuing or of indefinite duration;'' therefore, HUD does not expect the disability to be completely remediated by the provision of more suitable housing.

HUD disagrees that housing and service providers will be barred from determining that an individual has a disability because the disability cannot be remediated; therefore, HUD has not changed this language from the proposed rule based on these comments. HUD includes recordkeeping requirements to assist intake workers in documenting disability as defined in this final rule.

*Comment:* Restore the statutory language under Section 401(9)(B) of the Act. Commenters recommended that HUD include in the final rule the specific statutory language under section 401(9)(B) the McKinney-Vento Act. Commenters strongly recommended that this language be included unless the language regarding AIDS is removed.

*HUD Response:* HUD disagrees that the statutory language in section 401(9)(B) of the McKinney-Vento Act needs to be included in the rule or that the language regarding AIDS in section 401(9)(A)(iii) needs to be removed if the language in section 401(9)(B) is not included. Because of the inclusion of an ''or,'' instead of an ''and,'' after the statement in paragraph (2) of the definition of ''homeless individual with a disability'' in the proposed rule, the language allows persons eligible under paragraph (3) to also qualify as a homeless individual with a disability under paragraphs (1) and (2). Including the statutory language as recommended by the commenters creates a redundancy in the proposed rule; therefore, HUD has not made changes to the language in the proposed rule based on this comment.

*E. Definition of ''Disability'' in 24 CFR Part 583*

Because the existing regulations for the Supportive Housing Program (24 CFR part 583) do not use the term ''homeless individual with a disability,'' the substance of the new definition, including changes HUD has adopted in response to public comments on the proposed rule, has been included in a revised definition of ''disability.''

*F. Recordkeeping Requirements for ''Disability'' in 24 CFR Parts 582 and 583*

*Comment:* The proposed rule should contain documentation standards for ''homeless individual with a disability.'' Commenters mentioned that the proposed rule did not clarify the requirements for documenting a disability (when a client is not receiving Supplemental Social Security Income (SSI) or Social Security Disability Income (SSDI), other than a brief note in conjunction with the definition of homelessness by virtue of persistent instability. Commenters said that it is critically important to document a disability for the purpose of determining client eligibility for permanent supportive housing targeted for homeless persons with disabilities. Thus, commenters recommended that HUD use this opportunity to clarify, and to the extent possible, expand the options for documenting disability.

Additionally, one commenter recommended that the recordkeeping requirements for a ''homeless individual with a disability'' should include a process for identifying a person with a disability after intake. This commenter stated that HUD needs to ensure that persons not originally identified at intake as a ''homeless individual with a disability'' can be identified at a later point and be made eligible for resources associated with that definition.

*HUD Response:* HUD recognizes that providers need clear guidelines and documentation standards for establishing that an individual meets the definition of ''homeless individual with a disability.'' HUD has added recordkeeping requirements to the language from the proposed rule.

*Rule clarification.* To set clear guidelines and documentation standards for the definition of ''homeless individual with a disability,'' this final rule adds recordkeeping requirements for ''disability'' to 24 CFR parts 582 and 583.

*G. Comments Regarding Burden Estimate*

*Comment:* The burden estimate of 0.25 hours is too low. Some commenters expressed the view that the Reporting and Recordkeeping burden estimate of 0.25 hours as an average time for requirement is not enough for even one portion of the documentation. Commenters stated that the average burden could be as high as 2 to 3 hours for many individuals and families, and under the third category of homelessness, it could easily be 1 to 2 days per case. Other commenters expressed concern that 0.25 hours was an inadequate amount of time to analyze and document the information provided by applicants and third parties, especially when an applicant has resided in upwards of three different residences, and stated that the time required would be between 30 minutes to 3 hours.

*HUD Response:* HUD disagrees that the Reporting and Recordkeeping burden estimate of 0.25 hours as an average time is too low. The reporting and recordkeeping burden is an estimate of the average time it takes all recipients of HUD funds that serve homeless persons to document homeless status. In this final rule, HUD has made significant changes to lessen the documentation standards for providers, including allowing providers to use information that is available through other community resources, including HMIS, and clarifying that lesser documentation standards apply to overnight emergency shelters; therefore, HUD determined that 0.25 hours is an appropriate average. HUD has not revised the burden estimated in the April 2010 proposed rule.

## IV. Findings and Certifications

*Regulatory Planning and Review*

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, ''Regulatory Planning and Review.'' This rule was determined to be a ''significant regulatory action,'' as defined in section 3(f) of the order (although not an economically significant regulatory action under the order). The docket file is available for public inspection in the Regulations Division, Office of the General Counsel, 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 Information Relay Service at (800) 877–8339.

*Information Collection Requirements*

The information collection requirements contained in this final rule have been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB control number 2506–0112. In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number.

*Environmental Impact*

This rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this proposed rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

*Unfunded Mandates Reform Act*

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 rule does not impose a federal mandate on any state, local, or tribal government, or on the private sector, within the meaning of UMRA.

