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Washington, DC 20002

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 95

[Docket No. 30841; Amdt. No. 500]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

DATES: Effective Date: 0901 UTC, May 31, 2012.

FOR FURTHER INFORMATION CONTACT: Rick Dunham, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95.

The Rule

The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are impracticable and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 95

Airspace, Navigation (air).

Issued in Washington, DC, on April 27, 2012.

John M. Allen,

Deputy Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 UTC, May 31, 2012.

PART 95—[AMENDED]

■ 1. The authority citation for part 95 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44719, 44721.

■ 2. Part 95 is amended to read as follows:

REVISIONS TO IFR ALTITUDES & CHANGEOVER POINTS

[Amendment 500 effective date, May 31, 2012]

From	To	MEA
Color Routes		
§ 95.4 Green Federal Airway G9 Is Amended To Read in Part		
Oscarville, AK NDB	Zekeg, AK FIX.	
NE BND		*6000
SW BND		*3000
*2100—MOCA		
Zekeg, AK FIX	Cairn Mountain, AK NDB	6000

REVISIONS TO IFR ALTITUDES & CHANGEOVER POINTS—Continued

[Amendment 500 effective date, May 31, 2012]

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§ 95.6 Blue Federal Airway B27 Is Amended To Read in Part		
Chinook, AK NDB	Wanix, AK FIX	*8000
*7500—MOCA		
Wanix, AK FIX	Oscarville, AK NDB.	
NW BND		4000
SE BND		8000

From	To	MEA	MAA
§ 95.3000 Low Altitude RNAV Routes			
§ 95.3212 RNAV Route T212 Is Added To Read			
Weard, NY FIX	Weets, NY FIX	4600	17500
Weets, NY FIX	Tresa, NY FIX	3200	17500
Tresa, NY FIX	Stuby, CT FIX	3200	17500
Stuby, CT FIX	Veers, CT FIX	3400	17500
Veers, CT FIX	Ronge, CT FIX	3500	17500
Ronge, CT FIX	Nelie, CT FIX	3500	17500
Nelie, CT FIX	Darth, CT FIX	2800	17500
Darth, CT FIX	Putnam, CT VOR/DME	3000	17500
§ 95.3255 RNAV Route T255 Is Added To Read			
Marthas Vineyard, MA VOR/DME	Falma, RI FIX	2000	17500
Falma, RI FIX	Providence, RI VORTAC	2000	17500
Providence, RI VORTAC	Noxse, RI FIX	2500	17500
Noxse, RI FIX	Blatt, CT FIX	2500	17500
Blatt, CT FIX	Nelie, CT FIX	2800	17500
§ 95.3300 RNAV Route T300 Is Added To Read			
Albany, NY VORTAC	Canan, NY FIX	3400	17500
Canan, NY FIX	Shigy, MA FIX	3900	17500
Shigy, MA FIX	Stela, MA FIX	4000	17500
Stela, MA FIX	Molds, MA FIX	3900	17500
Molds, MA FIX	Tomes, MA FIX	3400	17500
Tomes, MA FIX	Cobol, MA FIX	3400	17500
Cobol, MA FIX	Nelie, CT FIX	3300	17500
Nelie, CT FIX	Wipor, CT FIX	2600	17500
Wipor, CT FIX	Norwich, CT VOR/DME	2400	17500
Norwich, CT VOR/DME	Lafay, RI FIX	2300	17500
Lafay, RI FIX	Minnk, RI FIX	2100	17500
Minnk, RI FIX	Falma, RI FIX	1800	17500
Falma, RI FIX	Marthas Vineyard, MA VOR/DME	2000	17500
§ 95.4000 High Altitude RNAV Routes			
§ 95.4140 RNAV Route Q140 Is Added To Read			
Wobed, WA FIX	Getng, WA FIX	*25000	45000
*18000—GNSS MEA			
*DME/DME/IRU MEA			
Getng, WA FIX	Cordu, ID FIX	*25000	45000
*18000—GNSS MEA			
*DME/DME/IRU MEA			
Cordu, ID FIX	Petiy, MT FIX	*30000	45000
*18000—GNSS MEA			
*DME/DME/IRU MEA			
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*18000—GNSS MEA			
*DME/DME/IRU MEA			
Chote, MT FIX	Lewit, MT FIX	*26000	45000
*18000—GNSS MEA			
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Lewit, MT FIX	Sayor, MT FIX	*24000	45000
*18000—GNSS MEA			
*GNSS MEA			
Sayor, MT FIX	Wiltn, ND FIX	*18000	45000
*GNSS MEA			
Wiltn, ND FIX	Ttail, MN FIX	*18000	45000
*GNSS MEA			

From	To	MEA	MAA
Ttail, MN FIX *GNSS MEA	Cesna, WI FIX	*18000	45000
Cesna, WI FIX *GNSS MEA	Eegee, WI FIX	*18000	45000
§ 95.4142 RNAV Route Q142 Is Added To Read			
Metow, WA FIX *18000—GNSS MEA *DME/DME/IRU MEA	Mullan Pass, ID VOR/DME	*26000	45000
Mullan Pass, ID VOR/DME *18000—GNSS MEA *DME/DME/IRU MEA	Keeta, MT FIX	*26000	45000
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§ 95.4144 RNAV Route Q144 Is Added To Read			
Ziran, WA FIX *GNSS MEA	Zoomr, WA FIX	*18000	45000
Zoomr, WA FIX *18000—GNSS MEA *DME/DME/IRU MEA	Blows, MT FIX	*21000	45000
Blows, MT FIX *18000—GNSS MEA *DME/DME/IRU MEA	Keeta, MT FIX	*21000	45000
Keeta, MT FIX *18000—GNSS MEA *DME/DME/IRU MEA	Lewit, MT FIX	*21000	45000
§ 95.4146 RNAV Route Q146 Is Added To Read			
Cashs, WA FIX *18000—GNSS MEA *DME/DME/IRU MEA	Blunt, WA FIX	*24000	45000
Blunt, WA FIX *18000—GNSS MEA *DME/DME/IRU MEA	Diphu, MT FIX	*24000	45000
Diphu, MT FIX *18000—GNSS MEA *DME/DME/IRU MEA	Cusda, MT FIX	*24000	45000
Cusda, MT FIX *18000—GNSS MEA *DME/DME/IRU MEA	Zerzo, MT FIX	*24000	45000
Zerzo, MT FIX *18000—GNSS MEA *DME/DME/IRU MEA	Kixco, MT FIX	*22000	45000
Kixco, MT FIX *18000—GNSS MEA *DME/DME/IRU MEA	Timmr, ND FIX	*20000	45000
Timmr, ND FIX *18000—GNSS MEA *DME/DME/IRU MEA	Smerf, SD FIX	*20000	45000
Smerf, SD FIX *GNSS MEA	Huffr, MN FIX	*18000	45000
§ 95.4148 RNAV Route Q148 Is Added To Read			
Stevs, WA FIX *18000—GNSS MEA *DME/DME/IRU MEA	Zaxul, WA FIX	*26000	45000
Zaxul, WA FIX *18000—GNSS MEA *DME/DME/IRU MEA	Finut, WA FIX	*26000	45000
Finut, WA FIX *18000—GNSS MEA *DME/DME/IRU MEA	Wedak, MT FIX	*26000	45000
Wedak, MT FIX *18000—GNSS MEA *DME/DME/IRU MEA	Waide, MT FIX	*26000	45000
Waide, MT FIX	Jugiv, WY FIX	*26000	45000

From	To	MEA	MAA
*18000—GNSS MEA *DME/DME/IRU MEA			
Jugiv, WY FIX	Medicine Bow, WY VOR/DME	*26000	45000
*18000—GNSS MEA *DME/DME/IRU MEA			
Medicine Bow, WY VOR/DME	Moctu, WY FIX	*26000	45000
*18000—GNSS MEA *DME/DME/IRU MEA			
Moctu, WY FIX	Lewoy, CO FIX	*26000	45000
*18000—GNSS MEA *DME/DME/IRU MEA			
Lewoy, CO FIX	Cugga, KS FIX	*26000	45000
*18000—GNSS MEA *DME/DME/IRU MEA			
Cugga, KS FIX	Penut, KS FIX	*26000	45000
*18000—GNSS MEA *DME/DME/IRU MEA			
Penut, KS FIX	Kirke, KS FIX	*26000	45000
*18000—GNSS MEA *DME/DME/IRU MEA			
Kirke, KS FIX	Morrr, KS FIX	*26000	45000
*18000—GNSS MEA *DME/DME/IRU MEA			
Morrr, KS FIX	Bartlesville, OK VOR/DME	*26000	45000
*18000—GNSS MEA *DME/DME/IRU MEA			
§ 95.4150	**RNAV Route Q150 Is Added To Read**		
Stevs, WA FIX	Zaxul, WA FIX	*24000	45000
*18000—GNSS MEA *DME/DME/IRU MEA			
Zaxul, WA FIX	Lezle, WA FIX	*24000	45000
*18000—GNSS MEA *DME/DME/IRU MEA			
Lezle, WA FIX	Baxgo, ID FIX	*24000	45000
*18000—GNSS MEA *DME/DME/IRU MEA			
Baxgo, ID FIX	Lamon, ID FIX	*24000	45000
*18000—GNSS MEA *DME/DME/IRU MEA			
Lamon, ID FIX	Ganne, WY FIX	*24000	45000
*18000—GNSS MEA *DME/DME/IRU MEA			
Ganne, WY FIX	Oppee, WY FIX	*24000	45000
*18000—GNSS MEA *DME/DME/IRU MEA			
§ 95.4152	**RNAV Route Q152 Is Added To Read**		
Suned, WA FIX	Lezle, WA FIX	*24000	45000
*18000—GNSS MEA *DME/DME/IRU MEA			
Lezle, WA FIX	Wedak, MT FIX	*24000	45000
*18000—GNSS MEA *DME/DME/IRU MEA			
Wedak, MT FIX	Ikfom, WY FIX	*24000	45000
*18000—GNSS MEA *DME/DME/IRU MEA			
Ikfom, WY FIX	Wuvut, WY FIX	*24000	45000
*18000—GNSS MEA *DME/DME/IRU MEA			
Wuvut, WY FIX	O'Neill, NE VORTAC	*24000	45000
*18000—GNSS MEA *DME/DME/IRU MEA			
§ 95.4154	**RNAV Route Q154 Is Added To Read**		
Wanta, WA FIX	Jelti, OR FIX	*24000	45000
*18000—GNSS MEA *DME/DME/IRU MEA			
Jelti, OR FIX	Hovel, ID FIX	*24000	45000
*18000—GNSS MEA *DME/DME/IRU MEA			

From	To	MEA	MAA
Hovel, ID FIX *18000—GNSS MEA *DME/DME/IRU MEA	Veluy, ID FIX	*24000	45000
Veluy, ID FIX *18000—GNSS MEA *DME/DME/IRU MEA	Burley, ID VOR/DME	*24000	45000
Burley, ID VOR/DME *18000—GNSS MEA *DME/DME/IRU MEA	Pimie, UT FIX	*24000	45000
Pimie, UT FIX *18000—GNSS MEA *DME/DME/IRU MEA	Nagne, UT FIX	*24000	45000
Nagne, UT FIX *18000—GNSS MEA *DME/DME/IRU MEA	Bongo, UT FIX	*24000	45000
Bongo, UT FIX *18000—GNSS MEA *DME/DME/IRU MEA	Pitmn, CO FIX	*24000	45000
Pitmn, CO FIX *18000—GNSS MEA *DME/DME/IRU MEA	Taylr, CO FIX	*24000	45000
Taylr, CO FIX *18000—GNSS MEA *DME/DME/IRU MEA	Gosip, CO FIX	*24000	45000
Gosip, CO FIX *18000—GNSS MEA *DME/DME/IRU MEA	Kento, NM FIX	*24000	45000
Kento, NM FIX *18000—GNSS MEA *DME/DME/IRU MEA	Nosew, TX FIX	*24000	45000
Nosew, TX FIX *18000—GNSS MEA *DME/DME/IRU MEA	Bowie, TX VORTAC	*24000	45000
§ 95.4156 RNAV Route Q156 Is Added To Read			
Stevs, WA FIX *GNSS MEA	Zaxul, WA FIX	*18000	45000
Zaxul, WA FIX *18000—GNSS MEA *#DME/DME/IRU MEA	Finut, WA FIX	*24000	45000
Finut, WA FIX *18000—GNSS MEA *DME/DME/IRU MEA	Tuffy, MT FIX	*24000	45000
Tuffy, MT FIX *18000—GNSS MEA *DME/DME/IRU MEA	Upuge, MT FIX	*24000	45000
Upuge, MT FIX *18000—GNSS MEA *DME/DME/IRU MEA	Hexol, MT FIX	*24000	45000
Hexol, MT FIX *18000—GNSS MEA *DME/DME/IRU MEA	Tough, MT FIX	*24000	45000
Tough, MT FIX *18000—GNSS MEA *DME/DME/IRU MEA	Jelro, SD FIX	*24000	45000
Jelro, SD FIX *18000—GNSS MEA #DME/DME/IRU MEA	Kekpe, SD FIX	*24000	45000
Kekpe, SD FIX *18000—GNSS MEA #DME/DME/IRU MEA	Uffda, MN FIX	*24000	45000
Uffda, MN FIX *18000—GNSS MEA #DME/DME/IRU MEA	Hstin, MN FIX	*24000	45000
Hstin, MN FIX *GNSS MEA	Zzipr, IA FIX	*18000	45000

From	To	MEA
§ 95.6001 Victor Routes—U.S. **§ 95.6004 VOR Federal Airway V4 Is Amended To Read in Part**		
Tatoosh, WA VORTAC	#Jawbn, WA FIX	5800

From	To	MEA
#MTA V495 SE TO V4 W 8000		
Jawbn, WA FIX	Lofal, WA FIX	*5400
*4300—MOCA		
§ 95.6085 VOR Federal Airway V85 Is Amended To Read in Part		
Falcon, CO VORTAC	*Hygen, CO FIX	8000
*11500—MCA HYGEN, CO FIX, NW BND		
Hygen, CO FIX	*Allan, CO FIX	**13500
*16000—MRA		
*15400—MCA ALLAN, CO FIX, NW BND		
**12900—MOCA		
*CHART: MTA V85 NW TO V361 SW 15800		
*CHART: MTA V85 SE TO V361 SW 16500		
*CHART: MTA V85 NW TO V361 NE 15800		
*Allan, CO FIX	Laramie, WY VOR/DME	16000
*16000—MRA		
§ 95.6106 VOR Federal Airway V106 Is Amended To Read in Part		
Cobol, MA FIX	Barnes, MA VORTAC	3500
§ 95.6107 VOR Federal Airway V107 Is Amended To Read in Part		
Avenal, CA VORTAC	Panoche, CA VORTAC	8000
§ 95.6113 VOR Federal Airway V113 Is Amended To Read in Part		
Priest, CA VOR	*Panoche, CA VORTAC	7500
*5500—MCA PANOCHE, CA VORTAC, S BND		
§ 95.6130 VOR Federal Airway V130 Is Amended To Delete		
Albany, NY VORTAC	Stela, MA FIX	6000
*3900—MOCA		
*4000—GNSS MEA		
Stela, MA FIX	Bradley, CT VORTAC	3900
Bradley, CT VORTAC	Norwich, CT VOR/DME	2600
§ 95.6130 VOR Federal Airway V130 Is Amended To Read in Part		
Norwich, CT VOR/DME	Minnk, RI FIX	2300
Minnk, RI FIX	Marthas Vineyard, MA VOR/DME	*3000
*1600—MOCA		
§ 95.6135 VOR Federal Airway V135 Is Amended By Adding		
Sayul, CA FIX	Bard, AZ VORTAC	*4000
*2700—MOCA		
§ 95.6137 VOR Federal Airway V137 Is Amended By Adding		
Novos, CA FIX	Imperial, CA VORTAC	*3000
*1900—MOCA.		
§ 95.6146 VOR Federal Airway V146 Is Amended To Read in Part		
Putnam, CT VOR/DME	Providence, RI VORTAC	*3000
*2100—MOCA		
§ 95.6151 VOR Federal Airway V151 Is Amended To Read in Part		
Providence, RI VORTAC	Putnam, CT VOR/DME	*3000
*2100—MOCA		
§ 95.6152 VOR Federal Airway V152 Is Amended To Read in Part		
Jensn, FL FIX	Kizer, FL FIX	*2800
*GNSS MEA		
Kizer, FL FIX	#Ormond Beach, FL VORTAC	*3600
*2800—MOCA		
#ORMOND BEACH R–211 UNUSABLE BYD 26 NM		
§ 95.6155 VOR Federal Airway V155 Is Amended To Read in Part		
Flat Rock, VA VORTAC	Falko, VA FIX	2000

From	To	MEA
Falko, VA FIX *1700—MOCA *2000—GNSS MEA	Brooke, VA VORTAC	*6000
§ 95.6165 VOR Federal Airway V165 Is Amended To Read in Part		
Olympia, WA VORTAC *4000—MRA **2000—MOCA	*Carro, WA FIX	**4000
*CARRO, WA FIX *4000—MRA **5000—MOCA	Diggn, WA FIX	**6000
Diggn, WA FIX *2600—MOCA	Penn Cove, WA VOR/DME	*5000
§ 95.6203 VOR Federal Airway V203 Is Amended by Adding		
Stela, MA FIX *4000—GNSS MEA	Albany, NY VORTAC	*6000
§ 95.6205 VOR Federal Airway V205 Is Amended To Delete		
Coate, NJ FIX *3300—MOCA	Huguenot, NY VOR/DME	*4000
Huguenot, NY VOR/DME *3500—MOCA	Weard, NY FIX	*4000
Weard, NY FIX *6000—MRA	*Weets, NY FIX	6000 MAA–14500
Weets, NY FIX *5000—GNSS MEA	Stuby, CT FIX	*8500
Stuby, CT FIX	Veers, CT FIX	3500
Veers, CT FIX	Ronge, CT FIX	3500
Bradley, CT VORTAC	Putnam, CT VOR/DME	3000
§ 95.6215 VOR Federal Airway V215 Is Amended To Read in Part		
White CLOUD, MI VOR/DME	Gaylord, MI VOR/DME	4000
§ 95.6233 VOR Federal Airway V233 Is Amended To Read in Part		
Carga, MI FIX	Gaylord, MI VOR/DME	4000
§ 95.6253 VOR Federal Airway V253 Is Amended To Read in Part		
Twin Falls, ID VORTAC	Litke, ID FIX	6200
Litke, ID FIX	Alkal, ID FIX.	
SE BND		6000
NW BND		9500
§ 95.6287 VOR Federal Airway V287 Is Amended To Read in Part		
Olympia, WA VORTAC *4000—MRA **2000—MOCA	*Carro, WA FIX	**4000
*Carro, WA FIX *4000—MRA **5000—MCA LOFAL, WA FIX, SW BND **5000—MOCA	**Lofal, WA FIX	***6000
Lofal, WA FIX *1900—MOCA	Paine, WA VOR/DME	*3000
§ 95.6311 VOR Federal Airway V311 Is Amended To Read in Part		
Dubbs, TN FIX *6400—MOCA	Nello, GA FIX	*7000
§ 95.6327 VOR Federal Airway V327 Is Amended To Read in Part		
Oates, AZ FIX *11000—MCA FLAGSTAFF, AZ VOR/DME, NE BND *MTA V327 N TO V291 E 11000	*Flagstaff, AZ VOR/DME	10500
§ 95.6330 VOR Federal Airway V330 Is Amended To Read in Part		
Idaho Falls, ID VOR/DME	*Osity, ID FIX	8000

From	To	MEA
*9500—MCA OSITY, ID FIX, E BND		
Osity, ID FIX	*Jackson, WY VOR/DME	14000
*13400—MCA JACKSON, WY VOR/DME, W BND		
*MTA V330 E TO V520 W 16000		
§ 95.6361 VOR Federal Airway V361 Is Amended To Read in Part		
Kremmling, CO VOR/DME	*Allan, CO FIX	**16000
*16000—MRA		
**15400—MOCA		
*CHART: MTA V361 SW TO V85 SE 14700.		
*CHART: MTA V361 SW TO VI5 NW 16500.		
*Allan, CO FIX	**Bargr, CO FIX	#15000
*16000—MRA		
**11800—MCA BARGR, CO FIX, SW BND		
§ 95.6374 VOR Federal Airway V374 Is Amended To Read in Part		
Gayel, NY FIX	Binghamton, NY VORTAC	*10000
*4400—MOCA		
*4400—GNSS MEA		
§ 95.6405 VOR Federal Airway V405 Is Amended by Deleting		
Pawling, NY VOR/DME	Veers, CT FIX	*4000
*3500—MOCA		
Veers, CT FIX	Bradley, CT VORTAC	3500
Bradley, CT VORTAC	Providence, RI VORTAC	*3000
*2200—MOCA		
§ 95.6405 VOR Federal Airway V405 Is Amended To Read in Part		
Pawling, NY VOR/DME	Cobol, MA FIX	*4000
*3500—MOCA		
Cobol, MA FIX	Barnes, MA VORTAC	3500
Barnes, MA VORTAC	Putnam, CT VOR/DME	*3000
*2500—MOCA		
Putnam, CT VOR/DME	Providence, RI VORTAC	*3000
*2100—MOCA		
Providence, RI VORTAC	Falma, RI FIX	*3000
*1400—MOCA		
§ 95.6407 VOR Federal Airway V407 Is Amended To Read in Part		
Harlingen, TX VOR/DME	Jimie, TX FIX.	
N BND		*6000
S BND		*1700
*1700—GNSS MEA		
Jimie, TX FIX	Jetty, TX FIX	*6000
*1800—MOCA		
*2000—GNSS MEA		
Jetty, TX FIX	Corpus Christi, TX VORTAC.	
N BND		*2100
S BND		*3800
*2100—GNSS MEA		
§ 95.6419 VOR Federal Airway V419 Is Amended To Delete		
Carmel, NY VOR/DME	Bradley, CT VORTAC	3000
Bradley, CT VORTAC	Boston, MA VOR/DME	*4000
*2500—MOCA		
*3000—GNSS MEA		
§ 95.6419 VOR Federal Airway V419 Is Amended To Read in Part		
Carmel, NY VOR/DME	Briss, CT FIX	3000
§ 95.6495 VOR Federal Airway V495 Is Amended To Read in Part		
U.S. Canadian Border	#Jawbn, WA FIX	*5400
*4300—MOCA		
#V495 SE TO V4 W 8000		
Jawbn, WA FIX	Lofal, WA FIX	*5800
*4300—MOCA		

From	To	MEA	MAA
§ 95.7001 Jet Routes			
§ 95.7084 Jet Route J84 Is Amended To Read in Part			
Sidney, NE VORTAC	Wolbach, NE VORTAC	18000	45000
§ 95.7095 Jet Route J95 Is Amended To Read in Part			
Gayel, NY FIX	Binghamton, NY VORTAC	18000	45000
§ 95.7100 Jet Route J100 Is Amended To Read in Part			
Sidney, NE VORTAC	Wolbach, NE VORTAC	18000	45000
Airway segment		Changeover points	
From	To	Distance	From
§ 95.8003 VOR Federal Airway Changeover Points			
V155 Is Amended To Add Changeover Point			
Flat Rock, VA VORTAC	Brooke, VA VORTAC	43	Flat Rock.
V419 Is Amended To Delete			
Boston, MA VOR/DME	Bradley, CT VORTAC	49	Boston.

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NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1240

[Document Number NASA–2012–0002]

RIN 2700–AD51

Inventions and Contributions

AGENCY: National Aeronautics and Space Administration.

ACTION: Direct final rule.

SUMMARY: NASA is amending its regulations to clarify and update the procedures for board recommended awards, and the procedures and requirements for recommended special initial awards, including patent application awards, software release awards, and Tech Brief awards, and to update citations and the information on the systems used for reporting inventions and issuing award payments. The revisions to this rule are part of NASA's retrospective plan under EO 13563 completed in August 2011. NASA's full plan can be accessed at: *http://www.nasa.gov/pdf/581545main_Final%20Plan%20for%20Retrospective%20Analysis%20of%20Existing%20Regulations.pdf.*

DATES: This rule is effective July 9, 2012 without further action, unless adverse comment is received by June 11, 2012. If adverse comment is received, NASA will publish a timely withdrawal of the rule in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Helen M. Galus, Office of the General Counsel, NASA Headquarters, telephone (202) 358–3437, fax (202) 358–4341.

SUPPLEMENTARY INFORMATION: Final regulations relating to Invention and Contributions Board Awards for Scientific and Technical Contributions [14 CFR part 1240, Subpart 1], were published at 25 FR 1312 on February 13, 1960. These regulations were written under the National Aeronautics and Space Act of 1958, As Amended, 42 U.S.C. 2457(f), 2458 and 2473(b)(1) (now, National Aeronautics and Space Act, 51 U.S.C. 20135(g), 20136 and 20112 (b)(1)). This subpart prescribes the regulations for the granting of monetary awards by the NASA Administrator, for scientific and technical contributions of significant value in the conduct of aeronautical and space activities. Final amendments to these regulations were published at 67 FR 31119 on May 9, 2002, to provide definitions, add new category of initial awards for release of software, to provide initial awards for the issuance of patents based upon continuation-in-part and divisional patent applications, to increase the amount of certain awards, and to change delegations of authority from the NASA Administrator.

NASA is now again revising its regulations at 14 CFR part 1240, subpart 1, to clarify the eligibility requirements for certain awards and clarify that the awards are recommended by the Inventions and Contributions Board (hereinafter ''the Board''), but final terms and conditions of the awards are at the discretion of the Administrator or his designee, the revisions also provide the Board more flexibility in the amount of the special awards to be recommended. Additionally, the National Aeronautics and Space Act (hereinafter ''the Space Act''), is now codified in Title 51 of the United States Code, so citations to this Act have been updated accordingly. The regulations have also been revised, in part, to make them conform closer to the terms of the Space Act, and to reflect current accounting techniques used at the Agency. Additional revisions include rendering the terminology consistent within the regulations and the sentence structure grammatically complete and easier to understand. Finally, the revisions reflect organizational management changes that have taken place within the agency and the respective resulting responsibilities.

Direct Final Rule and Significant Adverse Comments

NASA has determined this rulemaking meets the criteria for a direct final rule because it involves clarifications, updating, and minor substantive changes to the existing regulations. NASA does not anticipate this direct final rule will result in any major changes to its current awards program. NASA expects no opposition to the changes and no significant adverse comments. However, if NASA receives a significant adverse comment, the Agency will withdraw this direct final rule by publishing a document in the **Federal Register**. A significant adverse comment is one that explains:

(1) Why the direct final rule is inappropriate, including challenges to the rule's underlying premise or approach; or (2) why the direct final rule will be ineffective or unacceptable without a change. In determining whether a comment necessitates withdrawal of this direct final rule, NASA will consider whether it warrants a substantive response in a notice and comment process.

Statutory Authority

The Invention and Contributions Board is established under the National Aeronautics and Space Act, as amended, 51 U.S.C. 20135(g). 51 U.S.C. 20136(a) authorizes the NASA Administrator to make monetary awards to any person for any scientific or technical contribution to NASA which is determined by the Administrator to have significant value in the conduct of aeronautical and space activities. Applications for such awards are referred to the Inventions and Contributions Board which transmits to the Administrator its recommendation as to the terms of the award. The Federal Technology Transfer Act of 1986, sec. 12, 15 U.S.C. 3710b, requires, in part, the head of each Federal agency (that is making expenditures at a rate of more than $50,000,000 per fiscal year for research and development in its Government-operated laboratories) to use the appropriate statutory authority to develop and implement a cash awards program to reward its scientific, engineering, and technical personnel for inventions, innovations, computer software, or other outstanding scientific or technological contributions of value to the United States due to commercial application or due to contributions to missions of the Federal agency or the Federal government. Regulations setting forth the eligibility and procedures for submitting applications for monetary awards to the Administrator of NASA for scientific and technical contributions which have significant value in the conduct of aeronautical and space activities pursuant to the Space Act, and establishing an awards program consistent with the Federal Technology Transfer Act of 1986 are provided in Title 14 of the Code of Federal Regulations, Part 1240, Subpart 1.

Regulatory Analysis Section

Paperwork Reduction Act Statement

This rule does not contain an information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Executive Order 12866 and Executive Order 13563

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a ''significant regulatory action'' although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

It has been certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. The rule sets forth procedures for submitting applications for monetary awards to the Administrator of NASA for scientific and technical contributions which have significant value in the conduct of aeronautical and space activities pursuant to the Space Act, and establishes the awards program consistent with the Federal Technology Transfer Act of 1986. Based on the typical recipient and number of these awards, the rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 14 CFR Part 1240

Awards, Inventions and contributions.

Accordingly, 14 CFR part 1240 is amended as follows:

PART 1240—INVENTIONS AND CONTRIBUTIONS

■ 1. The authority citation for part 1240 is revised to read as follows:

Authority: Section 20136 of the National Aeronautics and Space Act (51 U.S.C. 20136), and the Federal Technology Transfer Act of 1986, sec. 12, 15 U.S.C. 3710b(1).

■ 2. Section 1240.100 is revised to read as follows:

§ 1240.100 Purpose.

This subpart prescribes procedures for submitting applications for monetary awards to the Administrator of NASA for scientific and technical contributions which have significant value in the conduct of aeronautical and space activities pursuant to 51 U.S.C. 20136, and establishes the awards program consistent with the Federal Technology Transfer Act of 1986, section 12, 15 U.S.C. 3710b(1).

■ 3. Section 1240.101 is revised to read as follows:

§ 1240.101 Scope.

This subpart applies to awards for any scientific or technical contribution, whether or not patentable, which is determined by the Administrator after referral to the Inventions and Contributions Board to have significant value in the conduct of aeronautical and space activities, upon submission of an application for award to NASA, or upon the Administrator's own initiative, under 51 U.S.C. 20136.

■ 4. Section 1240.102, paragraph (g), is revised to read as follows:

§ 1240.102 Definitions.

* * * * *

(g) *Innovation* means a mathematical, engineering or scientific concept, idea, design, process, or product.

* * * * *

■ 5. Section 1240.104, paragraph (a), is revised to read as follows:

§ 1240.104 Applications for awards.

(a) *Eligibility.* Applications for award may be submitted by any person including any individual, partnership, corporation, association, institution, or other entity. An application for an award under this section is separate from application for an award under § 1240.105 and may be submitted whether or not the contribution is also eligible for an award under § 1240.105.

* * * * *

■ 6. Section 1240.105 is revised to read as follows:

§ 1240.105 Special initial awards—NASA and NASA contractor employees.

(a) *Patent Application Awards.* (1) When the Board receives written notice, in the manner prescribed by the Board, from the Agency Counsel for Intellectual Property or the Patent or Intellectual Property Counsel at a NASA Center that an invention made by an employee of NASA or a NASA contractor and reported to NASA in the manner prescribed by the Board is eligible for a patent application award, the Board may recommend to the Administrator or a designee that an award be made, including a specific recommended amount and distribution thereof for any multiple inventors, so long as the

following eligibility conditions have been met:

(i) A nonprovisional U.S. patent application has been filed covering the invention and NASA has either an ownership interest in the invention or an irrevocable, royalty-free, license to practice the invention, or have the invention practiced for or on its behalf, throughout the world, or the invention has been assigned by NASA to a contractor under 35 U.S.C. 202(e); or

(ii) A continuation-in-part or divisional patent has been issued based on a patent application that is eligible for an award under paragraph (a)(1)(i) of this section.

(2) No additional award will be given for a continuation patent application where an award was authorized for the parent application and the parent application will be or has been abandoned. In addition, awards will not be granted for provisional applications under 35 U.S.C. 111(b) or reissue applications under 35 U.S.C. 251.

(b) *Software Release Awards.* (1) When the Board receives written notice, in the manner prescribed by the procedures of the Board, that a NASA Center has approved the initial (first) release to a qualified user of a software package based on a software innovation made by an employee of NASA or a NASA contractor and reported to NASA in the manner prescribed by the procedures of the Board, the Board may recommend to the Administrator or designee that an award be made, including a specific amount and distribution thereof for any multiple innovators, so long as the following conditions have been met:

(i) NASA has either an ownership interest in the software or an irrevocable, royalty-free, license to reproduce, prepare derivative works, distribute, perform and display the software, throughout the world for governmental purposes;

(ii) The software is of commercial quality as defined in § 1240.102; and

(iii) The software has been verified to perform the functions claimed in its documentation on the platform for which it was designed without harm to the systems or data contained within.

(2) Software that is the subject of a software release award is not eligible to receive a Tech Brief award based upon the publication of an announcement of availability in ''NASA Tech Briefs.''

(3) Software release awards for modifications made to software for which the innovators have already received an initial software release award will be at the discretion of the Administrator or his designee, upon recommendation by the Board.

(c) *Tech Briefs Awards.* When the Board receives written notice, in the manner and format prescribed by the procedures of the Board, that a NASA Center has approved for publication a NASA Tech Brief based on an innovation made by an employee of NASA or a NASA contractor and reported to NASA in the manner and form prescribed by the procedures of the Board, the Board may recommend to the Administrator or designee that an award be made, including a specific amount and distribution thereof for any multiple innovators.

(d) When a Patent Application Award, a Software Release Award, and a Tech Brief Award have been authorized for the same contribution, the awards will be cumulative.

■ 7. Section 1240.108, paragraph (a), is revised to read as follows:

§ 1240.108 Reconsideration.

(a) With respect to each completed application, in those cases where the Board does not recommend an award, the applicant may, within such period as the Board may set but in no event less than 30 days from notification, request reconsideration of the Board's decision.

* * * * *

■ 8. Section 1240.110 is amended by revising the section heading, designating the existing text as paragraph (a), and adding paragraphs (b) and (c) to read as follows:

§ 1240.110 Recommendation to, and action by, the Administrator.

* * * * *

(b) The granting, denying or modification of any Board recommended award under this subpart will be at the sole discretion of the Administrator or his designee, who will determine the final terms and conditions of each award after consideration of the criteria in § 1240.103.

(c) In addition, the Board may recommend, and the Administrator or his designee may grant, non-monetary awards under other applicable laws and regulations.

■ 9. Section 1240.111 is revised to read as follows:

§ 1240.111 Release

Under subsection 20136(c) of the National Aeronautics and Space Act, no award will be made to an applicant unless the applicant submits a duly executed release, in a form specified by the Administrator, of all claims the applicant may have to receive any compensation (other than the award recommended) from the United States Government for use of the contribution or any element thereof at any time by or on behalf of the United States, or by or on behalf of any foreign government pursuant to any existing or future treaty or agreement with the United States, within the United States, or at any other place.

■ 10. Section 1240.112 is revised to read as follows:

§ 1240.112 Presentation of awards.

(a) Written acknowledgments to employees of NASA receiving awards will be provided by the appropriate Official-in-Charge at the Headquarters Office, by the Director of the cognizant NASA Center, or by a designee.

(b) Written acknowledgments to employees of NASA contractors receiving awards will be forwarded to contractor officials for suitable presentation.

(c) Monetary awards will be paid by check or electronic funds transfer.

■ 11. Section 1240.113 is revised to read as follows:

§ 1240.113 Financial accounting.

NASA shall provide for appropriate database and accounting system(s) to ensure that award payments are recorded and disbursed in an orderly fashion and in the proper amounts to proper awardees.

■ 12. Section 1240.114 is revised to read as follows:

§ 1240.114 Delegation of authority.

(a) The Chairperson, Inventions and Contributions Board, is delegated authority to approve and execute grants of awards for significant scientific or technical contributions not exceeding $2,000 per contributor, when in accordance with the recommendation of the Board and in conformity with applicable law and regulations.

(b) The Chairperson, Inventions and Contributions Board, is delegated authority to approve and execute grants of awards not exceeding $2,000 per awardee, upon the notification that:

(1) A Patent Application Award has been recommended by the Board pursuant to § 1240.105(a);

(2) A Software Release Award has been recommended by the Board pursuant to § 1240.105(b); or

(3) A Tech Briefs Award has been recommended by the Board pursuant to § 1240.105(c).

Charles F. Bolden, Jr.,

Administrator.

[FR Doc. 2012–11234 Filed 5–9–12; 8:45 am]

BILLING CODE P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND—2011–0644, 0645 and 0654; FRL–9668–1]

National Priorities List, Final Rule No. 54

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''CERCLA'' or ''the Act''), as amended, requires that the National Oil and Hazardous Substances Pollution Contingency Plan (''NCP'') include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The National Priorities List (''NPL'') constitutes this list. The NPL is intended primarily to guide the Environmental Protection Agency (''the EPA'' or ''the agency'') in determining which sites warrant further investigation. These further investigations will allow the EPA to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. This rule adds three sites to the General Superfund Section of the NPL.

DATES: *Effective Date:* The effective date for this amendment to the NCP is June 11, 2012.

ADDRESSES: For addresses for the Headquarters and Regional dockets, as well as further details on what these dockets contain, see section II, ''Availability of Information to the Public'' in the **SUPPLEMENTARY INFORMATION** portion of this preamble.

FOR FURTHER INFORMATION CONTACT: Terry Jeng, phone: (703) 603–8852, email: *jeng.terry@epa.gov,* Site Assessment and Remedy Decisions Branch, Assessment and Remediation Division, Office of Superfund Remediation and Technology Innovation (Mail Code 5204P), U.S. Environmental Protection Agency; 1200 Pennsylvania Avenue NW., Washington, DC 20460; or the Superfund Hotline, phone (800) 424–9346 or (703) 412–9810 in the Washington, DC, metropolitan area.

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I. Background

A. What are CERCLA and SARA?

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601–9675 (''CERCLA'' or ''the Act''), in response to the dangers of uncontrolled releases or threatened releases of hazardous substances, and releases or substantial threats of releases into the environment of any pollutant or contaminant that may present an imminent or substantial danger to the public health or welfare. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act (''SARA''), Public Law 99–499, 100 Stat. 1613 *et seq.*

B. What is the NCP?

To implement CERCLA, the EPA promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan (''NCP''), 40 CFR part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP sets guidelines and procedures for responding to releases and threatened releases of hazardous substances, or releases or substantial threats of releases into the environment of any pollutant or contaminant that may present an imminent or substantial danger to the public health or welfare. The EPA has revised the NCP on several occasions. The most recent comprehensive revision was on March 8, 1990 (55 FR 8666).

As required under section 105(a)(8)(A) of CERCLA, the NCP also includes ''criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable, taking into account the potential urgency of such action, for the purpose of taking removal action.'' ''Removal'' actions are defined broadly and include a wide range of actions taken to study,

clean up, prevent or otherwise address releases and threatened releases of hazardous substances, pollutants or contaminants (42 U.S.C. 9601(23)).

C. What is the National Priorities List (NPL)?

The NPL is a list of national priorities among the known or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The list, which is appendix B of the NCP (40 CFR part 300), was required under section 105(a)(8)(B) of CERCLA, as amended. Section 105(a)(8)(B) defines the NPL as a list of ''releases'' and the highest priority ''facilities'' and requires that the NPL be revised at least annually. The NPL is intended primarily to guide the EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with a release of hazardous substances, pollutants or contaminants. The NPL is of only limited significance, however, as it does not assign liability to any party or to the owner of any specific property. Also, placing a site on the NPL does not mean that any remedial or removal action necessarily need be taken.

For purposes of listing, the NPL includes two sections, one of sites that are generally evaluated and cleaned up by the EPA (the ''General Superfund Section'') and one of sites that are owned or operated by other federal agencies (the ''Federal Facilities Section''). With respect to sites in the Federal Facilities Section, these sites are generally being addressed by other Federal agencies. Under Executive Order 12580 (52 FR 2923, January 29, 1987) and CERCLA section 120, each federal agency is responsible for carrying out most response actions at facilities under its own jurisdiction, custody or control, although the EPA is responsible for preparing a Hazard Ranking System (''HRS'') score and determining whether the facility is placed on the NPL.

D. How are sites listed on the NPL?

There are three mechanisms for placing sites on the NPL for possible remedial action (see 40 CFR 300.425(c) of the NCP): (1) A site may be included on the NPL if it scores sufficiently high on the HRS, which the EPA promulgated as appendix A of the NCP (40 CFR part 300). The HRS serves as a screening tool to evaluate the relative potential of uncontrolled hazardous substances, pollutants or contaminants to pose a threat to human health or the environment. On December 14, 1990 (55 FR 51532), the EPA promulgated revisions to the HRS partly in response to CERCLA section 105(c), added by SARA. The revised HRS evaluates four pathways: ground water, surface water, soil exposure and air. As a matter of agency policy, those sites that score 28.50 or greater on the HRS are eligible for the NPL. (2) Pursuant to 42 U.S.C. 9605(a)(8)(B), each state may designate a single site as its top priority to be listed on the NPL, without any HRS score. This provision of CERCLA requires that, to the extent practicable, the NPL include one facility designated by each state as the greatest danger to public health, welfare or the environment among known facilities in the state. This mechanism for listing is set out in the NCP at 40 CFR 300.425(c)(2). (3) The third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites to be listed without any HRS score, if all of the following conditions are met:

- The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Public Health Service has issued a health advisory that recommends dissociation of individuals from the release.
- The EPA determines that the release poses a significant threat to public health.
- The EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.

The EPA promulgated an original NPL of 406 sites on September 8, 1983 (48 FR 40658) and generally has updated it at least annually.

E. What happens to sites on the NPL?

A site may undergo remedial action financed by the Trust Fund established under CERCLA (commonly referred to as the ''Superfund'') only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.425(b)(1). (''Remedial actions'' are those ''consistent with a permanent remedy, taken instead of or in addition to removal actions. * * *'' 42 U.S.C. 9601(24).) However, under 40 CFR 300.425(b)(2), placing a site on the NPL ''does not imply that monies will be expended.'' The EPA may pursue other appropriate authorities to respond to the releases, including enforcement action under CERCLA and other laws.

F. Does the NPL define the boundaries of sites?

The NPL does not describe releases in precise geographical terms; it would be neither feasible nor consistent with the limited purpose of the NPL (to identify releases that are priorities for further evaluation), for it to do so. Indeed, the precise nature and extent of the site are typically not known at the time of listing.

Although a CERCLA ''facility'' is broadly defined to include any area where a hazardous substance has ''come to be located'' (CERCLA section 101(9)), the listing process itself is not intended to define or reflect the boundaries of such facilities or releases. Of course, HRS data (if the HRS is used to list a site) upon which the NPL placement was based will, to some extent, describe the release(s) at issue. That is, the NPL site would include all releases evaluated as part of that HRS analysis.

When a site is listed, the approach generally used to describe the relevant release(s) is to delineate a geographical area (usually the area within an installation or plant boundaries) and identify the site by reference to that area. However, the NPL site is not necessarily coextensive with the boundaries of the installation or plant, and the boundaries of the installation or plant are not necessarily the ''boundaries'' of the site. Rather, the site consists of all contaminated areas within the area used to identify the site, as well as any other location where that contamination has come to be located, or from where that contamination came.

In other words, while geographic terms are often used to designate the site (e.g., the ''Jones Co. plant site'') in terms of the property owned by a particular party, the site, properly understood, is not limited to that property (e.g., it may extend beyond the property due to contaminant migration), and conversely may not occupy the full extent of the property (e.g., where there are uncontaminated parts of the identified property, they may not be, strictly speaking, part of the ''site''). The ''site'' is thus neither equal to, nor confined by, the boundaries of any specific property that may give the site its name, and the name itself should not be read to imply that this site is coextensive with the entire area within the property boundary of the installation or plant. In addition, the site name is merely used to help identify the geographic location of the contamination, and is not meant to constitute any determination of liability at a site. For example, the name ''Jones Co. plant site,'' does not imply that the Jones company is responsible for the contamination located on the plant site.

EPA regulations provide that the Remedial Investigation (''RI'') ''is a process undertaken * * * to determine the nature and extent of the problem presented by the release'' as more information is developed on site contamination, and which is generally

performed in an interactive fashion with the Feasibility Study (''FS'') (40 CFR 300.5). During the RI/FS process, the release may be found to be larger or smaller than was originally thought, as more is learned about the source(s) and the migration of the contamination. However, the HRS inquiry focuses on an evaluation of the threat posed and therefore the boundaries of the release need not be exactly defined. Moreover, it generally is impossible to discover the full extent of where the contamination ''has come to be located'' before all necessary studies and remedial work are completed at a site. Indeed, the known boundaries of the contamination can be expected to change over time. Thus, in most cases, it may be impossible to describe the boundaries of a release with absolute certainty.

Further, as noted above, NPL listing does not assign liability to any party or to the owner of any specific property. Thus, if a party does not believe it is liable for releases on discrete parcels of property, it can submit supporting information to the agency at any time after it receives notice it is a potentially responsible party.

For these reasons, the NPL need not be amended as further research reveals more information about the location of the contamination or release.

G. How are sites removed from the NPL?

The EPA may delete sites from the NPL where no further response is appropriate under Superfund, as explained in the NCP at 40 CFR 300.425(e). This section also provides that the EPA shall consult with states on proposed deletions and shall consider whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required;

(ii) All appropriate Superfund-financed response has been implemented and no further response action is required; or

(iii) The remedial investigation has shown the release poses no significant threat to public health or the environment, and taking of remedial measures is not appropriate.

H. May the EPA delete portions of sites from the NPL as they are cleaned up?

In November 1995, the EPA initiated a policy to delete portions of NPL sites where cleanup is complete (60 FR 55465, November 1, 1995). Total site cleanup may take many years, while portions of the site may have been cleaned up and made available for productive use.

I. What is the Construction Completion List (CCL)?

The EPA also has developed an NPL construction completion list (''CCL'') to simplify its system of categorizing sites and to better communicate the successful completion of cleanup activities (58 FR 12142, March 2, 1993). Inclusion of a site on the CCL has no legal significance.

Sites qualify for the CCL when: (1) Any necessary physical construction is complete, whether or not final cleanup levels or other requirements have been achieved; (2) the EPA has determined that the response action should be limited to measures that do not involve construction (e.g., institutional controls); or (3) the site qualifies for deletion from the NPL. For the most up-to-date information on the CCL, see the EPA's Internet site at *http://www.epa.gov/superfund/cleanup/ccl.htm.*

J. What is the Sitewide Ready for Anticipated Use Measure?

The Sitewide Ready for Anticipated Use Measure represents important Superfund accomplishments and the measure reflects the high priority the EPA places on considering anticipated future land use as part of our remedy selection process. See Guidance for Implementing the Sitewide Ready-for-Reuse Measure, May 24, 2006, OSWER 9365.0–36. This measure applies to final and deleted sites where construction is complete, all cleanup goals have been achieved, and all institutional or other controls are in place. The EPA has been successful on many occasions in carrying out remedial actions that ensure protectiveness of human health and the environment for current and future land uses, in a manner that allows contaminated properties to be restored to environmental and economic vitality. For further information, please go to *http://www.epa.gov/superfund/programs/recycle/tools/index.html.*

II. Availability of Information to the Public

A. May I review the documents relevant to this final rule?

Yes, documents relating to the evaluation and scoring of the sites in this final rule are contained in dockets located both at the EPA Headquarters and in the Regional offices.

An electronic version of the public docket is available through *www.regulations.gov* (see table below for Docket Identification numbers). Although not all Docket materials may be available electronically, you may still access any of the publicly available Docket materials through the Docket facilities identified below in section II D.

DOCKET IDENTIFICATION NUMBERS BY SITE

Site name	City/county, state	Docket ID No.
Jervis B. Webb Co.	South Gate, CA	EPA–HQ–SFUND–2011–0644
Southern Avenue Industrial Area	South Gate, CA	EPA–HQ–SFUND–2011–0645
Bremerton Gasworks	Bremerton, WA	EPA–HQ–SFUND–2011–0654

B. What documents are available for review at the Headquarters Docket?

The Headquarters Docket for this rule contains, for each site, the HRS score sheets, the Documentation Record describing the information used to compute the score, pertinent information regarding statutory requirements or the EPA listing policies that affect the site and a list of documents referenced in the Documentation Record. For sites that received comments during the comment period, the Headquarters Docket also contains a Support Document that includes the EPA's responses to comments.

C. What documents are available for review at the Regional Dockets?

The Regional Dockets contain all the information in the Headquarters Docket, plus the actual reference documents containing the data principally relied upon by the EPA in calculating or evaluating the HRS score for the sites located in their Region. These reference documents are available only in the Regional Dockets. For sites that received comments during the comment period, the Regional Docket also contains a Support Document that includes the EPA's responses to comments.

D. How do I access the documents?

You may view the documents, by appointment only, after the publication of this rule. The hours of operation for the Headquarters Docket are from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding federal holidays. Please contact the Regional Dockets for hours.

Following is the contact information for the EPA Headquarters: Docket Coordinator, Headquarters; U.S. Environmental Protection Agency; CERCLA Docket Office; 1301 Constitution Avenue NW., EPA West, Room 3334, Washington, DC 20004, 202/566–0276.

The contact information for the Regional Dockets is as follows:

Karen Jurist, Region 9 (AZ, CA, HI, NV, AS, GU, MP), U.S. EPA, 75 Hawthorne Street, Mail Code SFD–9–1, San Francisco, CA 94105; 415/972–3219.

Ken Marcy, Region 10 (AK, ID, OR, WA), U.S. EPA, 1200 6th Avenue, Mail Code ECL–112, Seattle, WA 98101; 206/463–1349.

E. How may I obtain a current list of NPL sites?

You may obtain a current list of NPL sites via the Internet at *http://www.epa.gov/superfund/sites/npl/index.htm* or by contacting the Superfund Docket (see contact information above).

III. Contents of This Final Rule

A. Additions to the NPL

This final rule adds the following three sites to the NPL, all to the General Superfund Section. All of the sites included in this final rulemaking are being added to the NPL based on HRS scores of 28.50 or above. The sites are presented in the table below:

State	Site name	City/county
CA	Jervis B. Webb Co.	South Gate.
CA	Southern Avenue Industrial Area.	South Gate.
WA	Bremerton Gasworks	Bremerton.

B. Site Name Change

The Southern Avenue Industrial Area site in South Gate, California, was proposed to the NPL under a different name. The former name was Seam Master Industries (*see* Proposed Rule at 76 FR 57702, September 16, 2011). Please view the support document for the site, published concurrently with this final rule, for further discussion of EPA's rationale for changing the site name.

C. What did EPA do with the public comments it received?

EPA reviewed all comments received on the sites in this rule and responded to all relevant comments. This rule adds three sites to the NPL.

The three sites being placed on the NPL received comments specifically related to the HRS score and these are being addressed in response to comment support documents available concurrent with this final rule: Jervis B. Webb Co. (CA), Southern Avenue Industrial Area (CA), and Bremerton Gasworks (WA).

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

1. What is Executive Order 12866?

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the agency must determine whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities or the principles set forth in the Executive Order.

2. Is this final rule subject to Executive Order 12866 review?

No. The listing of sites on the NPL does not impose any obligations on any entities. The listing does not set standards or a regulatory regime and imposes no liability or costs. Any liability under CERCLA exists irrespective of whether a site is listed. It has been determined that this action is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

1. What is the Paperwork Reduction Act?

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations, after initial display in the preamble of the final rules, are listed in 40 CFR part 9.

2. Does the Paperwork Reduction Act apply to this final rule?

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* the EPA has determined that the PRA does not apply because this rule does not contain any information collection requirements that require approval of the OMB.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. This includes the time needed to review instructions; develop, acquire, install and utilize technology and systems for the purposes of collecting, validating and verifying information, processing and maintaining information and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

1. What is the Regulatory Flexibility Act?

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small

organizations and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

2. How has the EPA complied with the Regulatory Flexibility Act?

This rule listing sites on the NPL does not impose any obligations on any group, including small entities. This rule also does not establish standards or requirements that any small entity must meet, and imposes no direct costs on any small entity. Whether an entity, small or otherwise, is liable for response costs for a release of hazardous substances depends on whether that entity is liable under CERCLA 107(a). Any such liability exists regardless of whether the site is listed on the NPL through this rulemaking. Thus, this rule does not impose any requirements on any small entities. For the foregoing reasons, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

1. What is the Unfunded Mandates Reform Act (UMRA)?

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''federal mandates'' that may result in expenditures by state, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Before the EPA promulgates a rule where a written statement is needed, section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of the EPA regulatory proposals with significant federal intergovernmental mandates and informing, educating and advising small governments on compliance with the regulatory requirements.

2. Does UMRA apply to this final rule?

This final rule does not contain a federal mandate that may result in expenditures of $100 million or more for state, local and tribal governments, in the aggregate, or the private sector in any one year. Listing a site on the NPL does not itself impose any costs. Listing does not mean that the EPA necessarily will undertake remedial action. Nor does listing require any action by a private party or determine liability for response costs. Costs that arise out of site responses result from site-specific decisions regarding what actions to take, not directly from the act of placing a site on the NPL. Thus, this rule is not subject to the requirements of section 202 and 205 of UMRA.

This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. As is mentioned above, site listing does not impose any costs and would not require any action of a small government.

E. Executive Order 13132: Federalism

1. What is Executive Order 13132?

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires the EPA to develop an accountable process to ensure ''meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' are defined in the Executive Order to include regulations that have ''substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.''

2. Does Executive Order 13132 apply to this final rule?

This final rule does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it does not contain any requirements applicable to states or other levels of government. Thus, the requirements of the Executive Order do not apply to this final rule.

The EPA believes, however, that this final rule may be of significant interest to state governments. In the spirit of Executive Order 13132, and consistent with the EPA policy to promote communications between the EPA and state and local governments, the EPA therefore consulted with state officials and/or representatives of state governments early in the process of developing the rule to permit them to have meaningful and timely input into its development. All sites included in this final rule were referred to the EPA by states for listing. For all sites in this rule, the EPA received letters of support either from the Governor or a state official who was delegated the authority by the Governor to speak on their behalf regarding NPL listing decisions.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

1. What is Executive Order 13175?

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires the EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' are defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the federal government and the Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes.''

2. Does Executive Order 13175 apply to this final rule?

This final rule does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). Listing a site on the NPL does not impose any costs on a tribe or require a tribe to take remedial action. Thus,

Executive Order 13175 does not apply to this final rule.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

1. What is Executive Order 13045?

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that the EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the agency.

2. Does Executive Order 13045 apply to this final rule?

This rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because the agency does not have reason to believe the environmental health or safety risks addressed by this section present a disproportionate risk to children.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Usage

1. What is Executive Order 13211?

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use'' (66 FR 28355 (May 22, 2001)), requires federal agencies to prepare a ''Statement of Energy Effects'' when undertaking certain regulatory actions. A Statement of Energy Effects describes the adverse effects of a ''significant energy action'' on energy supply, distribution and use, reasonable alternatives to the action and the expected effects of the alternatives on energy supply, distribution and use.

2. Does Executive Order 13211 apply to this final rule?

This action is not a ''significant energy action'' as defined in Executive Order 13211, because it is not likely to have a significant adverse effect on the supply, distribution or use of energy. Further, the agency has concluded that this final rule is not likely to have any adverse energy impacts because adding a site to the NPL does not require an entity to conduct any action that would require energy use, let alone that which would significantly affect energy supply, distribution, or usage. Thus, Executive Order 13175 does not apply to this action.

I. National Technology Transfer and Advancement Act

1. What is the National Technology Transfer and Advancement Act?

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs the EPA to provide Congress, through OMB, explanations when the agency decides not to use available and applicable voluntary consensus standards.

2. Does the National Technology Transfer and Advancement Act apply to this final rule?

No. This rulemaking does not involve technical standards. Therefore, the EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

1. What is Executive Order 12898?

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies and activities on minority populations and low-income populations in the United States.

2. Does Executive Order 12898 apply to this rule?

The EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. As this rule does not impose any enforceable duty upon state, tribal or local governments, this rule will neither increase nor decrease environmental protection.

K. Congressional Review Act

1. Has the EPA submitted this rule to Congress and the Government Accountability Office?

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

2. Could the effective date of this final rule change?

Provisions of the Congressional Review Act (CRA) or section 305 of CERCLA may alter the effective date of this regulation.

Under the CRA, 5 U.S.C. 801(a), before a rule can take effect, the federal agency promulgating the rule must submit a report to each House of the Congress and to the Comptroller General. This report must contain a copy of the rule, a concise general statement relating to the rule (including whether it is a major rule), a copy of the cost-benefit analysis of the rule (if any), the agency's actions relevant to provisions of the Regulatory Flexibility Act (affecting small businesses) and the Unfunded Mandates Reform Act of 1995 (describing unfunded federal requirements imposed on state and local governments and the private sector) and any other relevant information or requirements and any relevant Executive Orders.

The EPA has submitted a report under the CRA for this rule. The rule will take effect, as provided by law, within 30 days of publication of this document, since it is not a major rule. Section 804(2) defines a major rule as any rule that the Administrator of the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and

Budget (OMB) finds has resulted in or is likely to result in: an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices for consumers, individual industries, federal, state or local government agencies or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. NPL listing is not a major rule because, as explained above, the listing, itself, imposes no monetary costs on any person. It establishes no enforceable duties, does not establish that the EPA necessarily will undertake remedial action, nor does it require any action by any party or determine liability for site response costs. Costs that arise out of site responses result from site-by-site decisions about what actions to take, not directly from the act of listing itself. Section 801(a)(3) provides for a delay in the effective date of major rules after this report is submitted.

3. What could cause a change in the effective date of this rule?

Under 5 U.S.C. 801(b)(1), a rule shall not take effect, or continue in effect, if Congress enacts (and the President signs) a joint resolution of disapproval, described under section 802.

Another statutory provision that may affect this rule is CERCLA section 305, which provides for a legislative veto of regulations promulgated under CERCLA. Although *INS* v. *Chadha,* 462 U.S. 919,103 S. Ct. 2764 (1983), and *Bd. of Regents of the University of Washington* v. *EPA,* 86 F.3d 1214,1222 (D.C. Cir. 1996), cast the validity of the legislative veto into question, the EPA has transmitted a copy of this regulation to the Secretary of the Senate and the Clerk of the House of Representatives.

If action by Congress under either the CRA or CERCLA section 305 calls the effective date of this regulation into question, the EPA will publish a document of clarification in the **Federal Register**.

List of Subjects in 40 CFR Part 300

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

Dated: May 3, 2012.

Mathy Stanislaus,

Assistant Administrator, Office of Solid Waste and Emergency Response.

40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

■ 1. The authority citation for Part 300 continues to read as follows:

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

■ 2. Table 1 of Appendix B to Part 300 is amended by adding the following sites in alphabetical order to read as follows:

Appendix B to Part 300—National Priorities List

TABLE 1—GENERAL SUPERFUND SECTION

State	Site name	City/county	Notes[a]
*	*	*	*
CA	Jervis B. Webb	South Gate	
*	*	*	*
CA	Southern Avenue Industrial Area	South Gate	
*	*	*	*
WA	Bremerton Gasworks	Bremerton	
*	*	*	*

* * * * *

[FR Doc. 2012–11289 Filed 5–9–12; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 110511280–2424–02]

RIN 0648–BB10

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery Off the Southern Atlantic States; Snapper-Grouper Management Measures

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement a regulatory amendment to the Fishery Management Plan (FMP) for the Snapper-Grouper Fishery of the South Atlantic Region (Regulatory Amendment 11), as prepared by the South Atlantic Fishery Management Council (Council). This rule removes the harvest and possession prohibition of six deep-water snapper-grouper species (snowy grouper, blueline tilefish, yellowedge grouper, misty grouper, queen snapper, and silk snapper) from depths greater than 240 ft (73 m) in the South Atlantic exclusive economic zone (EEZ). The intent of this final rule is to maintain the biological protection to speckled hind and warsaw grouper as well as reduce the socio-economic impacts to fishermen

harvesting deep-water snapper-grouper in the South Atlantic.

DATES: This rule is effective May 10, 2012.

ADDRESSES: Electronic copies of documents supporting this final rule, which include an environmental assessment and a regulatory impact review (RIR), may be obtained from the Southeast Regional Office Web site at *http://sero.nmfs.noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Rick DeVictor, telephone: 727–824–5305, or email: *Rick.DeVictor@noaa.gov.*

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery of the South Atlantic is managed under the FMP. The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

On December 20, 2011, NMFS published a proposed rule in the **Federal Register** for Regulatory Amendment 11 and requested public comment (76 FR 78879). The proposed rule and Regulatory Amendment 11 explained the rationale for the action contained in this final rule. A summary of the rationale and the action implemented by this final rule is provided below.

In the South Atlantic snapper-grouper fishery, speckled hind and warsaw grouper are currently undergoing overfishing and an annual catch limit (ACL) of zero was established through the final rule to implement Amendment 17B to the FMP (75 FR 82280, December 30, 2010). The accountability measure (AM) for this ACL prohibits all harvest and possession of speckled hind and warsaw grouper in the South Atlantic regardless of the depth where they are caught. Despite a prohibition on the harvest and possession of speckled hind and warsaw grouper, the Council anticipated that the bycatch mortality of these two species would continue as a result of the fishing effort for other deep-water snapper-grouper species. In order to reduce the anticipated bycatch mortality of speckled hind and warsaw grouper, Amendment 17B to the FMP and its implementing final rule prohibited all fishing for and possession of six deep-water snapper-grouper species (snowy grouper, blueline tilefish, yellowedge grouper, misty grouper, queen snapper, and silk snapper) beyond a depth of 240 ft (73 m), beginning January 31, 2011.

However, a more recent analysis of data from 1973–2011, indicate that speckled hind and warsaw grouper are rarely caught with snowy grouper, blueline tilefish, yellowedge grouper, misty grouper, queen snapper, or silk snapper. The low association between speckled hind and warsaw grouper landings and blueline tilefish may be attributable to the unique habitat preferences of speckled hind and warsaw grouper compared to blueline tilefish. The landings that were analyzed occurred prior to the implementation of the harvest and possession prohibition for speckled hind and warsaw grouper in Amendment 17B to the FMP (75 FR 82280, December 30, 2010). Speckled hind and warsaw grouper generally prefer hard bottom structure with habitat features such as steep cliffs, notches, and rocky ledges of the continental shelf break. Blueline tilefish, which is targeted for harvest by the deep-water component of the snapper-grouper fishery, inhabit irregular bottoms composed of troughs and terraces inter-mingled with sand, mud, or shell hash bottom where they live in burrows. In addition, the majority of snowy grouper landings in the South Atlantic are from waters deeper than 500 ft (152 m), where landings of speckled hind and warsaw grouper are extremely rare. Even though yellowedge grouper, misty grouper, queen snapper, and silk snapper primarily share the same hard bottom habitat preference as speckled hind and warsaw grouper, these four species are rarely encountered and are not targeted by commercial or recreational fishermen; between 2006 and 2010, the average annual commercial landings of yellowedge grouper, misty grouper, queen snapper, and silk snapper was 53,330 lb (24,190 kg) compared to 17,594,132 lb (7,980,564 kg) for the entire snapper-grouper commercial sector for this period. Instead, speckled hind and warsaw grouper, according to the new information available following the implementation of Amendment 17B to the FMP, are more commonly taken as incidental catch when fishermen target species such as gag, vermilion snapper, and red porgy inshore of 240 ft (73 m). Based on this information, at its August 2011 meeting, the Council voted to approve Regulatory Amendment 11 based upon the more recent analyses, and thereby, remove the deep-water snapper-grouper harvest and possession prohibition implemented through Amendment 17B.

The current speckled hind and warsaw grouper harvest and possession prohibition contained in Amendment 17B is not changed and is expected to continue to reduce fishing mortality of these two species even without the additional deep-water snapper-grouper harvest and possession prohibition. As such, Regulatory Amendment 11 seeks to maintain the biological protection to speckled hind and warsaw grouper, prevent significant direct economic loss to snapper-grouper fishermen, and continue to achieve optimum yield for the fishery.

The Council is currently developing an amendment to further enhance the biological protections for speckled hind and warsaw grouper. That amendment, the Comprehensive Ecosystem-Based Amendment 3 (CE–BA 3), considers additional measures to reduce the bycatch of speckled hind and warsaw grouper, including the expansion of existing, and establishment of new closure areas.

Comments and Responses

A total of 94 comments were received on the proposed rule for Regulatory Amendment 11, including comments from individuals, six fishing associations, a state agency, and three non-governmental agencies. NMFS received 87 comments of general support for Regulatory Amendment 11 and the proposed rule. NMFS also received two comments that opposed, and five comments that neither supported nor opposed, Regulatory Amendment 11 and the proposed rule. Specific comments related to the actions contained in Regulatory Amendment 11 and the proposed rule, as well as NMFS' respective responses, are summarized below.

Comment 1: One commenter stated that Regulatory Amendment 11 fails to end overfishing of speckled hind and warsaw grouper and that the Council and NMFS determined that a prohibition on landings would not, by itself, prevent overfishing because of the speckled hind and warsaw grouper mortality that would still result from discards of these species.

Response: NMFS and the Council intended that the prohibition on the harvest and possession of speckled hind and warsaw grouper would work in combination with the 240-ft (73-m) prohibition of six deep-water snapper-grouper species, as well as a variety of other management measures, to minimize harvest and reduce discard mortality of speckled hind and warsaw grouper. Based on new information presented at Council meetings in 2011, the Council and NMFS have decided to retain the prohibition on the harvest and possession of speckled hind and warsaw grouper but eliminate the 240-ft (73-m) prohibition on six deep-water snapper grouper species. The Council concluded that other management measures would

be more effective in reducing discard mortality of speckled hind and warsaw grouper and minimizing the socio-economic effects to deep-water snapper-grouper fishers.

The Council's Scientific and Statistical Committee (SSC) could not determine if the 240-ft (73-m) prohibition is necessary to end overfishing of either speckled hind or warsaw grouper. After reviewing Amendment 17B to the FMP, the SSC stated the following in its report from its December 2009 meeting: ''In general, the technical analyses supporting these species are acceptable, however, the SSC wishes to emphasize that these are extremely data poor species and that the uncertainty associated with any stock status information will be large. Consistent with that fact, the SSC cannot determine whether any of the proposed measures will end overfishing, because the overfishing level is unknown, the current mortality is unknown and discards are poorly known.''

A species is described as undergoing overfishing if either the fishing mortality rate exceeds the maximum fishing mortality threshold (MFMT) for a period of 1 year or if the annual catch exceeds the annual overfishing limit (OFL) for 1 year or more (50 CFR 600.310(e)(2)(ii)(A)). Since 1997, speckled hind and warsaw grouper have been listed as undergoing overfishing in NMFS' Report to Congress on the Status of U.S. Fisheries. The Council and NMFS specify which method will be used to determine a species' overfishing status. The OFL, which is the overfishing limit in pounds or numbers of fish, is unknown for speckled hind and warsaw grouper. The Council defined the MFMT for speckled hind and warsaw grouper through the final rule implementing Amendment 11 to the FMP (64 FR 59126, November 2, 1998) as the fishing mortality rate in excess of the fishing mortality rate at 30 percent of the static spawning potential ratio. The most recent evaluations of fishing mortality in relation to MFMT were for the 1999 and 1990 fishing years for speckled hind and warsaw grouper, respectively. These evaluations determined that speckled hind and warsaw grouper were undergoing overfishing. The Council has taken action to decrease fishing mortality of speckled hind and warsaw grouper to address overfishing. However, data are insufficient to assess the most recent fishing mortality rates. As with many Council-managed species, measures to significantly restrict fishing mortality have hindered the ability of the Council and NMFS to obtain data and conduct an assessment of a stock's health; fishery-dependent data are a major source of information in the assessment of stocks in the South Atlantic region.

The Council and NMFS have taken significant actions to decrease fishing mortality of speckled hind and warsaw grouper and address overfishing. Speckled hind and warsaw grouper were included in the five grouper aggregate recreational bag limit in 1992 (56 FR 56016, October 31, 1991), and then a commercial and recreational limit of one per vessel of each species with a commercial sale prohibition was established in 1994 (59 FR 27242, May 26, 1994). A complete harvest prohibition for both species and ACLs of zero (landings only) were established in 2011, through the final rule implementing Amendment 17B to the FMP (75 FR 82280, December 30, 2010). The ACL is based on an acceptable biological catch (ABC) level of zero (landings only) for speckled hind and warsaw grouper provided by the Council's SSC. The SSC did not provide a recommendation for an acceptable level of discard mortality and based its ABC recommendation on landings only. As a result of these restrictions, average annual landings of speckled hind decreased from 28,107 (12,749 kg) during 1981–1994 to 8,318 lb (3,773 kg), whole weight. During 1995–2010, average annual landings of warsaw grouper decreased from 88,007 lb (39,919 kg) to 27,171 lb (12,325 kg), whole weight.

In addition to harvest restrictions, the Council and NMFS have implemented spatial closures to reduce discard mortality of speckled hind and warsaw grouper. In 1994, Federal regulations were implemented that prohibited fishing for and retention of snapper-grouper species within the Oculina Experimental Closed Area. The intent of these prohibitions was to ''enhance stock stability and increase recruitment by providing an area where deep-water species can grow and reproduce without being subjected to fishing mortality'' (59 FR 27242, May 26, 1994). In Amendment 13A to the FMP, these regulations were extended indefinitely (69 FR 15731, March 26, 2004). In 2009, eight marine protected areas (MPAs) were established in the South Atlantic, through the final rule implementing Amendment 14 to the FMP, in which possession, retention, and fishing for all of the species in the FMP, including speckled hind and warsaw grouper, is prohibited (74 FR 1621, January 13, 2009). The intent of these MPAs is to protect long-lived, deep-water snapper-grouper species, including speckled hind and warsaw grouper, through the elimination of bottom-fishing activities in the closed areas. The presence of speckled hind and warsaw grouper has been documented in many of the MPAs.

Speckled hind and warsaw grouper are also known to inhabit depths inshore of 240 ft (73 m) where most of the commercial fishing effort occurs. Efforts to limit mortality of species occurring closer to shore would be expected to reduce the discard mortality of speckled hind and warsaw grouper because most speckled hind and warsaw grouper encounters occur inshore of 240 ft (73 m). Management measures to reduce both the commercial and recreational fishing effort relative to species occurring closer to shore such as black sea bass, gag, red snapper, red porgy, and vermilion snapper are likely to have a significant effect on speckled hind and warsaw grouper populations due to the strong harvest association among these species (SERO–LAPP–2011–06 Report). Because of these measures, some reduction in bycatch of speckled hind and warsaw grouper has likely already occurred since the number of recreational trips in the South Atlantic EEZ in 2011 was the lowest since 1982. In addition to the measures previously mentioned, these specific regulations that are likely to reduce bycatch of speckled hind and warsaw grouper for species occurring closer to shore include the following: (1) An annual vermilion snapper prohibition for the recreational sector from November through March (74 FR 30964, June 29, 2009); (2) an annual shallow-water grouper prohibition for all fishermen from January through April (74 FR 30964, June 29, 2009); (3) an annual red porgy prohibition for the commercial sector from January through April (65 FR 51253, August 23, 2000); (4) a three fish red porgy bag limit and a 120 fish commercial bycatch trip limit (71 FR 55096, September 21, 2006); and, (5) a prohibition of all red snapper harvest and possession (75 FR 76874, December 9, 2010). In addition, the establishment of ACLs and AMs for black sea bass, gag, golden tilefish, snowy grouper, and vermilion snapper through Amendment 17B to the FMP have resulted in in-season closures and reduced season lengths, which NMFS expects has further reduced the discard mortality of speckled hind and warsaw grouper.

To further reduce discards of speckled hind and warsaw grouper, the Council and NMFS plan to develop area and species prohibitions that would most effectively reduce encounters with speckled hind and warsaw grouper while minimizing, to the extent practicable, socio-economic effects to

the fishing industry. The intent of the deep-water prohibition implemented through Amendment 17B to the FMP was to reduce depth-related bycatch mortality. Following the implementation of Amendment 17B to the FMP, the Council and NMFS re-evaluated the effectiveness of the 24-ft (73 m) prohibition using the best scientific information available contained in Regulatory Amendment 11, scientific recommendations from the NMFS Southeast Fisheries Science Center (SEFSC), the Council's SSC, and public comments. Based on new information and new analyses, the Council and NMFS concluded that the 240-ft (73 m) prohibition is not an effective means to reduce discard mortality of speckled hind and warsaw grouper due to the location of the closure and the species prohibited.

According to the best scientific information available, in order to increase the effectiveness of additional regulations aimed at reducing the discard mortality of speckled hind and warsaw grouper, the Council and NMFS would need to consider areas shallower than 240 ft (73 m). A new analysis of landings data following the implementation of Amendment 17B to the FMP (SERO–LAPP–2011–06 Report) indicates that most encounters with speckled hind and warsaw grouper by fishermen occurred inshore of 240 ft (73 m), because fishing effort in the snapper-grouper fishery is greatest in these depths. Based on this new information, area closures on the shelf edge (between 160–240 ft (49–73 m) depths) would provide greater protection to speckled hind and warsaw grouper than the current harvest prohibition of the six species in depths greater than 240 ft (73 m).

New information suggests the effectiveness of the regulations for protecting speckled hind and warsaw grouper would also increase if a snapper-grouper prohibition applied to species other than those currently prohibited beyond a 240-ft (73-m) depth. Recent analysis of landings data (June 1, 2011, SERO–LAPP–2011–06 Report) indicate that speckled hind and warsaw grouper are rarely caught with the six species prohibited by the 240-ft (73-m) prohibition. Additionally, the low association between the harvest of blueline tilefish and speckled hind and warsaw grouper is supported by preliminary results from a study conducted with an exempted fishing permit (EFP) by the North Carolina Division of Marine Fisheries (NCDMF) that began on August 2, 2011. The primary purpose of the EFP is to determine if speckled hind and warsaw grouper are bycatch in the commercial blueline tilefish component of the South Atlantic snapper-grouper fishery. Preliminary findings provided to the Council and NMFS by NCDMF on March 2, 2012, indicate that no speckled hind or warsaw grouper were caught on 73 commercial trips targeting blueline tilefish off North Carolina (19 percent of those trips contained an observer).

The low association between speckled hind and warsaw grouper landings and blueline tilefish may be attributable to the unique habitat preferences of speckled hind and warsaw grouper compared to blueline tilefish. Speckled hind and warsaw grouper generally prefer hard bottom structure with habitat features such as steep cliffs, notches, and rocky ledges of the continental shelf break. Blueline tilefish, which is targeted for harvest by the deep-water component of the commercial sector of the snapper-grouper fishery, inhabit irregular bottom features composed of troughs and terraces inter-mingled with sand, mud, or shell hash habitat where they live in burrows. In addition, the majority of snowy grouper landings in the South Atlantic are from waters deeper than 500 ft (152 m), where landings of speckled hind and warsaw grouper are extremely rare.

With the exception of blueline tilefish off the coasts of North and South Carolina, snowy grouper, and deep-water species off South Florida, the six species currently prohibited deeper than 240 ft (73 m), are not currently targeted by the commercial sector. Snowy grouper is not targeted as much as in the past. Harvest of snowy grouper is severely restricted (regulations include a 100-lb (45-kg) commercial trip limit and a one fish per vessel recreational trip limit) and harvests of the remaining species are minimal, compared to landings of snapper-grouper for the entire commercial sector. Between 2006 and 2010, the average annual commercial landings of yellowedge grouper, misty grouper, queen snapper, and silk snapper was 53,330 lb (24,190 kg) compared to 17,594,132 lb (7,980,564 kg) for the entire snapper-grouper commercial sector for this period. Instead, speckled hind and warsaw grouper, according to new information available following the implementation of Amendment 17B to the FMP, are more commonly taken as incidental catch when fishermen target species such as gag, vermilion snapper, and red porgy inshore of 240 ft (73 m).

Therefore, based on a review of new information from the June 1, 2011, SERO–LAPP–2011–06 Report and a study conducted with an EFP by the NCDMF, neither of which was available during development of Amendment 17B to the FMP, the Council concluded that allowing the harvest of deep-water species, including blueline tilefish and snowy grouper, beyond a depth of 240 ft (73 m), would not likely result in significant increases in the bycatch mortality of speckled hind or warsaw grouper, although low levels of bycatch of these species might occur. Instead, the Council and NMFS determined that other measures besides the prohibition on harvest of six species deeper than 240 ft (73 m) would be more effective in reducing discard mortality of speckled hind and warsaw grouper and should be considered. The Council is currently developing CE–BA 3, which considers additional measures to reduce bycatch of speckled hind and warsaw grouper, including the expansion of existing, and establishment of new, mid-shelf MPAs. The completion of that amendment has been determined to be a high priority for the Council. The Council is planning to take final action and submit the amendment to the Secretary of Commerce at its December 2012 meeting for approval and subsequent implementation through rulemaking.

Comment 2: Regulatory Amendment 11 fails to minimize bycatch and bycatch mortality of speckled hind and warsaw grouper. Regulatory Amendment 11 would nullify the only AM currently in place for speckled hind and warsaw grouper and leave these species with no accountability for bycatch mortality anywhere, contrary to the requirements of National Standard 1 and section 303(a)(15) of the Magnuson-Stevens Act. Regulatory Amendment 11 would leave speckled hind and warsaw grouper unprotected against discard mortality. Additionally, NMFS has failed to implement an adequate standardized bycatch reporting methodology in the South Atlantic.

Response: NMFS disagrees that Regulatory Amendment 11 would nullify the only AM currently in place for speckled hind and warsaw grouper. AMs are management controls to prevent ACLs, including sector specific ACLs, from being exceeded, and to correct or mitigate overages of the ACL if they occur. The 240-ft (73 m) prohibition was intended to reduce discard mortality of speckled hind and warsaw grouper. The current AM is the prohibition on the harvest and possession of speckled hind and warsaw grouper.

During the development of Amendment 17B to the FMP, the Council discussed the challenges of setting an AM for speckled hind and

warsaw grouper when the Council's SSC recommended an ABC equal to zero for landings only. For the majority of species managed by the Council, the ABC is above zero and the AMs, or management controls, are triggered when a certain level of harvest is reached in order to prevent overages of the ACLs. In the snapper-grouper fishery, actions are taken to correct or mitigate overages of the ACLs, such as reducing the ACL in the following year by the overage. Despite stating in a footnote of a table in the Summary of Amendment 17B to the FMP that ''the deepwater closure may be considered as a type of AM'' (emphasis added), the Council acknowledged in Regulatory Amendment 11 that the prohibition on the harvest and possession of speckled hind and warsaw grouper is the AM and serves as the management control to prevent ACLs from being exceeded.

NMFS disagrees that Regulatory Amendment 11 would leave speckled hind and warsaw grouper without management measures to protect against discard mortality. The Council and NMFS are required to implement measures, to the extent practicable, that (1) minimize bycatch and (2) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch, according to National Standard 9 of the Magnuson-Stevens Act (16 U.S.C. 1851). In Regulatory Amendment 11, the Council and NMFS evaluated the practicability of implementing measures to minimize bycatch and bycatch mortality. The Council and NMFS have concluded that regulations that both minimize bycatch and minimize the mortality of bycatch, such as those noted below, are in effect even with the removal of the 240-ft (73-m) prohibition. In addition, and as discussed in response to Comment 1, the Council and NMFS have concluded, based on new information presented to them following the implementation of Amendment 17B to the FMP, that measures other than the 240-ft (73-m) prohibition would be more effective in reducing discard mortality of speckled hind and warsaw grouper.

The Council and NMFS have previously implemented spatial closures and gear requirements intended to reduce bycatch and bycatch mortality of managed species, including speckled hind and warsaw grouper. In 1994, the Council and NMFS prohibited fishing for and retention of all species in the FMP within the Oculina Experimental Closed Area off Florida (59 FR 27242, May 26, 1994). The intent of the prohibition was to enhance stock stability and increase recruitment by providing an area where deep-water species can grow and reproduce without being subjected to fishing mortality, including mortality from discards. In 2009, the Council and NMFS implemented eight MPAs in the South Atlantic, in or from which possession, retention, and fishing for all species in the FMP was prohibited (74 FR 1621, January 13, 2009). The intent of the eight MPAs was to protect long-lived, deep-water snapper-grouper species including speckled hind and warsaw grouper. Based on a review of new information that was not available during the development of Amendment 17B to the FMP, the 240-ft (73-m) prohibition is not the most effective means to reduce discard mortality of speckled hind and warsaw grouper, and the closure of other areas should be considered. The Council is currently developing CE–BA 3, which considers additional measures to reduce bycatch of speckled hind and warsaw grouper, including the expansion of currently established MPAs and the establishment of new mid-shelf MPAs.

The Council and NMFS have also implemented gear requirements intended to reduce recreational and commercial bycatch mortality. Beginning on July 29, 2009, the Council and NMFS required the possession of a dehooking device on board a vessel when fishing for South Atlantic snapper-grouper and required the use of such tools as needed to accomplish release of fish with minimum injury (74 FR 30964). In addition, beginning on March 3, 2011, the Council and NMFS required the use of non-stainless steel circle hooks when fishing for snapper-grouper species with hook-and-line gear and natural baits north of 28° N. lat. (75 FR 82280, December 30, 2010). The use of circle hooks is most effective in reducing bycatch mortality for juvenile speckled hind and warsaw grouper as these species are caught at shallower depths compared to adult fish.

The Council and NMFS adopted, through Amendment 15B to the FMP, the Atlantic Coastal Cooperative Statistics Program (ACCSP) Release, Discard and Protected Species Module as the preferred methodology for a standardized bycatch reporting methodology, and until the module is fully funded, require the use of a variety of sources to assess and monitor bycatch. Currently, discard estimates are supplied through the Marine Recreational Information Program (MRIP), the supplementary commercial and headboat discard logbooks, the previously-referenced EFP for North Carolina, and the Federal reef fish observer program. The Council has approved an action in Amendment 18A to the FMP to enhance data reporting in the for-hire sector. The Council is also developing amendments to other FMPs, including the Snapper-Grouper FMP, to improve data reporting by the commercial sector, and the for-hire component of the recreational sector of the snapper-grouper fishery, and by dealers.

Comment 3: Regulatory Amendment 11 fails to rely on the best scientific information available by circumventing the established SSC peer-review process.

Response: The Council and NMFS incorporated the best scientific information available into Regulatory Amendment 11 and utilized the SSC peer-review process in the development of the amendment. As described by National Standard 2 in the Magnuson-Stevens Act (16 U.S.C. 1851), conservation and management measures shall be based upon the best scientific information available. The NMFS Southeast Regional Office (SERO) provided Regulatory Amendment 11, including analyses, to the SEFSC for both the initial review of Regulatory Amendment 11 and the ''best available science'' certification. The SEFSC certified that the analyses of the proposed action contained in the environmental assessment and Regulatory Amendment 11 were based upon the best available scientific information. In addition, SEFSC staff served on the interdisciplinary plan team (IPT) for both Amendment 17B and Regulatory Amendment 11 to the FMP. IPT members serve numerous roles during the development of an amendment, including analyzing the anticipated effects of the proposed actions.

At its April 5–7, 2011, meeting, the Council's SSC reviewed a Regulatory Amendment 11 issues paper including alternatives under consideration and a presentation titled ''Preliminary data analyses to support Snapper-Grouper Regulatory Amendment 11.'' The SSC discussed Regulatory Amendment 11 and provided comments on Regulatory Amendment 11 in its written report of the meeting and in a presentation to the Council at the June 2011 Council meeting. At that meeting, the SSC chair noted in her presentation of the results of the April 2011 SSC meeting to the Council that the 240-ft (73-m) prohibition seemed counterintuitive to the intent of protecting speckled hind and warsaw grouper because of where the fish are primarily found.

Comment 4: One commenter stated that Regulatory Amendment 11 prioritizes short-term economic considerations over the Magnuson-Stevens Act's conservation measures

deemed essential to preventing overfishing.

Response: National Standard 1 of the Magnuson-Stevens Act (16 U.S.C. 1851) states that management measures shall both ''prevent overfishing while achieving, on a continuing basis, the optimum yield (OY).'' National Standard 8 of the Magnuson-Stevens Act states that, consistent with the conservation requirements of the Magnuson-Stevens Act, management measures shall, ''to the extent practicable, minimize adverse economic impacts on such communities.'' The Magnuson-Stevens Act provides for flexibility in the specific conservation and management measures used to achieve conservation goals. When a quantitative analysis of overfishing is absent, the Councils and NMFS must rely on informed judgment to weigh the costs and benefits of a proposed regulation to strike a balance between preventing overfishing, achieving optimum yield, and minimizing impacts to fishing communities. The Council and NMFS evaluated the costs and benefits to the biological and socio-economic environments of the 240-ft (73-m) prohibition, using the best scientific information available, as well as scientific recommendations from the SEFSC and the Council's SSC, and public comments. The Council and NMFS concluded that the 240-ft (73-m) prohibition is not an effective means to reduce discard mortality of speckled hind and warsaw grouper, has significant socio-economic effects to deep-water snapper-grouper fishers, particularly to those harvesting blueline tilefish, and hinders the snapper-grouper fishery's ability to achieve OY.

The Council's SSC was not able to determine if the 240-ft (73-m) prohibition is needed to end overfishing of either speckled hind or warsaw grouper. However, as discussed in the response to comments 1 and 2, the Council and NMFS have implemented actions to eliminate the harvest and reduce the discard mortality of speckled hind and warsaw grouper. The Council and NMFS have concluded, based on new scientific information presented to them following the implementation of Amendment 17B to the FMP, that the 240-ft (73-m) prohibition is not an effective means to reduce the discard mortality of speckled hind and warsaw grouper, and other measures would be more effective in reducing discard mortality while minimizing the socio-economic effects.

The economic hardship imposed on fishermen from the 240-ft (73-m) prohibition is greater than was projected when Amendment 17B to the FMP was approved by the Council. During the development and implementation of Amendment 17B to the FMP, in April of 2010, the SSC recommended an ABC of 49,221 lb (22,326 kg), whole weight, for blueline tilefish. Therefore, at the time the deep-water prohibition was being approved and implemented, the economic impacts from a prohibition of blueline tilefish were not substantial due to the anticipated low level of future allowable catch.

However, the SSC, at its April 2011 meeting, significantly increased the blueline tilefish ABC recommendation to 592,602 lb (268,780 kg), whole weight, to represent what they considered an expanding fishery north of Cape Hatteras, North Carolina, that resulted in increased commercial landings in recent years. In the Comprehensive ACL Amendment, the Council set the ACL equal to the ABC. Using an average ex-vessel price of $1.56 per lb, whole weight, the annual economic loss to commercial vessels landing blueline tilefish from the 240-ft (73-m) prohibition is estimated to be $438,114. Therefore, the continued prohibition of blueline tilefish harvest beyond a 240-ft (73-m) depth would result in significantly greater economic losses to a segment of commercial snapper-grouper fishers than originally anticipated when the Council approved Amendment 17B to the FMP for submission to NMFS.

Comment 5: NMFS and the Council previously determined that a landings prohibition was not sufficient to end overfishing of speckled hind and warsaw grouper and that the deep-water snapper-grouper prohibition was necessary for this purpose.

Response: NMFS has reviewed the text of Amendment 17B to the FMP, Regulatory Amendment 11, and the proposed and final rules for Amendment 17B to the FMP. The statement that a landings prohibition is not sufficient to end overfishing of speckled hind and warsaw grouper occurs only once in these documents. In the preamble's classification section of the final rule for Amendment 17B to the FMP, NMFS states the following, ''The second alternative to the final action would establish an ACL of zero for speckled hind and warsaw grouper but would not close any areas to fishing for deep-water species that co-occur with these two species. Although this alternative would have smaller negative economic effects on small entities than the final action, it would not be sufficient to end overfishing of speckled hind and warsaw grouper due to discard mortality from fishing for other co-occurring deep-water species.'' (75 FR 82280, December 30, 2010). However, this previous statement appears to have been made in error, as NMFS finds no record to support that conclusion. The Council and NMFS's decisions are based on the best scientific information available, including new information provided since the implementation of Amendment 17B to the FMP, that the prohibition on harvest of six deep-water snapper-grouper species beginning at a 240-ft (73-m) depth is not an effective means to reduce discard mortality of speckled hind and warsaw grouper.

NMFS states the following in the final rule to Amendment 17B to the FMP: (1) Speckled hind and warsaw grouper are extremely vulnerable to overfishing; (2) action must be taken to ensure overfishing is ended and does not occur; (3) the incidental catch of these species may be responsible for the continued overfishing; (4) the deep-water prohibition is intended to reduce depth-related bycatch mortality to reduce the probability that overfishing will occur; and (5) the implementation of the deep-water prohibition does not preclude the Council from proposing future action to modify the prohibition if scientific information indicates it is appropriate to do so. Because new scientific information has demonstrated that the 240-ft (73-m) prohibition to the harvest of six deep-water snapper-grouper species is not an effective means to reduce bycatch of speckled hind and warsaw grouper, and the action is having unnecessary and unanticipated negative socio-economic effects, the Council and NMFS are removing the 240-ft (73-m) prohibition through Regulatory Amendment 11 and are developing more effective means to enhance measures currently in place to protect these species.

Comment 6: Several commenters stated that the deep-water snapper-grouper prohibition does not enhance protection for the species it intends to protect. Many fishermen reported that they never caught speckled hind and warsaw grouper when targeting snowy grouper, tilefish, and queen snapper in deep water. Others stated that deep-water species receive little fishing pressure as it requires specific skills and knowledge (such as knowledge of bottom structure and fish location), significant financial investment, and specific equipment such as specialized vessels, to harvest these species. Rising fuel costs have also reduced effort for deep-water snapper-grouper species. One individual stated that spatial closures in shallow depths encompassing the shelf edge, with 160 ft (49 m) as the inshore depth limit, would have been more effective in

protecting speckled hind and warsaw grouper from discard mortality than a prohibition of six deep-water snapper-grouper species starting at a 240-ft (73-m) depth, and NMFS should focus management on places where these two species are being impacted to a greater degree. Commenters noted that, in deciding the location of the spatial closures, information should be utilized from technical divers, conservation-minded fishermen with direct knowledge of shelf-edge habitats, scientists who have completed studies on the shelf edge and further off-shore, and bottom habitat maps of the shelf edge and deeper waters.