*Regulatory Flexibility Act*

The Regulatory Flexibility Act (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 solely addresses the definitions of ''homeless,'' ''homeless individual,'' ''homeless person,'' and ''homeless individual with a disability.'' The purpose of this rule is to determine the universe of individuals and families who qualify as ''homeless'' under the HEARTH Act, and are therefore eligible to be served by HUD homeless programs that will be implemented by separate rulemaking. Given the narrow scope of this rule, HUD has determined that it would not have a significant economic impact on a substantial number of small entities.

*Executive Order 13132, Federalism*

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This final rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments nor preempt state law within the meaning of the Executive Order.

**List of Subjects**

*24 CFR Part 91*

Aged, Grant programs—housing and community development, Homeless, Individuals with disabilities, Low- and moderate-income housing, Reporting and recordkeeping requirements.

*24 CFR Part 582*

Homeless, Rent subsidies, Reporting and recordkeeping requirements, Supportive housing programs—housing and community development, Supportive services.

*24 CFR Part 583*

Homeless, Rent subsidies, Reporting and recordkeeping requirements, Supportive housing programs—housing and community development, Supportive services.

Accordingly, for the reasons described in the preamble, parts 91, 576, 582, and 583 of title 24 of the Code of Federal Regulations are amended as follows:

## PART 91—CONSOLIDATED SUBMISSIONS FOR COMMUNITY PLANNING AND DEVELOPMENT PROGRAMS

■ 1. The authority citation for 24 CFR part 91 continues to read as follows:

**Authority:** 42 U.S.C. 3535(d), 3601–3619, 5301–5315, 11331–11388, 12701–12711, 12741–12756, and 12301–12912.

■ 2. In § 91.5, the definition of ''Homeless'' is added to read as follows:

**§ 91.5 Definitions.**

* * * * *

*Homeless.* (1) An individual or family who lacks a fixed, regular, and adequate nighttime residence, meaning:

(i) An individual or family with a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings, including a car, park, abandoned building, bus or train station, airport, or camping ground;

(ii) An individual or family living in a supervised publicly or privately operated shelter designated to provide temporary living arrangements (including congregate shelters, transitional housing, and hotels and motels paid for by charitable organizations or by federal, state, or local government programs for low-income individuals); or

(iii) An individual who is exiting an institution where he or she resided for 90 days or less and who resided in an emergency shelter or place not meant for human habitation immediately before entering that institution;

(2) An individual or family who will imminently lose their primary nighttime residence, provided that:

(i) The primary nighttime residence will be lost within 14 days of the date of application for homeless assistance;

(ii) No subsequent residence has been identified; and

(iii) The individual or family lacks the resources or support networks, e.g., family, friends, faith-based or other social networks needed to obtain other permanent housing;

(3) Unaccompanied youth under 25 years of age, or families with children and youth, who do not otherwise qualify as homeless under this definition, but who:

(i) Are defined as homeless under section 387 of the Runaway and Homeless Youth Act (42 U.S.C. 5732a), section 637 of the Head Start Act (42 U.S.C. 9832), section 41403 of the Violence Against Women Act of 1994 (42 U.S.C. 14043e–2), section 330(h) of the Public Health Service Act (42 U.S.C. 254b(h)), section 3 of the Food and Nutrition Act of 2008 (7 U.S.C. 2012), section 17(b) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)), or section 725 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a);

(ii) Have not had a lease, ownership interest, or occupancy agreement in permanent housing at any time during the 60 days immediately preceding the date of application for homeless assistance;

(iii) Have experienced persistent instability as measured by two moves or more during the 60-day period immediately preceding the date of applying for homeless assistance; and

(iv) Can be expected to continue in such status for an extended period of

time because of chronic disabilities, chronic physical health or mental health conditions, substance addiction, histories of domestic violence or childhood abuse (including neglect), the presence of a child or youth with a disability, or two or more barriers to employment, which include the lack of a high school degree or General Education Development (GED), illiteracy, low English proficiency, a history of incarceration or detention for criminal activity, and a history of unstable employment; or

(4) Any individual or family who:

(i) Is fleeing, or is attempting to flee, domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening conditions that relate to violence against the individual or a family member, including a child, that has either taken place within the individual's or family's primary nighttime residence or has made the individual or family afraid to return to their primary nighttime residence;

(ii) Has no other residence; and

(iii) Lacks the resources or support networks, e.g., family, friends, faith-based or other social networks, to obtain other permanent housing.

## PART 582—SHELTER PLUS CARE

■ 3. The authority citation for 24 CFR part 582 continues to read as follows:

**Authority:** 42 U.S.C. 3535(d), and 11403–11407b.

■ 4. In § 582.5, the definition of ''Homeless or homeless individual'' is removed, the definitions of ''Developmental disability'' and ''Homeless'' are added, and the definition of ''Person with disabilities'' is revised to read as follows:

### § 582.5 Definitions.

* * * * *

*Developmental disability* means, as defined in section 102 of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15002):

(1) A severe, chronic disability of an individual that—

(i) Is attributable to a mental or physical impairment or combination of mental and physical impairments;

(ii) Is manifested before the individual attains age 22;

(iii) Is likely to continue indefinitely;

(iv) Results in substantial functional limitations in three or more of the following areas of major life activity:

(A) Self-care;

(B) Receptive and expressive language;

(C) Learning;

(D) Mobility;

(E) Self-direction;

(F) Capacity for independent living;

(G) Economic self-sufficiency; and

(v) Reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic services, individualized supports, or other forms of assistance that are of lifelong or extended duration and are individually planned and coordinated.