Response: NMFS agrees that, in addition to the current measures to protect speckled hind and warsaw grouper, the Council should focus on spatial closures in shallower depths to further reduce discard mortality of these species. The Council is currently developing CE–BA 3, which considers additional measures to reduce bycatch of speckled hind and warsaw grouper, including the expansion of currently established MPAs and the establishment of new mid-shelf MPAs. The public, fishermen, and scientists will be given opportunities to provide input through the Council process, which includes meetings of the Council's Advisory Panels and SSC. The Council will be holding public workshops in 2012 where the public may provide input on management measures to protect speckled hind and warsaw grouper. The Habitat and Environmental Protection and the Coral Advisory panels will be given the opportunity to provide advice and knowledge concerning known locations of fish habitats important for speckled hind and warsaw grouper, including the shelf-edge habitat. The Council held public scoping meetings on CE–BA 3 from January 24–February 2, 2011. There will be other opportunities for the Council to receive public input on this issue.

Comment 7: The analysis presented in the SERO Catch Analysis (June 1, 2011, SERO–LAPP–2011–06 Report) is insufficient to draw conclusions about species associations because it lacks any information to evaluate the uncertainty in the hierarchical clustering and dimension reduction results. One way of assessing the uncertainty in clustering analyses is through bootstrap re-sampling which produces probabilities that allow us to assess the uncertainty associated with the model outputs. To our knowledge, this was not done.

Response: At the time the catch analysis was developed, the authors of the species groupings analysis (June 1, 2011, SERO–LAPP–2011–06 Report) were unaware of the application of the bootstrap re-sampling technique to determine the uncertainty of the results from a hierarchical cluster analysis. However, using another method to address uncertainty and to reduce the relative impacts of the outcomes of any one cluster analysis, NMFS applied four different clustering methods to each of five different fishery-dependent and two fishery-independent data sources, then developed a methodology for aggregating the result of these analyses across clusters to form a weighted mean cluster association index. The SEFSC certified on October 26, 2011, that the analyses of the proposed action contained in the environmental assessment and Regulatory Amendment 11 were based upon the best available scientific information.

Classification

The Regional Administrator, Southeast Region, NMFS has determined that this final rule is necessary to more efficiently manage the species within Regulatory Amendment 11 and is consistent with the Magnuson-Stevens Act, and other applicable law.

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

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here.

No substantive comments were received on the certification provided in the proposed rule (76 FR 78879, December 20, 2011). Based on the information provided in the proposed rule, the Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration this final rule is not expected to have a significant economic impact on a substantial number of small entities. As a result, a final regulatory flexibility analysis was not required and none was prepared.

NMFS finds good cause under 5 U.S.C. 553(d)(1) to waive the delay in the effective date for this rule because this rule relieves a restriction by removing the harvest and possession prohibition of six deep-water snapper-grouper species from depths greater than 240 ft (73-m) in the South Atlantic EEZ. These measures will benefit commercial and recreational fishermen. Additionally, the immediate effectiveness of this final rule will allow fishermen to more effectively harvest deep-water snapper-grouper species (snowy grouper, blueline tilefish, yellowedge grouper, misty grouper, queen snapper, and silk snapper). Delaying implementation of these measures could result in snapper-grouper fishermen not having the opportunity to achieve OY from these stocks, because the sectors would have insufficient time to harvest the quota increase before the fishing year's end. A delay would thus diminish the social and economic benefits for deep-water snapper-grouper fishermen this final rule provides, and undermine part of the purpose of the rule itself. Finally, this rule creates no new duties, obligations, or requirements for the regulated community that would necessitate delaying this rule's effectiveness to allow them to come into compliance with it. Thus, this rule is made effective upon publication.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: May 4, 2012.

Paul N. Doremus,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

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

§ 622.35 [Amended]

■ 2. In § 622.35, paragraph (o) is removed and reserved.

[FR Doc. 2012–11307 Filed 5–9–12; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 77, No. 91
Thursday, May 10, 2012

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 THE TREASURY

31 CFR Chapter X

RIN 1506–AB15

Financial Crimes Enforcement Network: Customer Due Diligence Requirements for Financial Institutions; Extension of Comment Period

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Advance notice of proposed rulemaking; extension of comment period.

SUMMARY: FinCEN is extending the comment period for the referenced Advance Notice of Proposed Rulemaking (ANPRM) it published concerning customer due diligence requirements for financial institutions.

DATES: Written comments on the ANPRM must be received on or before June 11, 2012.

ADDRESSES: Comments may be submitted, identified by Regulatory Identification Number (RIN) 1506–AB15, by any of the following methods:

- *Federal E-rulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments. Include RIN 1506–AB15 in the submission. Refer to Docket Number FINCEN–2012–0001.
- *Mail:* FinCEN, P.O. Box 39, Vienna, VA 22183. Include 1506–AB15 in the body of the text. Please submit comments by one method only. All comments submitted in response to this ANPRM will become a matter of public record. Therefore, you should submit only information that you wish to make publicly available.

Inspection of comments: Comments may be inspected, between 10 a.m. and 4 p.m., in the FinCEN reading room in Vienna, VA. Persons wishing to inspect the comments submitted must request an appointment with the Disclosure Officer by telephoning (703) 905–5034 (not a toll free call). In general, FinCEN will make all comments publicly available by posting them on *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: FinCEN: Regulatory Policy and Programs Division, Financial Crimes Enforcement Network, (800) 949–2732 and select option 6.

SUPPLEMENTARY INFORMATION: On March 5, 2012, FinCEN issued an ANPRM seeking comments from interested parties on customer due diligence requirements for financial institutions.[1] FinCEN received several comments on the ANPRM, including several requesting that FinCEN extend the deadline for comments in order to allow interested parties more time in which to comment on the specific issues and questions raised in the ANPRM.

In light of the fact that an extension of the comment period will not impede any imminent rulemaking and will allow additional interested parties to provide comments, FinCEN has determined that it is appropriate in this instance to extend the comment period for an additional thirty (30) days. Thus, comments on the ANPRM may be submitted on or before June 11, 2012.

Dated: May 3, 2012.

Jamal El-Hindi,

Associate Director, Financial Crimes Enforcement Network.

[FR Doc. 2012–11227 Filed 5–9–12; 8:45 am]

BILLING CODE 4810–02–P

[1] *See* 77 FR 13046 (March 5, 2012), *available at http://www.regulations.gov/#!documentDetail;D=FINCEN_FRDOC_0001-0017.*

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2012–0331]

RIN 1625–AA00

Safety Zone; Newport High School Graduation Fireworks, Newport, OR

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a safety zone at the entrance of Yaquina Bay in Newport, OR, for a local fireworks event. The safety zone is necessary to help ensure the safety of the maritime public during the display and would do so by prohibiting persons and vessels from entering the safety zone unless authorized by the Captain of the Port Columbia River or his designated representative.

DATES: Comments and related material must be received by the Coast Guard on or before June 11, 2012.

ADDRESSES: You may submit comments identified by docket number USCG–2012–0331 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov*.

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or email ENS Ian McPhillips, Waterways Management Division, Marine Safety Unit Portland, Coast Guard; telephone 503–240–9319, email *Ian.P.McPhillips@uscg.mil*. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2012–0331),

indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online via *http://www.regulations.gov* or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via www.regulations.gov, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* type the docket number USCG–2012–0331 in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Submit a Comment'' on the line associated with this rulemaking. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number USCG–2012–0331 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not plan to hold a public meeting at this time, but you may submit a request for one on or before June 11, 2012 using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Basis and Purpose

Fireworks displays create hazardous conditions for the maritime public due to loud noises, falling debris, and explosions, as well as the heavy vessel traffic congregating near the displays. The establishment of a safety zone helps ensure the safety of the maritime public by prohibiting persons and vessels from risks associated with fireworks displays.

Discussion of Proposed Rule

This proposed rule would establish a temporary safety zone at the entrance of Yaquina Bay in Newport, OR. This event will be held on Saturday, June 9, 2012 from 9 p.m. to 11 p.m. The safety zone would extend 300 feet in all directions from the discharge site which is located on the south side of the channel at 44–36′46.86″ N 124–04′10.68″ W.

Geographically this safety zone would cover all waters of Yaquina Bay extending 300 feet in all directions from the discharge site. All persons and vessels would be prohibited from entering the safety zone during the date and time this proposed rule is effective unless authorized by the Captain of the Port Columbia River or his designated representative.

Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. The Coast Guard has made this determination based on the fact that the safety zone created by this rule will not significantly affect the maritime public because the federal navigation channel will remain open and vessels may still proceed around the perimeter of the safety zone.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which may be small entities: the owners and operators of vessels intending to operate in the area covered by the safety zone. The safety zone would not have a significant economical impact on a substantial number of small entities because the federally maintained navigation channel would remain open for use during the display and the safety zone would only be in effect for 2 hrs in the evening when vessel traffic is low. We will send out a broadcast to notify mariners 2 hrs before the effective period and the Coast Guard will also publish advisories in the Local Notice to Mariners. Maritime traffic will be able to schedule their transits around this safety zone.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact ENS Ian

McPhillips, Waterways Management Division, Marine Safety Unit Portland, Coast Guard; telephone 503–240–9319, email *Ian.P.Mcphillips@uscg.mil.* The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

Federalism

A rule has implications for Federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for Federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect 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.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies. This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under **ADDRESSES**. This rule is categorically excluded, under figure 2–1, paragraph (34) (g), of the instruction. This proposed rule involves the creation of a safety zone. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T216 Safety Zone; Newport High School Graduation Fireworks Display; Newport, OR

§ 165.T216 Safety Zone; Newport High School Graduation Fireworks Display; Newport, OR

Location

The safety zone will extend 300 feet in all directions from the discharge site which is located on the South Side of the Yaquina Bay channel at position 44–36′46.86″ N 124–04′10.68″ W. This event will be held on Saturday, June 9, 2012.

(a) *Regulations.* In accordance with the general regulations in 33 CFR part 165, subpart C, no person may enter or remain in the safety zone created in this section or bring, cause to be brought, or allow to remain in the safety zone created in this section any vehicle, vessel, or object unless authorized by the Captain of the Port or his designated representative. The Captain of the Port may be assisted by other federal, state, or local agencies with the enforcement of the safety zone.

(b) *Effective Period.* The safety zone created by this section will be in effect from 9 p.m. through 11 p.m. on June 9, 2012.

Dated: April 19, 2012.

B.C. Jones,

Captain, U.S. Coast Guard, Captain of the Port, Columbia River.

[FR Doc. 2012–11239 Filed 5–9–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Part 1333

[Docket No. EP 707]

Demurrage Liability

AGENCY: Surface Transportation Board (Board or STB), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: Through this notice of proposed rulemaking (NPRM), the Board is proposing a rule establishing that a person receiving rail cars from a rail carrier for loading or unloading who detains the cars beyond the ''free time'' provided in the carrier's governing tariff will generally be responsible for paying demurrage, if that person has actual notice, prior to rail car placement, of the demurrage tariff establishing such liability. The Board also clarifies that it intends to construe U.S. Code provisions titled ''Liability for payment of rates,'' as applying to carriers' line-haul rates, but not to carriers' charges for demurrage.

DATES: Comments are due by June 25, 2012. Reply comments are due by July 23, 2012.

ADDRESSES: Comments and replies may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should attach a document and otherwise comply with the instructions at the E-FILING link on the Board's Web site, at *http://www.stb.dot.gov.* Any person submitting a filing in the traditional paper format should send an original and 10 copies to: Surface Transportation Board, Attn: EP 707, 395 E Street SW., Washington, DC 20423–0001. Copies of written comments and replies will be available for viewing and self-copying at the Board's Public Docket Room, Room 131, and will be posted to the Board's Web site.

FOR FURTHER INFORMATION CONTACT: Craig Keats at (202) 245–0260. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at (800) 877–8339.

SUPPLEMENTARY INFORMATION: Demurrage is a charge for detaining railroad-owned rail freight cars for loading or unloading beyond a specified amount of time (called ''free time''). Demurrage has compensatory and penalty functions. It compensates rail carriers for the use of railroad equipment, and by penalizing those who detain rail cars for too long, it encourages prompt return of rail cars into the transportation network. Because of these dual roles, demurrage is statutorily recognized as an important tool in ensuring the smooth functioning of the rail system. *See* 49 U.S.C. 10746.

Historical Regulation of Demurrage. Since the earliest days of railroad regulation, parties have had disputes about who, if anyone, should have to pay demurrage. Certain principles for allocating the liability of intermediaries for holding carrier equipment became established over time and were reflected in agency and court decisions.[1] After reviewing recent court decisions, however, we believe that it is appropriate to revisit the matter and to consider whether the Board's policies should be revised.

Demurrage collection cases may only be brought in court, and thus much of the law governing the imposition of demurrage liability has been established judicially. However, the Interstate Commerce Act, as amended by the ICC Termination Act of 1995, Public Law 104–88, 109 Stat. 803 (1995) (ICCTA), also provides that demurrage is subject to Board regulation. Specifically, 49 U.S.C. 10702 requires railroads to establish reasonable rates and transportation-related rules and practices, and 49 U.S.C. 10746 requires railroads to compute demurrage and to establish demurrage-related rules ''in a way that fulfills the national needs related to'' freight car use and distribution and that will promote an adequate car supply. In the simplest case, demurrage is assessed on the ''consignor'' (the shipper of the goods) for delays in loading cars at origin and on the ''consignee'' (the receiver of the goods) for delays in unloading cars and returning them to the carrier at destination.[2]

This agency has long been involved in resolving demurrage disputes, both as an original matter and on referral from courts hearing railroad complaints seeking recovery of charges.[3] The disputes between railroads and parties that originate or terminate rail cars can involve relatively straightforward application of the carrier's tariffs to the circumstances of the case. Complications can arise, however, in cases involving warehousemen or other ''third-party intermediaries'' who handle the goods but have no property interest in them. A consignee that owned the property being shipped had common-law liability (for both freight charges and demurrage) when it accepted cars for delivery,[4] but warehousemen typically are not owners of the property being shipped (even though, by accepting the cars, they are in a position to facilitate or impede car supply). Under the legal principles that developed, in order for a warehouseman to be subject to demurrage or detention charges, there had to be some other basis for liability beyond the mere fact of handling the goods shipped.[5]

What became the most important factor under judicial and agency precedent was whether the warehouseman was named the consignee on the bill of lading.[6] Thus, our predecessor, the Interstate Commerce Commission (ICC), held that a tariff[7] may not lawfully impose such

[1] *See Responsibility for Payment of Detention Charges, E. Cent. States* (*Eastern Central*), 335 I.C.C. 537, 541 (1969) (involving liability of intermediaries for detention, the motor carrier equivalent of demurrage), *aff'd, Middle Atl. Conference* v. *United States* (*Middle Atlantic*), 353 F. Supp. 1109, 1114–15 (D.D.C. 1972) (3-judge court sitting under the then-effective provisions of 28 U.S.C. 2321 *et seq.*).

[2] While the Interstate Commerce Act does not define ''consignor'' or ''consignee,'' the Federal Bills of Lading Act uses the term ''consignor'' to refer to ''the person named in a bill of lading as the person from whom the goods have been received for shipment,'' 49 U.S.C. 80101(2), and the term ''consignee'' to refer to ''the person named in a bill of lading as the person to whom the goods are to be delivered,'' 49 U.S.C. 80101(1).

[3] *E.g., Eastern Central; Springfield Terminal Ry.—Pet. for Declaratory Order—Reasonableness of Demurrage Charges,* NOR 42108 (STB served June 16, 2010); *Capitol Materials Inc. —Pet. for Declaratory Order—Certain Rates & Practices of Norfolk S. Ry.,* NOR 42068 (STB served Apr. 12, 2004); *R. Franklin Unger, Trustee of Ind. Hi-Rail Corp.—Pet. for Declaratory Order—Assessment & Collection of Demurrage & Switching Charges,* NOR 42030 (STB served June 14, 2000); *South-Tec Dev. Warehouse, Inc.—Pet. for Declaratory Order—Ill. Cent. R.R.,* NOR 42050 (STB served Nov. 15, 2000); *Ametek, Inc.—Pet. for Declaratory Order,* NOR 40663, *et al.* (ICC served Jan. 29, 1993), *aff'd, Union Pac. R.R.* v. *Ametek, Inc.,* 104 F.3d 558 (3d Cir. 1997).

[4] *Pittsburgh, Cincinnati, Chicago & St. Louis Ry.* v. *Fink,* 250 U.S. 577, 581 (1919); *Norfolk S. Ry.* v. *Groves* (*Groves*), 586 F.3d 1273, 1278 (11th Cir. 2009), *cert. denied,* 131 S.Ct. 993 (2011).

[5] *See, e.g., Smokeless Fuel Co.* v. *Norfolk & W. Ry.,* 85 I.C.C. 395, 401 (1923).

[6] A bill of lading is the transportation contract between the shipper and the carrier for moving goods between two points. Its terms and conditions bind the shipper, the originating carrier, and all connecting carriers.

[7] Historically, carriers gave public notice of their rates and general service terms in tariffs that were publicly filed with the ICC and that had the force of law under the so-called ''filed rate doctrine.'' *See Maislin Indus., Inc.* v. *Primary Steel, Inc.,* 497 U.S. 116, 127 (1990). The requirement that rail carriers file rate tariffs at the agency was repealed in ICCTA. Nevertheless, although tariffs are no longer filed

demurrage charges on a warehouseman who is not the owner of the freight, who is not named as a consignor or consignee in the bill of lading, and who is not otherwise party to the contract of transportation.[8]

Recently, a new question arose: who should bear liability when an intermediary that accepts rail cars and detains them too long is named as consignee in the bill of lading, but asserts either that it did not know of its consignee status or that it affirmatively asked the shipper not to name it consignee? On that issue, the courts of appeals have split.[9] The legal debate and resulting conflicting opinions prompted the Board to reexamine its existing policy and to assist in providing clarification for the industry.

Conflict Among the Circuits. In *Groves,* the United States Court of Appeals for the Eleventh Circuit looked to contract principles and concluded that a party shown as a consignee in the bill of lading is not in fact a consignee, and hence is not liable for demurrage charges, unless it expressly agrees to the terms of the bill of lading describing it as a consignee, ''or at the least, [is] given notice that it is being named as a consignee in order that it might object or act accordingly.'' [10] On virtually identical facts, the United States Court of Appeals for the Third Circuit held in *Novolog* that ''recipients of freight who are named as consignees on bills of lading are subject to liability for demurrage charges arising after they accept delivery unless they act as agents of another [party] and comply with the notification procedures in [the] consignee-agent liability provision [of] 49 U.S.C. 10743(a)(1).'' [11] The statutory notice provision of section 10743(a)(1), which is also referred to in *Groves,* states, among other things, that a person receiving property as an agent for the shipper or consignee will not be liable for ''additional rates'' that may be found due beyond those billed at the time of delivery, if the receiver notifies the carrier in writing that it is not the owner of the property, but rather is only an agent for the owner.[12]

After reviewing these recent court decisions, the Board determined that it needed to revisit its demurrage precedent to consider whether the agency's policies accounted for current statutory provisions and commercial practices. Thus, on December 6, 2010, the Board published an Advance Notice of Proposed Rulemaking (ANPR) [13] that raised a series of specific questions about how the demurrage process works and sought public input on whether the Board should issue a new rule that does not follow the reasoning of *Novolog* or *Groves,* but that instead would provide that demurrage charges may apply when cars are accepted by a party with notice of the carrier's demurrage charges. Shortly thereafter, the United States Supreme Court denied a request that it review the split in the circuits. *Norfolk S. Ry.* v. *Groves,* 131 S.Ct. 993 (2011) (mem.).

Additional information is contained in the Board's decision. The full decision is available on the Board's Web site at *www.stb.dot.gov.*

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Comments are due by June 25, 2012; replies are due by July 23, 2012.

2. A copy of this decision will be served upon the Chief Counsel for Advocacy, Office of Advocacy, U.S. Small Business Administration.

3. This decision is effective on its service date.

List of Subjects in 49 CFR Part 1333

Demurrage, Railroads.

Decided: May 3, 2012.

By the Board, Chairman Elliott, Vice Chairman Mulvey, and Commissioner Begeman.

Jeffrey Herzig,

Clearance Clerk.

For the reasons set forth in the preamble, the Surface Transportation Board proposes to amend title 49, chapter X, subchapter D, of the Code of Federal Regulations by adding part 1333 to read as follows:

PART 1333—DEMURRAGE LIABILITY

Sec.
1333.1 Demurrage defined.
1333.2 Who can charge demurrage.
1333.3 Who is subject to demurrage.

Authority: 49 U.S.C. 721.

§ 1333.1 Demurrage defined.

Demurrage is a charge that both compensates rail carriers for the expenses incurred when rail cars are detained beyond a specified period of time (i.e., free time) for loading or unloading, and serves as a penalty for undue car detention to encourage the efficient use of rail cars in the rail network.

§ 1333.2 Who may charge demurrage.

Demurrage shall be assessed by the serving rail carrier, i.e., the rail carrier providing rail cars to a shipper at an origin point or delivering them to a receiver at an end-point or intermediate destination. A serving carrier and its customers (including those to which it delivers rail cars at origin or destination) may enter into contracts pertaining to demurrage, but in the absence of such contracts, demurrage will be governed by the demurrage tariff of the serving carrier.

§ 1333.3 Who is subject to demurrage.

Any person receiving rail cars from a rail carrier for loading or unloading who detains the cars beyond the period of free time set forth in the governing demurrage tariff may be held liable for demurrage if the carrier has provided that person with actual notice of the demurrage tariff providing for such liability prior to the placement of the rail cars. However, if that person is acting as an agent for another party, that person is not liable for demurrage if that

with the agency, rail carriers may still use them to establish and announce the terms of the services they hold out.

[8] *Eastern Central,* 335 I.C.C. at 541.

[9] *Compare Groves, supra, with CSX Transp. Co.* v. *Novolog Bucks Cnty.* (*Novolog*), 502 F.3d 247 (3d Cir. 2007).

[10] 586 F.3d at 1282. Relying in part on *Illinois Central Railroad* v. *South Tec Development Warehouse, Inc.* (*South Tec*), 337 F.3d 813 (7th Cir. 2003), which did not directly decide the issue but which indicated a predilection toward such a result, the court in *Groves* found the warehouseman not to be a consignee and thus not liable for demurrage even though the warehouse accepted the freight cars as part of its business and held them beyond the period of free time.

[11] 502 F.3d at 254. The court in *Novolog* cited *Middle Atlantic,* the Uniform Commercial Code, and the Federal Bills of Lading Act to find that a warehouseman (or, in that case, a transloader) could be a ''legal consignee,'' even if it was not the ''ultimate consignee.'' 502 F.3d at 258–59. The court found that a contrary result, such as the one suggested in *South Tec,* would frustrate what it viewed as the plain intent of section 10743: ''to facilitate the effective assessment of charges by establishing clear rules for liability'' by permitting railroads to rely on bills of lading and ''avoid wasteful attempts to recover [charges] from the wrong parties.'' *Id.* The court found warehouseman liability equitable because the warehouseman—which otherwise has no incentive to agree to liability—can avoid liability by identifying itself as an agent, whereas the rail carrier has no option but to deliver to the named consignee. *Id.* at 259.

[12] 49 U.S.C. 10743(a)(1) states in full:

Liability for payment of rates for transportation for a shipment of property by a shipper or consignor to a consignee other than the shipper or consignor, is determined under this subsection when the transportation is provided by a rail carrier under this part. When the shipper or consignor instructs the rail carrier transporting the property to deliver it to a consignee that is an agent only, not having beneficial title to the property, the consignee is liable for rates billed at the time of delivery for which the consignee is otherwise liable, but not for additional rates that may be found to be due after delivery if the consignee gives written notice to the delivering carrier before delivery of the property—(A) of the agency and absence of beneficial title; and (B) of the name and address of the beneficial owner of the property if it is reconsigned or diverted to a place other than the place specified in the original bill of lading.

[13] *Demurrage Liability,* EP 707 (STB served Dec. 6, 2010), 75 FR 76,496 (Dec. 10, 2010).

person has provided the rail carrier with actual notice of the agency status and the identity of the principal.

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix

The additional information below is included to assist those who may wish to submit comments pertinent to review under the Paperwork Reduction Act:

Description of Collection

Title: New Submissions Under the Board's Demurrage Liability Regulations.

OMB Control Number: 2140–XXXX.

STB Form Number: None.

Type of Review: New collection.

Respondents: Railroads that charge demurrage pursuant to a tariff, rather than a contract, and parties that receive rail cars as shipper agents and wish to avoid liability for demurrage under a tariff.

Number of Respondents: Approximately 650 railroads and approximately 75 receivers acting as shipper agents.

Estimated Time per Response: No more than 8 hours for each railroad; no more than one hour for each shipper agent.

Frequency: Railroads charging the demurrage under a tariff, rather than a contract, would have to provide notice to receivers of rail cars of the demurrage that may accrue with each delivery of cars. Similarly, persons receiving rail cars pursuant to a tariff, rather than a contract, would have to inform the servicing rail carrier whenever they acted solely in agency capacity in order to avoid potential demurrage on those cars.

Total Burden Hours (annually): No more than 2,208 (6,625 hours averaged over 3 years, based on the assumption that it will take each of 650 railroads 8 hours to provide initial notice to its customers (for a total of 5,200 hours) and that it will take each of an estimated 75 warehouses that might consider asserting agency status 1 hour to provide notice to each an average of 19 customers (for a total of 1,425 hours)). We anticipate that the notices required under the proposed rule will consist of electronic communications between parties that are already in communication regarding the transaction and that the burden will be minimal after the first year as the customer population for railroads tends to be rather stable and only new customers would have to be notified.

Total "Non-Hour Burden" Costs: None identified.

Needs and Uses: The new information collection, which involves notification requirements, is necessary to ensure that parties to rail transactions provide and/or receive notice regarding any potential liability for demurrage charges.

Retention Period: Under the proposed rule, these records will not be collected or retained by the agency, nor does the proposed rule impose a retention requirement on the parties to the transaction.

[FR Doc. 2012–11189 Filed 5–9–12; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R6–ES–2011–0019: 4500030113]

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To List the Arapahoe Snowfly as Threatened or Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 12-month finding on a petition to list the Arapahoe snowfly (*Capnia arapahoe*) as endangered and to designate critical habitat under the Endangered Species Act of 1973, as amended (Act). After review of the best available scientific and commercial information, we find that listing the Arapahoe snowfly as threatened or endangered is warranted. Currently, however, listing the Arapahoe snowfly is precluded by higher priority actions to amend the Lists of Endangered and Threatened Wildlife and Plants. Upon publication of this 12-month petition finding, we will add the Arapahoe snowfly to our candidate species list. We will develop a proposed rule to list the Arapahoe snowfly as our priorities allow. We will make any determination on critical habitat during development of the proposed listing rule. In any interim period, we will address the status of the candidate taxon through our annual Candidate Notice of Review.

DATES: The finding announced in this document was made on May 10, 2012.

ADDRESSES: This finding is available on the Internet at *http://www.regulations.gov* at Docket Number FWS–R6–ES–2011–0019. Supporting documentation we used in preparing this finding is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Colorado Field Office, 134 Union Blvd., Suite 670, Lakewood, CO 80228. Please submit any new information, materials, comments, or questions concerning this finding to the above street address.

FOR FURTHER INFORMATION CONTACT: Susan Linner, Field Supervisor, Colorado Field Office (see **ADDRESSES**); by telephone at 303–236–4773, or by facsimile at 303–236–4005. If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Act (16 U.S.C. 1531 *et seq.*) requires that, for any petition to revise the Federal Lists of Threatened and Endangered Wildlife and Plants that contains substantial scientific or commercial information that listing a species may be warranted, we make a finding within 12 months of the date of receipt of the petition. In this finding, we will determine that the petitioned action is: (1) Not warranted, (2) warranted, or (3) warranted, but the immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether species are endangered or threatened, and expeditious progress is being made to add or remove qualified species from the Federal Lists of Endangered and Threatened Wildlife and Plants. Section 4(b)(3)(C) of the Act requires that we treat a petition for which the requested action is found to be warranted but precluded as though resubmitted on the date of such finding, that is, requiring a subsequent finding to be made within 12 months. We must publish these 12-month findings in the **Federal Register**.

Previous Federal Actions

On July 30, 2007, we received a petition from Forest Guardians (now WildEarth Guardians), requesting that the Service consider for listing as either endangered or threatened 206 species in our Mountain-Prairie Region ranked as G1 or G1G2 by the organization NatureServe (except those that are currently listed, proposed for listing, or candidates for listing). The Arapahoe snowfly was 1 of the 206 species included in the petition. On March 19, 2008, WildEarth Guardians filed a complaint indicating that the Service failed to make a preliminary 90-day finding on their two multiple-species petitions—one for mountain-prairie species, and one for southwestern species. We subsequently published two 90-day findings, including one on February 5, 2009 (74 FR 6122) for the mountain-prairie species. That finding concluded that the petition did not present substantial scientific or commercial information indicating that listing may be warranted for 165 of the 206 species, including the Arapahoe snowfly.

On April 6, 2010, we received a petition, of the same date, from The Xerces Society for Invertebrate Conservation, Dr. Boris Kondratieff, Save the Poudre: Poudre Waterkeeper,

Cache la Poudre River Foundation, WildEarth Guardians, and Center for Native Ecosystems, requesting that the Arapahoe snowfly be listed as endangered and that critical habitat be designated under the Act. Supporting information regarding the species' taxonomy and ecology, population distribution and status, and actual and potential causes of decline was included in the petition. We acknowledged the receipt of the petition in a letter to Scott Hoffman Black and the other petitioners dated April 13, 2010. In that letter, we stated that issuing an emergency regulation temporarily listing the species under section 4(b)(7) of the Act was not warranted. We also stated that, due to previously received petitions, court orders, other listing actions with statutory deadlines, and judicially approved settlement agreements that would take the remainder of Fiscal Year 2010 to complete, we anticipated responding to the petition in Fiscal Year 2011. On December 1, 2010 the petitioners filed a Notice of Intent to sue regarding our failure to complete a 90-day finding concerning their April 6, 2010, petition to list the Arapahoe snowfly.

On April 26, 2011, we published a 90-day finding for the Arapahoe snowfly (76 FR 23256). In that finding, we found that the petition presented substantial information to indicate that listing the species may be warranted. On June 27, 2011, we received a Notice of Intent to sue from Mile High Law Office for not completing a 12-month finding on the April 6, 2010, petition to list the species. This Notice of Intent to sue was submitted on behalf of WildEarth Guardians, Save the Poudre: Poudre Waterkeeper, Center for Native Ecosystems, and Colorado State University. On September 9, 2011, a settlement agreement with WildEarth Guardians was approved in U.S. District Court that included a multiyear listing workplan for several species, including a commitment to complete a 12-month finding for the Arapahoe snowfly in Fiscal Year 2012. This notice constitutes the 12-month finding on the April 6, 2010, petition to list the Arapahoe snowfly as endangered and fulfills our commitment for the Arapahoe snowfly under the September 9, 2011, settlement agreement.

Species Information

Taxonomy

The Arapahoe snowfly is an insect in the order Plecoptera (stonefly), the family Capniidae (small winter stonefly), and the genus *Capnia* (snowfly) (NatureServe 2009, p. 1; Integrated Taxonomic Information System 2010, p. 1). In North America, there are 674 known species of stoneflies, including 56 species of Capnia (Stark *et al.* 2009, pp. 3–4). The nearest relatives of the Arapahoe snowfly are the Utah snowfly (*C. utahensis*) and the Sequoia snowfly (*C. sequoia*), both of which are a minimum of 400 miles (mi) (640 kilometers (km)) from the known locality for Arapahoe snowfly (Nelson and Kondratieff 1988, p. 79). The Arapahoe snowfly was first discovered in 1986 and identified as a new species in 1988 (Nelson and Kondratieff 1988, p. 77). The scientific community accepts the current taxonomic status of the Arapahoe snowfly (Nelson and Kondratieff 1988, p. 77; Nelson and Baumann 1989, p. 314; Stark *et al.* 2009, p. 3; Integrated Taxonomic Information System 2010, p. 1). Consequently, we conclude that the Arapahoe snowfly is a valid species and, therefore, a listable entity under section 3(16) of the Act.

Species Description

Stoneflies are distinguished by the ability to fold their two pairs of wings back along the abdomen; however, none fly well (Williams and Feltmate 1992, pp. 33 and 35). Most stoneflies are inconspicuous insects that fly clumsily (Hynes 1976, p. 135). Species of *Capnia* are typically distinguished from other genera by physical characteristics of the epiproct (a projection at the end of the abdomen) (Nelson and Baumann 1989, p. 312). The Arapahoe snowfly adult is dark colored and has a body length of approximately 0.2 inches (in.) (5 millimeters (mm)) and a wing length of also approximately 0.2 in. (5 mm) (Nelson and Kondratieff 1988, p. 77). The immature (nymph) stage has not been described.

Habitat

The Arapahoe snowfly has been documented only in two streams: Young Gulch and Elkhorn Creek in Colorado (Nelson and Kondratieff 1988, p. 77). Both streams are small tributaries of the Cache la Poudre River and are typical of streams in the Front Range of the Rocky Mountains of Colorado in that they are characterized by intermittent flow and a substrate of pebble, cobble, and bedrock (Nelson and Kondratieff 1988, p. 79). Upper reaches of both streams are typified by steep slopes with ponderosa pine (*Pinus ponderosa*) (Nelson and Kondratieff 1988, p. 79). Lower reaches near the confluences with the Cache la Poudre River, where the species has been collected, have gentler slopes, with cottonwood (*Populus angustifolia*), willow (*Salix* spp.), Rocky Mountain maple (*Acer glabrum*), chokecherry (*Padus virginiana*), and alder (*Alnus incana*) trees along the stream margins (Colorado State University 2010, p. 1). Elevations at collection sites are 5,800 feet (ft) (1,768 meters (m)) at Young Gulch and 6,600 ft (2,010 m) at Elkhorn Creek (Nelson and Kondratieff 1988, p. 77). Both stream reaches with records of Arapahoe snowfly are within the Canyon Lakes Ranger District of the Roosevelt National Forest and managed by the U.S. Forest Service (USFS). There also are some private land holdings in upstream reaches of both drainages.

Stoneflies are primarily associated with clean, cool, running waters (Surdick and Gaufin 1978, p. 3; Brittain 1990, p. 1; Williams and Feltmate 1992, p. 35; Palma and Figueroa 2008, p. 81; Stewart and Stark 2008, p. 311). Water temperature is a major influence on stonefly growth and development (Brittain 1983, p. 445). Stonefly nymphs tend to have specific water temperature, substrate type, and stream size requirements that are reflected in their distribution along stream courses and the timing of their emergence in the spring (Stewart and Stark 2008, p. 311). Their restriction to cool, clean habitats with considerable water movement, all of which contribute to high dissolved oxygen concentrations, is thought to be connected to high dissolved oxygen requirements of the nymphs (Williams and Feltmate 1992, p. 39; Heinold 2010, p. 17). Winter stonefly nymphs undergo diapause (dormancy) in the hyporheic zone-an active interface between the surface stream and groundwater with exchanges of water, nutrients, and dissolved oxygen (Boulton *et al.* 1998, p. 59; Hancock 2002, p. 763). The hyporheic zone is vulnerable to changes in the quality and quantity of both surface water and groundwater (Hancock 2002, p. 763). Exchange between surface water and groundwater may be the most important regulator of biological activity in the hyporheic zone; without flow to renew nutrients and oxygen and flush wastes, the sediments become unsuitable habitat (Hancock 2002, p. 764). Human activities that can impact the hyporheic zone include water diversions, sedimentation from roads and trails, wastewater inputs, and livestock grazing (Hancock 2002, p. 765).

The species of aquatic macroinvertebrates present in a watershed are an important indicator of the long-term health of that watershed (Fleming 1999, pp. 93–94; DeWalt *et al.* 2005, p. 942). Stoneflies are considered the order of insects most sensitive to habitat alteration, pollution, and siltation, and are the best insect

indicators of aquatic environmental quality (Baumann 1979, p. 241; Rosenberg and Resh 1993, p. 354; Fleming 1999, p. 94; Heinold 2010, p. 18). With increased stream disturbances, the number of stonefly taxa has been shown to decrease (Barbour *et al.* 1999, pp. 7.15–7.16). Fleming (1999, p. 94) developed a tolerance index for aquatic macroinvertebrates from 1 to 10, with 10 being most tolerant. Stoneflies were the least tolerant to stream perturbation, with a tolerance index ranging from 1.7 to 4.4 for the various families (Fleming 1999, p. 94). The family of small winter stoneflies, of which the Arapahoe snowfly is a member, was in the mid-range, with a tolerance index of 3.0 (Fleming 1999, p. 94).

We are not aware of any surface water quality data for Young Gulch, and there is minimal data for Elkhorn Creek. After work on this finding was initiated, the Service and the USFS undertook a cooperative effort to collect field data for both streams. However, Young Gulch was dry at the time of sampling (December 8, 2011). Consequently, data was only collected for Elkhorn Creek. Sampling was just above the confluence of the creek with the Cache la Poudre River. The winter season and the need for a short turn-around time on laboratory results in order to meet publication deadlines for the 12-month finding limited the amount of data collected. However, from what we know of winter stoneflies, the parameters shown in Table 1 appear adequate to support the species during early winter. These data are described in the following table (Sanchez 2011a, p. 2; 2011b, pp. 2, 14).

TABLE 1—WATER QUALITY DATA COLLECTED FROM ELKHORN CREEK (DECEMBER 8, 2011)

Parameter	Measurement
Water temperature	32.5 °F (0.3 °C).
Conductivity	150.9 microsiemens per centimeter (µs/cm).
pH	6.46.
Dissolved oxygen	11.18 milligrams per liter (mg/L) (>90%).
Total inorganic nitrogen	<0.21 mg/L.
Ammonium	<0.10 mg/L.
Total suspended solids	<5 mg/L.
Total dissolved solids	88–96 mg/L.
Total coliform	present.

A study that included the Cache la Poudre River tested for the presence of 271 compounds, including volatile organic compounds, pesticides, wastewater compounds, and *Escherichia coli* (Collins and Sprague 2005, p. 1). Most (257) of these compounds were not detected in the river, and all concentrations detected were less than established water quality standards (Collins and Sprague 2005, p. 1). The river is considered generally pristine (Medley and Clements 1998, p. 632; George Weber Environmental, Inc. 2007, p. 7). Based upon what is known regarding habitat requirements of the Arapahoe snowfly, the mainstem of the Cache la Poudre River is not likely to be habitat for the species due to the fact that known and historical occurrences were both found in small, intermittent streams.

Life History

Few studies have been conducted on the Arapahoe snowfly due to its rarity and relatively recent discovery. Sampling for adult specimens is limited to late winter/early spring when adults are present above ground. Snowflies generally cannot be identified at the species level during most of their life history stages, including the nymph stage. The difficulties in distinguishing among species of snowfly nymphs and sampling under ice in winter have largely precluded the study of individual species (Stewart and Stark 2002, p. 122). Detailed life histories are well known for less than 5 percent of stonefly species (Stewart and Stark 2002, p. 23). Therefore, most of the information below comes from knowledge about stoneflies (order Plecoptera) in general, other members of the small winter stonefly family, and other species of the genus Capnia. We expect that the life history of the Arapahoe snowfly would be similar to these closely related species.

Stoneflies have a complex lifecycle that requires terrestrial habitat during the adult phase and aquatic habitat during the nymph phase (Lillehammer *et al*. 1989, p. 183; Williams and Feltmate 1992, p. 33). Having both a terrestrial and aquatic phase creates dependence on two different environments (Brittain 1990, p. 1). The majority of the stonefly life cycle is spent as a developing nymph in the aquatic environment, while their brief terrestrial adult stage of 3 to 4 weeks is primarily focused on reproduction (Brittain 1990, p. 1; Williams and Feltmate 1992, p. 33). Winter stoneflies have a univoltine (1-year) life cycle (Hynes 1976, pp. 146–147).

As water levels fall through late winter, adult winter stoneflies emerge from the space that forms under stream ice and crawl onto the snow or nearby vegetation (Hynes 1976, pp. 135–36). Winter streamflow is essential for successful egg deposition (Jacobi and Cary 1996, p. 696). Water temperature also is important, with emergence occurring earlier in warmer years (Hynes 1976, p. 137). Arapahoe snowfly adults have been collected only in late March and early April (Mazzacano undated, p. 2). After emergence, winter stonefly males drum (beat their abdomen on the ground or on vegetation) to search for mates, with a frequency that is species and sex specific (Hynes 1976, p. 139). Unmated females reply, the males approach and drum again, and the process repeats until they meet and mate (Hynes 1976, p. 139). Mating occurs on the ground or on vegetation adjacent to the aquatic habitat (Brittain 1990, p. 1). Females release eggs over the surface of the flowing stream, and the eggs attach to the cobble and gravel in the stream substrate (Stewart and Stark 2008, p. 311).

Most stoneflies lay 100 to 2,000 eggs (Brittain 1990, p. 4). Winter stonefly eggs hatch within 3 to 4 weeks (Stewart and Stark 2008, p. 312). Hatching success is high within a water temperature range of 41 to 59 °F (5 to 15 °C) (Brittain 1990, p. 5). Most stoneflies show rapidly decreasing hatching success over 68 °F (20 °C) (Brittain 1990, p. 5). As water temperatures rise, nymphs burrow into the streambed and undergo summer diapause (Harper and Hynes 1970, pp. 925–926; Williams and Feltmate 1992, p. 39; Stewart and Stark 2002, p. 34; Mazzacano undated, p. 2). This behavior enables winter stoneflies to inhabit streams that may reach unsuitably high

temperatures or dry up during the summer (Harper and Hynes 1970, pp. 925–926; Stewart and Stark 2002, p. 34). Diapause also may be a mechanism for synchronizing the timing of feeding with leaf drop in the fall (Stewart and Stark 2002, p. 35). As water temperatures drop in the fall, nymphs emerge from the hyporheic zone into the stream water and become more active. Most winter stonefly nymphs are shredders (feeding on organic detritus such as falling leaves that is deposited into streams), and active nymphs are usually found in leafy or woody stream debris (Short and Ward 1981, p. 341; Mazzacano undated, p. 2; Stewart and Stark 2008, p. 379).

Stoneflies have limited dispersal capability (Brittain 1990, pp. 2 and 10). This lack of mobility prevents them from crossing even small ecological barriers and has led to a high degree of local speciation (Hynes 1976, p. 135). A study in the United Kingdom that collected more than 22,500 adult stoneflies of 15 different species found that half of all stoneflies were taken within 59 ft (18 m) of the stream channel, and 90 percent traveled less than 197 ft (60 m) (Petersen *et al.* 2004, pp. 934, 938, and 942). Most studies also suggest a low tendency of in-stream drift for stonefly nymphs (Stewart and Szczytko 1983, p. 117).

Historical Distribution

Many snowflies are endemic species, with a narrow range limited to a small geographical or ecological area (Nebeker and Gaufin 1967, p. 416; Nelson and Baumann 1989, p. 292; Nelson 2008, pp. 178–179; Kondratieff and Baumann 2002, p. 399). Similarly, the Arapahoe snowfly appears to have a highly restricted distribution. It is historically known from only two small tributaries of the Cache la Poudre River in northern Colorado—Young Gulch and Elkhorn Creek (Nelson and Kondratieff 1988, p. 77; Heinold and Kondratieff 2010, p. 282). Habitat where the species has been collected extends from the confluences with the river to approximately 1,640 ft (500 m) upstream for both streams (Heinold 2011a, unpaginated). Searches further upstream have failed to locate the species (Heinold 2011a, unpaginated). Approximately 5 mi (8 km) separates these two streams. The species was first discovered in March 1986 in Young Gulch, but, despite repeated searches during most of the past 25 years, it has not been found again in that locale (Nelson and Kondratieff 1988, p. 77; Heinold 2011b and 2011c, unpaginated). In April 1987, the species was first located in Elkhorn Creek and has been found in subsequent searches in this stream (Nelson and Kondratieff 1988, p. 77). Repeated searches (at least 17 searches in the past 16 years) also have been conducted in 11 additional nearby waterways with similar ecological characteristics; however, the species has not been located in any of these streams (Heinold 2011b, unpaginated). Thus, the species is currently known from just one extant location and we consider it to be extirpated from Young Gulch.

Since the species was collected in Young Gulch only on one occasion, we do not know if there was actually a historical population there, what the size of that population was, or why it was extirpated. However, Young Gulch has several characteristics that may make it less desirable than Elkhorn Creek as Arapahoe snowfly habitat. Young Gulch is a shorter stream, which originates at a lower elevation (7,500 ft (2,290 m)) than Elkhorn Creek (10,000 ft (3,050 m)). Thus, any accumulated snowfall in the upper reaches of the drainage will melt sooner and more quickly, which in turn would result in the drying of the stream earlier in the year than Elkhorn Creek. There is no minimum flow water right on Young Gulch, as there is on Elkhorn Creek (Colorado Water Conservation Board (CWCB) and Colorado Division of Water Resources (CDWR) 2011, unpaginated). As noted above, when water samples were collected from Elkhorn Creek in Arapahoe snowfly habitat on December 8, 2011, Young Gulch was dry.

The other major difference between the two streams is the amount of recreational use. Young Gulch has a well-developed trailhead off of Highway 14 that, according to the USFS, experiences heavy, year-round usage, including hikers, bikers, backpackers, and horseback riders (USFS 2011c, pp. 1, 2). The 4.5-mi (7.2-km) trail follows Young Gulch and includes approximately 45 stream crossings (Casamassa 2011, p. 4). Aquatic macroinvertebrate species present at a given stream site are related to the number of stream crossings above that site, with the total number of larval species (including stoneflies) negatively related to the number of stream crossings (Gucinski et al. 2001, p. 26). The amount of usage and the number of stream crossings likely contribute to a high sediment load, which may have factored into the extirpation of the species at this location.

Current Distribution, Abundance, and Trends

The species is known from 1 male specimen collected in 1986 in Young Gulch, 1 male in 1987, 10 males and 2 females in 2009, and 1 male in 2011, all in Elkhorn Creek (Heinold and Kondratieff 2010, p. 281; Heinold 2011d, unpaginated). We consider Elkhorn Creek to be the only currently occupied habitat. During a search of Elkhorn Creek on March 17, 2009, approximately 500 specimens of 4 species in the genus Capnia were collected, but only 5 of those specimens were Arapahoe snowfly (Heinold 2011a, unpaginated). We consider this low degree of detection to indicate rarity of the Arapahoe snowfly at the only known remaining location for the species.

Given the low numbers of individuals that have been collected over the years, we have no information available regarding population trends for the Arapahoe snowfly. However, we consider it extirpated from one of the two streams where it was historically known to occur. It appears to currently have an extremely narrow distribution near the confluence of one small stream, and it is rare within its only known occupied habitat.

Summary of Information Pertaining to the Five Factors

Section 4 of the Act (16 U.S.C. 1533) and implementing regulations (50 CFR 424) set forth procedures for adding species to, removing species from, or reclassifying species on the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, a species may be determined to be endangered or threatened based on any of the following five factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

In making this finding, information pertaining to the Arapahoe snowfly in relation to the five factors provided in section 4(a)(1) of the Act is discussed below. In considering what factors might constitute threats to a species, we must look beyond the exposure of the species to a particular factor to evaluate whether the species may respond to that factor in a way that causes actual impacts to the species. If there is exposure to a factor and the species responds negatively, the factor may be a threat and, during the status review, we attempt to determine how significant a threat it is. The threat is significant if

it drives, or contributes to, the risk of extinction of the species such that the species warrants listing as endangered or threatened as those terms are defined in the Act. However, the identification of factors that could impact a species negatively may not be sufficient to compel a finding that the species warrants listing. The information must include evidence sufficient to suggest that these factors are operative threats that act on the species to the point that the species may meet the definition of endangered or threatened under the Act.

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Under this factor we evaluate climate change, recreation, development, forest management, and grazing.

Climate Change

Our analyses under the Endangered Species Act include consideration of ongoing and projected changes in climate. The terms ''climate'' and ''climate change'' are defined by the Intergovernmental Panel on Climate Change (IPCC). ''Climate'' refers to the mean and variability of different types of weather conditions over time, with 30 years being a typical period for such measurements, although shorter or longer periods also may be used (IPCC 2007, p. 78). The term ''climate change'' thus refers to a change in the mean or variability of one or more measures of climate (e.g., temperature or precipitation) that persists for an extended period, typically decades or longer, whether the change is due to natural variability, human activity, or both (IPCC 2007, p. 78). Various types of changes in climate can have direct or indirect effects on species. These effects may be positive, neutral, or negative and they may change over time, depending on the species and other relevant considerations, such as the effects of interactions of climate with other variables (*e.g.,* habitat fragmentation) (IPCC 2007, pp. 8–14, 18–19). In our analyses, we use our expert judgment to weigh relevant information, including uncertainty, in our consideration of various aspects of climate change.

Stream Effects

The western United States is being affected by climate change more than any other part of the United States outside of Alaska (Saunders *et al.* 2008, p. iv). The hydrological cycle of the western United States changed significantly over the second half of the 20th century (Barnett *et al.* 2008, p. 1080). Numerous studies show more winter precipitation falling as rain instead of snow, earlier snowmelt, and associated changes in river flow (Barnett et al. 2008, p. 1080). Between 1978 and 2004, the spring pulse (onset of streamflow from melting snow) in Colorado shifted earlier by 2 weeks (Ray *et al.* 2008, p. 2). Although there is no identified decrease in runoff to date, average annual runoff is projected to decrease significantly for the South Platte River basin (which includes Elkhorn Creek) over the next 50 to 60 years (U.S. Bureau of Reclamation (BOR) 2011, p. 94). A decline of 8 percent is projected by the 2020s, 14 percent by the 2050s, and 17 percent by the 2070s, due primarily to increased temperatures and little projected change in precipitation (BOR 2011, p. 94).

A precipitous decline in lower elevation snowpack below 8,200 ft (2,500 m) elevation is predicted to occur across the western United States by the middle of the 21st century, and modest declines of 10 to 20 percent are projected to occur in snowpack above 8,200 ft (2,500 m) elevation (Regonda *et al.* 2005, p. 376; Ray *et al.* 2008, p. 1). The headwaters of Elkhorn Creek approach 10,000 ft (3,050 m) elevation, indicating that Elkhorn Creek may begin to experience some effects from reduced snowpack within the next 50 years.

A local habitat that depends on snowmelt to maintain a sufficient quantity of in-stream flows is likely to be sensitive to projected reductions in average snowpack, as well as to changes in the timing and intensity of precipitation (Glick *et al.* 2011, p. 20). Species that breed in intermittent streams are likely to be highly susceptible to climate impacts from changes such as rising temperature regimes; winter precipitation arriving more frequently as rain than snow; and shifts in the timing of snowmelt, runoff, and peak stream flows (Glick *et al.* 2011, p. 41). Species that are poor dispersers also may be more susceptible as they will be less able to move from areas where the effects of climate change render those areas unsuitable and into areas that become newly suitable (Glick *et al.* 2011, p. 49). The Arapahoe snowfly is found in a localized habitat, breeds in an intermittent stream, and is considered a poor disperser. Consequently, it may be particularly vulnerable to the effects of climate change.

Temperature has critical effects on aquatic macroinvertebrates through its combined influences on dissolved oxygen and metabolic activity (Durance and Ormerod 2007, p. 943). The stonefly's restriction to cool, clean habitats with considerable water movement is thought to be connected to high dissolved oxygen requirements of the nymphs (Williams and Feltmate 1992, p. 39; Heinold 2010, p. 17). Stoneflies' adaptation to cold environments places them at a competitive disadvantage in warmer climates (Brittain 1990, p. 9; Haiderkker and Hering 2007, p. 473). A study in the United Kingdom found that spring macroinvertebrate abundance declined by an average rate of 21 percent across all species for every 1.8 °F (1 °C) rise in stream temperature in circumneutral (pH near neutral) streams (Durance and Ormerod 2007, p. 942). Sixteen species of stoneflies were among the 84 macroinvertebrate species noted in these streams (Durance and Ormerod 2007, p. 951). Air temperatures in the northern Front Range of Colorado increased 2.5 °F (1.4 °C) in the period 1977–2006 (Ray *et al.* 2008, p. 10). Stream temperatures also are expected to increase as the climate warms (Ray *et al.* 2008, p. 41).

In a study conducted over a 25-year period in the United Kingdom, scarcer taxa of macroinvertebrates disappeared in circumneutral (pH near 7) streams that showed progressive temperature increases (Durance and Ormerod 2007, p. 943). There is limited pH data specific to Elkhorn Creek. However, in 1973 the USFS recorded a pH of 7.5 in Elkhorn Creek headwaters and also near the confluence of Elkhorn Creek with the Cache la Poudre River (USFS 1973, p. 1). More recently, a pH of 6.46 was recorded in Elkhorn Creek near the confluence with the Cache la Poudre River (Sanchez 2011, p. 2). These pH values are circumneutral, and similar to pH values in the study. Thus, currently observed increasing trends in temperature for Elkhorn Creek might adversely impact the Arapahoe snowfly.

A laboratory study found that larval growth of one species of stonefly (*Leuctra nigra*) increased with increasing water temperature from 43 to 68 °F (5.9 to 19.8 °C); however, mortality also increased, resulting in only 7 to 10 percent of individuals completing their life cycle at the three higher temperatures, compared with 23 to 27 percent at the three lower temperatures (Elliot 1987, p. 181). The number of eggs laid also decreased at higher temperatures (Elliot 1987, p. 181). As previously noted, air temperatures in the northern Front Range of Colorado increased 2.5 °F (1.4 °C) in the period 1977–2006 and stream temperatures also are expected to increase (Ray *et al.* 2008, pp. 10 and 41). This suggests that water temperatures in Elkhorn Creek could increase to levels harmful to sensitive taxa such as the Arapahoe snowfly.

Terrestrial Effects

Disturbances such as insect outbreaks and wildfire are likely to intensify in a warmer future with drier soils and longer growing seasons (Field *et al.* 2007, p. 619; Karl *et al.* 2009, p. 82). Ongoing outbreaks of mountain pine beetle (*Dendroctonus ponderosae*) in Colorado are probably caused primarily by climate, specifically drought and high temperature (Romme *et al.* 2006, p. 4; Black *et al.* 2010, p. 1). Mountain pine beetles typically exist as small populations that feed on the innermost bark layer of trees that have been weakened by disease or injury (Black *et al.* 2010, p. 7). However, they can erupt to epidemic levels if stand structure and climatic conditions are appropriate and overcome the defenses of even healthy trees, leading to widespread mortality of host species (Field *et al.* 2007, p. 623; Black *et al.* 2010, p. 7).

Ponderosa pine is the dominant vegetation in the upper watershed of Elkhorn Creek (Nelson and Kondratieff 1988, p. 79). Mountain pine beetle infestations are building in ponderosa pine forests along the Front Range of Colorado, with an outbreak detected in northern Larimer County (Ciesla 2010, pp. 2, 10, and 34). This outbreak encompasses the range of the Arapahoe snowfly. Infestations in ponderosa pine along the Northern Front Range increased by more than 10-fold from 2009 to 2010, from 22,000 acres (ac) (8,903 hectares (ha)) to 229,000 ac (92,673 ha) (Ciesla 2011, pp. 6–7). Mountain pine beetle activity is expected to increase in the Front Range over the next several years (Ciesla 2011, p. 8). The mountain pine beetle outbreak in northern Colorado could affect water quantity and quality. As trees die and fall, forest cover becomes less dense, allowing greater exposure of snowpack to solar radiation, causing faster, earlier runoff and a resultant potential increase in soil erosion (Ciesla 2010, p. 17).

Epidemics that kill trees over large areas also provide dead, desiccated fuels for large wildfires (Field *et al.* 2007, p. 623). A warming climate encourages wildfires through a longer summer period that dries fuels, promoting easier ignition and faster spread (Field *et al.* 2007, p. 623). In the last 3 decades, the wildfire season in the western United States increased by 78 days (Saunders *et al.* 2008, p. 20). Fire suppression during the 20th century is believed to have created a high hazard of catastrophic fire in ponderosa pine forests of the northern Front Range in Colorado (Veblen *et al.* 2000, p. 1178). Catastrophic fire can impact aquatic macroinvertebrates. For example, following fires in Yellowstone National Park in 1988, there was a change in aquatic macroinvertebrates from shredder and collector species (such as snowflies) to scraper and filter-feeding species (Neary *et al.* 2009, p. 142). Similarly, following the 1996 Dome wildfire in New Mexico, aquatic macroinvertebrate shredders (including winter stoneflies) common in pre-fire years were reduced or eliminated, and had not recovered by 5 years post-fire (Vieira *et al.* 2004, pp. 1243 and 1251). Taxa with weak dispersal abilities and specialized feeding requirements (including winter stoneflies) became rare after the Dome wildfire (Vieira *et al.* 2004, p. 1256). A wildfire in the Elkhorn Creek watershed has a similar potential to eliminate rare macroinvertebrates such as the Arapahoe snowfly.

In conclusion, the effects of climate change will likely modify Arapahoe snowfly habitat in several ways including: (1) The predicted significant reduction in snowpack; (2) the present increase in temperature as well as continued threatened increases in future years; (3) the present and increasing outbreak of mountain pine beetle in ponderosa pine; and (4) the threatened increased likelihood of wildfire. Although available information indicates that climate change could potentially be modifying the species' habitat at the present time, we do not have any information that indicates this is currently threatening the species. However, the impacts from each of these stressors are reasonably expected to increase into the future, and the species' limited distribution and life history characteristics make it extremely vulnerable to the predicted impacts. Therefore, we consider modification of habitat as a result of climate change to be a threat to the species.

Recreation

Recreation has been increasing in the northern Front Range as a result of increasing population growth in Colorado (USFS 2009b, p. 1). The nearest city is Fort Collins, Colorado, approximately 31 mi (50 km) from Elkhorn Creek. Fort Collins' population has grown rapidly in recent years. The 2006 population estimate was 129,467, an 8.7 percent increase from 2000 (City of Fort Collins 2008b, unpaginated). The 2010 population estimate was 143,986, an 11.2 percent increase from 2006 (City of Fort Collins 2011, unpaginated). Usage of trail systems throughout the Cache la Poudre River canyon will likely increase as the population continues to grow.

Specific information on the types of recreational usage for Elkhorn Creek is not available, but we expect that there would be similar usage patterns to nearby Young Gulch, where the USFS estimates that approximately 83 percent of recreational users were day-hikers, 10 percent bicyclists, 4 percent back-packers, and 1 percent horseback riders (Casamassa 2011, p. 5). Dogs are often allowed off-leash on USFS trails, including Elkhorn Creek trails (Casamassa 2011, p. 5). Common environmental impacts associated with trail usage include vegetation loss, soil compaction, erosion, muddiness, degraded water quality, and disruption of wildlife (International Mountain Biking Association (IMBA) 2007, p. 1; Marion and Wimpey 2007, unpaginated). The environmental degradation caused by hikers and mountain bikers is similar; both are substantially less than degradation caused by horses (Marion and Wimpey 2007, unpaginated). Eroded soils that enter streams increase sedimentation that can impact habitat directly or contribute to algae blooms that deplete dissolved oxygen (IMBA 2007, p. 8). Even localized disturbance can harm rare species (Marion and Wimpey 2007, unpaginated). Since Arapahoe snowfly nymphs require high dissolved oxygen levels (see Habitat section), algal blooms could indicate dissolved oxygen levels unsuitable for Arapahoe snowfly habitation.

A new trailhead was completed midway along Elkhorn Creek in 2010 that expanded the parking area and improved trail access (USFS 2009b, p. 4). Consequently, trail usage is likely to increase along the lower section of Elkhorn Creek in and near Arapahoe snowfly habitat. There are several areas along upper sections of Elkhorn Creek where trails are causing increased run-off and erosion (USFS 2009a, p. 48). Consequently, the USFS has identified 14 stream crossings for improvement (Casamassa 2011, p. 3). These trails originate 6 to 7 mi (10 to 11 km) upstream from where the Arapahoe snowfly has been found and progress further upstream, away from known Arapahoe snowfly habitat. We have no information at this time to indicate that sedimentation from these trails is impacting downstream Arapahoe snowfly habitat. Therefore, at present, we do not consider recreational use within the Elkhorn Creek watershed to be a threat to the species.

Development

The number of species of stoneflies as well as the percentage of stoneflies compared with all insect species

decreases with increasing stream perturbations (Barbour *et al.* 1999, pp. 7.15–7.16). Roads, water diversions, and wastewater inputs are the primary development activities occurring in the Elkhorn Creek watershed.

Roads

Road construction and use can result in large increases in suspended sediments, with potentially detrimental effects on water quality and aquatic macroinvertebrates (Anderson and Potts 1987, p. 681; Gucinski *et al.* 2001, p. vii; Grace 2002, p. 13; Angermeir *et al.* 2004, p. 19). A number of studies have demonstrated declines in invertebrate densities and biomass following sedimentation events by directly affecting aspects of their physiology or by altering their habitat (Anderson 1996, p. 8). Arapahoe snowfly nymphs inhabit the hyporheic zone in spaces between and beneath large substrate particles such as pebbles and cobbles. Sediment can clog these spaces, cementing the stream bottom, inhibiting the flow of dissolved oxygen, and making the habitat unsuitable for macroinvertebrate species such as stoneflies (Furniss *et al.* 1991, p. 302; Waters 1995, p. 65; Anderson 1996, pp. 6 and 8; Grace 2002, pp. 24–25). The aquatic macroinvertebrate species present at a given stream site are inversely related to the number of stream crossings above that site, with the total number of larval species (including stoneflies) decreasing with an increasing number of stream crossings (Gucinski *et al.* 2001, p. 26).

There are several areas along Elkhorn Creek where roads are causing increased run-off and erosion into the stream; consequently, the USFS rates the watershed as Class II or ''at risk'' (exhibiting moderate integrity relative to its potential condition and at risk of being able to support its beneficial uses) (USFS 2009a, p. 48). Unpaved roads create compacted, bare areas that increase runoff and erosion (USFS 2009a, p. 48). In addition, some road segments near Elkhorn Creek are steep and severely eroded (USFS 2009a, p. 48). Road density in the area averages 3.5 mi of roads per square mi (2.2 km per square km); a road density of 3.7 mi per square mi (2.3 km per square km) is considered high (USFS 2009a, p. A–1). Unpaved roads and jeep trails cross the Elkhorn Creek watershed approximately 20 times, according to topographic maps. One additional road crossing is by a paved road. Unpaved roads, constructed of native materials (such as gravel and sand), are more erosion prone than paved roads. All unpaved road crossings are upstream from Arapahoe snowfly habitat. The closest stream crossing by an unpaved road is approximately 5 to 6 mi (8 to 10 km) upstream of known occupied habitat for the species. Given the distance of the unpaved road crossings from the species' habitat, the sediment may be settling out before reaching occupied habitat. Additionally, during the winter, there is likely less traffic and the ground is frozen, both of which may result in less sediment erosion. We cannot identify any impacts to the species from the available water quality information.

Road salts are a common pollutant in regions with snowy winters and can enter air, soil, groundwater, and surface water from runoff, surface soils, or wind-borne spray (Center for Environmental Excellence 2009, p. 3; Silver *et al.* 2009, p. 942). Stoneflies are very sensitive to water salinity, with adverse effects apparent at low salinities (Hart *et al.* 1991, p. 136). However, the Colorado Department of Transportation concluded that magnesium chloride (the road salt used in Colorado Mountains) is highly unlikely to cause environmental damage at distances greater than 59 ft (18 m) from a roadway (Lewis 1999, p. vii; Center for Environmental Excellence 2009, p. 4). Highway 14 crosses Elkhorn Creek at its confluence with the Cache la Poudre River. Habitat for the Arapahoe snowfly extends from the confluence with the river to approximately 1,640 ft (500 m) upstream (Heinold 2011a, unpaginated). Therefore, based on the Colorado Department of Transportation's conclusion, approximately 3.6 percent of potential habitat may be impacted by the use of road salt. Sampling on December 8, 2011, within this 1,640-ft (500-m) reach in Elkhorn Creek detected very low salinity levels (Sanchez 2001b, p. 2). Based upon the small percentage of stream habitat that could potentially be impacted and the low salinity levels detected during the one sampling event, we do not consider the use of road salt to be a threat to the Arapahoe snowfly.

In conclusion, roads are contributing to an unacceptable sediment load resulting in the Elkhorn watershed being rated as Class II or ''at risk.'' However, these roads are a minimum of 5 mi (8 km) upstream of the species' occupied habitat, and we have limited downstream water quality information in the vicinity of Arapahoe snowfly habitat to confirm or refute impacts. We believe that use of road salts causes minimal impact to the species' habitat. Therefore, at present, we do not consider roads to be a threat to the species.

Water Diversions

Elkhorn Creek and 2 of its tributaries contain 35 water diversion structures, 23 of which have active water rights (CWCB and CDWR 2011, unpaginated). Diversion rights totaling rates of approximately 50 cubic feet per second (cfps) (1.4 cubic meters per second (cmps)) plus an additional volume of approximately 205 acre-feet (252,800 cubic meters) are permitted (CWCB and CDWR 2011, unpaginated). A minimum flow of 2 cfps (0.06 cmps) for Elkhorn Creek is included among the active water rights (CWCB and CDWR 2011, unpaginated). This minimum flow indirectly provides some protection to habitat of the Arapahoe snowfly. However, Elkhorn Creek is described as an intermittent stream (Nelson and Kondratieff 1988, p. 79), and during periods of low precipitation it may be dry, despite in-stream flow water rights. The species' life history includes a diapause stage that allows it to inhabit streams which may become dry during the year due to high temperatures or low flows (Harper and Hynes 1970, pp. 925–926; Stewart and Stark 2002, p. 34).

In the upstream reach of the Cache la Poudre River that includes the confluence of Elkhorn Creek, water inputs and outputs tend to balance out (City of Fort Collins 2008a, p. 5). Further downstream, below the mouth of the Cache la Poudre Canyon, there are numerous water depletions (City of Fort Collins 2008a, pp. 5–6). However, the downstream river reach does not have an impact on the amount of water in Elkhorn Creek.

Several water diversions on Elkhorn Creek or its tributaries have modified or curtailed habitat for the Arapahoe snowfly. However, a minimum flow of 2 cfps for Elkhorn Creek is included among the active water rights, and information on other species of winter stoneflies indicates that diapause enables them to withstand naturally dry summer conditions. Therefore, at present, we do not consider water diversions to be a threat to the species.

Wastewater

The two largest known wastewater inputs within the Elkhorn Creek watershed are a Boy Scout camp (camp) located approximately 5 to 6 mi (8 to 10 km) upstream of known occupied habitat for the Arapahoe snowfly and a meditation and yoga retreat (retreat) located approximately 6 to 7 mi (10 to 11 km) upstream. Both facilities have septic tanks and constructed wetlands or evaporation ponds for treating wastewater prior to discharge into the groundwater basin within the Elkhorn

Creek watershed (North Front Range Water Quality Planning Association 2011, unpaginated). Both the camp and the retreat are building treatment facilities that will further reduce the possibility of wastewater entering Elkhorn Creek (North Front Range Water Quality Planning Association 2011, unpaginated). With these precautions, we conclude that contamination of the Arapahoe snowfly habitat by wastewater from the camp or retreat is unlikely and therefore, not a threat to the species.

None of the streams in the project area are listed on the State Clean Water Act (CWA) section 303(d) list as impaired. However, groundwater monitoring wells installed both up-gradient and down-gradient from the retreat's wastewater treatment site show that all parameters, with the exception of chloride, had their lowest values (i.e., highest water quality) in groundwater up-gradient of the wastewater treatment site and their highest values (i.e., worst water quality) down-gradient of the wastewater treatment site (Zigler 2010, p. 5; Campbell 2011, unpaginated). Data submitted for June 2010, through July 2011, measured the following water quality parameters:

TABLE 2—WATER QUALITY FROM GROUNDWATER MONITORING WELLS (mg/L)

Parameter	Lowest recorded value	Highest recorded value
Total Inorganic Nitrogen	0.09 (up-gradient well)	10.77 (down-gradient well).
Total Coliform	Less than 1 (both wells)	46 (down-gradient well).
Chloride	6 (up-gradient well)	43.9 (up-gradient well).
Sulfate	16.8 (up-gradient well)	132.2 (down-gradient well).
Total Dissolved Solids	142 (up-gradient well)	400 (down-gradient well).

Contaminant inputs can move from groundwater into surface water through the hyporheic zone (Boulton *et al.* 1998, p. 73). Although down-gradient concentrations are elevated, none of the pollutants measured are priority pollutants under the CWA. We cannot make firm conclusions regarding the extent of contamination in the species' habitat caused by wastewater discharge into groundwater 5 to 7 mi (8 to 11 km) upstream without corresponding surface-water quality measurements taken during the summer in lower Elkhorn Creek near known Arapahoe snowfly occupied habitat, when human use upstream is much greater than occurred during the recent winter sampling period. None of the groundwater or surface-water quality information available indicates that nutrient enrichment (high levels of nitrogen or phosphorus), which could lead to algal blooms and decreased dissolved oxygen, is occurring. Wastewater inputs may have modified habitat through nutrient inputs into groundwater within the Elkhorn Creek watershed that could impact the hyporheic zone where Arapahoe snowfly nymphs undergo diapause. However, these inputs occur 5 to 7 mi (8 to 11 km) upstream, and we have only limited water-quality information in the vicinity of the species' known habitat. This data does not indicate nutrient enrichment, but sampling occurred on only one date during the winter, when wastewater inputs are minimal. At present, based upon the best available information, we do not consider wastewater a threat to the species.

Forest Management

In this section we discuss management by the USFS to address the mountain pine beetle; specifically, spraying trees with carbaryl to protect against mountain pine beetle attack and removal of hazardous trees.

Carbaryl is considered one of the most effective and environmentally safe insecticides used to prevent mountain pine beetle attack (Hastings *et al.* 2001, p. 803). Nevertheless, carbaryl poses ecological risks, particularly to honey bees and aquatic invertebrates (U.S. Environmental Protection Agency (EPA) 2004, p. 1). It is rated as ''very highly toxic'' to aquatic invertebrates, with one of the test organisms a species of stonefly (*Chloroperla grammatica*) (EPA 2004, p. 46). Despite no-spray buffer zones around aquatic habitats, pesticides such as carbaryl may be deposited by drift or mobilized by runoff from upland areas (Beyers *et al.* 1995, p. 27). A study described by Beyers *et al.* (1995, p. 32) found that virtually all stoneflies collected from a stream following carbaryl spraying were dead; however, mortality was likely ameliorated by colonization from unaffected organisms of the same species in the substrate or living upstream. In recent years, the USFS has been spraying carbaryl on thousands of individual trees in the Canyon Lakes Ranger District in an effort to control the ongoing mountain pine beetle outbreak (USFS 2009c, 2010b, 2011a, unpaginated). However, none of the sites sprayed to date are within the Elkhorn Creek watershed (Casamassa 2011, pp. 5–6). Pesticide drift into Arapahoe snowfly habitat is not likely due to the distance from sites that are sprayed. We have no information indicating that the Forest Service intends to spray carbaryl in the Elkhorn Creek watershed in the future, and they are committed to following label restrictions whenever using this pesticide. Therefore, at present, we do not consider spraying with carbaryl a threat to the species.

The USFS has been removing hazardous trees within the Canyon Lakes Ranger District that have been killed as a result of the mountain pine beetle outbreak (USFS 2009c, 2010b, 2011a, unpaginated). Hazardous trees in this area represent an imminent threat to public health and safety, and largely consist of lodgepole and ponderosa pine. The high percentage of dead trees also increases the amount of forest fuels available during a potential wildfire (USFS 2010a, p. 1). The USFS estimates that approximately 85 percent (48,000 ac (19,000 ha)) of the Arapaho and Roosevelt National Forests have been infested by mountain pine beetles (USFS 2010a, p. 1). Some restrictions regarding tree removal exist within critical habitat for the threatened Preble's meadow jumping mouse (*Zapus hudsonius preblei*). Designated critical habitat for the mouse includes the downstream reaches of both Elkhorn Creek and Young Gulch that contain potential habitat for the Arapahoe snowfly. Mechanical vegetation and slash treatments within critical habitat will occur only during the mouse's hibernation period (November 1–April 30) (USFS 2010a, p. 15). Hand (chainsaw) treatment of vegetation and slash can occur at any time (USFS 2010a, p. 15). No new stream crossings would be allowed in critical habitat (USFS 2010a, p. 16). Adult Arapahoe snowflies have been collected in late March and early April (Mazzacano undated, p. 2), and could potentially be

active during removal of hazardous trees.

Ponderosa pines are more common in the upper reaches of Elkhorn Creek than in downstream reaches (Nelson and Kondratieff 1988, p. 79). This lessens the likelihood of tree removal occurring in lower stream reaches in the vicinity of Arapahoe snowfly habitat. Nevertheless, upstream removal of hazardous trees for reasons of public safety and fuel reduction could increase erosion and sediment loading due to soil disturbance near riparian areas (USFS 2010a, p. 40). However, leaving dead trees in place would increase the likelihood of large-scale or high-intensity wildfires due to increased fuel loads (USFS 2010a, p. 44). A wildfire in the vicinity of Arapahoe snowfly habitat could result in extirpation of the species through loss of streamside vegetation important for adult Arapahoe snowfly habitat and as a food source for nymphs and increased sedimentation. Therefore, at present, we do not consider removal of hazardous trees to be a threat to the species as this activity lessens the risk of wildfire. Furthermore, any removal of hazardous trees would likely occur upstream of Arapahoe snowfly habitat.

In conclusion, spraying of carbaryl is currently not implemented within the Elkhorn Creek watershed and, therefore, it is not currently a threat to the Arapahoe snowfly. Removal of hazardous trees may occur in upstream reaches of Elkhorn Creek and could potentially contribute to sediment loading in this stream. However, this activity could be more benefit than harm to the species as it reduces the risk of wildfire. Therefore, at present, we do not consider the forest management practice of hazardous tree removal to be a threat to the species.

Grazing

The USFS manages one active cattle grazing allotment in the Elkhorn Creek watershed (Elkhorn-Lady Moon allotment) (Casamassa 2011, p. 5). The Elkhorn-Lady Moon allotment permits stocking of 75 cow-calf pairs from June 1 through September 30 (USFS 2006a, p. 4). Grazing has been discontinued on a second allotment (Seven Mile allotment) that also includes part of the Elkhorn Creek watershed (USFS 2006a, p. 9).

The effects of cattle grazing on streams have been well documented in the western United States (Clary and Webster 1989, p. 1; Chaney *et al.* 1993, p. 6; Fleischner 1994, p. 629; Belsky *et al.* 1999, p. 419; Agouridis *et al.* 2005, p. 592; Coles-Ritchie *et al.* 2007, p. 733). Cattle are attracted to, and tend to loaf in riparian areas (Roath and Krueger 1982, p. 100; Chaney *et al.* 1993, p. 6; Fleischner 1994, p. 629; Leonard *et al.* 1997, p. 11; Coles-Ritchie *et al.* 2007, p. 738). Grazing cattle can change watershed hydrology, alter stream channel morphology, erode soils, destroy riparian vegetation, impair water quality, and negatively affect aquatic species (Fleischner 1994, p. 635; Agouridis *et al.* 2005, p. 592). Water quality impacts can include increased nutrient levels, bacteria counts, protozoa, sediment loads, and water temperatures and decreased levels of dissolved oxygen (Belsky *et al.* 1999, p. 421). Cattle-impacted streams usually have unstable, trampled streambanks that become significant sources of sediments when they erode, resulting in sediment filling the spaces between cobble in the streambed (embedded streambed), which results in less accessibility to macroinvertebrates, like the Arapahoe snowfly, that use streambed habitat (Braccia and Voshell 2007, p. 198). Stream channel morphology impacts can include decreased channel and streambank stability during floods, and decreased bed gravel. Hydrology impacts can include decreased late-season flows and water table levels (Belsky *et al.* 1999, pp. 421–422). Impacts to riparian vegetation can include decreased abundance of submerged and emergent higher plants and increased algae (Belsky *et al.* 1999, p. 422). All of these changes can alter the diversity, abundance, and species composition of invertebrate populations, particularly those that require cleaner and colder waters and coarser substrates (Belsky *et al.* 1999, p. 424).

The percentage of stoneflies and other sensitive taxa in a stream has a negative relationship with cattle density (Braccia and Voshell 2007, p. 196; McIver and McInnis 2007, pp. 298 and 301). Higher stocking rates result in greater impacts to streams. Livestock excrement elevates stream water concentrations of inorganic phosphorus and nitrogen, which increases growth of filamentous algae and production by microbes that can reduce dissolved oxygen concentrations (Strand and Merrit 1999, p. 17). Reduced concentrations of dissolved oxygen can adversely affect stonefly nymphs, which have high dissolved oxygen requirements (Williams and Feltmate 1992, p. 39).

A Colorado study in the South Platte River watershed (which includes the Cache la Poudre River) found significantly higher counts of fecal bacteria in stream water at stocking rates of 0.38 cow per ac (0.94 cow per ha) or more (Gary *et al.* 1983, p. 128). As stated above, the grazing allotment on Elkhorn Creek has a much lower stocking rate that permits stocking 75 cow-calf pairs from June 11 through September 30 on 11,605 ac (4,700 ha), or 0.006 cow-calf pair per ac (0.02 cow-calf pair per ha) (USFS 2006b, p. 34; 2007, p. 12; 2011b, p. 1). If only primary range (1,975 ac (800 ha)) within the Elkhorn-Lady Moon allotment, where the majority of grazing occurs, is considered, the stocking rate is higher (0.04 cow-calf pair per ac (0.09 cow-calf pair per ha)), but still much less than the stocking rate of 0.38 cow per ac (0.94 cow per ha) from the study. Therefore, fecal bacteria counts in Elkhorn Creek may not be as elevated as at the study site. Low concentrations (less than established water quality standards) of *E. coli* bacteria have been detected in the Cache la Poudre River during the summer, perhaps due to increased recreation and cattle grazing in the watershed, combined with warmer stream water temperatures that can enhance bacterial survival (Collins and Sprague 2005, p. 1). However, the source of *E. coli* detected in the river is not known.

The Elkhorn-Lady Moon allotment management plan states: (1) Livestock will graze a pasture only once in any given year; (2) livestock will be removed when utilization reaches 45 percent on satisfactory upland range or 30 percent on unsatisfactory range; (3) livestock will be removed when stream reaches rated as functional-at-risk reach an average of 6 in. (150 mm) stubble height on tall sedges; and (4) livestock will be removed when streambank disturbance (trampling, exposed soils) reaches 20 to 25 percent of the key area stream reach (USFS 2007, p. 3; 2011b, pp. 1–3). The current grazing plan allows for a five-pasture rotational system (USFS 2007, p. 4). The allotment plan notes that lower reaches of Elkhorn Creek within the allotment have varying degrees of grazing impacts including heavily grazed sedges and hoof shearing along portions of the streambank, resulting in a marginal proper functioning rating (USFS 2007, p. 10). At its closest point, the Elkhorn-Lady Moon allotment is approximately 6 to 7 mi (10 to 11 km) upstream from where the Arapahoe snowfly has been found. Without surface-water quality measurements, taken during the summer grazing season and collected in lower Elkhorn Creek where there is known Arapahoe snowfly habitat, we cannot make firm conclusions regarding the extent of contamination in the species' habitat caused by grazing 6 to 7 mi (10 to 11 km) or further upstream.

In conclusion, grazing may have modified habitat through sediment loading and nutrient inputs into upstream reaches of the Elkhorn Creek

watershed. However, stocking rates are light, these inputs occur at least 6 to 7 mi (10 to 11 km) upstream from where the Arapahoe snowfly has been found, and there is no water quality information from the summer grazing season in the vicinity of the species' known habitat to confirm or refute nutrient enrichment. Therefore, at present, we do not consider grazing to be a threat to the species.

Management Plans and Other Conservation Measures

In some instances, there may be conservation measures or management plans that are non-regulatory in nature which may provide benefits to a species.

The CNHP has proposed a Potential Conservation Area (PCA) for the species that would encompass approximately 5,000 ac (2,000 ha) and include downstream portions of both Elkhorn Creek and Young Gulch (Colorado State University 2005, p. 2). This PCA has a Biodiversity Significance Rank of B1 for outstanding biodiversity significance. This is the highest level of biological diversity that can be assigned to a site. A PCA can provide planning and management guidance, but infers no legal status, and this PCA has only been proposed.

The State of Colorado has had minimum in-stream flow water rights of 2 cfps (0.06 cmps) in Elkhorn Creek since 1978 (CWCB 2010, p. 10). This minimum flow indirectly provides some protection to habitat of the Arapahoe snowfly. However, Elkhorn Creek is described as an intermittent stream (Nelson and Kondratieff 1988, p. 79), and during periods of low precipitation it may be dry, despite in-stream flow water rights. Therefore, minimum flow requirements may be of limited benefit to the species.

Both stream reaches where the Arapahoe snowfly has been located are included in critical habitat for the Preble's meadow jumping mouse, designated on December 15, 2010 (75 FR 78430). Critical habitat extends 394 ft (120 m) from the edges of both streams, and is part of the Cache la Poudre River unit of critical habitat encompassing approximately 4,929 ac (1,995 ha) and 51 mi (82 km) of the river and its tributaries. Section 7(a)(2) of the Act requires Federal agencies to confer with us on any action funded, authorized, or carried out by a Federal agency that is likely to adversely affect the continued existence of the mouse or its designated critical habitat. Examples of specific activities that may adversely affect critical habitat and, therefore, require consultation include: Land clearing; road construction; bank stabilization; intensive grazing; water diversions; changes to inputs of water, sediment, and nutrients; or any activity that significantly and detrimentally alters water quantity.

This designation currently provides some indirect protection to the Arapahoe snowfly. The bodies of the streams are not included as critical habitat, although activities in the streams such as water diversions and changes to inputs of water, sediment, and nutrients such as might be caused by hazardous tree removal will require consultation if those activities may adversely affect critical habitat. Actions that do not affect the Preble's meadow jumping mouse or its habitat, or do not involve a Federal agency action, would not require consultation. Federal actions that occurred prior to 2003 did not require consultation because critical habitat for the mouse had not yet been designated. Designation of critical habitat for the Preble's meadow jumping mouse does not protect Arapahoe snowfly occupied habitat from the potential future effects of climate change, nor does it protect the body of Elkhorn Creek from some impacts to water quality that could likely occur without impacting designated critical habitat.

Summary of Factor A

Potential present and threatened future habitat modification caused by climate change is a threat to the Arapahoe snowfly. Climate change is potentially modifying Arapahoe snowfly habitat in several ways including: (1) The threatened reduction in snowpack; (2) the present increase in temperature as well as continued threatened increases in future years; (3) the present outbreak of mountain pine beetle in ponderosa pine; and (4) the threatened increased likelihood of wildfire. Although available information indicates that climate change could potentially be modifying the species' habitat, we do not have any information that indicates this is currently threatening the species. However, the impacts from each of these stressors are expected to increase into the future. Therefore, we consider threatened habitat modification due to climate change to be a threat to the species.

Development in the Elkhorn Creek watershed includes the construction and use of numerous roads and trails, causing sedimentation that has resulted in a watershed rated as Class II or ''at risk.'' Water diversions from Elkhorn Creek and wastewater inputs into groundwater in the Elkhorn Creek watershed also may be impacting Arapahoe snowfly habitat. However, the extent of impact in the downstream reach where the species occurs has not been determined. Therefore, at present, we do not consider development a threat to the species.

Forest management by the USFS regarding the ongoing mountain pine beetle epidemic includes carbaryl spraying of lodgepole and ponderosa pines to prevent infestations and removal of dead trees that are a potential hazard. However, carbaryl spraying is not occurring in the Elkhorn Creek watershed, and we consider tree removal to pose less of a threat to the Arapahoe snowfly than the increased risk from wildfire if dead trees are not removed. Therefore, at present, we do not consider forest management practices to be a threat to the species.

Some grazing occurs in upstream reaches of the Elkhorn Creek watershed. However, stocking rates are light, these inputs occur at least 6 to 7 mi (10 to 11 km) upstream from where the Arapahoe snowfly has been found, and we have no water quality information in the vicinity of the species' known habitat to confirm or refute nutrient enrichment. Therefore, at present, we do not consider grazing to be a threat to the species.

There are management plans or other conservation measures that directly or indirectly protect the species, to some degree. However, these cannot protect against habitat modification due to climate change.

Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

We are not aware of any threats due to overutilization of the Arapahoe snowfly for any commercial, recreational, scientific, or educational purposes at this time. We are aware that specimens have been collected for scientific purposes to describe the species and determine its distribution and abundance (Heinold and Kondratieff 2010, p. 281; Heinold 2011d, unpaginated). However, we have no information that suggests these collections were or are occurring at a level that impacts the overall status of the species. Therefore, at present, we do not consider overutilization to be a threat to the species.

Factor C. Disease or Predation

We are not aware of any diseases that affect the Arapahoe snowfly. Therefore, at present, we do not consider disease to be a threat to the species. We presume that Arapahoe snowfly nymphs and adults may occasionally be subject to predation by certain fish species, such as brook trout (*Salvelinus*

fontinalis) or by certain bird species, such as the American dipper (*Cinclus mexicanus*). Both of these species are known to be present in Elkhorn Creek and to consume invertebrates (USFS 2006b, p. 69; eBird 2011, unpaginated). However, nymphs may be protected from most predation due to burrowing into the streambed to undergo diapause, leaving terrestrial adults as the most likely potential prey. However, we have no information that any predation is a threat to the species. Therefore, at present, we do not consider predation to be a threat to the species.

Factor D. Inadequacy of Existing Regulatory Mechanisms

The Act requires us to examine the adequacy of existing regulatory mechanisms with respect to ongoing and foreseeable threats that place the Arapahoe snowfly at risk of becoming either endangered or threatened. The species currently receives no direct protection under Federal, State, or local law.

The Arapahoe snowfly is designated as ''critically imperiled'' at both the State and global level by Colorado's Natural Heritage Program (CNHP) and NatureServe, respectively (NatureServe 2009, p. 1). However, this designation does not provide any legal protection for the species or its habitat. See Factor A for a discussion of the CNHP. The Arapahoe snowfly is designated as a ''species of greatest conservation need'' by the Colorado Division of Wildlife (CDOW), based upon its global and State ranking by NatureServe and the CNHP (CDOW 2006, pp. 17 and 20). However, this designation also confers no protection to the species from the threats identified in Factors A and E.

The Arapahoe snowfly occurs on USFS lands and is indirectly protected by Federal laws and regulations mandating how USFS lands are managed. The Land and Resource Management Plan (LRMP) for the Arapaho and Roosevelt National Forests and Pawnee National Grassland was prepared in accordance with the National Forest Management Act of 1976 (NFMA), the regulatory mechanism directing the administration and management of national forests. One of the goals of the LRMP is to restore, protect, and enhance habitats for endangered, threatened, and proposed species listed in accordance with the Act, as well as sensitive species appearing on the regional sensitive species list to contribute to their stabilization and full recovery (USFS 1997, p. 17). Habitat on USFS lands is managed to help assure that species whose viability is a concern survive throughout their range, that populations increase or stabilize, or that threats are eliminated (USFS 1997, p. 7). However, the species is not currently listed under the Act, and it is not on the USFS sensitive species list. Consequently, it currently receives no direct protection under the USFS LRMP. The management authorities that USFS has available are not adequate to protect the species from the primary threats of climate change and small population size (see Factor E).

All Federal agencies are required to adhere to the National Environmental Policy Act (NEPA) of 1970 (42 U.S.C. 4321 *et seq.*) for projects they fund, authorize, or carry out. The Council on Environmental Quality's regulations for implementing NEPA (40 CFR 1500–1518) state that when preparing environmental impact statements, agencies must include a discussion on the environmental impacts of the various project alternatives, any adverse environmental effects that cannot be avoided, and any irreversible or irretrievable commitments of resource involved. Additionally, activities on non-Federal lands are subject to NEPA if there is a Federal action. The NEPA is a disclosure law, and does not require subsequent minimization or mitigation measures by the Federal agency involved. Although Federal agencies may include conservation measures for sensitive species as a result of the NEPA process, any such measures are typically voluntary in nature and not required by the statute.

On December 15, 2009, the EPA published in the **Federal Register** (74 FR 66496) a rule titled, ''Endangerment and Cause or Contribute Findings for Greenhouse Gases under Section 202(a) of the Clean Air Act.'' In this rule, the EPA Administrator found that the current and projected concentrations of the six long-lived and directly emitted greenhouse gases—carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride—in the atmosphere threaten the public health and welfare of current and future generations; and that the combined emissions of these greenhouse gases from new motor vehicles and new motor vehicle engines contribute to the greenhouse gas pollution that threatens public health and welfare (74 FR 66496). In effect, the EPA has concluded that the greenhouse gases linked to climate change are pollutants, whose emissions can now be subject to the Clean Air Act (42 U.S.C. 7401 *et seq.;* see 74 FR 66496). However, specific regulations to limit greenhouse gas emissions were only proposed in 2010 and, therefore, cannot be considered an existing regulatory mechanism. At present, we have no basis to conclude that implementation of the Clean Air Act in the foreseeable future (40 years, based on global climate projections) will substantially reduce the current rate of global climate change through regulation of greenhouse gas emissions. Thus, we conclude that the Clean Air Act is not designed to address the primary threats to the Arapahoe snowfly, namely the anticipated loss of thermally and hydrologically suitable habitat as a result of increasing water temperatures and reduced snowpack changes that result from climate change in the Elkhorn Creek watershed, Colorado.