(2) An individual from birth to age 9, inclusive, who has a substantial developmental delay or specific congenital or acquired condition, may be considered to have a developmental disability without meeting three or more of the criteria described in paragraphs (1)(i) through (v) of the definition of ''developmental disability'' in this section if the individual, without services and supports, has a high probability of meeting those criteria later in life.

* * * * *

*Homeless* means:

(1) An individual or family who lacks a fixed, regular, and adequate nighttime residence, meaning:

(i) An individual or family with a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings, including a car, park, abandoned building, bus or train station, airport, or camping ground;

(ii) An individual or family living in a supervised publicly or privately operated shelter designated to provide temporary living arrangements (including congregate shelters, transitional housing, and hotels and motels paid for by charitable organizations or by federal, state, or local government programs for low-income individuals); or

(iii) An individual who is exiting an institution where he or she resided for 90 days or less and who resided in an emergency shelter or place not meant for human habitation immediately before entering that institution;

(2) An individual or family who will imminently lose their primary nighttime residence, provided that:

(i) The primary nighttime residence will be lost within 14 days of the date of application for homeless assistance;

(ii) No subsequent residence has been identified; and

(iii) The individual or family lacks the resources or support networks, e.g., family, friends, faith-based or other social networks, needed to obtain other permanent housing;

(3) Unaccompanied youth under 25 years of age, or families with children and youth, who do not otherwise qualify as homeless under this definition, but who:

(i) Are defined as homeless under section 387 of the Runaway and Homeless Youth Act (42 U.S.C. 5732a), section 637 of the Head Start Act (42 U.S.C. 9832), section 41403 of the Violence Against Women Act of 1994 (42 U.S.C. 14043e–2), section 330(h) of the Public Health Service Act (42 U.S.C. 254b(h)), section 3 of the Food and Nutrition Act of 2008 (7 U.S.C. 2012), section 17(b) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)), or section 725 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a);

(ii) Have not had a lease, ownership interest, or occupancy agreement in permanent housing at any time during the 60 days immediately preceding the date of application for homeless assistance;

(iii) Have experienced persistent instability as measured by two moves or more during the 60-day period immediately preceding the date of applying for homeless assistance; and

(iv) Can be expected to continue in such status for an extended period of time because of chronic disabilities; chronic physical health or mental health conditions; substance addiction; histories of domestic violence or childhood abuse (including neglect); the presence of a child or youth with a disability; or two or more barriers to employment, which include the lack of a high school degree or General Education Development (GED), illiteracy, low English proficiency, a history of incarceration or detention for criminal activity, and a history of unstable employment; or

(4) Any individual or family who:

(i) Is fleeing, or is attempting to flee, domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening conditions that relate to violence against the individual or a family member, including a child, that has either taken place within the individual's or family's primary nighttime residence or has made the individual or family afraid to return to their primary nighttime residence;

(ii) Has no other residence; and

(iii) Lacks the resources or support networks, e.g., family, friends, and faith-based or other social networks, to obtain other permanent housing.

* * * * *

*Person with disabilities* means a household composed of one or more persons at least one of whom is an adult who has a disability.

(1) A person shall be considered to have a disability if he or she has a disability that:

(i) Is expected to be long-continuing or of indefinite duration;

(ii) Substantially impedes the individual's ability to live independently;

(iii) Could be improved by the provision of more suitable housing conditions; and

(iv) Is a physical, mental, or emotional impairment, including an impairment caused by alcohol or drug abuse, post-traumatic stress disorder, or brain injury.

(2) A person will also be considered to have a disability if he or she has a developmental disability, as defined in this section.

(3) A person will also be considered to have a disability if he or she has acquired immunodeficiency syndrome (AIDS) or any conditions arising from the etiologic agent for acquired immunodeficiency syndrome, including infection with the human immunodeficiency virus (HIV).

(4) Notwithstanding the preceding provisions of this definition, the term person with disabilities includes, except in the case of the SRO component, two or more persons with disabilities living together, one or more such persons living with another person who is determined to be important to their care or well-being, and the surviving member or members of any household described in the first sentence of this definition who were living, in a unit assisted under this part, with the deceased member of the household at the time of his or her death. (In any event, with respect to the surviving member or members of a household, the right to rental assistance under this part will terminate at the end of the grant period under which the deceased member was a participant.)

■ 5. A new § 582.301 is added to read as follows:

**§ 582.301 Recordkeeping.**

(a) [Reserved.]