Combined with the threats discussed under Factor A, the species' small population size makes the species more vulnerable to extinction due to demographic stochasticity, environmental stochasticity, and random catastrophe (discussed under Factor E). We are not aware of any regulatory mechanisms that address threats caused by small population size for this species.

Summary of Factor D

There are no regulatory mechanisms that directly protect the Arapahoe snowfly at the Federal, State, or local level. The species is indirectly protected by Federal laws and regulations mandating how USFS lands are managed. These regulatory mechanisms cannot protect against climate change or a small population size (discussed under Factor E). We consider habitat loss and modification resulting from the environmental changes due to climate change to constitute a primary threat to the species. The United States is only now beginning to address global climate change through the regulatory process (e.g., Clean Air Act). We have no information on what regulations may eventually be adopted and when implemented. We are not aware of any regulatory mechanisms that address the changes in Arapahoe snowfly habitat that are occurring or likely to occur in the future. Additionally, we are not aware of any regulations that address threats caused by small population size.

Factor E. Other Natural or Manmade Factors Affecting Its Continued Existence

Under this factor we consider the small population size of the Arapahoe snowfly. As discussed in the section on Historic Distribution, the species has been extirpated from Young Gulch, one of the two streams where it was known to occur. Based upon the best available

information, it appears to currently have an extremely narrow distribution near the confluence of Elkhorn Creek with the Cache la Poudre River, and appears rare within its only known occupied habitat.

A species may be considered rare because of a limited geographical range, specialized habitat, or small population size (Primack 1998, p. 176). The Arapahoe snowfly appears to have a very limited occupied range (approximately 1,640 ft (500 m) along 1 stream) and a very small population size (13 males and 2 females have been collected in the past 25 years). It has several characteristics typical of species vulnerable to extinction including: (1) A very narrow geographical range; (2) only one known population; (3) a small population size; (4) an ineffective disperser; (5) a seasonal migrant depending on two or more distinct habitat types to complete its life cycle; and (6) characteristically found in stable, pristine environments (Primack 1998, pp. 178–187).

Extinction may be caused by demographic stochasticity due to chance realizations of individual probabilities of death and reproduction, particularly in small populations (Shaffer 1981, p. 131; Lande 1993, pp. 911–912). Environmental stochasticity can result in extinction through a series of small or moderate perturbations that affect birth and death rates within a population (Shaffer 1981, p. 131; Lande 1993, p. 912). Lastly, extinction can be caused by random catastrophes (Shaffer 1981, p. 131; Lande 1993, p. 912). The Arapahoe snowfly is vulnerable to extinction due to: (1) Demographic stochasticity due to its small population size; (2) environmental stochasticity due to continued small perturbations caused by ongoing modification and curtailment of its habitat and range; and (3) the chance of random catastrophe such as wildfire.

Small populations also can be vulnerable due to a lack of genetic diversity (Shaffer 1981, p. 132). We have no information regarding genetic diversity of the Arapahoe snowfly. A minimum viable population (MVP) will vary depending on the species. An MVP of 1,000 may be adequate for species of normal genetic variability, and an MVP of 10,000 should permit long-term persistence and continued genetic diversity (Thomas 1990, p. 325). These estimates should be increased by at least 1 order of magnitude (to 10,000 and 100,000) for insects because they usually have greater population variability (Thomas 1990, p. 326). Based upon available information, the Arapahoe snowfly likely does not meet these minimum population criteria for maintaining genetic diversity.

Summary of Factor E

We consider the Arapahoe snowfly to be rare due to its extremely limited range, a single known extant population, and its small population size. It also is an ineffective disperser, a seasonal migrant depending on two or more distinct habitat types to complete its life cycle, and it requires a pristine environment to carry out life history functions. The restricted range of the species does not necessarily constitute a threat in itself. However, combined with the threats discussed under Factor A, the species' small population size makes the species more vulnerable to extinction due to demographic stochasticity, environmental stochasticity, and random catastrophe. The presence of specific threats including climate change increases the vulnerability of this small population. Therefore, at present, we consider its small population size to be a threat to the species.

Finding

As required by the Act, we considered the five factors in assessing whether the Arapahoe snowfly is threatened or endangered throughout all of its range. We examined the best scientific and commercial information available regarding the past, present, and future threats faced by the species. We reviewed the petition, information available in our files, other available published and unpublished information, and we consulted with recognized species experts and other Federal and State agencies.

This status review identified threats to the Arapahoe snowfly attributable to Factors A, D, and E. Potential present and threatened habitat modification caused by climate change is impacting the Elkhorn Creek watershed. We also find that the species is at risk due to its small population size. Existing regulatory mechanisms are not designed to protect the species from threats identified under Factors A and E. The following table summarizes the conclusions from our five factor analysis:

TABLE 3—SUMMARY OF THE ACT'S FIVE FACTOR ANALYSIS FOR THE ARAPAHOE SNOWFLY, ELKHORN CREEK

Factor/stressor	Threat conclusion
Factor A:	
Climate Change:	
Reduced Snowpack	Future threat.
Increased Temperature	Ongoing and future threat.
Mountain Pine Beetle	Ongoing and future threat.
Wildfire	Future threat.
Recreational Use	Present, but not a threat.
Development:	
Roads	Present, but not a threat.
Water Diversions	Present, but not a threat.
Wastewater Inputs	Present, but not a threat.
Forest Management:	
Carbaryl Spraying	Not present, not a threat.
Hazardous Tree Removal	Present, but not a threat.
Grazing	Present, but not a threat.
Factor B:	
Overutilization	Present, but not a threat.
Factor C:	
Disease	Not present, not a threat.
Predation	Present, but not a threat.
Factor D:	
Inadequate Regulatory Mechanisms	No mechanisms existing or designed to address threats.
Factor E:	

TABLE 3—SUMMARY OF THE ACT'S FIVE FACTOR ANALYSIS FOR THE ARAPAHOE SNOWFLY, ELKHORN CREEK—Continued

Factor/stressor	Threat conclusion
Small Population Size	Ongoing and future threat.

On the basis of the best scientific and commercial information available, we find that the petitioned action is warranted. We will make a determination on the status of the species as threatened or endangered when we do a proposed listing determination. However, as explained in more detail below, an immediate proposal of a regulation implementing this action is precluded by higher priority listing actions, and expeditious progress is being made to add or remove qualified species from the Lists of Endangered and Threatened Wildlife and Plants.

We reviewed the available information to determine if the existing and foreseeable threats render the species at risk of extinction now such that issuing an emergency regulation temporarily listing the Arapahoe snowfly under section 4(b)(7) of the Act is warranted. We determined that issuing an emergency regulation temporarily listing the species is not warranted for this species at this time, because the species is not under immediate threat of extinction. Impacts from climate change, a small population size, and lack of adequate regulatory mechanisms are cumulative, and will develop in intensity and scope over time. However, if at any time we determine that issuing an emergency regulation temporarily listing the Arapahoe snowfly is warranted, we will initiate this action at that time.

Listing Priority Number

The Service adopted guidelines on September 21, 1983 (48 FR 43098), to establish a rational system for utilizing available resources for the highest priority species when adding species to the Lists of Endangered or Threatened Wildlife and Plants or reclassifying species listed as threatened to endangered status. These guidelines, titled ''Endangered and Threatened Species Listing and Recovery Priority Guidelines,'' address the magnitude and immediacy of threats and the level of taxonomic distinctiveness by assigning priority in descending order to monotypic genera (genus with one species), full species, and subspecies (or equivalently distinct population segments of vertebrates). Listing Priority Numbers (LPNs) range from 1 to 12, with an LPN of 1 representing the highest priority. We assign the Arapahoe snowfly an LPN of 5 based on our finding that this is a species facing threats that are of high magnitude, but those threats are not imminent. These threats include the present or threatened destruction, modification, or curtailment of its habitat, the inadequacy of existing regulatory mechanisms, and its small population size. Our rationale for assigning the Arapahoe snowfly an LPN of 5 is outlined below.

Under the Service's LPN Guidance, the magnitude of threat is the first criterion we look at when establishing a listing priority. The guidance indicates that species with the highest magnitude of threat are those species facing the greatest threats to their continued existence. These species receive the highest priority. Threats to the Arapahoe snowfly are of high magnitude because climate change, inadequate regulatory mechanisms, and a small population size occur throughout the range of the species. The species has not been located in Young Gulch since 1986 and, despite repeated searches, has not been located in other nearby tributaries, leaving one small known population along a reach of Elkhorn Creek of approximately 1,640 ft (500 m).

Under our LPN Guidance, the second criterion we consider in assigning a listing priority is the immediacy of threats. This criterion is intended to ensure that the species facing actual, identifiable threats are given priority over those species for which threats are only potential or species that are intrinsically vulnerable, but are not known to be presently facing such threats. We consider the threats to the Arapahoe snowfly overall to be non-imminent because: (1) Although increases in temperature in excess of those known to adversely impact stoneflies have been documented in the northern Front Range of Colorado, we have no information to indicate that the species has actually been adversely affected by these temperatures; and (2) a single small population with a very limited range results in increased vulnerability to extirpation caused by threats from climate change and sedimentation; however, the species has been located in Elkhorn Creek on three occasions since 1987. While regulatory mechanisms are currently inadequate to protect the species from the previously described threats, these impacts do not appear to be affecting the existing population in Elkhorn Creek, though they may be precluding reestablishment in the Young Gulch watershed.

These actual, identifiable threats are covered in detail under the discussion of Factors A, D, and E of this finding. We previously acknowledged that few studies have been conducted on the Arapahoe snowfly due to its rarity, the difficulties in distinguishing among species of snowfly nymphs, and difficulties of sampling under ice in winter. Consequently, most of the best available information regarding specific impacts caused by the various threats comes from our knowledge about stoneflies (order Plecoptera) in general, other members of winter stonefly (family Capniidae), and other species of snowfly (genus *Capnia*). Due to the extreme rarity of the Arapahoe snowfly, species-specific research is not likely to be conducted, and we do not consider it appropriate to defer this finding until research is conducted. The available data shows adverse impacts from these threats for closely related species.

The third criterion in our LPN guidance is intended to devote resources to those species representing highly distinctive or isolated gene pools as reflected by taxonomy. The Arapahoe snowfly is a valid taxon at the species level and, therefore, receives a higher priority than a subspecies, but a lower priority than a species in a monotypic genus. The Arapahoe snowfly faces high-magnitude, nonimminent threats, and is a valid taxon at the species level. Thus, in accordance with our LPN guidance, we have assigned the Arapahoe snowfly an LPN of 5.

We will continue to monitor the threats to the Arapahoe snowfly and the species' status on an annual basis, and should the magnitude or the imminence of the threats change, we will revisit our assessment of the LPN.

Work on a proposed listing determination for the Arapahoe snowfly is precluded by work on higher priority listing actions with absolute statutory, court-ordered, or court-approved deadlines and final listing determinations for those species that were proposed for listing with funds from Fiscal Year 2012. This work includes all the actions listed in the

tables below under expeditious progress.

Preclusion and Expeditious Progress

Preclusion is a function of the listing priority of a species in relation to the resources that are available and the cost and relative priority of competing demands for those resources. Thus, in any given fiscal year (FY), multiple factors dictate whether it will be possible to undertake work on a listing proposal regulation or whether promulgation of such a proposal is precluded by higher priority listing actions. We make our determinations of preclusion on a nationwide basis to ensure that the species most in need of listing will be addressed first and also because we allocate our listing budget on a nationwide basis.

Available Resources

Congress identified the availability of resources as the only basis for deferring the initiation of a rulemaking that is warranted. The Conference Report accompanying Public Law 97–304 (Endangered Species Act Amendments of 1982), which established the current statutory deadlines and the warranted-but-precluded finding, states that the amendments were ''not intended to allow the Secretary to delay commencing the rulemaking process for any reason other than that the existence of pending or imminent proposals to list species subject to a greater degree of threat would make allocation of resources to such a petition [that is, for a lower-ranking species] unwise.'' Although that statement appeared to refer specifically to the ''to the maximum extent practicable'' limitation on the 90-day deadline for making a ''substantial information'' finding, that finding is made at the point when the Service is deciding whether or not to commence a status review that will determine the degree of threats facing the species, and therefore the analysis underlying the statement is more relevant to the use of the warranted-but-precluded finding, which is made when the Service has already determined the degree of threats facing the species and is deciding whether or not to commence a rulemaking.

The resources available for listing actions are determined through the annual Congressional appropriations process. The appropriation for the Listing Program is available to support work involving the following listing actions: Proposed and final listing rules; 90-day and 12-month findings on petitions to add species to the Lists of Endangered and Threatened Wildlife and Plants (Lists) or to change the status of a species from threatened to endangered; annual ''resubmitted'' petition findings on prior warranted-but-precluded petition findings as required under section 4(b)(3)(C)(i) of the Act; critical habitat petition findings; proposed and final rules designating critical habitat; and litigation-related, administrative, and program-management functions (including preparing and allocating budgets, responding to Congressional and public inquiries, and conducting public outreach regarding listing and critical habitat). The work involved in preparing various listing documents can be extensive and may include, but is not limited to: Gathering and assessing the best scientific and commercial data available and conducting analyses used as the basis for our decisions; writing and publishing documents; and obtaining, reviewing, and evaluating public comments and peer review comments on proposed rules and incorporating relevant information into final rules. The number of listing actions that we can undertake in a given year also is influenced by the complexity of those listing actions; that is, more complex actions generally are more costly. The median cost for preparing and publishing a 90-day finding is $39,276; for a 12-month finding, $100,690; for a proposed rule with critical habitat, $345,000; and for a final listing rule with critical habitat, $305,000.

We cannot spend more than is appropriated for the Listing Program without violating the Anti-Deficiency Act (see 31 U.S.C. 1341(a)(1)(A)). In addition, in FY 1998 and for each fiscal year since then, Congress has placed a statutory cap on funds that may be expended for the Listing Program, equal to the amount expressly appropriated for that purpose in that fiscal year. This cap was designed to prevent funds appropriated for other functions under the Act (for example, recovery funds for removing species from the Lists), or for other Service programs, from being used for Listing Program actions (see House Report 105–163, 105th Congress, 1st Session, July 1, 1997).

Since FY 2002, the Service's budget has included a critical habitat subcap to ensure that some funds are available for other work in the Listing Program (''The critical habitat designation subcap will ensure that some funding is available to address other listing activities'' (House Report No. 107–103, 107th Congress, 1st Session, June 19, 2001)). In FY 2002 and each year until FY 2006, the Service has had to use virtually the entire critical habitat subcap to address court-mandated designations of critical habitat, and consequently none of the critical habitat subcap funds have been available for other listing activities. In some FYs since 2006, we have been able to use some of the critical habitat subcap funds to fund proposed listing determinations for high-priority candidate species. In other FYs, while we were unable to use any of the critical habitat subcap funds to fund proposed listing determinations, we did use some of this money to fund the critical habitat portion of some proposed listing determinations so that the proposed listing determination and proposed critical habitat designation could be combined into one rule, thereby being more efficient in our work. At this time, for FY 2012, we are using some of the critical habitat subcap funds to fund proposed listing determinations.

Through the listing cap, the critical habitat subcap, and the amount of funds needed to address court-mandated critical habitat designations, Congress and the courts have in effect determined the amount of money available for other listing activities nationwide. Therefore, the funds in the listing cap, other than those needed to address court-mandated critical habitat for already listed species, set the limits on our determinations of preclusion and expeditious progress.

Preclusion

For FY 2012, on December 23, 2011, Congress passed a Consolidated Appropriations Act (Pub. L. 112–74) which provides funding through the end of the fiscal year. The Service has $20,902,000 for the listing program. Of that, no more than $7,472,000 is available for determinations of critical habitat for already listed species. In addition, while no more than $1,500,000 can be used for listing, delisting, and reclassification actions for foreign species, $500,000 is being allocated for work on foreign species. The Service thus has $12,930,000 available to fund work on listing actions other than critical habitat designation and work on foreign species. The following are categories of work for which listing funds are being used: (1) Compliance with court orders and court-approved settlement agreements requiring that petition findings or listing determinations be completed by a specific date; (2) section 4 (of the Act) listing actions with absolute statutory deadlines; and (3) essential litigation-related, administrative, and listing program-management functions. In FY 2010, the Service received many new petitions and a single petition to list 404 species, increasing our workload significantly. Additionally, as a result of a settlement agreement, we are

implementing a work plan that establishes a framework and schedule for resolving by September 30, 2016, the status of all of the species that the Service had determined to be qualified as of the 2010 Candidate Notice of Review. The Service submitted such a work plan to the U.S. District Court for the District of Columbia in *In re Endangered Species Act Section 4 Deadline Litigation,* No. 10–377 (EGS), MDL Docket No. 2165 (D. DC May 10, 2011), and obtained the court's approval. In FY 2012, our entire listing budget has been allocated for work in the above categories, primarily including work under this settlement agreement. The budget allocations for each specific listing action are identified in the Service's FY 2012 Allocation Tables (part of our record). Thus, funding a proposed listing determination for the Arapahoe snowfly is precluded by our lack of available resources.

Based on our September 21, 1983, guidelines for assigning an LPN for each candidate species (48 FR 43098), we assign each candidate an LPN of 1 to 12, depending on the magnitude of threats (high or moderate to low), immediacy of threats (imminent or nonimminent), and taxonomic status of the species (in order of priority: Monotypic genus (a species that is the sole member of a genus); species; or part of a species (subspecies, or distinct population segment)). The lower the listing priority number, the higher the listing priority (that is, a species with an LPN of 1 would have the highest listing priority). A species with a higher LPN would generally be precluded from listing by species with lower LPNs, unless work on a proposed rule for the species with the higher LPN can be combined with work on a proposed rule for other high-priority species. This is not the case for Arapahoe snowfly. Thus, in addition to being precluded by the lack of available resources, the Arapahoe snowfly with an LPN of 5 is also precluded by work on proposed listing determinations for those candidate species with a higher listing priority.

Finally, proposed rules for reclassification of threatened species to endangered species are lower priority, because as listed species, they are already afforded the protections of the Act and implementing regulations. However, for efficiency reasons, we may choose to work on a proposed rule to reclassify a species to endangered if we can combine this with work that is subject to a court-determined deadline.

With our workload much larger than the amount of funds we have to accomplish it, it is important that we be as efficient as possible in our listing process. Therefore, as we implement our listing work plan and work on proposed rules for the highest priority species in the next several years, we are preparing multi-species proposals when appropriate, and these may include species with lower priority if they overlap geographically or have the same threats as a species with an LPN of 2. In addition, we take into consideration the availability of staff resources when we determine which high-priority species will receive funding to minimize the amount of time and resources required to complete each listing action.

Expeditious Progress

As explained above, a determination that listing is warranted but precluded must also demonstrate that expeditious progress is being made to add and remove qualified species to and from the Lists of Endangered and Threatened Wildlife and Plants. As with our ''precluded'' finding, the evaluation of whether progress in adding qualified species to the Lists has been expeditious is a function of the resources available for listing and the competing demands for those funds. (Although we do not discuss it in detail here, we are also making expeditious progress in removing species from the list under the Recovery program in light of the resource available for delisting, which is funded by a separate line item in the budget of the Endangered Species Program. To date, during FY 2012, we completed delisting rules for one species.) Given the limited resources available for listing, we find that we are making expeditious progress in FY 2012 in the Listing Program. This progress included preparing and publishing the following determinations:

FY 2012 COMPLETED LISTING ACTIONS

Publication date	Title	Actions	FR pages
10/4/2011	12-Month Finding on a Petition to List the Lake Sammamish Kokanee Population of *Oncorhynchus nerka* as an Endangered or Threatened Distinct Population Segment.	Notice of 12-month petition finding, Not warranted.	76 FR 61298–61307.
10/4/2011	12-Month Finding on a Petition to List *Calopogon oklahomensis* as Threatened or Endangered.	Notice of 12-month petition finding, Not warranted.	76 FR 61307–61321.
10/4/2011	12-Month Finding on a Petition To List the Amargosa River Population of the Mojave Fringe-toed Lizard as an Endangered or Threatened Distinct Population Segment.	Notice of 12-month petition finding, Not warranted.	76 FR 61321–61330.
10/4/2011	Endangered Status for the Alabama Pearlshell, Round Ebonyshell, Southern Sandshell, Southern Kidneyshell, and Choctaw Bean, and Threatened Status for the Tapered Pigtoe, Narrow Pigtoe, and Fuzzy Pigtoe; with Critical Habitat.	Proposed Listing Endangered	76 FR 61482–61529.
10/4/2011	90-Day Finding on a Petition To List 10 Subspecies of Great Basin Butterflies as Threatened or Endangered with Critical Habitat.	Notice of 90-day Petition Finding, Substantial and Not substantial.	76 FR 61532–61554.
10/5/2011	90-Day Finding on a Petition to List 29 Mollusk Species as Threatened or Endangered With Critical Habitat.	Notice of 90-day Petition Finding, Substantial and Not substantial.	76 FR 61826–61853.
10/5/2011	12-Month Finding on a Petition to List the Cactus Ferruginous Pygmy-Owl as Threatened or Endangered with Critical Habitat.	Notice of 12-month petition finding, Not warranted.	76 FR 61856–61894.
10/5/2011	12-Month Finding on a Petition to List the Northern Leopard Frog in the Western United States as Threatened.	Notice of 12-month petition finding, Not warranted.	76 FR 61896–61931.
10/6/2011	Endangered Status for the Ozark Hellbender Salamander	Final Listing, Endangered	76 FR 61956–61978.
10/6/2011	Red-Crowned Parrot	Notice of 12-month petition finding, Warranted but precluded.	76 FR 62016–62034.
10/6/2011	12-Month Finding on a Petition to List Texas Fatmucket, Golden Orb, Smooth Pimpleback, Texas Pimpleback, and Texas Fawnsfoot as Threatened or Endangered.	Notice of 12-month petition finding, Warranted but precluded.	76 FR 62166–62212.

FY 2012 COMPLETED LISTING ACTIONS—Continued

Publication date	Title	Actions	FR pages
10/6/2011	12-Month Finding on a Petition to List the Mohave Ground Squirrel as Endangered or Threatened.	Notice of 12-month petition finding, Not warranted.	76 FR 62214–62258.
10/6/2011	Partial 90-Day Finding on a Petition to List 404 Species in the Southeastern United States as Threatened or Endangered With Critical Habitat.	Notice of 90-day Petition Finding, Not substantial.	76 FR 62260–62280.
10/7/2011	12-Month Finding on a Petition to List the Black-footed Albatross as Endangered or Threatened.	Notice of 12-month petition finding, Not warranted.	76 FR 62504–62565.
10/11/2011	12-Month Finding on a Petition to List *Amoreuxia gonzalezii, Astragalus hypoxylus,* and *Erigeron piscaticus* as Endangered or Threatened.	Notice of 12-month petition finding, Not warranted.	76 FR 62722–62740.
10/11/2011	12-Month Finding on a Petition and Proposed Rule to List the Yellow-Billed Parrot.	Notice of 12-month petition finding, Warranted, Propose Listing, threatened.	76 FR 62740–62754.
10/11/2011	12-Month Finding on a Petition to List the Tehachapi Slender Salamander as Endangered or Threatened.	Notice of 12-month petition finding, Not warranted.	76 FR 62900–62926.
10/11/2011	Endangered Status for the Altamaha Spinymussel and Designation of Critical Habitat.	Final Listing, Endangered	76 FR 62928–62960.
10/11/2011	12-Month Finding for a Petition to List the California Golden Trout as Endangered.	Notice of 12-month petition finding, Not warranted.	76 FR 63094–63115.
10/12/2011	12-Month Petition Finding, Proposed Listing of Coquí Llanero as Endangered, and Designation of Critical Habitat for Coquí Llanero.	Notice of 12-month petition finding, Warranted, Proposed Listing, Endangered.	76 FR 63420–63442.
10/12/2011	12-Month Finding on a Petition to List Northern Leatherside Chub as Endangered or Threatened.	Notice of 12-month petition finding, Not warranted.	76 FR 63444–63478.
10/12/2011	12-Month Finding on a Petition to List Two South American Parrot Species.	Notice of 12-month petition finding, Not warranted.	76 FR 63480–63508.
10/13/2011	12-Month Finding on a Petition to List a Distinct Population Segment of the Red Tree Vole as Endangered or Threatened.	Notice of 12-month petition finding, Warranted but precluded.	76 FR 63720–63762.
12/19/2011	90-Day Finding on a Petition To List the Western Glacier Stonefly as Endangered With Critical Habitat.	Notice of 90-day Petition Finding, Substantial.	76 FR 78601–78609.
1/3/2012	90-Day Finding on a Petition to List Sierra Nevada Red Fox as Endangered or Threatened.	Notice of 90-day Petition Finding, Substantial.	77 FR 45–52.
1/5/2012	Listing Two Distinct Population Segments of Broad-Snouted Caiman as Endangered or Threatened and a Special Rule.	Proposed Reclassification	77 FR 666–697.
1/12/2012	90-Day Finding on a Petition To List the Humboldt Marten as Endangered or Threatened.	Notice of 90-day Petition Finding, Substantial.	77 FR 1900–1908.
1/24/2012	90-Day Finding on a Petition to List the 'I'iwi as Endangered or Threatened.	Notice of 90-day Petition Finding, Substantial.	77 FR 3423–3432.
2/1/2012	90-Day Finding on a Petition to List the San Bernardino Flying Squirrel as Endangered or Threatened With Critical Habitat.	Notice of 90-day Petition Finding, Substantial.	77 FR 4973–4980.
2/14/2012	Determination of Endangered Status for the Rayed Bean and Snuffbox Mussels Throughout Their Ranges.	Final Listing Endangered	77 FR 8632–8665.
2/17/2012	90-Day Finding on a Petition to List the Thermophilic Ostracod as Endangered or Threatened.	Notice of 90-day Petition Finding, Not substantial.	77 FR 9618–9619.
3/13/2012	Determination of Endangered Status for the Sheepnose and Spectaclecase Mussels Throughout Their Range.	Final Listing, Endangered	77 FR 14914–14949.
4/2/2012	12-month Finding on a Petition to List the San Francisco Bay-Delta Population of the Longfin Smelt as Endangered or Threatened.	Notice of 12-month petition finding, Warranted but precluded.	77 FR 19756—19797.
4/6/2012	Listing of the Miami Blue Butterfly as Endangered Throughout Its Range; Listing of the Cassius Blue, Ceraunus Blue, and Nickerbean Blue Butterflies as Threatened Due to Similarity of Appearance to the Miami Blue Butterfly in Coastal South and Central Florida.	Final Listing, Endangered	77 FR 20948–20986.
4/12/2012	90-Day Finding on a Petition to List Either the Eastern Population or the Southern Rocky Mountain Population of the Boreal Toad as an Endangered or Threatened Distinct Population Segment.	Notice of 90-day Petition Finding, Substantial.	77 FR 21920–21936.
4/17/2012	Determination of Endangered Status for Three Forks Springsnail and Threatened Status for San Bernardino Springsnail Throughout Their Ranges and Designation of Critical Habitat for Both Species.	Final Listing, Endangered and Threatened.	77 FR 23060–23092.

Our expeditious progress also includes work on listing actions that we funded in previous fiscal years and in FY 2012 but have not yet been completed to date. These actions are listed below. Actions in the top section of the table are being conducted under a deadline set by a court through a court order or settlement agreement. The Service had already begun to implement our work plan submitted as part of the MDL settlement case (see above) last FY and we continue to work on these actions. Many of these initial actions in our work plan include work on proposed rules for candidate species with an LPN of 2 or 3. As discussed above, selection of the order in which

these species are worked on is partially based on available staff resources, and when appropriate, include species with a lower priority if they overlap geographically or have the same threats as the species with the high priority. Including these species together in the same proposed rule results in considerable savings in time and funding, when compared to preparing separate proposed rules for each of them in the future. Actions in the lower section of the table are being conducted to meet statutory timelines, that is, timelines required under the Act.

ACTIONS FUNDED IN PREVIOUS FYS AND IN FY 2012 BUT NOT YET COMPLETED

Species	Action
Actions Subject to Court Order/Settlement Agreement	
4 parrot species (military macaw, yellow-billed parrot, scarlet macaw) [5]	12-month petition finding.
20 Maui-Nui candidate species [2] (17 plants, 3 tree snails) (14 with LPN = 2, 2 with LPN = 3, 3 with LPN = 8)	Proposed listing.
Umtanum buckwheat (LPN = 2) and white bluffs bladderpod (LPN = 9) [4]	Proposed listing.
Grotto sculpin (LPN = 2) [4]	Proposed listing.
2 Arkansas mussels (Neosho mucket (LPN = 2) & Rabbitsfoot (LPN = 9)) [4]	Proposed listing.
Diamond darter (LPN = 2) [4]	Proposed listing.
Gunnison sage-grouse (LPN = 2) [4]	Proposed listing.
Coral Pink Sand Dunes Tiger Beetle (LPN = 2) [5]	Proposed listing.
Lesser prairie chicken (LPN = 2)	Proposed listing.
4 Texas salamanders (Austin blind salamander (LPN = 2), Salado salamander (LPN = 2), Georgetown salamander (LPN = 8), Jollyville Plateau (LPN = 8)) [3].	Proposed listing.
West Texas aquatics (Gonzales Spring Snail (LPN = 2), Diamond Y springsnail (LPN = 2), Phantom springsnail (LPN = 2), Phantom Cave snail (LPN = 2), Diminutive amphipod (LPN = 2)) [3].	Proposed listing.
2 Texas plants (Texas golden gladecress (*Leavenworthia texana*) (LPN = 2), Neches River rose-mallow (*Hibiscus dasycalyx*) (LPN = 2)) [3].	Proposed listing.
4 AZ plants (Acuna cactus (*Echinomastus erectocentrus var. acunensis*) (LPN = 3), Fickeisen plains cactus (*Pediocactus peeblesianus fickeiseniae*) (LPN = 3), Lemmon fleabane (*Erigeron lemmonii*) (LPN = 8), Gierisch mallow (*Sphaeralcea gierischii*) (LPN = 2)) [5].	Proposed listing.
FL bonneted bat (LPN = 2) [3]	Proposed listing.
3 Southern FL plants (Florida semaphore cactus (*Consolea corallicola*) (LPN = 2), shellmound applecactus (*Harrisia* (= *Cereus*) *aboriginum* (= *gracilis*)) (LPN = 2), Cape Sable thoroughwort (*Chromolaena frustrata*) (LPN = 2)) [5].	Proposed listing.
21 Big Island (HI) species [5] (includes 8 candidate species—6 plants & 2 animals; 4 with LPN = 2, 1 with LPN = 3, 1 with LPN = 4, 2 with LPN = 8).	Proposed listing.
12 Puget Sound prairie species (9 subspecies of pocket gopher (*Thomomys mazama* ssp.) (LPN = 3), streaked horned lark (LPN = 3), Taylor's checkerspot (LPN = 3), Mardon skipper (LPN = 8)) [3].	Proposed listing.
2 TN River mussels (fluted kidneyshell (LPN = 2), slabside pearlymussel (LPN = 2)) [5]	Proposed listing.
Jemez Mountain salamander (LPN = 2) [5]	Proposed listing.
Actions With Statutory Deadlines	
5 Bird species from Colombia and Ecuador	Final listing determination.
Queen Charlotte goshawk	Final listing determination.
6 Birds from Peru & Bolivia	Final listing determination.
Loggerhead sea turtle (assist National Marine Fisheries Service) [5]	Final listing determination.
Platte River caddisfly (from 206 species petition) [5]	12-month petition finding.
Ashy storm-petrel [5]	12-month petition finding.
Honduran emerald	12-month petition finding.
Eagle Lake trout [1]	90-day petition finding.
Spring Mountains checkerspot butterfly	90-day petition finding.
Aztec gilia [5]	90-day petition finding.
White-tailed ptarmigan [5]	90-day petition finding.
Bicknell's thrush [5]	90-day petition finding.
Sonoran talussnail [5]	90-day petition finding.
2 AZ Sky Island plants (*Graptopetalum bartrami* & *Pectis imberbis*) [5]	90-day petition finding.
Desert massasauga	90-day petition finding.
Alexander Archipelago wolf [5]	90-day petition finding.
Eastern diamondback rattlesnake	90-day petition finding.

[1] Funds for listing actions for these species were provided in previous FYs.
[2] Although funds for these high-priority listing actions were provided in FY 2008 or 2009, due to the complexity of these actions and competing priorities, these actions are still being developed.
[3] Partially funded with FY 2010 funds and FY 2011 funds.
[4] Funded with FY 2010 funds.
[5] Funded with FY 2011 funds.

We have endeavored to make our listing actions as efficient and timely as possible, given the requirements of the relevant law and regulations, and constraints relating to workload and personnel. We are continually considering ways to streamline processes or achieve economies of scale, such as by batching related actions together. Given our limited budget for implementing section 4 of the Act, these actions described above collectively constitute expeditious progress.

The Arapahoe snowfly will be added to the list of candidate species upon publication of this 12-month finding. We will continue to monitor the status

of this species as new information becomes available. This review will determine if a change in status is warranted, including the need to make prompt use of emergency listing procedures.

We intend that any proposed listing action for the Arapahoe snowfly will be as accurate as possible. Therefore, we will continue to accept additional information and comments from all concerned governmental agencies, the scientific community, industry, or any other interested party concerning this finding.

References Cited

A complete list of references cited is available on the Internet at *http://www.regulations.gov* and upon request from the Colorado Field Office (see **ADDRESSES** section).

Authors

The primary authors of this notice are the staff members of the Colorado Field Office and the Mountain-Prairie Regional Office.

Authority

The authority for this section is section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: May 1, 2012.

David L. Cottingham,

Acting Director, Fish and Wildlife Service.

[FR Doc. 2012–11229 Filed 5–9–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2012–0006: 4500030113]

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To List the Eastern Diamondback Rattlesnake as Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding and initiation of status review.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to list the eastern diamondback rattlesnake (*Crotalus adamanteus*) as threatened under the Endangered Species Act of 1973, as amended (Act) and to designate critical habitat. Based on our review, we find that the petition presents substantial scientific or commercial information indicating that listing the eastern diamondback rattlesnake may be warranted. Therefore, with the publication of this notice, we are initiating a review of the status of the species to determine if listing the eastern diamondback rattlesnake is warranted. To ensure that this status review is comprehensive, we are requesting scientific and commercial data and other information regarding this species. Based on the status review, we will issue a 12-month finding on the petition, which will address whether the petitioned action is warranted, as provided in section 4(b)(3)(B) of the Act.

DATES: To allow us adequate time to conduct this review, we request that we receive information on or before July 9, 2012. The deadline for submitting an electronic comment using the Federal eRulemaking Portal (see **ADDRESSES** section, below) is 11:59 p.m. Eastern Time on this date. After July 9, 2012, you must submit information directly to the Field Office (see **FOR FURTHER INFORMATION CONTACT** section below). Please note that we might not be able to address or incorporate information that we receive after the above requested date.

ADDRESSES: You may submit information by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Enter Keyword or ID box, enter Docket No. FWS–R4–ES–2012–0006 which is the docket number for this action. Then click on the Search button. You may submit a comment by clicking on ''Send a Comment or Submission.''

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R4–ES–2012–0006; 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 information we receive on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Request for Information section below for more details).

FOR FURTHER INFORMATION CONTACT: Don Imm, Field Supervisor, U.S. Fish and Wildlife Service, Panama City, FL, Ecological Services Field Office, 1601 Balboa Avenue, Panama City, FL 32405; telephone 850–769–0552; facsimile 850–763–2177. If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Request for Information

When we make a finding that a petition presents substantial information indicating that listing a species may be warranted, we are required to promptly review the status of the species (status review). For the status review to be complete and based on the best available scientific and commercial information, we request information on the eastern diamondback rattlesnake from governmental agencies, Native American tribes, the scientific community, industry, and any other interested parties. We seek information on:

(1) The species' biology, range, and population trends, including:

(a) Habitat requirements for feeding, breeding, and sheltering;

(b) Genetics and taxonomy throughout its entire range both historical and current;

(c) Historical and current range including distribution patterns;

(d) Historical and current population levels, and current and projected trends; and

(e) Past and ongoing conservation measures for the species, its habitat, or both.

(2) The factors that are the basis for making a listing determination for a species under section 4(a) of the Act (16 U.S.C. 1531 *et seq.*), which are:

(a) The present or threatened destruction, modification, or curtailment of its habitat or range;

(b) Overutilization for commercial, recreational, scientific, or educational purposes;

(c) Disease or predation;

(d) The inadequacy of existing regulatory mechanisms; or

(e) Other natural or manmade factors affecting its continued existence.

(3) Information related to whether any portion of the species' range should be considered for listing as a distinct population segment.

(4) Information on specific activities that could be affected or issues caused by listing the species.

If, after the status review, we determine that listing the eastern diamondback rattlesnake is warranted, we will propose critical habitat (see definition in section 3(5)(A) of the Act) under section 4 of the Act, to the maximum extent prudent and determinable at the time we propose to list the species. Therefore, we also request data and information on:

(1) What may constitute ''physical or biological features essential to the

conservation of the species,'' within the geographical range currently occupied by the species;

(2) Where these features are currently found;

(3) Whether any of these features may require special management considerations or protection;

(4) Specific areas outside the geographical area occupied by the species that are ''essential for the conservation of the species;'' and

(5) What, if any, critical habitat you think we should propose for designation if the species is proposed for listing, and why such habitat meets the requirements of section 4 of the Act.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

Submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination. Section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or threatened species must be made ''solely on the basis of the best scientific and commercial data available.''

You may submit your information concerning this status review by one of the methods listed in the **ADDRESSES** section. If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the Web site. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this personal identifying information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov.*

Information and supporting documentation that we received and used in preparing this finding is available for you to review at *http://www.regulations.gov,* or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Panama City Ecological Services Field Office, FL (see **FOR FURTHER INFORMATION CONTACT**).

Background

Section 4(b)(3)(A) of the Act requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish our notice of the finding promptly in the **Federal Register**.

Our standard for substantial scientific or commercial information within the Code of Federal Regulations (CFR) with regard to a 90-day petition finding is ''that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted'' (50 CFR 424.14(b)). If we find that substantial scientific or commercial information was presented, we are required to promptly conduct a species status review, which we subsequently summarize in our 12-month finding.

Petition History

On August 29, 2011, we received a petition dated August 22, 2011, from Collette L. Adkins Giese, Herpetofauna Staff Attorney, Center for Biological Diversity; D. Noah Greenwald, Endangered Species Program Director, Center for Biological Diversity; D. Bruce Means, Ph.D., President and Executive Director, Coastal Plains Institute; Bill Matturro, Protect All Living Species; and Jim Ries, One More Generation (petitioners), requesting that the eastern diamondback rattlesnake be listed as a threatened species and that critical habitat be designated under the Act. The petition clearly identified itself as such and included the requisite identification information for the petitioners required at 50 CFR 424.14(a). In a September 26, 2011, letter to the petitioners, we acknowledged receipt of the petition. On December 11, 2011, we received, via email, a letter dated December 9, 2011, from the petitioners submitting information to amend the petition with new information regarding climate change. In a December 12, 2011, email to the petitioners, we acknowledged receipt of the new information. This finding addresses the petition.

Previous Federal Action(s)

There are no previous Federal actions concerning the eastern diamondback rattlesnake under the Act.

Species Information

The eastern diamondback rattlesnake (*Crotalus adamanteus*) was described in 1799 by Beauvois (Transactions of the American Philosophical Society, Vol. 4 (1799), pp. 362–381). The Florida Museum of Natural History Web site 2011 (*http://www.flmnh.ufl.edu/herpetology/fl-guide/crotalusadamanteus.htm*) lists *Crotalus durissus* as a synonym by Boulenger (1896). This synonym was not found in other taxonomic treatments of the species or in the information available to the Service at the time of this finding. No other taxonomic history other than *C. adamanteus* was found during the course of this finding. The eastern diamondback is recognized as a valid species in the Checklist of Vertebrates of the United States, the U.S. Territories, and Canada (ITIS) (retrieved November 9, 2011, from the Integrated Taxonomic Information System on-line database). Therefore, we accept the taxonomic description of the eastern diamondback as *Crotalus adamanteus.*

The eastern diamondback rattlesnake is recognized by its large size, diamond-patterned dorsal (upper) side, yellowish unpatterned underbelly, dark tail with rattle, and infrared sensitive pit between the eye and nostril (Timmerman and Martin 2003, p. 2). The eastern diamondback is the largest rattlesnake in the world (Timmerman and Martin 2003, p. 1). Adult snakes average 4 to 5 feet (ft) (1.2 to 1.5 meters (m)) in length and average 4 to 5 pounds (lbs) (1.8 to 2.3 kilograms (kg)) in weight. Eastern diamondbacks in the 6-ft (1.8-m) range are considered quite large and can reach 12 lbs (5.4 kg) or more (Timmerman and Martin 2003, p. 2).

The historical (pre-European settlement or presettlement) range of the eastern diamondback rattlesnake encompasses the Coastal Plain of the southeastern United States from North Carolina to south Florida, and west to Mississippi and Louisiana (Mount 1975, Dundee and Rossman 1989, Palmer and Braswell 1995, Ernst and Ernst 2003, and Campbell and Lamar 2004 as cited in the petition on p. 9). At the broadest spatial scale, the historical range of the eastern diamondback is largely congruent with the historical distribution of the longleaf pine savanna ecosystem (Martin and Means 2000, p. 20; Waldron *et al.* 2008, p. 2478).

The principal native habitat of the eastern diamondback rattlesnake in presettlement times was longleaf pine savannas (Martin and Means 2000, p. 20). Longleaf pine savannas once occupied about 62 percent of the uplands of the Coastal Plain and about 40 percent of the regional landscape (Petition, p. 13). Today, nearly all of the old growth longleaf pine savannas are gone, and the eastern diamondback survives wherever its native habitats still exist or where open-canopy, ruderal forests and grasslands that mimic the native vegetation have developed (Petition, p. 12). The remaining

principal large tracts of second growth longleaf pine are found on publically owned lands in the Coastal Plain, especially national forests, military bases, State forests and parks, and a few wildlife refuges (Means 2005, p. 76).

Longleaf pine savannas are maintained by frequent fires. Naturally ignited by lightning during spring and early summer, these flatwoods historically burned at intervals ranging from 1 to 4 years (Clewell 1989, p. 226).

Shelters from fire and cold are important microhabitats for the eastern diamondback rattlesnake (Martin and Means 2000, p. 18). Eastern diamondbacks seek subterranean overwintering shelters throughout their range with the exception of extreme southern Florida and the Florida Keys (Timmerman and Martin 2003, p. 8). They also use gopher tortoise (*Gopherus polyphemus*) and armadillo (*Dasypus novemcinctus*) burrows as well as fire-burned pine stumpholes and cavities at the bases of hardwood trees (Timmerman and Martin 2003, p. 8; Means 2005, p. 74).

The natural lifespan of an eastern diamondback rattlesnake is probably 15 to 20 years, but evidence from the field indicates that few individuals today live beyond 10 years, likely due to anthropogenic threats (Timmerman and Martin 2003, p. 15). Mating occurs in the late summer and early fall (Timmerman and Martin 2003, p. 15). Ovulation apparently occurs in the late spring of the following year with births centered in late August and ranging from late July to early October (Timmerman and Martin 2003, p. 15). Female eastern diamondbacks reach sexual maturity between 2 to 6 years of age (Timmerman and Martin 2003, p. 16). Eastern diamondbacks have long birth intervals and gestational periods; females reproduce only every 2 to 4 years, depending on the geographic location, age of the snake, and productivity of the environment (Petition, p. 14).

The eastern diamondback rattlesnake is an ambush predator that feeds on a wide variety of small mammals and some birds (Timmerman and Martin 2003, p. 6). The bulk of its prey consists of rabbits (*Sylvilagus* sp.), cotton rats (*Sigmodon hispidus*), and gray squirrels (*Sciurus carolinensis*) (Timmerman and Martin 2003, p. 6). The open-canopy habitats of the eastern diamondback favor the development of an herbaceous groundcover on which its primary prey depend (Petition, p. 12). The eastern diamondback is terrestrial, hunting almost exclusively on the ground (Timmerman and Martin 2003, p. 6). As a member of the pit viper family, it is able to hunt in total darkness and identify warm-blooded prey via infrared detection (Timmerman and Martin 2003, p. 6). Timmerman (Petition, p. 14) found that home ranges for females averaged 114.9 acres (ac) (46.5 hectares (ha)), home ranges for males averaged 208.3 ac (84.3 ha), and that the species does not defend a territory. Eastern diamondbacks do not den communally (Means 2009, p. 138).

The species has likely been declining since the 1930s (Timmerman and Martin 2003, p. 19). The greatest population decline of eastern diamondback rattlesnakes has occurred since the 1970s, as the human population grew in the southeastern United States (Timmerman and Martin 2003, p. 19). The area of occupancy, number of subpopulations, and population size of the eastern diamondback is declining throughout the species' range (Nature Serve 2010 as cited in the petition on p. 9). The range has contracted because of habitat loss from agriculture, silviculture, urbanization, and plant succession resulting from fire suppression (Timmerman and Martin 2003, p. 9). Remaining intact range supporting large populations of the eastern diamondback is now located only in northern Florida and southern Georgia (Martin and Means 2000, p. 21). The species is likely gone from Louisiana, endangered in North Carolina, and scarce in South Carolina (Dundee and Rossman 1989; Palmer and Braswell 1995; Georgia DNR 2011; and Means 2011 as cited in the petition on p. 9).

There are other indicators of the eastern diamondback rattlesnake's decline from collection for anti-venom production, commercial sale of skin and other parts, and supplying rattlesnake roundups. Size records for thousands of eastern diamondbacks purchased by the Ross Allen Reptile Institute demonstrate that the average snake length dropped by about a foot (30.5 centimeters) between the 1930s and 1960s (Diemer-Berish 1998, p. 556; Timmerman and Martin 2003, p. 19).

The size and numbers of eastern diamondback rattlesnakes collected at ''rattlesnake roundups'' also provides an indicator of population status (Means 2009, p. 134). Since at least the mid-1980s, a steady decline is evident for the weights of prize-winning eastern diamondbacks collected in all four roundups in the southeastern United States (Means 2006, p. 170–171; Means 2009, p. 134). Declining size means fewer older snakes and, therefore, has negative implications for the reproductive success of local populations (Means 2009, p. 137). Heavily harvested populations are skewed to smaller and less productive animals (Enge 1993, p. 412), as clutch size is correlated with the body size of the mother (Petition, p. 15).

There has also been a decline in the numbers of eastern diamondback rattlesnakes brought into the roundups (Timmerman and Martin 2003, p. 19; Means 2009, p. 134). The number of snakes brought into the Whigham, Georgia, roundup in January 2011 was the lowest number in the history of the event, at 82 snakes, down from a high of 583 in 1992.

Evaluation of Information for This Finding

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations at 50 CFR 424 set forth the procedures for adding a species to, or removing a species from, the Federal Lists of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

In considering what factors might constitute threats; we must look beyond the mere exposure of the species to the factor to determine whether the species responds to the factor in a way that causes actual impacts to the species. If there is exposure to a factor, but no response, or only a positive response, that factor is not a threat. If there is exposure and the species responds negatively, the factor may be a threat and we then attempt to determine how significant a threat it is. If the threat is significant, it may drive or contribute to the risk of extinction of the species so that the species may warrant listing as threatened or endangered as those terms are defined by the Act. This does not necessarily require empirical proof of a threat. The combination of exposure and some corroborating evidence of how the species is likely impacted could suffice. The mere identification of factors that could impact a species negatively may not be sufficient to compel a finding that listing may be warranted. The information shall contain evidence sufficient to suggest that these factors may be operative threats that act on the

species to the point that the species may meet the definition of threatened or endangered under the Act.

In making this 90-day finding, we evaluated whether information regarding threats to the eastern diamondback rattlesnake, as presented in the petition and other information available in our files, is substantial, thereby indicating that the petitioned action may be warranted. Our evaluation of this information is presented below.

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Information Provided in the Petition

The petition discusses the correlation between the status and condition of open-canopy longleaf pine savannas and the status of the eastern diamondback rattlesnake. According to the petition, in presettlement times, the eastern diamondback thrived in the longleaf pine savannas that covered the southeastern United States. But today, less than two or three percent of the longleaf pine savanna habitat remains (Noss *et al.* 1995, p. 3; Platt 1999 p. 24; Martin and Means 2000, p. 20). The presettlement population of the eastern diamondback has been estimated to be about 3.08 million individuals (Petition, p. 14), but the petition acknowledges that no sound baseline information exists (Timmerman and Martin 2003, p. 19). It is unlikely that the current population exceeds 100,000 snakes (Means 2011 as cited in the petition on p. 15). Thus, the petition indicates that, as in the longleaf pine savannas reduction, it is possible that the current population of the eastern diamondback is about 3 percent of the historical population (Petition, p. 16).

The petition provides that, while the eastern diamondback rattlesnake does not require longleaf pine savannas to survive, it does require open-canopy habitats that provide herbaceous groundcover for its prey species (Means 2011 as cited in the petition on p. 16). Open-canopy habitats are becoming increasingly rare, as forests are being converted into closed-canopy pine plantations, residential and commercial developments, and agriculture (Petition, p. 16). The petition asserts that there is significant agreement among scientists that the destruction of longleaf pine savannas and open-canopy forest is the single most important factor affecting the survival of the eastern diamondback (Martin and Means 2000, p. 21; Timmerman and Martin 2003, p. 21; Waldron *et al.* 2006, p. 419; Waldron *et al.* 2008, p. 2478; Means 2011 as cited in the petition on p. 16). The petition summarizes the current status of the eastern diamondback in the southeastern United States.

In North Carolina, the eastern diamondback rattlesnake is now restricted to the Lower Coastal Plain south of the Neuse River (Martin and Means 2000, p. 17; NatureServe 2010 as cited in the petition on p. 9). The eastern diamondback was once known to occupy Croatan National Forest, but it has not been documented on any lands in the State managed by the U.S. Forest Service, National Park Service, or U.S. Fish and Wildlife Service in the last 10 years (Petition, p. 11).

In South Carolina, the eastern diamondback rattlesnake is patchily distributed where it occurs in undeveloped areas on the Lower and Middle Coastal Plain and on Edisto Island and three smaller barrier islands (Martin and Means 2000, p. 17; NatureServe 2010 as cited in the petition on p. 11). South Carolina has numerous National Park Service lands and National Wildlife Refuges within the historical range of the eastern diamondback, however, only the Ace Basin National Wildlife Refuge has any records of the snake from the last 10 years (Petition, p. 11).

In Georgia, the extent of the current range of the eastern diamondback rattlesnake is probably essentially unchanged from presettlement times and includes the Coastal Strand and Barrier Island region of the Atlantic coast (Martin and Means 2000, p. 14). However, much of the habitat within the range has been lost to development, hurricanes, or absence of shelter (hardwood stumps), and its distribution is highly fragmented (Martin and Means 2000, pp. 16–17).

In Florida, the eastern diamondback has become rare or disappeared completely from many sites within its historical range that was essentially statewide, including barrier islands and keys (Martin and Means 2000, pp. 15–16). Much of the species' habitat has been lost to urbanization and conversion to citrus groves and improved pasture in the Florida peninsula during the last half of the twentieth century (Martin and Means 2000, p. 15). Florida encompasses half of the species' current range (Timmerman and Martin 2003, p. 41).

In Alabama, the eastern diamondback rattlesnake occurs in the Lower Coastal Plain where longleaf pine and wiregrass originally dominated the uplands (NatureServe 2010 as cited in the petition p. 12). It is found primarily in the southwestern part of the State, in southern Washington and northern Mobile Counties, Alabama (Martin and Means 2000, p. 13; Timmerman and Martin 2003, p. 9). The only Federal land in Alabama with a record of the eastern diamondback within the last 10 years is the Bon Secour National Wildlife Refuge (NatureServe 2010 as cited in the petition on p. 12).

In Mississippi, the eastern diamondback rattlesnake may have ranged to the limits of the State's longleaf pine forest, but was not known to occur on barrier islands (NatureServe 2010 as cited in the petition on p. 12). Today, the species is uncommon because its habitat is being converted to agriculture and it is hunted for the roundup at the City of Opp, Alabama, and the skin trade. Its range is now being confined mainly to the longleaf pine hills and pine flats regions (Martin and Means 2000, pp. 13–14; Timmerman and Martin 2003, p. 43; NatureServe 2010 as cited in the petition on p. 12). The three national wildlife refuges in the State within the historical range of the species lack any records of the eastern diamondback from the last 10 years (Petition, p. 12).

In Louisiana, the eastern diamondback rattlesnake was historically confined to the eastern-most three of the seven Florida parishes (the area of Louisiana north of Lake Pontchartrain, east of the Mississippi River and Bayou Manchac and south of the Mississippi border) and was never reported from the barrier islands (NatureServe 2010 as cited in the petition p. 12). The eastern diamondback is likely extirpated in Louisiana. It is possible that the species may exist in extreme northeastern Louisiana, but is so rare that it is functionally extinct (Martin and Means 2000, p. 11; Timmerman and Martin 2003, pp. 9, 20, 43). The snake was last observed in Louisiana in 1995 (Louisiana Department of Fisheries and Wildlife 2010 Web site *http://www.wlf.louisiana.gov/serpentes/eastern-diamondback-rattlesnake* as cited in the petition on p. 12).

The petition also asserts that the quality of the open-canopy and longleaf pine savannas has declined—this being mainly due to the absence of fire (Petition, p. 13). Without active fire management, remnant longleaf pine ecosystems convert to closed-canopy forests and become unsuitable for snakes such as the eastern diamondback (Petition, pp. 13, 16). In presettlement times, lightning-caused fires burned on average every 1 to 4 years, keeping the canopy open. However, in the past 200 years, human settlement of the Coastal Plain has drastically altered the normal, summertime fire cycle. Not only have

wildfires been actively suppressed following ignition, but roads, towns, agricultural fields, and other developments impede the widespread, weeks-long fires that swept the Coastal Plain regularly in presettlement times (Means 2011 as cited in the petition on p. 16). The disruption of the natural fire cycle has resulted in an increase in slash and loblolly pine on sites formerly dominated by longleaf pine, an increase in hardwood understory, and a decrease in herbaceous ground cover (Wolfe *et al.* 1988, p. 132; Yager *et al.* 2007, p. 428).

Evaluation of Information Provided in the Petition and Available in Service Files

The petition states that the species' range reduction, habitat loss and degradation, and lack of fire are contributing heavily to the population reduction of the eastern diamondback rattlesnake. The petition asserts that remaining population size of the eastern diamondback of three percent corresponds to the amount of remaining historical longleaf pine savanna habitat of two to three percent. Similar information concerning the life history, status, and distribution of the eastern diamondback and availability of suitable habitat (longleaf pine savannas and open-canopy forests) is also found in the Service's files (Timmerman and Means 2003, entire; America's Longleaf Regional Working Group 2009, entire). The Region-wide Conservation Plan for Longleaf states that longleaf pine forests are a remnant of their former 90 million ac (36.4 million ha) (America's Longleaf Regional Working Group 2009, p. 1). As indicated in the petition, less than three percent or an estimated 3.4 million ac (1.4 million ha) remain (America's Longleaf Regional Working Group 2009, p. 1) of longleaf forests. Fragmentation, unsustainable harvest, conversion to other land uses and vegetative types, invasive species, and exclusion of natural fire regimes have cumulatively resulted in declines in the extent, condition, and future sustainability of the system. The loss of 97 percent of the longleaf forests is a dramatic change in the landscape. While no discussion of the eastern diamondback is provided in the Conservation Plan, the species is listed as a species of conservation interest in the longleaf pine ecosystem (America's Longleaf Regional Working Group 2009, pp. 41–42).

Prescribed burning has been a tool used on forested lands to restore the natural fire regime, but liability, reduced budgets, unfavorable weather, and backlogged, dangerously high fuel loads from years of fire suppression have allowed the quality of habitat maintained by fires to degrade and become less or, in many cases, unsuitable for the eastern diamondback rattlesnake (Wade and Lundsford 1989, pp. 1–2; Kaufman *et al.* undated, pp. 2, 4–8).

In summary, we find that the information presented in the petition, as well as the information available in our files, presents substantial scientific or commercial information indicating that the petitioned action may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range primarily as a result of the conversion of natural pine habitat to silviculture, agriculture, urbanization, and to fire suppression.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Information Provided in the Petition

According to the petition, eastern diamondback rattlesnakes are harvested for their skins and other parts including venom, and are killed for recreation (Martin and Means 2000, p. 21; Means 2009, p. 139; Means 2011 as cited in the petition on p. 19). This exploitation by humans is having a severe impact on remaining eastern diamondback rattlesnake populations (Martin and Means 2000, p. 21; Means 2009, p. 139; Means 2011 as cited in the petition on p. 19). Various markets for eastern diamondback rattlesnakes have existed for decades (Petition, p. 19). The rattlesnake skin trade likely takes thousands of eastern diamondbacks each year, with no limit placed on annual harvest (Timmerman and Martin 2003, p. 22). From 1990 to 1994, Florida hide dealers and taxidermists purchased 42,788 eastern diamondbacks, primarily from Georgia, Alabama, and Florida (Timmerman and Martin 2003, p. 40).

According to the petition, intensive collection of rattlesnakes for ''rattlesnake roundups'' is affecting the eastern diamondback rattlesnake (Diemer-Berish 1998, p. 556). In rattlesnake roundups, rattlesnakes are collected in competitions for prizes (Timmerman and Martin 2003, p. 22). Some of the snakes including eastern diamondbacks are then sold for skins and other parts. Means (2009, p. 132) analyzed 50 years of data for the longest running roundups involving the eastern diamondback. At least 23 roundups were held for the purpose of downsizing the population of the eastern diamondback (Petition, p. 20). Hunters that gather rattlesnakes for roundups often use the practice of pouring gasoline or ammonia through a hose placed inside the burrows of gopher tortoises in winter (Petition, p. 20). This practice often kills the snakes and impacts other fauna inhabiting the burrows (Petition 2011, p. 20). Means (as cited in the petition on p. 20) also found that the total number of captured rattlesnakes declined by 67 percent in the last two decades. Thus, the petition asserts that the numbers of snakes collected for rattlesnake roundups likely are an underestimate of the number of snakes actually killed by hunters (Petition, p. 20).

The petition stated that eastern diamondback rattlesnakes are also taken for venom extraction. The Ross Allen Reptile Institute purchased and supplied most of the venom to U.S. laboratories during the development of anti-venom from 1929 to 1940, and for the production of anti-venom during World War II (Petition, p. 20). Other laboratories have also purchased thousands of eastern diamondbacks for the purpose of venom extraction (Petition, p. 20).

Evaluation of Information Provided in the Petition and Available in Service Files

Information concerning the harvest of eastern diamondback rattlesnakes similar to that presented in the petition is found in Service files. Since the 1930s there has been a variety of markets for the eastern diamondback. The snake's meat has been used as a food delicacy, skins for clothing, parts for curio trade, venom for human safety, and they have been sold at festivals or events for recreation and tourism (Timmerman and Martin 2003, pp. 21–22). In addition to the decline in the capture rate of snakes (harvest and research) and the potential reasons for the decline (fewer snakes, market changes, and regulation), the effects to eastern diamondback populations include the disappearance of larger eastern diamondbacks and increased capture of smaller diamondbacks (Timmerman and Martin 2003, pp. 19–20).

In summary, we find that the information presented in the petition, as well as the information available in our files, presents substantial scientific or commercial information indicating that the petitioned action may be warranted due to the overutilization of the species for commercial, recreational, scientific, or educational purposes.

C. Disease or Predation

Information Provided in the Petition

The petition provides that the eastern diamondback rattlesnake has a long list of likely natural predators, including

ungulates, raccoons, opossum, dogs, cats, raptors, storks, and other snakes (Timmerman and Martin 2003, p. 17; Means 2011 as cited in the petition on p. 21). However, natural predation does not appear to be a threat to the snake. In addition, the petition provides that disease does not appear to be a threat to the eastern diamondback and provided no additional information concerning the potential threat of diseases to the eastern diamondback (Petition, p. 21).

Evaluation of Information Provided in the Petition and Available in Service Files

Information concerning predation and diseases of the eastern diamondback rattlesnake in the Service's files is similar to the information presented in the petition. Young and adult eastern diamondbacks are predated upon. According to Timmerman and Martin (2003, p. 17), there have been numerous species of wildlife implicated in the death of even the largest of rattlesnakes, including swine, raccoons, otters, dogs, cats, raptorial birds, storks, eastern indigo snakes, king snakes, black snakes, coral snakes, and the river frog (*Rana heckscheri*). A white-tailed deer was observed stomping a radio-tagged male eastern diamondback (Timmerman and Martin 2003, p. 17). However, the Service has no information in our files that indicates the level of impact resulting from predation by other wildlife (native and non-native) has resulted in population-level effects.

The petition does not provide any information about disease in eastern diamondback rattlesnakes. The Service has no information in our files on diseases that affect or could affect the species. Wilson and Porras (1983 as cited in Timmerman and Martin 2003, p. 21) reported that the eastern diamondback was one of several south Florida species that were occasionally found emaciated and lethargic. The reasons were unknown, and specimens sent for pathological analysis turned up no evidence of bacteriological or parasitic infestation.

In summary, we find that the information presented in the petition, as well as the information available in our files, does not present substantial scientific or commercial information indicating that the petitioned action may be warranted due to disease or predation.

D. The Inadequacy of Existing Regulatory Mechanisms

Information Provided in the Petition

The petition contends that populations of the eastern diamondback rattlesnake are closely correlated with the amount and condition of open-canopy pine, particularly longleaf pine forests. The petition states that the species' range reduction, habitat loss, and degradation are contributing heavily to the population reduction of the eastern diamondback. Approximately 34 percent of remaining longleaf pine habitats occur on federally owned lands, 11 percent occur on State or locally-owned lands, and 55 percent on privately owned lands (Means 2011 as cited in the petition on p. 22).

The petition presents information that the loss of longleaf pine savannas is the single most important factor affecting the survival of the eastern diamondback rattlesnake. While there are ongoing restoration efforts that vary in scale and land ownership, nearly all of the efforts are purely voluntary and without dedicated funding. Uncertainty remains as to whether these actions will continue in the future. In addition, the petition asserts that, none of the efforts to restore longleaf pine are specifically aimed at protecting eastern diamondbacks. They also assert that on Federal lands the conservation and restoration programs are not legally mandated or require monitoring to measure success of habitat improvements. The petition states as a consequence, because these regulatory mechanisms are lacking, they are inadequate and a threat to the eastern diamondback (Petition, pp. 22–23).

The petition also contends that habitat for the eastern diamondback rattlesnake is inadequately protected under State law or on State lands. The petitioners indicate they are unaware of any State regulations providing permitting oversight or requiring conservation benefit to eastern diamondbacks. The eastern diamondback receives some benefit from State regulations protecting gopher tortoise habitat, but only in Florida where there are some regulations (Petition, p. 24). Habitat on State-managed lands is protected in small amounts but is inadequate because the management actions are not conducted to specifically benefit the eastern diamondback (Petition, p. 24).

The petition indicates that the majority of remaining longleaf pine is on private lands, where habitat is being rapidly lost and not all regenerated to longleaf pine. Modest conservation value is derived from voluntary participation with restoration programs. In addition to restoration, land acquisition programs are in place. While the eastern diamondback would likely benefit from these acquisitions, the amount of habitat that will be conserved and the distribution of extant diamondback populations on these properties is not known. The petition states that these efforts are purely voluntary and, therefore, are not adequate to protect the snakes (Petition, p. 24).

Regarding human exploitation, among the States, only North Carolina provides legal protection for the eastern diamondback rattlesnake where it is State-listed as endangered. The eastern diamondback is listed as a species of special concern in South Carolina, Alabama, and Florida, but the petition contends that these designations provide no legal or regulatory protection (Petition, p. 26). Georgia has a law that prohibits the taking of nongame wildlife, but venomous snakes are specifically excluded (Petition, p. 26). In other words, eastern diamondbacks are wholly unprotected in South Carolina, Georgia, Florida, Mississippi, Alabama, and Louisiana. According to the petition, unlimited numbers of the snakes may be killed in all but one of the seven States, and, therefore, the lack of regulatory mechanisms facilitates overexploitation of the species. The petition concludes that inadequacy is a factor threatening the species (Petition, pp. 26–27).

Evaluation of Information Provided in the Petition and Available in Service Files

Federal Regulatory Mechanisms

Federal lands within the historical range of the eastern diamondback rattlesnake are managed by the Department of the Interior (units of the National Park System, National Wildlife Refuges, and Bureau of Land Management (small areas)), Department of Agriculture (U.S. Forest Service), and Department of Defense (DOD) (U.S. Air Force, U.S. Army, and U.S. Navy). These Federal land owners or managers are tasked with implementing natural resource management plans that include conservation and restoration of habitats and species and regulation of activities related to agency mission, other land users, and visitors. As general conservation programs, these programs are adequate on Federal lands. However, threats to the eastern diamondback may remain because of lack of implementation, compliance, or enforcement or because these programs do not target conservation of the species. Lack of implementation or compliance may be a result of funding, work priorities, and staffing. The Service has no information concerning the implementation of the plans and enforcement of regulations protecting

the snake from harm. Insufficient implementation or enforcement could become a threat to the species in the future if the species continues to decline in numbers on Federal lands. In addition, the Service is not aware that any of these Federal land programs have management actions geared specifically to benefit eastern diamondbacks.

Eastern diamondback rattlesnakes overlap suitable habitats with other federally protected species and derive conservation benefits through their protection. Eastern diamondbacks share suitable habitat with the eastern indigo snake (*Drymarchon couperi*) and the gopher tortoise. Indigo snakes are listed as threatened under the Act (January 31, 1978; 50 CFR part 17.11(h)). Gopher tortoises are listed as threatened under the Act in the western portion of their range (west of the Mobile and Tombigbee Rivers in Alabama, Mississippi, and Louisiana) (July 7, 1987; 50 CFR part 17.11(h)). No critical habitat is designated for either the indigo snake or the gopher tortoise listed in the western portion of its range.

State Regulatory Mechanisms

The petition suggests that eastern diamondback rattlesnakes are protected by state law only in North Carolina (NC ST § 113–331–350) and are wholly unprotected in South Carolina, Georgia, Florida, Mississippi, Alabama, and Louisiana. This is not entirely accurate. State parks and other State lands are governed by regulations (which are based in State statutes) that protect the snake inasmuch as they protect all other species of wildlife. For example in State Parks in Florida, all plants, animals and park property are protected and their collection, destruction or disturbance of plants, animals or park property is prohibited (F.S. Chap. 258.008(b) and (c)). In South Carolina, killing, harming, or harassing any mammal, bird, reptile, or amphibian, except by permit issued by the South Carolina Department of Natural Resources for designated Game Management Areas is unlawful (Title 51—Parks, Recreation and Tourism, Chap. 3, State Parks, Sec. 51–3–145 (B)). In Georgia any person who hunts, traps, fishes, possesses, or transports wildlife in violation of the wildlife laws and regulations violates the conditions under which this right is extended; and any wildlife then on his person or within his immediate possession is deemed to be wildlife possessed in violation of the law and is subject to seizure by the department pursuant to Georgia Code Section 27–1–21 (Georgia Code Section 27–1–3). On the other hand, if the rules do not result in compliance or are not adequately enforced, this could render the rules relatively inconsequential in providing real protection for the snake. The Service has no information concerning the compliance with or the enforcement of the State regulations.

While regulations to protect habitat and wildlife in general on Federal and State public lands do exist, almost none specifically target protection of the eastern diamondback rattlesnake. Approximately 45 percent of the snake's remaining habitat is under public ownership, and the remaining 55 percent of the habitat is on private lands.

Private Lands

Existing land use regulations on private lands within the eastern diamondback rattlesnake's historical range are implemented by the individual States and local governments. With the exception of North Carolina's State protection, the Service is aware of no regulatory mechanisms that are in place and specifically intended to protect the eastern diamondback. Projections of nationwide rural land development excluding Federal lands are largest in the Southeast at 15 percent (White *et al.* 2008, p. 10). The spatial arrangement of rural lands that are converted to developed uses, even for small areas, may magnify the ecological impacts from urbanization, including the loss of wildlife habitat (White *et al.* 2008, p. 10). Only in the last decade has the concept of green infrastructure that balances development and land protection (benefits wildlife like the eastern diamondback) evolved from a novelty practice to a national planning method (*http://www.conservationfund.org/green_infrastructure*). This may be due in part to the scarcity of undeveloped land areas and the realization of their importance for ecological conservation (water quality, habitat, and wildlife), safety (wildfires), and the amenities afforded by living in close proximity to them (recreation, aesthetics, green space, and land values) (White *et al.* 2008, p. 11).

Long-term survival of the eastern diamondback rattlesnake will depend almost entirely upon lands set aside for conservation (Timmerman and Martin 2003, p. 41). The Service finds that there are regulatory mechanisms in place in the form of State and Federal regulations governing their respective owned and managed lands. However, implementation, compliance, or enforcement of the regulations is important to the conservation of the eastern diamondback and currently is unknown.

The petition suggests that there are no existing regulations that protect the eastern diamondback rattlesnake and thus regulatory mechanisms are inadequate by their absence. There are regulatory mechanisms in place on State and Federal lands that lend protection in general to all wildlife; while not specific to the eastern diamondback, they do provide protection to the species. Thus, there are existing regulatory mechanisms that protect the eastern diamondback contrary to the assertions in the petition. The implementation of, compliance with, and enforcement of those regulatory mechanisms are unknown.

Thus, the information provided in our files does not support the conclusion stated in the petition that there are no existing regulatory mechanisms to protect the eastern diamondback rattlesnake. However, the information in our files supports the conclusion that the existing regulatory mechanisms may be inadequate because there is no evidence that existing implementation of, compliance with, and enforcement of the mechanisms is effective in protecting the eastern diamondback on private, local, State, or Federal lands.

In summary, we find that the information provided in the petition and the Service's files provide substantial scientific or commercial information indicating that the petitioned action may be warranted due to the inadequacy of existing regulatory mechanisms that address threats to the eastern diamondback rattlesnake.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Information Provided in the Petition

The petition asserts that human-caused climate change is a factor that may impact the eastern diamondback rattlesnake. The petition indicates that, because the species is restricted to coastal areas (0 to 1,640 ft (0 to 500 m) above sea level), rising sea levels due to climate change may inundate some habitat occupied by the species and the species may not be able to adapt to changes in the climate at a rate needed for survival. The petition also addresses possible threats to the eastern diamondback from pesticide use, snakes killed out of fear, and the inadequate amount of prescribed fire to maintain good quality habitat. Each of these potential threats is addressed below.

An amendment to the petition provided a paper (Lawing and Polly 2011, entire) on rattlesnakes and climate change. Lawing and Polly (2011, p. 2)

present that snakes are particularly useful for understanding the effects of climate change on terrestrial vertebrate species because their ectothermic (controlling body temperature by external means) physiology is highly dependent on the ambient temperature. Lawing and Polly (2011, p. 2) chose rattlesnakes for their climate modeling because the geographic distributions of some species extend north of former glacial margins, assuring that their geographic distributions have, in fact, changed over recent geological history. Climate models were examined predicting the probable suitable habitat at the year 2100, under a climate change increase of 1.1 degrees Centigrade (C) (34 degrees Fahrenheit (F)) and 6.4 degrees C (43.5 F). The models predict for the eastern diamondback rattlesnake a great reduction in suitable habitat availability by 2100 with an average change of 1.1 degrees C (34 degrees F), and zero suitable habitat availability by the year 2100 with an average increase of 6.4 degrees C (43.5 degrees F) (Lawing and Polly 2011, p. 11). The study essentially says that the eastern diamondback rattlesnake is one of these particularly sensitive species, and that the rate of climate change and the subsequent changes to suitable habitat will likely occur too quickly for the eastern diamondback rattlesnake to adapt and survive because suitable habitat will diminish significantly, and disappear altogether at the extreme change of 6.4 degrees C (43.5 F) by 2100 (Lawing and Polly 2011, p. 11).

The petition indicates that the eastern diamondback rattlesnake may be susceptible to pesticide poisoning, but the extent of this threat is unknown (Timmerman and Martin 2003, p. 21). No other information is provided in the petition relative to threats of pesticides on the snake.

The petition asserts that the eastern diamondback rattlesnake is one of the most heavily persecuted reptiles in the eastern United States (Timmerman and Martin 2003, p. 41). The eastern diamondback rattlesnake is feared by many people (as are snakes in general, venomous and non-venomous) and often are killed whenever and wherever they are encountered (Petition, p. 21). Human persecution is a primary threat to the eastern diamondback and has contributed significantly to the decline of the species (Petition, p. 21).

Evaluation of Information Provided in the Petition and in Service Files

The petition did not provide any information supporting the conclusion that pesticides are a current or potential threat to the eastern diamondback rattlesnake. The Service has no information in our files on pesticides and impacts to the eastern diamondback.

The petition presents documentation and other information about the killing of eastern diamondback rattlesnakes by humans out of fear, malice, adventure, and excitement. The petition asserts that killing of this type has contributed significantly to the decline of the eastern diamondback. However, none of the information presented in the petition clearly distinguishes the difference between commercial collection or harvest and killing for other reasons and contribution to the species' decline. While the Service has no specific information in our files related to killing of eastern diamondbacks because of fear of or malice, we are cognizant of the public's concern about venomous animals in general and the responses to those fears. We are aware of inaccurate and largely undeserved folklore that result in eastern diamondbacks and other snakes being killed simply because they exist, or for adventure and excitement (Means 2009, p. 1).

Consideration of ongoing and projected climate change is a component of our analyses under the Act. Described in general terms, ''climate change'' refers to a change in the mean or variability of one or more measures of climate (e.g., temperature or precipitation) that persists for an extended period, typically decades or longer, whether the change is due to natural variability, human activity, or (Intergovernmental Panel on Climate Change (IPCC) 2007, p. 78). Various types of changes in climate can have direct or indirect effects on species, and these may be positive or negative depending on the species and other relevant considerations, including interacting effects with existing habitat fragmentation or other non-climate variables.

Information provided in the petition concerning the potential for negative effects to the eastern diamondback rattlesnake from climate change presents compelling scenarios. However, there is no information in Service files concerning the eastern diamondback and climate change.

Ecologists consider fire suppression to be the primary reason for the degradation of remaining longleaf pine forest habitat (Wolfe *et al.* 1988, p. 132). Prescribed burning is a significant part of many habitat management plans on private and public lands. However, the implementation of prescribed burning has been inconsistent due to financial constraints and limitations of weather (drought, wind direction, etc.) that restrict the number of opportunities to burn (Kaufman *et al.,* undated, pp. 2, 4–8). Many State and Federal lands use prescribed fire to restore and maintain fire-dependent plant communities and habitats as part of their respective management plans. This is usually beneficial to the eastern diamondback rattlesnake, as it is to other species that depend on fire dependent open-canopy pine forests for survival. Even though this action helps maintain and restore habitat necessary for the survival of the eastern diamondback, remaining suitable habitat is a fraction of the historical range. The prescribed burn programs of State and Federal lands, as well as some large tracts of private lands, improve and restore habitat important to the eastern diamondback, however much more fire management is needed to maintain and restore current and historical portions of its range. Additionally, fire management is often impeded by unsuitable weather, dangerous burn conditions, lack of funding, concern of adjacent landowners, or unwillingness to burn in difficult conditions because of safety issues. Often, prescribed fire management focuses more on reducing fuel loading and lessening the potential for wildfire than on maintaining high-quality areas with respect to habitat suitability for eastern diamondback rattlesnakes (Kaufman *et al.* undated, pp. 2, 4–8). In other words, there may simply not be enough prescribed fire in terms of area or frequency to restore or maintain the open-canopy habitats on which the eastern diamondback depends.

In summary, the Service finds that the petition and information in our files does not provide substantial scientific or commercial information indicating that listing may be warranted due to the effects of pesticide use or snakes killed out of fear or for adventure. However, prescribed fire is one of the most important tools for restoration and maintenance of suitable habitat for the eastern diamondback rattlesnake. Based on the information available to this assessment, the limited area and frequency of prescribed fire occurring for restoration and maintenance of suitable habitat may pose a significant threat to the continued existence of the eastern diamondback. Additionally, new scientific information and modeling data cited in the petition are demonstrating that the eastern diamondback may not likely be able to adapt to the change and more importantly, the rate of change, in its habitat due to climate change.

Therefore, the Service finds that the information provided in the petition, as well as other information in our files, presents substantial scientific or commercial information indicating that the petitioned action may be warranted due to other natural or manmade factors.

Finding

On the basis of our determination under section 4(b)(3)(A) of the Act, we determine that the petition presents substantial scientific or commercial information indicating that listing the eastern diamondback rattlesnake throughout its entire range may be warranted. This finding is based on information provided under factors A, B, D, and E. We determine that the information provided under factor C is not substantial.

Because we have found that the petition presents substantial information indicating that listing the eastern diamondback rattlesnake may be warranted, we are initiating a status review to determine whether listing the eastern diamondback rattlesnake under the Act is warranted.

The ''substantial information'' standard for a 90-day finding differs from the Endangered Species Act's ''best scientific and commercial data'' standard that applies to a status review to determine whether a petitioned action is warranted. A 90-day finding does not constitute a status review under the Act. In a 12-month finding, we will determine whether a petitioned action is warranted after we have completed a thorough status review of the species, which is conducted following a substantial 90-day finding. Because the Act's standards for 90-day and 12-month findings are different, as described above, a substantial 90-day finding does not mean that the 12-month finding will result in a warranted finding.

References Cited

A complete list of references cited is available on the Internet at *http://www.regulations.gov* and upon request from the Panama City, FL, Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

Author

The primary authors of this notice are the staff members of the Panama City, FL, Ecological Services Office.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: May 1, 2012.

David L. Cottingham,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2012–11230 Filed 5–9–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[Docket No. 120328230–1019–01]

RIN 0648–BC10

Sea Turtle Conservation; Shrimp Trawling Requirements

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

ACTION: Proposed rule; request for comments; notice of public hearings.

SUMMARY: We are proposing to withdraw the alternative tow time restriction and require all skimmer trawls, pusher-head trawls, and wing nets (butterfly trawls) rigged for fishing to use turtle excluder devices (TEDs) in their nets. The intent of this proposed rule is to reduce incidental bycatch and mortality of sea turtles in the southeastern U.S. shrimp fisheries, and to aid in the protection and recovery of listed sea turtle populations.

DATES: Written comments (see **ADDRESSES**) will be accepted through July 9, 2012. Public hearings on the proposed rule will be held in May and June 2012. See **SUPPLEMENTARY INFORMATION** for meeting dates, times, and locations.

ADDRESSES: You may submit comments on this proposed rule, identified by 0648–BC10, by any of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal e-Rulemaking Portal: *http://www.regulations.gov.*
- *Mail:* Michael Barnette, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.
- *Fax:* 727–824–5309; Attention: Michael Barnette.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. We will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Michael Barnette, 727–551–5794.

SUPPLEMENTARY INFORMATION:

Background

All sea turtles in U.S. waters are listed as either endangered or threatened under the Endangered Species Act of 1973 (ESA). The Kemp's ridley (*Lepidochelys kempii*), leatherback (*Dermochelys coriacea*), and hawksbill (*Eretmochelys imbricata*) turtles are listed as endangered. The loggerhead (*Caretta caretta;* Northwest Atlantic distinct population segment) and green (*Chelonia mydas*) turtles are listed as threatened, except for breeding populations of green turtles in Florida and on the Pacific coast of Mexico, which are listed as endangered.

Sea turtles are incidentally taken, and some are killed, as a result of numerous activities, including fishery-related trawling activities in the Gulf of Mexico and along the Atlantic seaboard. Under the ESA and its implementing regulations, taking (harassing, injuring or killing) sea turtles is prohibited, except as identified in 50 CFR 223.206, according to the terms and conditions of a biological opinion issued under section 7 of the ESA, or according to an incidental take permit issued under section 10 of the ESA. Incidentally taking threatened sea turtles during shrimp trawling is exempted from the taking prohibition of section 9 of the ESA if the conservation measures specified in the sea turtle conservation regulations (50 CFR 223.206) are followed. The same conservation measures also apply to endangered sea turtles (50 CFR 224.104).

The regulations require most shrimp trawlers operating in the southeastern United States to have a NMFS-approved TED installed in each net that is rigged for fishing, to allow sea turtles to escape. TEDs currently approved by NMFS include single-grid hard TEDs and hooped hard TEDs conforming to a generic description and one type of soft TED—the Parker soft TED (see 50 CFR 223.207). However, skimmer trawls, pusher-head trawls, and vessels using wing nets currently may employ alternative tow time restrictions in lieu of TEDs, under 50 CFR 223.206(d)(2)(ii)(A). The alternative tow

time restrictions currently limit tow times to 55 minutes from April 1 through October 31, and 75 minutes from November 1 through March 31.

TEDs incorporate an escape opening, usually covered by a webbing flap, which allows sea turtles to escape from trawl nets. To be approved by NMFS, a TED design must be shown to be 97 percent effective in excluding sea turtles during testing based upon specific testing protocols (50 CFR 223.207(e)(1)). Most approved hard TEDs are described in the regulations (50 CFR 223.207(a)) according to generic criteria based upon certain parameters of TED design, configuration, and installation, including height and width dimensions of the TED opening through which the turtles escape.

Over the past two years we have documented elevated sea turtle strandings in the northern Gulf of Mexico, particularly throughout the Mississippi Sound area. In the first three weeks of June 2010, over 120 sea turtle strandings were reported from Mississippi and Alabama waters, none of which exhibited any signs of external oiling to indicate effects associated with the Deepwater Horizon (DWH) oil spill event. A total of 644 sea turtle strandings were reported in 2010 from Louisiana, Mississippi, and Alabama waters, 561 (87 percent) of which were Kemp's ridley sea turtles. During March through May of 2011, 267 sea turtle strandings were reported from Mississippi and Alabama waters alone. A total of 525 sea turtle strandings were reported in 2011 from Louisiana, Mississippi, and Alabama waters, with the majority (455) occurring from March through July, 390 (86 percent) of which were Kemp's ridley sea turtles. These stranding numbers are significantly greater than reported in past years; Louisiana, Mississippi, and Alabama reported 42 and 73 total sea turtle strandings for 2008 and 2009, respectively. Strandings typically represent only a small fraction of actual mortality; therefore, these stranding events represent significant amounts of sea turtle mortality. However, it should be noted that stranding coverage has increased considerably due to the DWH oil spill event, which has increased the likelihood of observing stranded animals.

Necropsy results indicate a significant number of stranded turtles from both the 2010 and 2011 events likely perished due to forced submergence (drowning), which is commonly associated with fishery interactions. Additionally, information from NMFS and Mississippi Department of Marine Resources (MDMR) enforcement, stemming from the monitoring of Mississippi Sound skimmer trawl vessels in 2010, indicate the vessels in the skimmer trawl fleet exceed alternative tow time requirements.

Because of the elevated strandings in 2010 and 2011, as well as issues identified within the shrimp fisheries that indicated an evaluation of alternative tow time restrictions within the skimmer trawl sector was warranted, NMFS began developing a draft environmental impact statement (DEIS); a notice of availability is expected to publish in the **Federal Register** on May 18, 2012. The analysis included in the DEIS demonstrates that withdrawing the alternative tow time restriction and requiring all skimmer trawls, pusher-head trawls, and wing nets rigged for fishing to use TEDs in their nets would reduce incidental bycatch and mortality of sea turtles in the southeastern U.S. shrimp fisheries and, therefore, may be a necessary and advisable action to conserve threatened sea turtle species.

While the recent stranding events acted as a catalyst for examining sea turtle bycatch issues within the shrimp fisheries and, ultimately, this proposed rule, NMFS has previously considered a TED requirement for skimmer trawls, pusher-head trawls, and wing nets (butterfly trawls). For example, on May 8, 2009, NMFS published a notice of intent (NOI) to prepare an environmental impact statement and conduct public scoping meetings, and made available a scoping document presenting various approaches to regulating trawl fisheries in the Atlantic Ocean (74 FR 21627). The scoping document suggested using a phased approach to implement regulations to reduce sea turtle captures by requiring capture mitigation strategies (i.e., TEDs) as technology becomes available. ''Phase I'' would have further regulated the summer flounder and Atlantic sea scallop fisheries, as well as introduce regulations for the whelk, croaker/weakfish, and calico scallop trawl fisheries. Regulation of fisheries in ''Phase II,'' which included sheepshead, black drum, king whiting, porgy, southeastern U.S. shrimp (skimmer trawl and trynets), Spanish sardine, scad, ladyfish, squid, mackerel, butterfish, and Northeast multispecies (large- and small-mesh) trawl fisheries, would be evaluated for subsequent rulemaking. Finally, ''Phase III'' regulations would have been developed for the skate, horseshoe crab, monkfish, bluefish, spiny dogfish, and herring trawl fisheries, and any other trawl fisheries not previously identified or considered. The NOI and scoping document acknowledged, however, that the implementation sequence could shift we obtain testing results and new information about additional trawl fisheries.

Additionally, in June 2010, NMFS prepared but never published an emergency rule in accordance with Section 4(b)(7) of the ESA (16 U.S.C. 1533(b)(7)) to require TEDs for all skimmer trawls, pusher-head trawls, and wing nets (butterfly trawls) rigged for fishing in Mississippi and Alabama state waters. Before the emergency rule could be implemented, however, oil from the DWH oil spill event reached nearshore areas of the Northern Gulf of Mexico, and the states closed their waters to all fishing.

Skimmer Trawls, Pusher-Head Trawls, and Wing Nets

Developed in the early 1980s, the skimmer trawl was intended for use in some areas primarily to catch white shrimp, which have the ability to jump over the headrope of standard trawls while being towed in shallow water. The skimmer net frame allows the net to be elevated above the water while the net is fishing, thus preventing shrimp from escaping over the top. Owing to increased shrimp catch rates, less debris and/or fish and other bycatch, and lower fuel consumption than otter trawlers, the use of skimmer nets quickly spread throughout Louisiana, Mississippi, and Alabama. The basic components of a skimmer trawl include a frame, the net, heavy weights, skids or ''shoes,'' and tickler chains. The net frame is usually constructed of steel or aluminum pipe or tubing and is either L-shaped (with an additional stiff leg) or a trapezoid design. When net frames are deployed, they are aligned perpendicularly to the vessel and cocked or tilted forward and slightly upward. This position allows the net to fish better and reduces the chance of the leading edge of the skid digging into the bottom and subsequently damaging the gear. The frames are maintained in this position by two or more stays or cables to the bow. The outer leg of the frame is held in position with a ''stiff leg'' to the horizontal pipe and determines the maximum depth at which each net is capable of working. The skid, or ''shoe,'' is attached to the bottom of the outer leg, which allows the frame to ride along the bottom, rising and falling with the bottom contour. The bottom of the gear includes tickler chains and lead lines. The skimmer trawl is the most popular trawl type after the otter trawl, and is widely utilized in Louisiana waters.

Vietnamese fishermen who moved into Louisiana in the early 1980s

introduced the pusher-head trawl, also known as the ''xipe'' or chopstick net. The pusher-head trawl net is attached to a rigid or flexible frame similar to the wing net; however, the frame mounted on the bow of the boat is attached to a pair of skids and fished by pushing the net along the bottom.

Wing nets (butterfly trawls or ''paupiers'') were introduced in the 1950s and used on stationary platforms and on shrimp boats either under power or while anchored. A wing net consists of square metal frame which forms the mouth of the net. Webbing is attached to the frame and tapers back to a cod end. The net can be fished from a stationary platform or a pair of nets can be attached to either side of a vessel. The vessel is then anchored in tidal current or the nets are ''pushed'' through the water by the vessel. The contents of the wing net, as well as the contents of skimmer and pusher-head trawls, can be picked up and dumped without raising the entire net out of the water, which is necessary with an otter trawl. While wing nets, as well as pusher-head trawls, are allowable gear types in the Northern Gulf of Mexico, they are not as common as skimmer trawls. For example, while the MDMR does not differentiate gear type within their shrimp fishery, a 2008 survey of trip tickets indicated there were approximately 247 otter trawl, 56 skimmer trawl, 4 butterfly net, and 2 pusher-head trawls active in Mississippi.

Sea Turtle Bycatch in Skimmer Trawls, Pusher-Head Trawls, and Wing Nets

While there is available information documenting sea turtle captures in the skimmer trawl fisheries (e.g., Price and Gearheart 2011), skimmer trawls, pusher-head trawls, and wing nets were initially allowed to use alternative tow time restrictions in lieu of TEDs under the assumption that the trawl bags were typically retrieved at intervals that would not be fatal to most sea turtles that were captured in the net. The December 2, 2002 biological opinion (NMFS 2002) noted that the tow-time authorization instead of TEDs was for fisheries that, ''out of physical, practical, or economic necessity, require fishermen to limit their tow times naturally.'' But information from MDMR indicates that some participants in their skimmer trawl fishery are not aware of the tow time restrictions, and violations of the tow time restrictions have occurred and still occur within the fishery.

Moreover, tow times restrictions are difficult to enforce. Documenting a tow time violation requires enforcement personnel to be in close proximity of a skimmer trawl to monitor gear deployment and recovery, and to record the time when the codend enters the water until it is removed. Also, enforcement personnel need to remain undetected for at least 55 minutes—practically impossible at sea—or else their presence may bias a vessel captain's operational procedure. There are also concerns repeated captures may result in turtle mortality in times and areas where sea turtle abundance and skimmer trawl fishing effort is high (Sasso and Epperly 2006).