(b) *Homeless status.* The recipient must maintain and follow written intake procedures to ensure compliance with the homeless definition in § 582.5. The procedures must require documentation at intake of the evidence relied upon to establish and verify homeless status. The procedures must establish the order of priority for obtaining evidence as third-party documentation first, intake worker observations second, and certification from the person seeking assistance third. However, lack of third-party documentation must not prevent an individual or family from being immediately admitted to emergency shelter, receiving street outreach services, or being immediately admitted to shelter or receiving services provided by a victim service provider, as defined in section 401(32) of the McKinney-Vento Homeless Assistance Act, as amended by the HEARTH Act. Records contained in an HMIS or comparable database used by victim service or legal service providers are acceptable evidence of third-party documentation and intake worker observations if the HMIS retains an auditable history of all entries, including the person who entered the data, the date of entry, and the change made; and if the HMIS prevents overrides or changes of the dates entries are made.

(1) If the individual or family qualifies as homeless under paragraph (1)(i) or (ii) of the homeless definition in § 582.5, acceptable evidence includes a written observation by an outreach worker of the conditions where the individual or family was living, a written referral by another housing or service provider, or a certification by the individual or head of household seeking assistance.

(2) If the individual qualifies as homeless under paragraph (1)(iii) of the homeless definition in § 582.5, because he or she resided in an emergency shelter or place not meant for human habitation and is exiting an institution where he or she resided for 90 days or less, acceptable evidence includes the evidence described in paragraph (b)(1) of this section and one of the following:

(i) Discharge paperwork or a written or oral referral from a social worker, case manager, or other appropriate official of the institution, stating the beginning and end dates of the time residing in the institution. All oral statements must be recorded by the intake worker; or

(ii) Where the evidence in paragraph (b)(2)(i) of this section is not obtainable, a written record of the intake worker's due diligence in attempting to obtain the evidence described in paragraph (b)(2)(i) and a certification by the individual seeking assistance that states he or she is exiting or has just exited an institution where he or she resided for 90 days or less.

(3) If the individual or family qualifies as homeless under paragraph (2) of the homeless definition in § 582.5, because the individual or family will imminently lose their housing, the evidence must include:

(i)(A) A court order resulting from an eviction action that requires the individual or family to leave their residence within 14 days after the date of their application for homeless assistance; or the equivalent notice under applicable state law, a Notice to Quit, or a Notice to Terminate issued under state law;

(B) For individuals and families whose primary nighttime residence is a hotel or motel room not paid for by charitable organizations or federal, state, or local government programs for low-income individuals, evidence that the individual or family lacks the resources necessary to reside there for more than 14 days after the date of application for homeless assistance; or

(C) An oral statement by the individual or head of household that the owner or renter of the housing in which they currently reside will not allow them to stay for more than 14 days after the date of application for homeless assistance. The intake worker must record the statement and certify that it was found credible. To be found credible, the oral statement must either: (I) Be verified by the owner or renter of the housing in which the individual or family resides at the time of application for homeless assistance and be documented by a written certification by the owner or renter or by the intake worker's recording of the owner or renter's oral statement; or (II) if the intake worker is unable to contact the owner or renter, be documented by a written certification by the intake worker of his or her due diligence in attempting to obtain the owner or renter's verification and the written certification by the individual or head of household seeking assistance that his or her statement was true and complete;

(ii) Certification by the individual or head of household that no subsequent residence has been identified; and

(iii) Certification or other written documentation that the individual or family lacks the resources and support networks needed to obtain other permanent housing.

(4) If the individual or family qualifies as homeless under paragraph (3) of the homeless definition in § 582.5, because the individual or family does not otherwise qualify as homeless under the homeless definition but is an unaccompanied youth under 25 years of age, or homeless family with one or more children or youth, and is defined as homeless under another Federal statute or section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), the evidence must include:

(i) For paragraph (3)(i) of the homeless definition in § 582.5, certification of homeless status by the local private nonprofit organization or state or local governmental entity responsible for administering assistance under the Runaway and Homeless Youth Act (42

U.S.C. 5701 *et seq.*), the Head Start Act (42 U.S.C. 9831 *et seq.*), subtitle N of the Violence Against Women Act of 1994 (42 U.S.C. 14043e *et seq.*), section 330 of the Public Health Service Act (42 U.S.C. 254b), the Food and Nutrition Act of 2008 (7 U.S.C. 2011 *et seq.*), section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786), or subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 *et seq.*), as applicable;

(ii) For paragraph (3)(ii) of the homeless definition in § 582.5, referral by a housing or service provider, written observation by an outreach worker, or certification by the homeless individual or head of household seeking assistance;

(iii) For paragraph (3)(iii) of the homeless definition in § 582.5, certification by the individual or head of household and any available supporting documentation that the individual or family moved two or more times during the 60-day period immediately preceding the date of application for homeless assistance, including: Recorded statements or records obtained from each owner or renter of housing, provider of shelter or housing, or social worker, case worker, or other appropriate official of a hospital or institution in which the individual or family resided; or, where these statements or records are unobtainable, a written record of the intake worker's due diligence in attempting to obtain these statements or records. Where a move was due to the individual or family fleeing domestic violence, dating violence, sexual assault, or stalking, then the intake worker may alternatively obtain a written certification from the individual or head of household seeking assistance that they were fleeing that situation and that they resided at that address; and

(iv) For paragraph (3)(iv) of the homeless definition in § 582.5, written diagnosis from a professional who is licensed by the state to diagnose and treat that condition (or intake staff-recorded observation of disability that within 45 days of the date of application for assistance is confirmed by a professional who is licensed by the state to diagnose and treat that condition); employment records; department of corrections records; literacy, English proficiency tests; or other reasonable documentation of the conditions required under paragraph (3)(iv) of the homeless definition.

(5) If the individual or family qualifies under paragraph (4) of the homeless definition in § 582.5, because the individual or family is fleeing domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening conditions related to violence, then acceptable evidence includes an oral statement by the individual or head of household seeking assistance that they are fleeing that situation, that no subsequent residence has been identified, and that they lack the resources or support networks, e.g., family, friends, faith-based or other social networks, needed to obtain other housing. If the individual or family is receiving shelter or services provided by a victim service provider, as defined in section 401(32) of the McKinney-Vento-Homeless Assistance Act, as amended by the HEARTH Act, the oral statement must be documented by either a certification by the individual or head of household, or a certification by the intake worker. Otherwise, the oral statement that the individual or head of household seeking assistance has not identified a subsequent residence and lacks the resources or support networks, e.g., family, friends, faith-based or other social networks, needed to obtain housing must be documented by a certification by the individual or head of household that the oral statement is true and complete, and, where the safety of the individual or family would not be jeopardized, the domestic violence, dating violence, sexual assault, stalking or other dangerous or life-threatening condition must be verified by a written observation by the intake worker or a written referral by a housing or service provider, social worker, health-care provider, law enforcement agency, legal assistance provider, pastoral counselor, or any other organization from whom the individual or head of household has sought assistance for domestic violence, dating violence, sexual assault, or stalking. The written referral or observation need only include the minimum amount of information necessary to document that the individual or family is fleeing, or attempting to flee domestic violence, dating violence, sexual assault, and stalking.

(c) *Disability.*—Each recipient of assistance under this part must maintain and follow written intake procedures to ensure that the assistance benefits persons with disabilities, as defined in § 582.5. In addition to the documentation required under paragraph (b), the procedures must require documentation at intake of the evidence relied upon to establish and verify the disability of the person applying for homeless assistance. The recipient must keep these records for 5 years after the end of the grant term. Acceptable evidence of the disability includes:

(1) Written verification of the disability from a professional licensed by the state to diagnose and treat the disability and his or her certification that the disability is expected to be long-continuing or of indefinite duration and substantially impedes the individual's ability to live independently;

(2) Written verification from the Social Security Administration;

(3) The receipt of a disability check (e.g., Social Security Disability Insurance check or Veteran Disability Compensation);

(4) Intake staff-recorded observation of disability that, no later than 45 days of the application for assistance, is confirmed and accompanied by evidence in paragraph (c)(1), (2), (3), or (4) of this section; or

(5) Other documentation approved by HUD.

## PART 583—SUPPORTIVE HOUSING PROGRAM

■ 6. The authority citation for 24 CFR part 583 continues to read as follows:

**Authority:** 42 U.S.C. 3535(d) and 11389.

■ 7. In § 583.5, the definitions of ''Disability'' and ''Homeless person'' are removed and the definitions of ''Disability,'' ''Developmental disability,'' and ''Homeless'' are added to read as follows:

### § 583.5 Definitions.

* * * * *

*Developmental disability* means, as defined in section 102 of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15002):

(1) A severe, chronic disability of an individual that—

(i) Is attributable to a mental or physical impairment or combination of mental and physical impairments;

(ii) Is manifested before the individual attains age 22;

(iii) Is likely to continue indefinitely;

(iv) Results in substantial functional limitations in three or more of the following areas of major life activity:

(A) Self-care;

(B) Receptive and expressive language;

(C) Learning;

(D) Mobility;

(E) Self-direction;

(F) Capacity for independent living;

(G) Economic self-sufficiency; and

(v) Reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic services, individualized supports, or other forms of assistance that are of lifelong or extended duration and are individually planned and coordinated.

(2) An individual from birth to age 9, inclusive, who has a substantial developmental delay or specific congenital or acquired condition, may be considered to have a developmental disability without meeting three or more of the criteria described in paragraphs (1)(i) through (v) of the definition of ''developmental disability'' in this section if the individual, without services and supports, has a high probability of meeting those criteria later in life.

* * * * *

*Disability* means:

(1) A condition that:

(i) Is expected to be long-continuing or of indefinite duration;

(ii) Substantially impedes the individual's ability to live independently;

(iii) Could be improved by the provision of more suitable housing conditions; and

(iv) Is a physical, mental, or emotional impairment, including an impairment caused by alcohol or drug abuse, post-traumatic stress disorder, or brain injury;

(2) A developmental disability, as defined in this section; or

(3) The disease of acquired immunodeficiency syndrome (AIDS) or any conditions arising from the etiologic agent for acquired immunodeficiency syndrome, including infection with the human immunodeficiency virus (HIV).