In the DEIS, we calculated sea turtle catch per unit effort rates based on observed effort in the skimmer trawl fisheries and relative abundances of sea turtle species. These rates were multiplied by overall effort (i.e., 585,576 effort hours in the Northern Gulf of Mexico skimmer trawl fisheries and 6,576 effort hours in the North Carolina skimmer trawl fishery) to determine total sea turtle take in the skimmer trawl fisheries. The analysis resulted in a total anticipated take of 28,127 captured sea turtles in the combined skimmer trawl, pusher-head trawl, and wing net fisheries.

If skimmer trawl vessels regularly exceed the tow time restrictions and kill incidentally captured sea turtles, requiring TEDs instead of tow times may significantly reduce sea turtle mortality by allowing them to escape the net and avoid drowning. In order to extrapolate the sea turtle capture estimates to obtain an associated mortality estimate for the skimmer trawl fisheries operating with installed TEDs, the DEIS analysis considered both the benefits of exclusion through properly installed TEDs and the effect of TED violations on sea turtle capture rates and total mortalities. This analysis was accomplished by calculating overall compliance and non-compliance rates in the Gulf of Mexico and the Atlantic otter trawl shrimp fisheries (to serve as a proxy for the skimmer trawl fisheries, assuming TED compliance would be similar between the two gear types) based on vessel boarding data from TED inspections. Using this data, we estimate that withdrawing the alternative tow time restriction in the preferred alternative would prevent 5,515 sea turtle mortalities in the combined skimmer trawl fisheries. Therefore, we preliminarily determined that the measures proposed here are a necessary and advisable to conserve threatened sea turtle species. We have further preliminarily determined that the measures proposed here are necessary and appropriate to enforce the requirements of the ESA.

We anticipate to make this proposed TED requirement effective by the start of the 2013 shrimping season, not later than March 15, 2013.

Classification

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

NMFS prepared an Initial Regulatory Flexibility Analysis (IRFA), as required by Section 603 of the Regulatory Flexibility Act, for this proposed rule. The IRFA describes the economic impact this proposed rule, if implemented, would have on small entities. A description of the proposed rule, why it is being considered, the objectives of, and legal basis for this proposed rule are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A copy of the full analysis is available from NMFS (see **ADDRESSES**). A summary of the IRFA follows.

No duplicative, overlapping, or conflicting Federal rules have been identified.

We expect this proposed rule will directly affect fishermen who use skimmer trawls, pusher-head trawls, and wing nets (butterfly trawls). This gear is only used in Louisiana, Mississippi, Alabama, Florida, and North Carolina. Florida already requires vessels employing this gear to use TEDs. Among the remaining states, approximately 2,435 active vessels have been identified that use this gear (2,248 in Louisiana, 62 in Mississippi, 60 in Alabama, and 65 in North Carolina). We expect this rule, if implemented, will affect all of these vessels.

The Small Business Administration has established size criteria for all major industry sectors in the U.S. including fish harvesters. A business involved in fish harvesting is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of $4 million (North American Industry Classification System code 114112, shellfish fishing) for all its affiliated operations worldwide.

We estimate the average annual revenue (2008 dollars) for vessels harvesting shrimp using skimmer trawls, pusher-head trawls, or wing nets (butterfly trawls) as approximately $22,500 for Louisiana vessels, $21,400 for Alabama vessels, and $2,700 for North Carolina vessels. However, fishermen, including shrimpers, commonly participate in multiple fisheries, and these results may not

include revenue from non-shrimp species. Comparable information for Mississippi vessels is not available because no shrimp landings from Mississippi vessels using this gear were recorded in the comparable time period (2006–2010). Although some Mississippi vessels are expected to be actively using this gear, we do not know whether these vessels are landing their shrimp harvests in other states, selling directly to the public and not through dealers, or engaging in some other practice that has resulted in the absence of recorded landings. Based on the average revenue estimates, all commercial fishing vessels expected to be directly affected by this proposed rule, if implemented, are for the purpose of this analysis considered to be small entities.

If the affected entities are required to pay for their TEDs, we expect this proposed rule will result in an estimated average first-year cost of $2,120 for fishermen in Louisiana, $1,000 for fishermen in Mississippi, $2,061 for fishermen in Alabama, and $1,133 for fishermen in North Carolina. These results are based on an estimated cost of $350 per TED, the use of two TEDs per vessel, an annual maintenance cost of $300 per vessel, and an estimated 4.97 percent reduction in shrimp harvest. Based on the average annual revenue estimates provided above, these first-year costs equal approximately 9.4 percent of average annual shrimp revenue for affected entities in Louisiana, 9.6 percent in Alabama, and 42.4 percent in North Carolina. The total average effect per entity would be reduced if these fishermen also operate in other fisheries, which we expect is the case for most entities. Total revenues from all species for the affected fishermen are not known. However, the estimated average annual net revenue across all Gulf states, including revenue from all species, for operations in the inshore shrimp sector, which includes the entities described here, is negative, indicating the average vessel is operating at a loss. As a result, any increased costs or reduced revenues are expected to compound these losses. Similar information is not available for North Carolina fishermen, but this analysis assumes the average net revenue for North Carolina fishermen is comparable to that of inshore shrimp fishermen in the Gulf of Mexico.

As previously discussed, a comparable analysis for entities in Mississippi cannot be completed because we lack appropriate revenue information. As a result, the estimated effect for entities in Mississippi simply reflects the cost of the TEDs. The cost associated with TED purchase, however, may be overstated, particularly for Mississippi vessels. The National Fish and Wildlife Foundation (NFWF) allocated funds received from oil recovery income as a result of the DWH oil spill event for Gulf of Mexico restoration efforts. In 2010, funding was made available to purchase and distribute TEDs for skimmer trawl vessels and, to date, an estimated 360 TEDs have been distributed to 180 Mississippi shrimp vessels. Therefore, we believe the majority of skimmer trawl vessels operating in Mississippi already possess TEDs.

Because a TED is a durable device, the cost of a new TED is not an annual expense. The estimated replacement cycle for a TED is at least three years, barring net damage and TED loss. In a year in which a new TED is not purchased, the effect of this rule would be limited to TED maintenance costs and reduced shrimp harvest associated with TED use. These costs then would be approximately $1,420 for Louisiana vessels, $1,361 for Alabama vessels, and $433 for North Carolina vessels. It may also be possible to reduce shrimp losses over time through changes in fishing practices or increased experience with TED use.

The cost of initial TED purchases would be reduced if special funding is available, similar to the NFWF funding in 2010 or a comparable project. This analysis does not assume that TEDs will be provided. If TEDs are provided, the initial and recurring expected effects of this proposed rule would be reduced to the costs of TED maintenance, replacement TEDs, and shrimp loss.

This proposed rule would not establish any new reporting, record-keeping, or other compliance requirements beyond the requirement to use a TED when using skimmer trawls, pusher-head trawls, and wing nets (butterfly trawls). TEDs are installed by the net dealer, so no special skills would be expected to be required of fishermen for TED installation. Some learning may be required for the maintenance and routine use of the TED. Use of TEDs, however, is common in the general shrimp fisheries and the skills required in their use are consistent with the skill set and capabilities of commercial shrimp fishermen in general. As a result, special professional skills would not be expected to be necessary.

We considered eight alternatives, including the proposed rule and the no-action alternative, to reduce incidental bycatch and mortality of sea turtles in the southeastern U.S. shrimp fisheries. The no-action alternative would not have changed any current management measures and was not selected because it would not to result in any reduction in the incidental bycatch and mortality of sea turtles.

Two other management alternatives also considered TED use instead of the current tow time authorization for varying portions of the skimmer trawl fleets. The remaining four alternatives considered different time/area closures for the shrimp fisheries.

The two alternatives that considered alternative tow time restrictions would have, alternatively, required TED use in lieu of tow time restrictions based on vessel length, or limited TED use either to vessels 30 feet and longer, or to those 20 feet and longer. Both alternatives would have affected fewer vessels (1,471 and 2,211 vessels, respectively) and resulted in lower adverse economic effects (by 40 percent and 9 percent, respectively) than the proposed rule. However, we did not select these alternatives because they would not sufficiently reduce the incidental bycatch and mortality of sea turtles in general, and would also incentivize an effort shift to smaller vessels, thereby reducing the net benefits of TED use by larger vessels.

The four alternatives that considered closures varied by geographic coverage, either the Texas-Louisiana or Louisiana-Mississippi state borders through the Alabama-Florida state border; or by duration, either March 1 through May 31 or April 1 through May 15. The expected economic effects of these alternatives would result from reduced shrimp harvests, and range from aggregates losses of approximately $50,000 to approximately $14 million. While three of these alternatives would likely result in lower adverse economic effects for affected entities than the proposed action, none of these alternatives was selected because the low fishing effort during the time periods considered means that the total reduction in the incidental bycatch and mortality of sea turtles would be insufficient to afford these species the necessary protection.

The Endangered Species Act provides the statutory basis for the rule.

Locations and Times of Public Hearings

Public hearings will be held at the following locations:

1. Morehead City—Crystal Coast Civic Center, 3505 Arendell Street, Morehead City, NC 28557.

2. Larose—Larose Regional Park and Civic Center, 307 East 5th Street, Larose, LA 70373.

3. Belle Chasse—Belle Chasse Community Center, 8398 Highway 23, Belle Chasse, LA 70037.

4. D'Iberville—L.H. ''Red'' Barnett Senior Center, 10450 Lamey Bridge Road, D'Iberville, MS 39540.

5. Bayou La Batre—Bayou La Batre Community Center, 12745 Padgett Switch Road, Bayou La Batre, AL 36509.

The public hearing dates are:

1. May 30, 2012, 2 p.m. to 4 p.m., Morehead City, NC.

2. June 4, 2012, 4 p.m. to 6 p.m., Larose, LA.

3. June 5, 2012, 4 p.m. to 6 p.m., Belle Chasse, LA.

4. June 6, 2012, 4 p.m. to 6 p.m., Biloxi, MS.

5. June 13, 2012, 2 p.m. to 4 p.m., Bayou La Batre, AL.

References

NMFS. 2002. Endangered Species Act Section 7 Consultation on Shrimp Trawling in the Southeastern United States, under the Sea Turtle Conservation Regulations and as Managed by the Fishery Management Plans for Shrimp in the South Atlantic and Gulf of Mexico. December 2, 2002.

Price, A.B. and J.L. Gearhart. 2011. Evaluations of turtle excluder device (TED) performance in the U.S. southeast Atlantic and Gulf of Mexico skimmer trawl fisheries. NOAA Technical Memorandum NMFS–SEFSC–615, 15 pp.

Sasso, C.R. and S.P. Epperly. 2006. Seasonal sea turtle mortality risk from forced submergence in bottom trawls. Fisheries Research 81:86–88.

List of Subjects in 50 CFR Part 223

Endangered and threatened species; Exports; Imports; Transportation.

Dated: May 3, 2012.

Paul N. Doremus,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 223 is proposed to be amended as follows:

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

1. The authority citation for part 223 continues to read as follows:

Authority: 16 U.S.C. 1531–1543; subpart B, § 223.201–202 also issued under 16 U.S.C. 1361 *et seq.;* 16 U.S.C. 5503(d) for § 223.206(d)(9).

§ 223.206 [Amended]

2. In § 223.206, paragraph (d)(2)(ii)(A)(*3*) is removed and reserved.

[FR Doc. 2012–11201 Filed 5–8–12; 11:15 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 77, No. 91

Thursday, May 10, 2012

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

May 7, 2012.

The Department of Agriculture will submit the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, Washington, DC; *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602.

Dates: Comments regarding these information collections are best assured of having their full effect if received by June 11, 2012. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Agricultural Marketing Service

Title: Specialty Crop Block Grant Program—2008 Farm Bill.

OMB Control Number: 0581–0248.

Summary of Collection: The Specialty Crop Block Grant Program—Farm Bill (SCBGP–FB) is authorized under section 101 of the Specialty Crops Competitiveness Act of 2004 (7 U.S.C. 1621 note, amended under section 10109 of the Food, Conservation, and Energy Act of 2008, the Farm Bill). Section 10109 directs the Secretary of Agriculture to make grants to States to be used by State departments of agriculture solely to enhance the competitiveness of specialty crops.

Need and Use of the Information: The information collected is needed for the implementation of the SCBGP–FB, to determine a State department of agriculture's eligibility in the program, and to certify that grant participants are complying with applicable program regulations.

Description of Respondents: State Agriculture Departments.

Number of Respondents: 56.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 1,624.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2012–11334 Filed 5–9–12; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

May 7, 2012.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Natural Resources Conservation Service

Title: Long Term Contracting.

OMB Control Number: 0578–0013.

Summary Of Collection: The Long Term Contracting regulations at 7 CFR part 630, and the Conservation program regulations at 7 CFR parts 624, 625, 636, 701, 1415, 1469, 1465, 1466, 1467, 1470 and 1491 set forth the basic policies, program provisions, and eligibility requirements for owners and operators to enter into and carry out long-term conservation program contracts with technical assistance under the various program. These programs are administered by the Natural Resources Conservation Service (NRCS). These programs authorize federal technical and financial long term cost sharing assistance for conservation treatment with eligible land users and entities. Under the terms of the agreement, the participant agrees to apply, or arrange to apply, the conservation treatment

specified in the conservation plan. In return for this agreement, federal financial assistance payments are made to the land user, or third party, upon successful application of the conservation treatment.

Need and Use of the Information: NRCS will collect information on cost sharing and technical assistance, making land use changes and install measure to conserve, develop and utilize soil, water, and related natural resources on participants land. NRCS uses the information to ensure the proper utilization of program funds, including application for participation, easement, and application for payment.

Description of Respondents: Individuals or households; Farms; Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 10,145.

Frequency of Responses: Reporting; Annually, Other (As required).

Total Burden Hours: 7,661.

Natural Resources Conservation Service

Title: Volunteer Program—Earth Team.

OMB Control Number: 0578–0024.

Summary of Collection: Volunteers have been a valuable human resource to the Natural Resources Conservation Service (NRCS) since 1985. NRCS is authorize by the Federal Personnel Manual (FPM) Supplement 296–33, Subchapter 33, to recruit, train and accept, with regard to Civil Service classification law, rules, or regulations, the service of individuals to serve without compensation. Volunteers may assist in any agency program/project and may perform any activities which agency employees are allowed to do. Volunteers must be 14 years of age. NRCS will collect information using NRCS forms.

Need and Use of the Information: NRCS will collect information on the type of skills and type of work the volunteers are interested in doing. The collected information will be used to evaluate potential international volunteers and evaluate the effectiveness of the volunteer program. Without the information, NRCS would not know which individuals are interested in volunteering.

Description of Respondents: Individuals or households; Business or other for-profit; Not-for-profit institutions; State, Local, or Tribal Government.

Number of Respondents: 5,951.

Frequency of Responses: Reporting: Biennially.

Total Burden Hours: 776.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2012–11336 Filed 5–9–12; 8:45 am]

BILLING CODE 3410–16–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Illinois Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a meeting and briefing of the Illinois Advisory Committee to the Commission will convene at 9:00 a.m. and adjourn at 1:00 p.m. on June 7, 2012, at 515 N. State Street, Suite 2800, Chicago, IL 60654. The purpose of the meeting is to conduct planning and business activities of the Committee and to hear a briefing on mass incarceration issues in Illinois. Participants of the meeting will include scholars and community representatives.

Members of the public are entitled to submit written comments; the comments must be received in the regional office by July 9, 2012. The address is 55 W. Monroe St., Suite 410, Chicago, IL 60603. Persons wishing to email their comments, or to present their comments verbally at the meeting, or who desire additional information should contact Carolyn Allen, Administrative Assistant, (312) 353–8311, or by email: *callen@usccr.gov.*

Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

Records generated from this meeting may be inspected and reproduced at the Midwestern Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *www.usccr.gov,* or to contact the Midwestern Regional Office at the above email or street address.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated in Washington, DC, May 7, 2012.

Peter Minarik,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. 2012–11311 Filed 5–9–12; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Meetings

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of meeting.

DATE AND TIME: Friday, May 18, 2012; 9:30 a.m. EDT.

PLACE: 624 Ninth Street NW., Room 540, Washington, DC 20425.

MEETING AGENDA This meeting is open to the public.

I. Approval of Agenda
II. Approval of the March 9, 2012 Meeting Minutes
III. Program Planning Update and discussion of projects:
- Strategic Planning Process
- Discussion on 2013 Statutory Report Selection Process

IV. Management and Operations
- Chief of Regional Programs' report
- Discussion on Agency Staffing

V. Adjourn Meeting

CONTACT PERSON FOR FURTHER INFORMATION: Lenore Ostrowsky, Acting Chief, Public Affairs Unit (202) 376–8591.

Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact Pamela Dunston at (202) 376–8105 or at *signlanguage@usccr.gov* at least seven business days before the scheduled date of the meeting.

Dated: May 4, 2012.

Kimberly Tolhurst,

Senior Attorney-Advisor.

[FR Doc. 2012–11385 Filed 5–8–12; 11:15 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–33–2012]

Foreign-Trade Zone 220—Sioux Falls, SD; Notification of Proposed Production Activity, Rosenbauer America, LLC/Rosenbauer South Dakota, LLC, (Emergency Vehicles/ Firefighting Equipment), Lyons, SD

The Sioux Falls Development Foundation, grantee of FTZ 220, submitted a notification of proposed production activity on behalf of Rosenbauer America, LLC/Rosenbauer South Dakota, LLC (Rosenbauer), located in Lyons, South Dakota. A separate application which is requesting usage-driven designation for the Company's facility (proposed Site 8) was submitted and will be processed under Section 400.31 of the Board's

regulations. The facility is used for the production of emergency vehicles and firefighting equipment (pumps, tankers, rescue, aerials and specialty emergency vehicles).

Production under FTZ procedures could exempt Rosenbauer from customs duty payments on the foreign status components used in export production. On its domestic sales, Rosenbauer would be able to choose the duty rates during customs entry procedures that apply to emergency vehicles and firefighting equipment (duty rate free) for the foreign status inputs noted below. Customs duties also could possibly be deferred or reduced on foreign status production equipment.

Components and materials sourced from abroad include: Actuator assemblies, foam compounds, extension hoses, docking gasket profiles, axial face seals, holding discs, non-return valves, anti-kink hoses, high-pressure rubber hoses, alloy suction hoses, V-belts, O-rings, shaft-seal rings, leak-sealing lances, rope ladders, manual hose-reels, wall calendars, catalogs, rescue ropes, stuffing-box packets, gloves, elastic lighting lines, fire boots, helmets, gaskets, composite gas containers, chain sets, screws, support bearings, washers, swivel mount flanges, hose lines, strainers and clamps, hose shafts with crimp connectors, sealing flanges, closer flanges, telescoping aluminum poles, folding multi-use knives, rotary pumps, centrifugal pumps, foam transfer pumps, pump parts, fire extinguishers, spray guns, other sprayers, hand-held pneumatic tools and parts, powered hose reels, safety and relief valves, taps and cocks, hand-operated spray valves, valve parts, transmission shafts, transfer boxes, torsion dampers, gasket kits, priming pump drives, DC motors, static converters, rechargeable flashlights, flashlight parts, electrical foam proportioning system and parts, tank suspension assemblies, swing-out shelf/step assemblies, pressure governors, voltage regulators and lighting masts and assemblies (duty rate ranges from free to 10.4%).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is June 19, 2012.

A copy of the notification will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *www.trade.gov/ftz.*

For further information, contact Christopher Kemp at *Christopher.Kemp@trade.gov* or (202) 482–0862.

Dated: May 3, 2012.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2012–11224 Filed 5–9–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Order Denying Export Privileges

In the Matter of:

Davoud Baniameri, a/k/a Davoud Baniamery,
a/k/a David Baniameri, a/k/a David Baniamery currently incarcerated at: Inmate Number: 33905–112, CI–Taft, Correctional Institution, P.O. Box 7001, Taft, CA 93268,

and with an address at:

6531 Kessler Avenue, Woodland Hills, CA 91367–2712.

On August 12, 2011, in the U.S. District Court, District of Illinois, Davoud Baniameri, a/k/a Davoud Baniamery, a/k/a David Baniameri, and a/k/a David Baniamery (''Baniameri'') was convicted of one count of violating the International Emergency Economic Powers Act (50 U.S.C.1701 *et seq.* (2000)) (''IEEPA'') and one count of violating Section 38 of the Arms Export Control Act (22 U.S.C. 2778 (2000)) (''AECA''). Specifically, Baniameri was convicted of conspiring to export goods and technology to Iran, in violation of IEEPA. Baniameri also was convicted of knowingly and willfully attempting to export from the United States defense articles designated on the United States Munitions List, namely, ten connector adapters, without first having obtained the required license or other approval for such export, in violation of AECA. Baniameri was sentenced to 51 months in prison followed by three years supervised release.

Section 766.25 of the Export Administration Regulations (''EAR'' or ''Regulations'') [1] provides, in pertinent part, that ''[t]he Director of the Office of Exporter Services, in consultation with the Director of the Office of Export Enforcement, may deny the export privileges of any person who has been convicted of a violation of the [Export Administration Act (''EAA'')], the EAR, or any order, license or authorization issued thereunder; any regulation, license, or order issued under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706); 18 U.S.C. 793, 794 or 798; section 4(b) of the Internal Security Act of 1950 (50 U.S.C. 783(b)), or section 38 of the Arms Export Control Act (22 U.S.C. 2778).'' 15 CFR 766.25(a); see also Section 11(h) of the EAA, 50 U.S.C. app. § 2410(h). The denial of export privileges under this provision may be for a period of up to 10 years from the date of the conviction. 15 CFR 766.25(d); see also 50 U.S.C. app. § 2410(h). In addition, Section 750.8 of the Regulations states that the Bureau of Industry and Security's Office of Exporter Services may revoke any Bureau of Industry and Security (''BIS'') licenses previously issued in which the person had an interest in at the time of his conviction.

I have received notice of Baniameri's conviction for violating IEEPA and AECA, and have provided notice and an opportunity for Baniameri to make a written submission to BIS, as provided in Section 766.25 of the Regulations. I have not received a submission from Baniameri. Based upon my review and consultations with BIS's Office of Export Enforcement, including its Director, and the facts available to BIS, I have decided to deny Baniameri's export privileges under the Regulations for a period of ten years from the date of Baniameri's conviction. I have also decided to revoke all licenses issued pursuant to the Act or Regulations in which Baniameri had an interest at the time of his conviction.

Accordingly, it is hereby *ordered*:

I. Until August 12, 2021, Davoud Baniameri, a/k/a Davoud Baniamery a/k/a David Baniameri, and a/k/a/David Baniamery, with last known addresses at: Inmate Number: 33905–112, CI–Taft, Correctional Institution, P.O. Box 7001, Taft, CA 93268 and 6531 Kessler Avenue, Woodland Hills, CA 91367–2712, and when acting for or on behalf of Baniameri, his representatives, assigns, agents or employees (the ''Denied Person''), may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'')

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[1] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2011). The Regulations issued pursuant to the Export Administration Act (50 U.S.C. app. §§ 2401–2420 (2000)) (''EAA''). Since August 21, 2001, the EAA has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 12, 2011 (76 FR 50661 (August 16, 2011)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.* (2000)).

exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

II. No person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

III. After notice and opportunity for comment as provided in Section 766.23 of the Regulations, any other person, firm, corporation, or business organization related to Baniameri by affiliation, ownership, control or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order if necessary to prevent evasion of the Order.

IV. This Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

V. This Order is effective immediately and shall remain in effect until August 12, 2021.

VI. In accordance with Part 756 of the Regulations, Baniameri may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

VII. A copy of this Order shall be delivered to the Baniameri. This Order shall be published in the **Federal Register**.

Issued this 3rd day of May 2012.

Bernard Kritzer,

Director, Office of Exporter Services.

[FR Doc. 2012–11267 Filed 5–9–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–848]

Certain Stilbenic Optical Brightening Agents From Taiwan: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* May 10, 2012.

SUMMARY: Based on affirmative final determinations by the Department of Commerce (the Department) and the International Trade Commission (ITC), the Department is issuing an antidumping duty order on certain stilbenic optical brightening agents (stilbenic OBAs) from Taiwan. In addition, the Department is amending its final determination to correct a ministerial error.

FOR FURTHER INFORMATION CONTACT: Sandra Stewart or Minoo Hatten, 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) 482–0768 or (202) 482–1690, respectively.

SUPPLEMENTARY INFORMATION:

Background

In accordance with sections 735(d) and 777(i)(1) of the Tariff Act of 1930, as amended (the Act), on March 23, 2012, the Department published the final determination of sales at less than fair value in the antidumping duty investigation of stilbenic OBAs from Taiwan.[1] On May 2, 2012, the ITC notified the Department of its affirmative determination of material injury to a U.S. industry.[2]

Scope of the Order

The stilbenic OBAs covered by this order are all forms (whether free acid or salt) of compounds known as triazinylaminostilbenes (*i.e.,* all derivatives of 4,4'-bis [1,3,5- triazin-2-yl] [3] amino-2,2'-stilbenedisulfonic acid), except for compounds listed in the following paragraph. The stilbenic OBAs covered by this order include final stilbenic OBA products, as well as intermediate products that are themselves triazinylaminostilbenes produced during the synthesis of stilbenic OBA products.

Excluded from this order are all forms of 4,4'-bis[4-anilino-6-morpholino-1,3,5-triazin-2-yl] [4] amino-2,2'-stilbenedisulfonic acid, $C_{40}H_{40}N_{12}O_8S_2$ (''Fluorescent Brightener 71''). This order covers the above-described compounds in any state (including but not limited to powder, slurry, or solution), of any concentrations of active stilbenic OBA ingredient, as well as any compositions regardless of additives (*i.e.,* mixtures or blends, whether of stilbenic OBAs with each other, or of stilbenic OBAs with additives that are not stilbenic OBAs), and in any type of packaging.

These stilbenic OBAs are classifiable under subheading 3204.20.8000 of the Harmonized Tariff Schedule of the United States (HTSUS), but they may also enter under subheadings 2933.69.6050, 2921.59.4000 and

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[1] *See Certain Stilbenic Optical Brightening Agents From Taiwan: Final Determination of Sales at Less Than Fair Value,* 77 FR 17027 (March 23, 2012) (*Final Determination*).

[2] *See Certain Stilbenic Optical Brightening Agents from China and Taiwan,* USITC Investigation Nos. 731–TA–1186 and 731–TA–1187 (Final), USITC Publication 4322 (May 2012).

[3] The brackets in this sentence are part of the chemical formula.

[4] *Id.*

2921.59.8090. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Amendment to the Final Determination

On March 23, 2012, the Department published its affirmative final determination in this proceeding.[5] On March 27, 2012, Clariant Corporation (the petitioner), submitted a timely ministerial error allegation and requested that the Department correct the alleged ministerial error in the dumping margin calculation. The respondent, Teh Fong Min International Co., Ltd. (TFM) did not submit a ministerial error allegation or rebuttal comments.

After analyzing the petitioner's comments, we have determined, in accordance with section 735(e) of the Act and 19 CFR 351.224(e), that we made a ministerial error in our calculation for the *Final Determination* with respect to TFM. Specifically, we did not use TFM's revised U.S. sales database for our dumping margin calculation. For a detailed discussion of the alleged ministerial error, as well as the Department's analysis, *see* Memorandum to Paul Piquado, Assistant Secretary for Import Administration, from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, entitled, ''Ministerial Error Allegation in the Final Determination of the Antidumping Duty Investigation of Certain Stilbenic Optical Brightening Agents from Taiwan: Teh Fong Min International Co., Ltd.,'' dated April 23, 2012.[6]

In the *Final Determination,* pursuant to section 735(c)(5)(A) of the Act, we determined the estimated all others rate to be equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated. Because TFM is the only respondent in this investigation for which the Department calculated a company-specific rate, we determined the all others rate to be the weighted-average dumping margin calculated for TFM.[7] Because the weighted-average dumping margin for TFM changed as a result of the aforementioned ministerial error, we have amended the all others rate accordingly. The amended weighted-average dumping margins are provided below.

Antidumping Duty Order

As stated above, on May 2, 2012, in accordance with section 735(d) of the Act, the ITC notified the Department of its final determination in this investigation, in which it found material injury with respect to stilbenic OBAs from Taiwan. Because the ITC determined that imports of stilbenic OBAs from Taiwan are materially injuring a U.S. industry, all unliquidated entries of such merchandise from Taiwan, entered or withdrawn from warehouse, are subject to the assessment of antidumping duties.

Therefore, in accordance with section 736(a)(1) of the Act, the Department will direct U.S. Customs and Border Protection (CBP) to assess, upon further instruction by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price (or constructed export price) of the merchandise, for all relevant entries of stilbenic OBAs from Taiwan. These antidumping duties will be assessed on unliquidated entries from Taiwan entered, or withdrawn from warehouse, for consumption on or after November 3, 2011, the date on which the Department published its preliminary determination,[8] but will not include entries occurring after the expiration of the provisional measures period and before publication of the ITC's final injury determination as further described below.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we will instruct CBP to continue to suspend liquidation on all entries of stilbenic OBAs from Taiwan. We will also instruct CBP to require cash deposits equal to the estimated amount by which the normal value exceeds the U.S. price as indicated below. These instructions suspending liquidation will remain in effect until further notice.

Accordingly, effective on the date of publication of the ITC's final affirmative injury determination, CBP will require, at the same time as importers would normally deposit estimated duties on this subject merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins listed below. *See* section 736(a)(3) of the Act.

Provisional Measures

Section 733(d) of the Act states that instructions issued pursuant to an affirmative preliminary determination may not remain in effect for more than four months except where exporters representing a significant proportion of exports of the subject merchandise request the Department to extend that four-month period to no more than six months. At the request of exporters that account for a significant proportion of exports of stilbenic OBAs from Taiwan, we extended the four-month period to no more than six months.[9] In the underlying investigation, the Department published the *Preliminary Determination* on November 3, 2011.[10] Therefore, the six-month period beginning on the date of the publication of the *Preliminary Determination* ended on May 1, 2012. Furthermore, section 737(b) of the Act states that definitive duties are to begin on the date of publication of the ITC's final injury determination.

Therefore, in accordance with section 733(d) of the Act and our practice, we will instruct CBP to terminate the suspension of liquidation and to liquidate, without regard to antidumping duties, unliquidated entries of stilbenic OBAs from Taiwan entered, or withdrawn from warehouse, for consumption after May 1, 2012, the date provisional measures expired, and through the day preceding the date of publication of the ITC's final injury determination in the **Federal Register**. Suspension of liquidation will resume on and after the date of publication of the ITC's final injury determination in the **Federal Register**.

The weighted-average dumping margins are as follows:

Manufacturer/Exporter	Weighted-average margin (percent)
Teh Fong Min International Co., Ltd	6.19
All Others	6.19

This notice constitutes the antidumping duty order with respect to stilbenic OBAs from Taiwan pursuant to section 736(a) of the Act. Interested parties may contact the Department's Central Records Unit, Room 7043 of the main Commerce building, for copies of

[5] *See Final Determination.*

[6] *See also* Memorandum to the file entitled, ''Allegation of Ministerial Error in the Antidumping Duty Investigation of Certain Stilbenic Optical Brightening Agents from Taiwan: Analysis Memorandum for Teh Fong Min International Co., Ltd. With Respect to the Ministerial Error in the Final Determination,'' dated April 23, 2012.

[7] *See Final Determination.*

[8] *See Certain Stilbenic Optical Brightening Agents from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 76 FR 68154 (November 3, 2011) (*Preliminary Determination*).

[9] *Id.*

[10] *Id.*

an updated list of antidumping duty orders currently in effect.

This order and amended final determination are published in accordance with sections 736(a) and 735(e) of the Act and 19 CFR 351.211 and 351.224(e).

Dated: May 3, 2012.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. 2012–11223 Filed 5–9–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–520–804]

Certain Steel Nails From the United Arab Emirates: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce

DATES: *Effective Date:* May 10, 2012.

SUMMARY: Based on affirmative final determinations by the Department of Commerce (the Department) and the International Trade Commission (ITC), the Department is issuing an antidumping duty order on certain steel nails (nails) from the United Arab Emirates (UAE). In addition, the Department is amending its final determination to correct certain ministerial errors.

FOR FURTHER INFORMATION CONTACT: Dmitry Vladimirov or Minoo Hatten, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–0665 or (202) 482–1690, respectively.

SUPPLEMENTARY INFORMATION:

Background

In accordance with sections 735(d) and 777(i)(1) of the Tariff Act of 1930, as amended (the Act), on March 23, 2012, the Department published the final determination of sales at less than fair value in the antidumping duty investigation of nails from the UAE. *See Certain Steel Nails from the United Arab Emirates: Final Determination of Sales at Less Than Fair Value,* 77 FR 17029 (March 23, 2012) (*Final Determination*). On May 2, 2012, the ITC notified the Department of its affirmative determination that an industry in the United States is materially injured within the meaning of section 735(b)(1)(A)(i) of the Act by reason of less-than-fair-value imports of nails from the UAE. *See Certain Steel Nails from the United Arab Emirates,* USITC Investigation No. 731–TA–1185 (Final), USITC Publication 4321 (May 2012).

Pursuant to section 736(a) of the Act, the Department is publishing an antidumping duty order on the subject merchandise.

Scope of the Order

The merchandise covered by this 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), 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 order 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. Certain steel 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 order 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 of this order are steel nails specifically enumerated and identified in ASTM Standard F 1667 (2011 revision) as Type I, Style 20 nails, whether collated or in bulk, and whether or not galvanized.

Also excluded from the scope of this order are the following products:

- Non-collated (*i.e.,* hand-drive 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; 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;
- Non-collated (*i.e.,* hand-drive 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;
- 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;
- non-collated (*i.e.,* hand-drive 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;
- Corrugated nails. A corrugated nail is made of a small strip of corrugated steel with sharp points on one side;
- Thumb tacks, which are currently classified under HTSUS 7317.00.10.00;
- 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;
- Certain steel 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; and
- 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 order is dispositive.

Amendment to the Final Determination

On March 23, 2012, the Department published its affirmative final determination in this proceeding. *See Final Determination.* On March 26, 2012, the respondents in the investigation, Dubai Wire FZE and Precision Fasteners LLC, submitted timely ministerial error allegations and requested, pursuant to 19 CFR 351.224, that the Department correct the alleged ministerial errors in the dumping margin calculations. On March 30, 2012, the petitioner in this proceeding, Mid Continent Nail Corporation, filed

rebuttal comments. No other interested party submitted ministerial error allegations or rebuttal comments.

After analyzing all interested party comments and rebuttals, we have determined, in accordance with section 735(e) of the Act and 19 CFR 351.224(e), that we made a ministerial error in our calculations for the *Final Determination* with respect to both companies. Specifically, we calculated the constructed value (CV) profit ratio on a basis different from how it was applied in the margin calculations in deriving a value for CV profit. For a detailed discussion of the alleged ministerial errors, as well as the Department's analysis, *see* Memorandum to Paul Piquado, Assistant Secretary for Import Administration, from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, entitled, ''Ministerial Error Allegations in the Final Determination of the Antidumping Duty Investigation of Certain Steel Nails from the United Arab Emirates: Precision Fasteners, LLC and Dubai Wire FZE,'' dated April 23, 2012 (Ministerial Error Memo). After correcting the aforementioned ministerial error, the amended weighted average dumping margins changed from 2.80 to 2.51 percent for Precision Fasteners LLC and from 6.29 to 6.09 percent for Dubai Wire FZE.[1]

In the *Final Determination,* pursuant to section 735(c)(5)(A) of the Act, we determined the estimated all-others rate as a simple-average of the weighted-average dumping margins we determined for Dubai Wire FZE and Precision Fasteners LLC. *See Final Determination.* Because the weighted-average dumping margins for both companies changed as a result of the aforementioned ministerial error, we have amended the all-others rate accordingly. The amended all-others rate is provided below.

Antidumping Duty Order

As stated above, on May 2, 2012, in accordance with section 735(d) of the Act, the ITC notified the Department of its final determination in this investigation, in which it found material injury with respect to nails from the UAE. Because the ITC determined that imports of nails from the UAE are materially injuring a U.S. industry, all unliquidated entries of such merchandise from the UAE, entered or withdrawn from warehouse, are subject to the assessment of antidumping duties.

Therefore, in accordance with section 736(a)(1) of the Act, the Department will direct U.S. Customs and Border Protection (CBP) to assess, upon further instruction by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price (or constructed export price) of the merchandise, for all relevant entries of nails from the UAE. These antidumping duties will be assessed on unliquidated entries of nails from the UAE entered, or withdrawn from warehouse, for consumption on or after November 3, 2011, the date on which the Department published its *Preliminary Determination,*[2] but will not include entries occurring after the expiration of the provisional measures period and before publication of the ITC's final injury determination as further described below.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we will instruct CBP to continue to suspend liquidation on all entries of nails from the UAE. We will also instruct CBP to require cash deposits equal to the estimated amount by which the normal value exceeds the U.S. price as indicated below. These instructions suspending liquidation will remain in effect until further notice.

Accordingly, effective on the date of publication of the ITC's final affirmative injury determination, CBP will require, at the same time as importers would normally deposit estimated duties on this subject merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins listed below. *See* section 736(a)(3) of the Act.

Provisional Measures

Section 733(d) of the Act states that instructions issued pursuant to an affirmative preliminary determination may not remain in effect for more than four months except where exporters representing a significant proportion of exports of the subject merchandise request the Department to extend that four-month period to no more than six months. At the request of exporters that account for a significant proportion of exports of nails from the UAE, we extended the four-month period to no more than six months. *See* letters from Dubai Wire FZE and Precision Fasteners LLC, both dated October 4, 2011. In the underlying investigation, the Department published the *Preliminary Determination* on November 3, 2011. *See Preliminary Determination.* Therefore, the six-month period beginning on the date of the publication of the *Preliminary Determination* ended on May 1, 2012. Furthermore, section 737(b) of the Act states that definitive duties are to begin on the date of publication of the ITC's final injury determination.

Therefore, in accordance with section 733(d) of the Act and our practice, we will instruct CBP to terminate the suspension of liquidation and to liquidate, without regard to antidumping duties, unliquidated entries of nails from the UAE entered, or withdrawn from warehouse, for consumption after May 1, 2012, the date provisional measures expired, and through the day preceding the date of publication of the ITC's final injury determination in the **Federal Register**. Suspension of liquidation will resume on and after the date of publication of the ITC's final injury determination in the **Federal Register**.

The weighted-average dumping margins are as follows:

Manufacturer/exporter	Weighted-average margin (percent)
Dubai Wire FZE	6.09
Precision Fasteners LLC	2.51
Tech Fast International Ltd	184.41
All Others	4.30

This notice constitutes the antidumping duty order with respect to nails from the UAE pursuant to section 736(a) of the Act. Interested parties may contact the Department's Central Records Unit, Room 7043 of the main Commerce building, for copies of an updated list of antidumping duty orders currently in effect.

This order and amended final determination are published in accordance with sections 736(a) and 735(e) of the Act and 19 CFR 351.211 and 351.224(e).

Dated: May 4, 2012.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. 2012–11340 Filed 5–9–12; 8:45 am]

BILLING CODE 3510–DS–P

[1] In the Ministerial Error Memo, the amended weighted average margin for Precision Fasteners LLC was stated inadvertently as 2.52 percent, rather than 2.51 percent. *See* Memorandum to File entitled ''Antidumping Duty Investigation on Certain Steel Nails from the United Arab Emirates: Analysis Memorandum for Precision Fasteners, LLC with respect to the Ministerial Errors in the Final Determination,'' dated April 23, 2012; and Memorandum to File entitled ''Certain Steel Nails from the United Arab Emirates—Correction to April 23, 2012, Memorandum,'' dated May 1, 2012.

[2] *See Certain Steel Nails from the United Arab Emirates: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 76 FR 68129 (November 3, 2011) (*Preliminary Determination*).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–972]

Certain Stilbenic Optical Brightening Agents From the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* May 10, 2012.

SUMMARY: Based on affirmative final determinations by the Department of Commerce (the ''Department'') and the International Trade Commission (''ITC''), the Department is issuing an antidumping duty order on certain stilbenic optical brightening agents (''stilbenic OBAs'') from the People's Republic of China (''PRC''). In addition, the Department is amending its final determination to correct a ministerial error.

FOR FURTHER INFORMATION CONTACT: Shawn Higgins or Maisha Cryor, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0679 or (202) 482–5831, respectively.

SUPPLEMENTARY INFORMATION:

Background

In accordance with sections 735(d) and 777(i)(1) of the Tariff Act of 1930, as amended (''Act''), on March 26, 2012, the Department published the final determination of sales at less than fair value in the antidumping duty investigation of stilbenic OBAs from the PRC.[1] On May 2, 2012, the ITC notified the Department of its affirmative determination of material injury to a U.S. industry.[2]

Scope of the Order

The stilbenic OBAs covered by this order are all forms (whether free acid or salt) of compounds known as triazinylaminostilbenes (*i.e.,* all derivatives of 4,4'-bis [1,3,5- triazin-2-yl] [3] amino-2,2'-stilbenedisulfonic acid), except for compounds listed in the following paragraph. The stilbenic OBAs covered by this order include final stilbenic OBA products, as well as intermediate products that are themselves triazinylaminostilbenes produced during the synthesis of stilbenic OBA products.

Excluded from this order are all forms of 4,4'-bis[4-anilino-6-morpholino-1,3,5-triazin-2-yl] [4] amino-2,2'-stilbenedisulfonic acid, $C_{40}H_{40}N_{12}O_8S_2$ (''Fluorescent Brightener 71''). This order covers the above-described compounds in any state (including but not limited to powder, slurry, or solution), of any concentrations of active stilbenic OBA ingredient, as well as any compositions regardless of additives (*i.e.,* mixtures or blends, whether of stilbenic OBAs with each other, or of stilbenic OBAs with additives that are not stilbenic OBAs), and in any type of packaging.

These stilbenic OBAs are classifiable under subheading 3204.20.8000 of the Harmonized Tariff Schedule of the United States (''HTSUS''), but they may also enter under subheadings 2933.69.6050, 2921.59.4000 and 2921.59.8090. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Amendment to the Final Determination

On March 26, 2012, the Department published its affirmative final determination in this proceeding.[5] On March 27, 2012, Zhejiang Hongda Chemicals Co., Ltd. (''Hongda'') and Zhejiang Transfar Whyyon Chemical Co., Ltd. (''Transfar''), respondents in the investigation, submitted timely ministerial error allegations and requested, pursuant to 19 CFR 351.224, that the Department correct the alleged ministerial errors in the dumping margin calculations. On April 2, 2012, the petitioner, Clariant Corporation, submitted comments in rebuttal to Hongda's ministerial error allegation. No other interested party submitted ministerial error allegations or rebuttal comments.

After analyzing all interested party comments and rebuttals, we have determined, in accordance with section 735(e) of the Act and 19 CFR 351.224(e), that we made a ministerial error in our calculations for the *Final Determination,* as alleged by Transfar: Specifically, we excluded the cost of rendering services from the denominator of the surrogate profit ratio but included the profit earned from rendering services in the total profit used as the numerator of the surrogate profit ratio. This error in arithmetic function resulted in the attribution of profits derived from rendering services to the manufacture and sale of the merchandise under consideration.[6] The amended weighted-average dumping margins are provided, below.

Antidumping Duty Order

As noted above, on May 2, 2012, in accordance with section 735(d) of the Act, the ITC notified the Department of its final determination in this investigation, in which it found material injury with respect to stilbenic OBAs from the PRC. Because the ITC determined that imports of stilbenic OBAs from the PRC are materially injuring a U.S. industry, all unliquidated entries of such merchandise from the PRC, entered or withdrawn from warehouse, are subject to the assessment of antidumping duties.

Therefore, in accordance with section 736(a)(1) of the Act, the Department will direct U.S. Customs and Border Protection (''CBP'') to assess, upon further instruction by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price (or constructed export price) of the merchandise, for all relevant entries of stilbenic OBAs from the PRC. These antidumping duties will be assessed on unliquidated entries from the PRC entered, or withdrawn from warehouse, for consumption on or after November 3, 2011, the date on which the Department published its preliminary determination,[7] but will not include entries occurring after the expiration of the provisional measures period and before publication of the ITC's final injury determination as further described below.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we will instruct CBP to continue to suspend liquidation

[1] *See Certain Stilbenic Optical Brightening Agents from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 77 FR 17436 (March 26, 2012) (''Final Determination'').

[2] *See Certain Stilbenic Optical Brightening Agents from China and Taiwan,* USITC Investigation Nos. 731–TA–1186 and 731–TA–1187 (Final), USITC Publication 4322 (May 2012).

[3] The brackets in this sentence are part of the chemical formula.

[4] *Id.*

[5] *See Final Determination.*

[6] For a detailed discussion of all alleged ministerial errors, as well as the Department's analysis, *see* Memorandum to Paul Piquado, Assistant Secretary for Import Administration, from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, concerning, ''Antidumping Duty Investigation of Certain Stilbenic Optical Brightening Agents from the People's Republic of China: Allegation of Ministerial Errors and Amended Final Determination,'' dated April 20, 2012.