* * * * *

*Homeless* means:

(1) An individual or family who lacks a fixed, regular, and adequate nighttime residence, meaning:

(i) An individual or family with a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings, including a car, park, abandoned building, bus or train station, airport, or camping ground;

(ii) An individual or family living in a supervised publicly or privately operated shelter designated to provide temporary living arrangements (including congregate shelters, transitional housing, and hotels and motels paid for by charitable organizations or by federal, state, or local government programs for low-income individuals); or

(iii) An individual who is exiting an institution where he or she resided for 90 days or less and who resided in an emergency shelter or place not meant for human habitation immediately before entering that institution;

(2) An individual or family who will imminently lose their primary nighttime residence, provided that:

(i) The primary nighttime residence will be lost within 14 days of the date of application for homeless assistance;

(ii) No subsequent residence has been identified; and

(iii) The individual or family lacks the resources or support networks, e.g., family, friends, faith-based or other social networks, needed to obtain other permanent housing;

(3) Unaccompanied youth under 25 years of age, or families with children and youth, who do not otherwise qualify as homeless under this definition, but who:

(i) Are defined as homeless under section 387 of the Runaway and Homeless Youth Act (42 U.S.C. 5732a), section 637 of the Head Start Act (42 U.S.C. 9832), section 41403 of the Violence Against Women Act of 1994 (42 U.S.C. 14043e–2), section 330(h) of the Public Health Service Act (42 U.S.C. 254b(h)), section 3 of the Food and Nutrition Act of 2008 (7 U.S.C. 2012), section 17(b) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)), or section 725 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a);

(ii) Have not had a lease, ownership interest, or occupancy agreement in permanent housing at any time during the 60 days immediately preceding the date of application for homeless assistance;

(iii) Have experienced persistent instability as measured by two moves or more during the 60-day period immediately preceding the date of applying for homeless assistance; and

(iv) Can be expected to continue in such status for an extended period of time because of chronic disabilities, chronic physical health or mental health conditions, substance addiction, histories of domestic violence or childhood abuse (including neglect), the presence of a child or youth with a disability, or two or more barriers to employment, which include the lack of a high school degree or General Education Development (GED), illiteracy, low English proficiency, a history of incarceration or detention for criminal activity, and a history of unstable employment; or

(4) Any individual or family who:

(i) Is fleeing, or is attempting to flee, domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening conditions that relate to violence against the individual or a family member, including a child, that has either taken place within the individual's or family's primary nighttime residence or has made the individual or family afraid to return to their primary nighttime residence;

(ii) Has no other residence; and

(iii) Lacks the resources or support networks, e.g., family, friends, and faith-based or other social networks, to obtain other permanent housing.

■ 8. A new § 583.301 is added to read as follows:

**§ 583.301 Recordkeeping.**

(a) [Reserved.]

(b) *Homeless status.* The recipient must maintain and follow written intake procedures to ensure compliance with the homeless definition in § 583.5. The procedures must require documentation at intake of the evidence relied upon to establish and verify homeless status. The procedures must establish the order of priority for obtaining evidence as third-party documentation first, intake worker observations second, and certification from the person seeking assistance third. However, lack of third-party documentation must not prevent an individual or family from being immediately admitted to emergency shelter, receiving street outreach services, or being immediately admitted to shelter or receiving services provided by a victim service provider, as defined in section 401(32) of the McKinney-Vento Homeless Assistance Act, as amended by the HEARTH Act. Records contained in an HMIS or comparable database used by victim service or legal service providers are acceptable evidence of third-party documentation and intake worker observations if the HMIS retains an auditable history of all entries, including the person who entered the data, the date of entry, and the change made; and if the HMIS prevents overrides or changes of the dates on which entries are made.

(1) If the individual or family qualifies as homeless under paragraph (1)(i) or (ii) of the homeless definition in § 583.5, acceptable evidence includes a written observation by an outreach worker of the conditions where the individual or family was living, a written referral by another housing or service provider, or a certification by the individual or head of household seeking assistance.

(2) If the individual qualifies as homeless under paragraph (1)(iii) of the homeless definition in § 583.5, because he or she resided in an emergency shelter or place not meant for human habitation and is exiting an institution where he or she resided for 90 days or less, acceptable evidence includes the evidence described in paragraph (b)(1) of this section and one of the following:

(i) Discharge paperwork or a written or oral referral from a social worker, case manager, or other appropriate official of the institution, stating the beginning and end dates of the time

residing in the institution. All oral statements must be recorded by the intake worker; or

(ii) Where the evidence in paragraph (b)(2)(i) of this section is not obtainable, a written record of the intake worker's due diligence in attempting to obtain the evidence described in paragraph (b)(2)(i) and a certification by the individual seeking assistance that states he or she is exiting or has just exited an institution where he or she resided for 90 days or less.

(3) If the individual or family qualifies as homeless under paragraph (2) of the homeless definition in § 583.5, because the individual or family will imminently lose their housing, the evidence must include:

(i)(A) A court order resulting from an eviction action that requires the individual or family to leave their residence within 14 days after the date of their application for homeless assistance; or the equivalent notice under applicable state law, a Notice to Quit, or a Notice to Terminate issued under state law;

(B) For individuals and families whose primary nighttime residence is a hotel or motel room not paid for by charitable organizations or federal, state, or local government programs for low-income individuals, evidence that the individual or family lacks the resources necessary to reside there for more than 14 days after the date of application for homeless assistance; or

(C) An oral statement by the individual or head of household that the owner or renter of the housing in which they currently reside will not allow them to stay for more than 14 days after the date of application for homeless assistance. The intake worker must record the statement and certify that it was found credible. To be found credible, the oral statement must either: Be verified by the owner or renter of the housing in which the individual or family resides at the time of application for homeless assistance and documented by a written certification by the owner or renter or by the intake worker's recording of the owner or renter's oral statement; or if the intake worker is unable to contact the owner or renter, be documented by a written certification by the intake worker of his or her due diligence in attempting to obtain the owner or renter's verification and the written certification by the individual or head of household seeking assistance that his or her statement was true and complete;

(ii) Certification by the individual or head of household that no subsequent residence has been identified; and

(iii) Certification or other written documentation that the individual or family lacks the resources and support networks needed to obtain other permanent housing.

(4) If the individual or family qualifies as homeless under paragraph (3) of the homeless definition in § 583.5, because the individual or family does not otherwise qualify as homeless under the homeless definition but is an unaccompanied youth under 25 years of age, or homeless family with one or more children or youth, and is defined as homeless under another Federal statute or section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), the evidence must include:

(i) For paragraph (3)(i) of the homeless definition in § 583.5, certification of homeless status by the local private nonprofit organization or state or local governmental entity responsible for administering assistance under the Runaway and Homeless Youth Act (42 U.S.C. 5701 *et seq.*), the Head Start Act (42 U.S.C. 9831 *et seq.*), subtitle N of the Violence Against Women Act of 1994 (42 U.S.C. 14043e *et seq.*), section 330 of the Public Health Service Act (42 U.S.C. 254b), the Food and Nutrition Act of 2008 (7 U.S.C. 2011 *et seq.*), section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786), or subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 *et seq.*), as applicable;

(ii) For paragraph (3)(ii) of the homeless definition in § 583.5, referral by a housing or service provider, written observation by an outreach worker, or certification by the homeless individual or head of household seeking assistance;

(iii) For paragraph (3)(iii) of the homeless definition in § 583.5, certification by the individual or head of household and any available supporting documentation that the individual or family moved two or more times during the 60-day period immediately preceding the date for application of homeless assistance, including: Recorded statements or records obtained from each owner or renter of housing, provider of shelter or housing, or social worker, case worker, or other appropriate official of a hospital or institution in which the individual or family resided; or, where these statements or records are unobtainable, a written record of the intake worker's due diligence in attempting to obtain these statements or records. Where a move was due to the individual or family fleeing domestic violence, dating violence, sexual assault, or stalking, then the intake worker may alternatively obtain a written certification from the individual or head of household seeking assistance that they were fleeing that situation and that they resided at that address; and

(iv) For paragraph (3)(iv) of the homeless definition in § 583.5, written diagnosis from a professional who is licensed by the state to diagnose and treat that condition (or intake staff-recorded observation of disability that within 45 days of the date of application for assistance is confirmed by a professional who is licensed by the state to diagnose and treat that condition); employment records; department of corrections records; literacy, English proficiency tests; or other reasonable documentation of the conditions required under paragraph (3)(iv) of the homeless definition.

(5) If the individual or family qualifies under paragraph (4) of the homeless definition in § 583.5, because the individual or family is fleeing domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening conditions related to violence, then acceptable evidence includes an oral statement by the individual or head of household seeking assistance that they are fleeing that situation, that no subsequent residence has been identified, and that they lack the resources or support networks, e.g., family, friends, faith-based or other social networks, needed to obtain other housing. If the individual or family is receiving shelter or services provided by a victim service provider, as defined in section 401(32) of the McKinney-Vento Homeless Assistance Act, as amended by the HEARTH Act, the oral statement must be documented by either a certification by the individual or head of household; or a certification by the intake worker. Otherwise, the oral statement that the individual or head of household seeking assistance has not identified a subsequent residence and lacks the resources or support networks, e.g., family, friends, faith-based or other social networks, needed to obtain housing, must be documented by a certification by the individual or head of household that the oral statement is true and complete, and, where the safety of the individual or family would not be jeopardized, the domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening condition must be verified by a written observation by the intake worker; or a written referral by a housing or service provider, social worker, health-care provider, law enforcement agency, legal assistance provider, pastoral counselor, or any another organization from whom the individual or head of household has sought assistance for domestic violence,

dating violence, sexual assault, or stalking. The written referral or observation need only include the minimum amount of information necessary to document that the individual or family is fleeing, or attempting to flee domestic violence, dating violence, sexual assault, and stalking.

(c) *Disability.*—Each recipient of assistance under this part must maintain and follow written intake procedures to ensure that the assistance benefits persons with disabilities, as defined in § 583.5. In addition to the documentation required under paragraph (b) of this section, the procedures must require documentation at intake of the evidence relied upon to establish and verify the disability of the person applying for homeless assistance. The recipient must keep these records for 5 years after the end of the grant term. Acceptable evidence of the disability includes:

(1) Written verification of the disability from a professional licensed by the state to diagnose and treat the disability and his or her certification that the disability is expected to be long-continuing or of indefinite duration and substantially impedes the individual's ability to live independently;

(2) Written verification from the Social Security Administration;

(3) The receipt of a disability check (e.g., Social Security Disability Insurance check or Veteran Disability Compensation);

(4) Other documentation approved by HUD; or

(5) Intake staff-recorded observation of disability that, no later than 45 days of the application for assistance, is confirmed and accompanied by evidence in paragraph (c)(1), (2), (3), or (4) of this section.

Dated: November 9, 2011.

**Mercedes Márquez,**

*Assistant Secretary for Community Planning and Development.*

[FR Doc. 2011–30942 Filed 12–2–11; 8:45 am]

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**Federal Register**

Vol. 76, No. 233

Monday, December 5, 2011

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| | |
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## FEDERAL REGISTER PAGES AND DATE, DECEMBER

74625–75426 ..... 1
75427–75770 ..... 2
75771–76020 ..... 5

## CFR PARTS AFFECTED DURING DECEMBER

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

**3 CFR**

**Administrative Orders:**
Memorandums:
Memorandum of November 28, 2011 .....75423

**5 CFR**

**Proposed Rules:**
Ch. XXIII .....75798

**7 CFR**

761.....75427
763.....75427
764.....75427
**Proposed Rules:**
400.....75799
457.....75805

**8 CFR**

280.....74625
1280.....74625

**9 CFR**

**Proposed Rules:**
316.....75809
317.....75809
320.....75809
331.....75809
354.....75809
355.....75809
381.....75809
412.....75809
424.....75809

**10 CFR**

50.....74630, 75771
52.....74630, 75771
**Proposed Rules:**
Ch. II .....75798
Ch. III .....75798
Ch. X.....75798

**12 CFR**

225.....74631
912.....74648
997.....74648
1780.....74648
1781.....74648
1782.....74648
1783.....74648
1784.....74648
1785.....74648
1786.....74648
1787.....74648
1788.....74648
1789.....74648
1790.....74648
1791.....74648
1792.....74648
1793.....74648
1794.....74648
1795.....74648
1796.....74648
1797.....74648
1798.....74648
1799.....74648
**Proposed Rules:**
Ch. X.....75825

**13 CFR**

**Proposed Rules:**
121.....74749
125.....74749

**14 CFR**

23.....75736
25.....74649
27.....74655
29.....74655, 75435
39 .....74665, 74667, 75442, 75772
71 .....75445, 75446, 75447, 75448, 75449
**Proposed Rules:**
35.....74749

**15 CFR**

902.....74670

**16 CFR**

**Proposed Rules:**
Ch. II .....75504

**19 CFR**

12.....74690, 74691

**21 CFR**

1314.....74696

**24 CFR**

91.....75954, 75994
576.....75954
582.....75994
583.....75994

**26 CFR**

1.....75774, 75781
**Proposed Rules:**
1 .....75829

**27 CFR**

**Proposed Rules:**
9.....75830
19.....75836

**29 CFR**

1910.....75782
4044.....74699
**Proposed Rules:**
1910.....75840

**33 CFR**

165.....75450

334 ....75453
**Proposed Rules:**
117 ....75505
334 ....75508

**34 CFR**

99 ....75604

**36 CFR**

**Proposed Rules:**
1190 ....75844

**37 CFR**

1 ....74700
381 ....74703
386 ....74703

**38 CFR**

9 ....75458
**Proposed Rules:**
17 ....75509

**39 CFR**

20 ....75786
111 ....74704, 75461
**Proposed Rules:**
501 ....74753

**40 CFR**

9 ....75794
52 ....75464, 75467, 75795
63 ....74708
93 ....75797
261 ....74709
721 ....75794
**Proposed Rules:**
52 ....75845, 75849, 75857
70 ....74755
85 ....74854
86 ....74854
600 ....74854

**44 CFR**

64 ....74717

**46 CFR**

506 ....74720

**47 CFR**

0 ....74721
8 ....74721
20 ....74721
101 ....74722

**48 CFR**

422 ....74722
**Proposed Rules:**
215 ....75512
252 ....75512
422 ....74755

**49 CFR**

177 ....75470
383 ....75470
384 ....75470
390 ....75470
391 ....75470
392 ....75470
575 ....74723
**Proposed Rules:**
523 ....74854
531 ....74854
533 ....74854
536 ....74854
537 ....74854

**50 CFR**

622 ....75488
635 ....75492
640 ....75488
648 ....74724
660 ....74725
665 ....74747
679 ....74670
680 ....74670
**Proposed Rules:**
17 ....75858
622 ....74757

## LIST OF PUBLIC LAWS

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**H.R. 3321/P.L. 112–61**
America's Cup Act of 2011 (Nov. 29, 2011; 125 Stat. 753)

**S. 1637/P.L. 112–62**
Appeal Time Clarification Act of 2011 (Nov. 29, 2011; 125 Stat. 756)

**Last List November 30, 2011**

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