[7] *See Certain Stilbenic Optical Brightening Agents from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 76 FR 68148 (November 3, 2011) (''*Preliminary Determination*'').

on all entries of subject merchandise from the PRC. We will also instruct CBP to require cash deposits equal to the estimated amount by which the normal value exceeds the U.S. price as indicated in the chart below. These instructions suspending liquidation will remain in effect until further notice.

Accordingly, effective on the date of publication of the ITC's final affirmative injury determination, CBP will require, at the same time as importers would normally deposit estimated duties on this subject merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins as discussed below.[8] The ''PRC-wide'' rate applies to all exporters of subject merchandise not specifically listed.

Provisional Measures

Section 733(d) of the Act states that instructions issued pursuant to an affirmative preliminary determination may not remain in effect for more than four months except where exporters representing a significant proportion of exports of the subject merchandise request the Department to extend that four-month period to no more than six months. At the request of exporters that account for a significant proportion of exports of stilbenic OBAs from the PRC, we extended the four-month period to no more than six months.[9] In the underlying investigation, the Department published the *Preliminary Determination* on November 3, 2011.[10] Therefore, the six-month period beginning on the date of the publication of the *Preliminary Determination* ended on May 1, 2012. Furthermore, section 737(b) of the Act states that definitive duties are to begin on the date of publication of the ITC's final injury determination.

Therefore, in accordance with section 733(d) of the Act and our practice, we will instruct CBP to terminate the suspension of liquidation and to liquidate, without regard to antidumping duties, unliquidated entries of stilbenic OBAs from the PRC entered, or withdrawn from warehouse, for consumption after May 1, 2012, the date provisional measures expired, and through the day preceding the date of publication of the ITC's final injury determination in the **Federal Register** Suspension of liquidation will resume on and after the date of publication of the ITC's final injury determination in the **Federal Register**

The weighted-average dumping margins are as follows:

Exporter	Producer	Weighted-average margin
Zhejiang Hongda Chemicals Co., Ltd	Zhejiang Hongda Chemicals Co., Ltd	91.78
Zhejiang Transfar Whyyon Chemical Co., Ltd	Zhejiang Transfar Whyyon Chemical Co., Ltd	61.04
PRC-wide Entity		106.17

This notice constitutes the antidumping duty order with respect to stilbenic OBAs from the PRC pursuant to section 736(a) of the Act. This order and amended final determination are published in accordance with sections 736(a) and 735(e) of the Act and 19 CFR 351.211 and 351.224(e).

Dated: May 3, 2012.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. 2012–11219 Filed 5–9–12; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–836]

Light-Walled Rectangular Pipe and Tube From Mexico: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce

DATES: *Effective Date:* May 10, 2012.

FOR FURTHER INFORMATION CONTACT: Dena Crossland or Edythe Artman, 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) 482–3362 or (202) 482–3931, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 3, 2011, the Department of Commerce (the Department) published in the **Federal Register** the initiation of the administrative review of the antidumping duty order on light-walled rectangular pipe and tube from Mexico, covering the period of August 1, 2010, to July 31, 2011. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocations in Part,* 76 FR 61076 (October 3, 2011). The current deadline for the preliminary results of this review is May 2, 2012.

Statutory Time Limits

In antidumping duty administrative reviews, section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to complete the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an order for which a review is requested. However, if it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act allows the Department to extend the 245-day time period for the preliminary results up to 365 days after the last day of the anniversary month.

Extension of Time Limit for Preliminary Results of Review

The Department finds it is not practicable to complete the preliminary results of these reviews within the original time frame because the Department requires additional time to gather additional information and analyze the information submitted on the record by both mandatory respondents, Regiomontana de Perfiles S.A. de C.V. (Regiopytsa) and Maquilacero S.A. de C.V. (Maquilacero). Therefore, the Department is fully extending the time limit for completion of the preliminary results of this administrative review until no later than August 30, 2012, which is 365 days from the last day of the anniversary month of this order. We intend to issue the final results no later than 120 days after publication of the preliminary results notice.

This extension is issued and published in accordance with sections 751(a)(3)(A) and 777(i) of the Act.

[8] *See* section 736(a)(3) of the Act.

[9] *See Preliminary Determination,* 76 FR at 68149.

[10] *See Preliminary Determination.*

Dated: April 27, 2012.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2012–11343 Filed 5–9–12; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–888]

Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Commerce.

SUMMARY: In response to a request from Home Products International (the Petitioner in this proceeding), the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on floor-standing, metal-top ironing tables and certain parts thereof (ironing tables) from the People's Republic of China (PRC). The period of review (POR) is August 1, 2010, through July 31, 2011. The review covers one respondent Foshan Shunde Yongjian Housewares & Hardware Co., Ltd. (Foshan Shunde). As discussed below, we have preliminarily determined that Foshan Shunde is part of the PRC-wide entity and that the entity has failed to cooperate to the best of its ability. We are, therefore, applying adverse facts available (AFA) to the PRC-wide entity, which includes Foshan Shunde. If these preliminary results are adopted in our final results, we will instruct the U.S. Customs and Border Protection (CBP) to assess antidumping duties on entries of the subject merchandise during the POR.

DATES: Effective May 10, 2012.

FOR FURTHER INFORMATION CONTACT: Michael J. Heaney 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) 482–4475 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 6, 2004, the Department published in the **Federal Register** the antidumping duty order regarding ironing tables from the PRC.[1]

On August 1, 2011, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on, *inter alia,* ironing tables from the PRC.[2] On August 31, 2011, Home Products International and Foshan Shunde requested, in accordance with 19 CFR 351.213(b)(1), an administrative review of this order for Foshan Shunde.

On October 3, 2011, the Department initiated an administrative review of Foshan Shunde.[3]

The Department issued its antidumping questionnaire to Foshan Shunde on October 6, 2011. On October 27, 2011, counsel for Foshan Shunde withdrew Foshan Shunde's request for review. Additionally, the law firm that had represented Foshan Shunde indicated it ''has not been authorized to enter an appearance or to otherwise participate in this review'' on Foshan Shunde's behalf.[4] Because, the review request filed by Home Products International was not withdrawn, the Department continued the administrative review of Foshan Shunde. On November 4, 2011, the Department sent Foshan Shunde a letter, which was received, requesting confirmation that Foshan Shunde received our antidumping questionnaire through its counsel at the time. However, Foshan Shunde filed no response to either our October 6, 2011, questionnaire or our November 4, 2011, letter.

Scope of the Order

For purposes of this order, the product covered consists of floor-standing, metal-top ironing tables, assembled or unassembled, complete or incomplete, and certain parts thereof. The subject tables are designed and used principally for the hand ironing or pressing of garments or other articles of fabric. The subject tables have full-height leg assemblies that support the ironing surface at an appropriate (often adjustable) height above the floor. The subject tables are produced in a variety of leg finishes, such as painted, plated, or matte, and they are available with various features, including iron rests, linen racks, and others. The subject ironing tables may be sold with or without a pad and/or cover. All types and configurations of floor-standing, metal-top ironing tables are covered by this review.

Furthermore, this order specifically covers imports of ironing tables, assembled or unassembled, complete or incomplete, and certain parts thereof. For purposes of this order, the term ''unassembled'' ironing table means a product requiring the attachment of the leg assembly to the top or the attachment of an included feature such as an iron rest or linen rack. The term ''complete'' ironing table means product sold as a ready-to-use ensemble consisting of the metal-top table and a pad and cover, with or without additional features, *e.g.,* iron rest or linen rack. The term ''incomplete'' ironing table means product shipped or sold as a ''bare board''—*i.e.,* a metal-top table only, without the pad and cover—with or without additional features, *e.g.,* iron rest or linen rack. The major parts or components of ironing tables that are intended to be covered by this order under the term ''certain parts thereof'' consist of the metal top component (with or without assembled supports and slides) and/or the leg components, whether or not attached together as a leg assembly. The order covers separately shipped metal top components and leg components, without regard to whether the respective quantities would yield an exact quantity of assembled ironing tables.

Ironing tables without legs (such as models that mount on walls or over doors) are not floor-standing and are specifically excluded. Additionally, tabletop or countertop models with short legs that do not exceed 12 inches in length (and which may or may not collapse or retract) are specifically excluded.

The subject ironing tables are currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheading 9403.20.0011. The subject metal top and leg components are classified under HTSUS subheading 9403.90.8041. Although the HTSUS subheadings are provided for convenience and for Customs and Border Protection (CBP) purposes, the Department's written description of the scope remains dispositive.

Facts Otherwise Available

Section 776(a) of the Tariff Act of 1930, as amended (the Act), mandates that the Department use facts otherwise

[1] *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof From the People's Republic of China,* 69 FR 47868 (August 6, 2004) (*Amended Final and Order*).

[2] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 76 FR 45773 (August 1, 2011).

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 76 FR 61076 (October 3, 2011).

[4] *See* October 27, 2011, letter from the law firm of deKieffer & Horgan to the Department.

available if necessary information is not otherwise available on the record of the antidumping proceeding. Specifically, section 776(a)(2) of the Act provides that where an interested party: (A) Withholds information that has been requested by the Department; (B) fails to provide requested information by the requested date or in the form and manner requested; (C) significantly impedes an antidumping proceeding; or (D) provides such information but the information cannot be verified, the Department shall use facts otherwise available in reaching its determination.

Foshan Shunde did not respond to the antidumping questionnaire issued by the Department on October 6, 2011, and thus Foshan Shunde did not establish its eligibility in this segment of the proceeding for a separate rate. As a result, we preliminarily find Foshun Shunde to be part of the PRC-wide entity. Because the entity, which includes Foshun Shunde, provided the Department with no data from which it could calculate a margin, the record lacks the requisite data that is needed to reach a determination. Accordingly, the Department finds that necessary information to calculate an accurate and reliable margin is not available on the record of this proceeding. The Department finds that because Foshan Shunde, as part of the PRC-wide entity, failed to submit any response to the Department's questionnaire, the PRC-wide entity withheld the requested information, failed to provide the information in a timely manner and in the form requested, and significantly impeded this proceeding, pursuant to sections 776(a)(2)(A), (B), and (C) of the Act. On this basis, the Department finds that it must rely on the facts otherwise available to determine a margin for the PRC-wide entity in accordance with section 776(a) of the Act.[5]

Adverse Facts Available

Section 776(b) of the Act states that if the Department ''finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from the administering authority * * * {the Department} * * * may use an inference that is adverse to the interests of the party in selecting from among the facts otherwise available.''[6] Adverse inferences are appropriate to ''ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.''[7] In selecting an adverse inference, the Department may rely on information derived from the petition, the final determination in the investigation, any previous review, or any other information placed on the record.[8]

The Department determines that the PRC-wide entity, which includes Foshan Shunde's failure to respond to the Department's questionnaire, has failed to cooperate to the best of its ability in providing the requested information. Accordingly, pursuant to sections 776(a)(2)(A), (B), and (C) and section 776(b) of the Act, we find it appropriate to apply a margin to the PRC-wide entity based entirely on the facts available, and to apply an adverse inference.[9] By doing so, we ensure that the PRC-wide entity, which includes Foshan Shunde, will not obtain a more favorable result by failing to cooperate than had it cooperated fully in this review.

The Department's practice is to select an AFA rate that is sufficiently adverse as to effectuate the purpose of the facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner and that ensures that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.[10] Specifically, the Department's practice in reviews, when selecting a rate as total AFA, is to use the highest rate on the record of the proceeding which, to the extent practicable, can be corroborated.[11] The Court of International Trade (CIT) and the CAFC have affirmed decisions to select the highest margin from any prior segment of the proceeding as the AFA rate on numerous occasions.[12] Therefore, we are assigning the PRC-wide entity, which includes Foshan Shunde, a rate of 157.68 percent, which is the highest rate on the record of this proceeding and which was the rate assigned to the PRC-wide entity in a previously published antidumping determination.[13]

Corroboration

Section 776(c) of the Act requires the Department to corroborate, to the extent practicable, secondary information used as FA. To be considered corroborated, the Department must find the information has probative value, meaning that the information must be both reliable and relevant.[14] Secondary information is {i}nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 {of the Act } concerning the subject merchandise.'' [15] Unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated margins. Thus, in an administrative review, if the Department chooses, as AFA, a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin.

The Department considers the AFA rate calculated for the current review as both reliable and relevant. On the issue of reliability, the adverse rate selected was calculated for another respondent, Shunde Yongjian, during the LTFV

[5] *See Non-Malleable Cast Iron Pipe Fittings from the People's Republic of China: Final Results of Antidumping Duty Administrative Review,* 71 FR 69546 (December 1, 2006) (*Cast Iron Fittings*), and accompanying Issues and Decision Memorandum at Comment 1.

[6] *See also Statement of Administrative Action accompanying the Uruguay Round Agreements Act,* H.R. Rep. No., 103–316 at 870 (1994) (SAA).

[7] *Id.*

[8] *See* section 776(b) of the Act.

[9] *See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Preliminary Results of the First Administrative Review,* 72 FR 10689, 10692 (March 9, 2007) (decision to apply total AFA to the NME-wide entity), unchanged in *Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results of the First Administrative Review and First New Shipper Review,* 72 FR 52052 (September 12, 2007), and accompanying Issues and Decision Memorandum.

[10] *See Notice of Final Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors From Taiwan,* 63 FR 8909, 8911 (February 23, 1998); *see also Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the Seventh Administrative Review; Final Results of the Eleventh New Shipper Review,* 70 FR 69937, 69939 (November 18, 2005), and SAA at 870.

[11] See *Glycine from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review,* 74 FR 15930, 15934 (April 8, 2009), unchanged in *Glycine From the People's Republic of China: Final Results of Antidumping Duty Administrative Review,* 74 FR 41121 (August 14, 2009); *see also Fujian Lianfu Forestry Co., Ltd.* v. *United States,* 638 F. Supp. 2d 1325, 1336 (CIT August 10, 2009) (''Commerce may, of course, begin its total AFA selection process by defaulting to the highest rate in any segment of the proceeding, but that selection must then be corroborated, to the extent practicable.'').

[12] *See, e.g., KYD, Inc.* v. *United States,* 607 F.3d 760, 766–767 (CAFC 2010) (*KYD*); *see also NSK Ltd.* v. *United States,* 346 F. Supp. 2d 1312, 1335 (CIT 2004) (affirming a 73.55 percent total AFA rate, the highest available dumping margin calculated for a different respondent in the investigation).

[13] See *Amended Final and Order* 69 FR 47868.

[14] *See* SAA at 870; *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished From Japan, and Tapered Roller Bearings Four Inches or Less in Outside Diameter and Components Thereof, From Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews,* 61 FR 57391, 57392 (November 6, 1996) unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished From Japan, and Tapered Roller Bearings Four Inches or Less in Outside Diameter and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part,* 62 FR 11825 (March 13, 1997).

[15] *See SAA,* H.R. Doc. No. 103–316 at 870 (1994) and 19 CFR 351.308(d).

investigation.[16] No information has been presented in the current review that calls into question the reliability of this information. With respect to the relevance, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. Where circumstances indicate that the selected margin is not appropriate as AFA, the Department will disregard the margin and determine an appropriate margin. For example in *Fresh Cut Flowers from Mexico,* the Department disregarded the highest margin in that case as best information available (the predecessor to facts available) because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin).[17] The selected AFA margin is based upon the calculated rate for another respondent in the LTFV investigation, and thus reflects the commercial reality of a competitor in the same industry.[18] Given that the PRC-wide entity, which includes Foshan Shunde, failed to cooperate to the best of its ability in this administrative review, it is appropriate to select an AFA rate that serves as an adequate deterrent in order to induce cooperation in the proceeding. As the Federal Circuit found in *KYD,* we find that in choosing the appropriate balance between providing a respondent with an incentive to respond accurately and imposing a rate that is reasonably related to the respondent's prior commercial activity, selecting the highest prior margin reflects ''a common sense inference that the highest prior margin is the most probative evidence of current margins in this instance, because, if it were not so,'' Foshan Shunde, ''knowing of the rule, would have produced current information showing the margin to be less.'' [19] We find this to be particularly true in this case because, Foshan Shunde, as part of the PRC entity, was assigned the same calculated AFA rate in a prior review due to its failure to cooperate.[20] On this basis, we find that selecting the highest calculated rate of this proceeding is sufficiently relavant to the commercial reality for the PRC entity, which includes Foshan Shunde. Furthermore, there is no information on the record of this review that demonstrates that this rate is uncharacteristic of the industry, or otherwise inappropriate for use as AFA. Based upon the foregoing, we determine this rate to be relevant.

As the 157.68 percent AFA rate is both reliable and relevant, we determine that it has probative value and is corroborated to the extent practicable, in accordance with section 776(c) of the Act. Therefore, we have assigned this rate as AFA, to exports of the subject merchandise by the PRC-wide entity, including Foshan Shunde.

Preliminary Results of Review

We preliminarily determine that the following antidumping duty margin exists:

Exporter	Margin (percent)
PRC wide entity (includes Foshan Shunde Yongjian Housewares & Hardware Co., Ltd.)	157.68

Assessment Rates

Upon issuance of the final results, the Department will determine and CBP will assess, antidumping duties on all appropriate entries covered by this review. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of this review. Where assessments are based upon total facts available, including total AFA, we instruct CBP to assess duties at the *ad valorem* margin rate published above. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any assessment rate calculated in the final results of this review is above *de minimis.* The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For the exporter listed above, the cash deposit rate will be established in the final results of this review (except, if the rate is zero or *de minimis, i.e.,* less than 0.5 percent, no cash deposit will be required for that company); (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 157.68 percent (*see Amended Final and Order*); and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Public Comment

The Department will disclose calculations performed in connection with the preliminary results of this review within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of publication of this notice in accordance with 19 CFR 351.310(c). Any hearing will be held 37 days after the publication of this notice, or the first workday thereafter unless the Department alters the date pursuant to 19 CFR 351.310(d). Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, pursuant to the Department's e-filing regulations. *See https://iaaccess.trade.gov/help/IA%20ACCESS%20User%20Guide.pdf.*

Requests for a public hearing should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) to the extent practicable, an identification of the arguments to be raised at the hearing.

Unless otherwise notified by the Department, interested parties may submit case briefs within 30 days of the date of publication of this notice in accordance with 19 CFR 351.309(c)(1)(ii). As part of the case brief, parties are encouraged to provide a summary of the arguments and a table of authorities cited in accordance with 19 CFR 351.309(c)(2). Rebuttal briefs, which must be limited to issues raised in the case briefs, must be filed within five days after the case brief is filed in

[16] *See Amended Final and Order* 69 FR 47868.

[17] *See Fresh Cut Flowers from Mexico; Final Results of Antidumping Administrative Review,* 61 FR 6812, 6814 (February 22, 1996) (*Fresh Cut Flowers*) cited in *Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Final Results and Partial Rescission of First Antidumping Duty Administrative Review,* 77 FR 21734, 21737 (April 11, 2012).

[18] *See Amended Final and Order* 69 FR 47868.

[19] *See KYD,* 607 F.3d at 766, citing *Rhone Poulenc, Inc.* v. *United States,* 899 F.2d 1185, 1190 (CAFC 1990).

[20] *See Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof From the People's Republic of China: Final Results of Antidumping Duty Administrative Review,* 75 FR 3201, 3202 (January 20, 2010).

accordance with 19 CFR 351.309(d). If a hearing is held, an interested party may make an affirmative presentation only on arguments included in that party's case brief and may make a rebuttal presentation only on arguments included in that party's rebuttal brief in accordance with 19 CFR 351.310(c). Parties should confirm by telephone the time, date, and place of the hearing within 48 hours before the scheduled time. The Department will issue the final results of this review, which will include the results of its analysis of issues raised in the briefs, not later than 120 days after the date of publication of this notice in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1).

Notification to Importers

This notice also serves as a preliminary 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 these review periods. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These preliminary results of administrative review are issued and this notice is published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: May 2, 2012.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. 2012–11220 Filed 5–9–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–954]

Certain Magnesia Carbon Bricks From the People's Republic of China: Extension of Time Limit for the Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* May 10, 2012.

FOR FURTHER INFORMATION CONTACT: Tim Lord, Office 9, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–7425.

Background

On September 2, 2011, the Department of Commerce (''Department'') published a notice of opportunity to request an administrative review on the antidumping order on certain magnesia carbon bricks from the People's Republic of China (''PRC'') for the period of review March 12, 2010, through August 31, 2011.[1] Based upon requests for review from various parties, on October 31, 2011, the Department initiated an antidumping duty administrative review on certain magnesia carbon bricks from the PRC, covering 129 companies.[2] The preliminary results are currently due June 1, 2012.

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''Act''), requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order for which a review is requested and a final determination within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary determination to a maximum of 365 days after the last day of the anniversary month.

Extension of Time Limit for Preliminary Results of Review

We determine that it is not practicable to complete the preliminary results of this review within the current time limits. The Department requires additional time to analyze questionnaire (including supplemental questionnaire) responses and surrogate country and value data. This additional time also takes into account analysis of data related to the dumping margin calculation for the reviewed respondents, and the consideration of any issues that may be raised by parties during the course of this proceeding. Therefore, the Department is hereby extending the time limit for completion of the preliminary results by 120 days. The preliminary results will now be due no later than September 29, 2012. As that day falls on a Saturday, the preliminary results are due no later than October 1, 2012.[3] The final results continue to be due 120 days after the publication of the preliminary results.

This notice is published in accordance with sections 751(a)(3)(A) and 777(i)(1) of the Act.

Dated: May 2, 2012.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2012–11346 Filed 5–9–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–850]

Certain Large Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe (Over 4½ Inches) From Japan: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On March 5, 2012, the Department of Commerce (''Department'') published its preliminary results of the administrative review of the antidumping duty order on certain large diameter carbon and alloy seamless standard, line, and pressure pipe (over 4½ inches) from Japan. The review covers four manufacturers/exporters: JFE Steel Corporation (''JFE''); Nippon Steel Corporation (''Nippon''); NKK Tubes (''NKK''); and Sumitomo Metal Industries, Ltd. (''SMI''). The period of review (''POR'') is June 1, 2010, through May 31, 2011. No parties commented on the preliminary results; thus, the final results do not differ from the preliminary results. We will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on all appropriate entries.

DATES: *Effective Date:* May 10, 2012.

FOR FURTHER INFORMATION CONTACT: Sergio Balbontin, 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:

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[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 76 FR 54735 (September 2, 2011).

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 76 FR 67133 (October 31, 2011).

[3] *See Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant of the Tariff Act of 1930, as Amended,* 70 FR 24533 (May 10, 2005).

Background

On March 5, 2012, the Department published the preliminary results of the administrative review of the antidumping duty order on carbon and alloy seamless standard, line, and pressure pipe (over 4½ inches) from Japan for the period June 1, 2010, through May 31, 2011. *See Certain Large Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe (Over 4½ Inches) From Japan: Preliminary Results of the Antidumping Duty Administrative Review,* 77 FR 13079 (March 5, 2012) (''*Preliminary Results*''). We invited interested parties to comment on our *Preliminary Results*. We received no comments.

Scope of the Order

The products covered by the order are large diameter seamless carbon and alloy (other than stainless) steel standard, line, and pressure pipes produced, or equivalent, to the American Society for Testing and Materials (''ASTM'') A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–589, ASTM A–795, and the American Petroleum Institute (''API'') 5L specifications and meeting the physical parameters described below, regardless of application. The scope of the order also includes all other products used in standard, line, or pressure pipe applications and meeting the physical parameters described below, regardless of specification, with the exception of the exclusions discussed below. Specifically included within the scope of the order are seamless pipes greater than 4.5 inches (114.3 mm) up to and including 16 inches (406.4 mm) in outside diameter, regardless of wall-thickness, manufacturing process (hot finished or cold-drawn), end finish (plain end, beveled end, upset end, threaded, or threaded and coupled), or surface finish.

The seamless pipes subject to the order are currently classifiable under the subheadings 7304.10.10.30, 7304.10.10.45, 7304.10.10.60, 7304.10.50.50, 7304.19.10.30, 7304.19.10.45, 7304.19.10.60, 7304.19.50.50, 7304.31.60.10, 7304.31.60.50, 7304.39.00.04, 7304.39.00.06, 7304.39.00.08, 7304.39.00.36, 7304.39.00.40, 7304.39.00.44, 7304.39.00.48, 7304.39.00.52, 7304.39.00.56, 7304.39.00.62, 7304.39.00.68, 7304.39.00.72, 7304.51.50.15, 7304.51.50.45, 7304.51.50.60, 7304.59.20.30, 7304.59.20.55, 7304.59.20.60, 7304.59.20.70, 7304.59.60.00, 7304.59.80.30, 7304.59.80.35, 7304.59.80.40, 7304.59.80.45, 7304.59.80.50, 7304.59.80.55, 7304.59.80.60, 7304.59.80.65, and 7304.59.80.70 of the Harmonized Tariff Schedule of the United States (''HTSUS'').

Specifications, Characteristics, and Uses: Large diameter seamless pipe is used primarily for line applications such as oil, gas, or water pipeline, or utility distribution systems. Seamless pressure pipes are intended for the conveyance of water, steam, petrochemicals, chemicals, oil products, natural gas and other liquids and gasses in industrial piping systems. They may carry these substances at elevated pressures and temperatures and may be subject to the application of external heat. Seamless carbon steel pressure pipe meeting the ASTM A–106 standard may be used in temperatures of up to 1000 degrees Fahrenheit, at various American Society of Mechanical Engineers (''ASME'') code stress levels. Alloy pipes made to ASTM A–335 standard must be used if temperatures and stress levels exceed those allowed for ASTM A–106. Seamless pressure pipes sold in the United States are commonly produced to the ASTM A–106 standard.

Seamless standard pipes are most commonly produced to the ASTM A–53 specification and generally are not intended for high temperature service. They are intended for the low temperature and pressure conveyance of water, steam, natural gas, air and other liquids and gasses in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipes (depending on type and code) may carry liquids at elevated temperatures but must not exceed relevant ASME code requirements. If exceptionally low temperature uses or conditions are anticipated, standard pipe may be manufactured to ASTM A–333 or ASTM A–334 specifications.

Seamless line pipes are intended for the conveyance of oil and natural gas or other fluids in pipe lines. Seamless line pipes are produced to the API 5L specification.

Seamless water well pipe (ASTM A–589) and seamless galvanized pipe for fire protection uses (ASTM A–795) are used for the conveyance of water.

Seamless pipes are commonly produced and certified to meet ASTM A–106, ASTM A–53, API 5L–B, and API 5L–X42 specifications. To avoid maintaining separate production runs and separate inventories, manufacturers typically triple or quadruple certify the pipes by meeting the metallurgical requirements and performing the required tests pursuant to the respective specifications. Since distributors sell the vast majority of this product, they can thereby maintain a single inventory to service all customers.

The primary application of ASTM A–106 pressure pipes and triple or quadruple certified pipes in large diameters is for use as oil and gas distribution lines for commercial applications. A more minor application for large diameter seamless pipes is for use in pressure piping systems by refineries, petrochemical plants, and chemical plants, as well as in power generation plants and in some oil field uses (on shore and off shore) such as for separator lines, gathering lines and metering runs. These applications constitute the majority of the market for the subject seamless pipes. However, ASTM A–106 pipes may be used in some boiler applications.

The scope of the order includes all seamless pipe meeting the physical parameters described above and produced to one of the specifications listed above, regardless of application, with the exception of the exclusions discussed below, whether or not also certified to a non-covered specification. Standard, line, and pressure applications and the above-listed specifications are defining characteristics of the scope of the order. Therefore, seamless pipes meeting the physical description above, but not produced to the ASTM A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–589, ASTM A–795, and API 5L specifications shall be covered if used in a standard, line, or pressure application, with the exception of the specific exclusions discussed below.

For example, there are certain other ASTM specifications of pipe which, because of overlapping characteristics, could potentially be used in ASTM A–106 applications. These specifications generally include ASTM A–161, ASTM A–192, ASTM A–210, ASTM A–252, ASTM A–501, ASTM A–523, ASTM A–524, and ASTM A–618. When such pipes are used in a standard, line, or pressure pipe application, such products are covered by the scope of the order.

Specifically excluded from the scope of the order are: A. Boiler tubing and mechanical tubing, if such products are not produced to ASTM A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–589, ASTM A–795, and API 5L specifications and are not used in standard, line, or pressure pipe applications. B. Finished and unfinished oil country tubular goods (''OCTG''), if covered by the scope of another antidumping duty order from the same country. If not covered by such

an OCTG order, finished and unfinished OCTG are included in the scope when used in standard, line or pressure applications. C. Products produced to the A–335 specification unless they are used in an application that would normally utilize ASTM A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–589, ASTM A–795, and API 5L specifications. D. Line and riser pipe for deepwater application, *i.e.,* line and riser pipe that is: (1) Used in a deepwater application, which means for use in water depths of 1,500 feet or more; (2) intended for use in and is actually used for a specific deepwater project; (3) rated for a specified minimum yield strength of not less than 60,000 psi; and (4) not identified or certified through the use of a monogram, stencil, or otherwise marked with an API specification (*e.g.,* ''API 5L'').

With regard to the excluded products listed above, the Department will not instruct CBP to require end-use certification until such time as the petitioner or other interested parties provide to the Department a reasonable basis to believe or suspect that the products are being utilized in a covered application. If such information is provided, we will require end-use certification only for the product(s) (or specification(s)) for which evidence is provided that such products are being used in a covered application as described above. For example, if, based on evidence provided by petitioner, the Department finds a reasonable basis to believe or suspect that seamless pipe produced to the A–335 specification is being used in an A–106 application, we will require end-use certifications for imports of that specification. Normally we will require only the importer of record to certify to the end use of the imported merchandise. If it later proves necessary for adequate implementation, we may also require producers who export such products to the United States to provide such certification on invoices accompanying shipments to the United States.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the merchandise subject to this scope is dispositive.

Final Determination of No Shipments

As we stated in the *Preliminary Results,* our prior practice concerning no-shipment respondents had been to rescind the administrative review if the respondent certified that it had no shipments and we confirmed through our examination of CBP data that there were no shipments of subject merchandise during the POR. *See* 19 CFR 351.213(d)(3); *see also Certain Large Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe From Japan: Rescission of Antidumping Duty Administrative Review,* 75 FR 38781 (July 6, 2010). In such circumstances, we normally instructed CBP to liquidate any entries from the no-shipment company at the cash deposit rate in effect on the date of entry.

In our May 6, 2003, ''automatic assessment'' clarification, we explained that, where respondents in an administrative review demonstrate that they had no knowledge of sales through resellers to the United States, we would instruct CBP to liquidate such entries at the all-others rate applicable to the proceeding. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003) (''*Assessment Policy Notice*'').

As we stated in the *Preliminary Results,* because ''as entered'' liquidation instructions do not alleviate the concerns which the May 6, 2003, clarification was intended to address, we find it appropriate in this case to instruct CBP to liquidate any existing entries of merchandise produced by Nippon, JFE, SMI, or NKK, and exported by other parties at the all-others rate. *See Preliminary Results,* 77 FR at 13081. In addition, we continue to find it is more consistent with the May 6, 2003, clarification not to rescind the review in these circumstances but, rather, to complete the review with respect to Nippon, JFE, SMI, and NKK, and issue appropriate instructions to CBP based on the final results of the review. *See* the ''Assessment Rates'' section of this notice below.

Assessment Rates

The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review.

As noted above, the Department clarified its ''automatic assessment'' regulation on May 6, 2003. *See Assessment Policy Notice.* This clarification will apply to POR entries by all respondent companies because they certified that they made no POR shipments of subject merchandise for which they had knowledge of U.S. destination. We will instruct CBP to liquidate these entries at the all-others rate established in the less-than-fair-value investigation (68.88 percent) if there is no rate for the intermediary involved in the transaction. *See Assessment Policy Notice* for a full discussion of this clarification.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding APOs

This notice also serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely notification of destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

These final results of administrative review and notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended.

Dated: May 3, 2012.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. 2012–11333 Filed 5–9–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–894]

Certain Tissue Paper Products From the People's Republic of China: Notice of Initiation of Anticircumvention Inquiry

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request from Seaman Paper Company of Massachusetts, Inc. (the petitioner), the Department of Commerce (the Department) is initiating an anticircumvention inquiry to determine whether certain imports of tissue paper products from India are circumventing the antidumping duty order on certain tissue paper products (tissue paper)

from the People's Republic of China (PRC).[1]

DATES: *Effective Date:* May 10, 2012.

FOR FURTHER INFORMATION CONTACT: Brian Smith or Brandon Custard, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1766 or (202) 482–1823, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 8, 2012, the petitioner submitted a request that the Department initiate and conduct an anticircumvention inquiry, pursuant to section 781(b) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.225(h), to determine whether imports of tissue paper from India made from jumbo rolls (and likely cut-to-length sheets) of tissue paper produced in the PRC are circumventing the antidumping duty order on tissue paper from the PRC. Specifically, the petitioner alleges that AR Printing and Packaging India Pvt. Ltd. (ARPP) is importing into India PRC-produced jumbo rolls (and likely cut-to-length sheets) of tissue paper for completion or assembly into merchandise of the same class or kind as that covered by the antidumping duty order on tissue paper from the PRC prior to exporting that merchandise to the United States; and that such activity on the part of ARPP constitutes circumvention of the PRC tissue paper order.

On April 12, 2012, the Department requested that the petitioner provide additional information and clarification pertinent to its anticircumvention inquiry request in order to determine whether it was appropriate to grant that request. *See* Letter to Seaman Paper Company of Massachusetts, Inc., dated April 12, 2012. The petitioner provided the requested information and clarification on April 16, 2012.

Scope of the Order

The tissue paper products subject to order are cut-to-length sheets of tissue paper having a basis weight not exceeding 29 grams per square meter. Tissue paper products subject to this order may or may not be bleached, dye-colored, surface-colored, glazed, surface decorated or printed, sequined, crinkled, embossed, and/or die cut. The tissue paper subject to this order is in the form of cut-to-length sheets of tissue paper with a width equal to or greater than one-half (0.5) inch. Subject tissue paper may be flat or folded, and may be packaged by banding or wrapping with paper or film, by placing in plastic or film bags, and/or by placing in boxes for distribution and use by the ultimate consumer. Packages of tissue paper subject to this order may consist solely of tissue paper of one color and/or style, or may contain multiple colors and/or styles.

Tissue paper products subject to this order do not have specific classification numbers assigned to them under the Harmonized Tariff Schedule of the United States (HTSUS) and appear to be imported under one or more of the several different ''basket'' categories, including but not necessarily limited to the following subheadings: HTSUS 4802.30, HTSUS 4802.54, HTSUS 4802.61, HTSUS 4802.62, HTSUS 4802.69, HTSUS 4804.39, HTSUS 4806.40, HTSUS 4808.30, HTSUS 4808.90, HTSUS 4811.90, HTSUS 4823.90, HTSUS 9505.90.40.

Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the investigation is dispositive.

Excluded from the scope of the order are the following tissue paper products: (1) Tissue paper products that are coated in wax, paraffin, or polymers, of a kind used in floral and food service applications; (2) tissue paper products that have been perforated, embossed, or die-cut to the shape of a toilet seat, *i.e.,* disposable sanitary covers for toilet seats; and (3) toilet or facial tissue stock, towel or napkin stock, paper of a kind used for household or sanitary purposes, cellulose wadding, and webs of cellulose fibers (HTSUS 4803.00.20.00 and 4803.00.40.00).

Initiation of Anticircumvention Proceeding

Applicable Statute

Section 781(b) of the Act provides that the Department may find circumvention of an antidumping duty order when merchandise of the same class or kind subject to the order is completed or assembled in a foreign country other than the country to which the order applies. In conducting anticircumvention inquiries under section 781(b) of the Act, the Department relies upon the following criteria: (A) Merchandise imported into the United States is of the same class or kind as any merchandise produced in a foreign country that is subject to an antidumping duty order; (B) before importation into the United States, such imported merchandise is completed or assembled in another foreign country from merchandise which is subject to the order or produced in the foreign country that is subject to the order; (C) the process of assembly or completion in the foreign country referred to in section (B) is minor or insignificant; (D) the value of the merchandise produced in the foreign country to which the antidumping duty order applies is a significant portion of the total value of the merchandise exported to the United States; and (E) the administering authority determines that action is appropriate to prevent evasion of such order or finding. As discussed below, the petitioner presented evidence with respect to these criteria.

A. Merchandise of the Same Class or Kind

The petitioner claims that the tissue paper from India, which it alleges ARPP completes or assembles (*i.e.,* by cutting to length (if necessary), folding, and packaging) in India before exporting it to the United States, is produced from jumbo rolls of PRC-origin tissue paper obtained from a tissue paper supplier located in the PRC, and is physically identical to the subject merchandise. The petitioner states that its claim is supported through an affidavit included in its March 8, 2012, anticircumvention inquiry request which shows that by testing the ARPP-packaged tissue paper the petitioner obtained from a retail store in the United States, an expert in tissue paper products was able to determine that the tissue paper was made from PRC-origin tissue paper, and that the tissue paper ARPP exports to the United States is of the same class or kind of merchandise as that covered by the antidumping duty order. *See* March 8, 2012, anticircumvention inquiry request at Exhibit 8, and April 16, 2012, submission at pages 3–10. Accordingly, pursuant to section 781(b)(1)(A)(i) of the Act, the petitioner claims that at least some of the tissue paper exported by ARPP to the United States is of the same class or kind as the tissue paper produced in the PRC, which is subject to the antidumping duty order.

B. Completion of Merchandise in a Foreign Country

The petitioner alleges that the tissue paper that is the subject of the anticircumvention inquiry request is made from jumbo rolls (and likely cut-to-length sheets) of tissue paper produced in the PRC which are completed or assembled (*i.e.,* cut-to-length, folded, and packaged) into finished tissue paper products in India

[1] *See Notice of Amended Final Determination of Sales at Less than Fair Value and Antidumping Duty Order: Certain Tissue Paper Products from the People's Republic of China,* 70 FR 16223 (March 30, 2005) (*Tissue Paper Order*).

for export to the United States. Based on information contained in documentation obtained largely from sources which the petitioner is claiming business proprietary treatment, the petitioner asserts that: (1) ARPP recently imported tissue paper jumbo rolls from a Chinese producer; (2) ARPP exported tissue paper products made from those jumbo rolls to the United States; and (3) ARPP's facility in India performs only basic converting operations (*i.e.,* cutting, folding and packing activities), and not capital-intensive papermaking operations. *See* March 8, 2012, anticircumvention inquiry request at Exhibits 1, 5, 9, 10, and 13; and the April 16, 2012, submission at pages 3–5. Based on this information, the petitioner concludes that, pursuant to section 781(b)(1)(B)(ii) of the Act, ARPP's tissue paper products are completed or assembled in another foreign country (India) from merchandise (tissue paper jumbo rolls) which is produced in the foreign country (the PRC) that is subject to the antidumping duty order.

C. Minor or Insignificant Process

The petitioner maintains that for the purpose of section 781(b)(1)(C) of the Act, conversion of jumbo rolls of tissue paper produced in the PRC into cut-to-length tissue paper in India is a ''minor or insignificant process'' as defined by the Act. According to the petitioner, the record evidence in the PRC tissue paper proceeding demonstrates that converting jumbo rolls and/or sheets of tissue paper is a minor or insignificant process. The petitioner states that cutting, folding and packaging tissue paper are operations that merely impart the final sheet size and form in which the product is delivered to the ultimate customer. The petitioner also states that the most fundamental aspects of the merchandise, such as the basis weight, texture, quality, and other special characteristics that may be required if the paper is intended for printing, are established when the paper is produced. Furthermore, the petitioner claims that the types of minor assembly operations described above (and below) with respect to converting jumbo rolls is consistent with the information obtained in other anticircumvention inquiries involving tissue paper products from the PRC.[2] *See* March 8, 2012, anticircumvention inquiry request at pages 20–21 and 29–30.

The petitioner states that converting jumbo rolls of tissue paper involves two to three minor processes typically performed by hand in India: cutting the tissue to a specific size, folding it (by hand typically) and packaging it for export (by hand). The petitioner contends that, based on the information obtained from ARPP's Web site, ARPP performs only basic converting operations in India (*i.e.,* cutting (if necessary), folding and packing activities),[3] which are minor or insignificant processes in the overall production of tissue paper products, not capital-intensive papermaking operations. *See* March 8, 2012, anticircumvention inquiry request at page 30 and Exhibit 1.

The petitioner argues that an analysis of the relevant statutory factors of section 781(b)(2) of the Act further supports its conclusion that the processing in India is ''minor or insignificant.'' These factors include: (1) The level of investment in the foreign country; (2) the level of research and development in the foreign country; (3) the nature of the production process in the foreign country; (4) the extent of production facilities in the foreign country; and (5) whether the value of the processing performed in the foreign country represents a small proportion of the value of the merchandise imported into the United States.

The petitioner argues that the processing in India is ''minor and insignificant'' as the term is defined in section 781(b)(2) of the Act when compared to the complex and capital-intensive processes involved in producing lightweight tissue paper from pulp, chemicals, and dyes. The petitioner's analysis of the statutory factors follows below.

(1) Level of Investment

The petitioner claims that the available information concerning ARPP's operations indicates that the level of investment is minor or insignificant. According to the petitioner, ARPP's operations (*i.e.,* importing jumbo rolls from companies in China, cutting to length if necessary and using manual labor to hand-fold and package the tissue paper before export to the United States) requires at most paper cutting machines, tables, chairs and lights, and the investment associated with this equipment is not significant. The petitioner states that its claim is supported by the information obtained from ARPP's Web site (*i.e., www.arprintpack.com*) and is consistent with the Department's determinations in past anticircumvention inquiries of the PRC tissue paper order which involved respondents with similar converting operations (*i.e., Quijiang* and *Max Fortune Vietnam*). *See* March 8, 2012, anticircumvention inquiry request at pages 26–27, and Exhibit 1. Accordingly, the petitioner concludes that the level of investment in ARPP's converting operations is minor or insignificant.

(2) Level of Research and Development

The petitioner maintains that there is no evidence reasonably available which indicates research and development (R&D) is taking place in India. In fact, the petitioner claims that information on ARPP's Web site indicates that ARPP is not a center for R&D and that any R&D which may take place is handled by ARPP's U.S. affiliate, Gem Stone Printing Inc. The petitioner also states that tissue paper production involves mature technologies and processes, and any technical developments are refinements rather than new technologies. Converting operations also reflect mature technologies, according to the petitioner, and the Indian converting operations involve hand-folding and packaging, which are inherently mature processes. The petitioner states that this claim is also consistent with the Department's determinations addressing the level of R&D in the *Quijiang* and *Max Fortune Vietnam* anticircumvention inquiries. *See* March 8, 2012, anticircumvention inquiry request at pages 27–28, and Exhibit 1.

(3) Nature of the Production Process in India

The petitioner states that information from ARPP's Web site indicates that ARPP's operations in India are designed to convert (cut and/or package) the tissue paper imported from the PRC without altering the fundamental characteristics of the basis weight, quality and texture of the tissue paper that are established during the papermaking process. Therefore, the petitioner claims that the information from ARPP's Web site shows that its operations are limited to PRC-origin jumbo rolls and sheets being cut to size (if necessary), and folded and packed by hand prior to export. As such, they involve unskilled manual labor in contrast to skilled labor required for

[2] *See Certain Tissue Paper Products From the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order,* 73 FR 57591 (October 3, 2008) (*Quijiang*); and *Certain Tissue Paper Products From the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order,* 76 FR 47551 (August 5, 2011) (*Max Fortune Vietnam*).

[3] ARPP's Web site provides photos of only folding and packing operations taking place, and its list of production assets does not identify any papermaking equipment or machines. *See* March 8, 2012, anticircumvention inquiry request at Exhibit 1.

papermaking. While cutting jumbo rolls into sheets of tissue paper may involve some skill and machinery, according to the petitioner, the nature of this activity is not complex. Therefore, the petitioner contends that ARPP's ''production process'' is minor or insignificant and is consistent with the Department's determinations in *Quijiang* and *Max Fortune Vietnam. See* March 8, 2012, anticircumvention inquiry request at pages 29–30 and Exhibit 1.

(4) Extent of Production Facilities in India

The petitioner asserts, based on information obtained from ARPP's Web site, that ARPP's facility provides ample storage for cut tissue paper and that it does not believe that ARPP has machinery in place to make tissue paper. According to the petitioner, the information on ARPP's Web site demonstrates that ARPP is not a paper mill, as it indicates that ARPP's production capabilities focus exclusively on printing and converting a variety of paper products, but not on paper-making from pulp. Therefore, the petitioner concludes that ARPP's facilities associated with converting tissue paper products are minimal. *See* March 8, 2012, anticircumvention inquiry request at pages 30–31, and Exhibit 1.

(5) Value of Processing in India Compared to Value of Tissue Paper Imported Into United States

The petitioner states that the simple completion or assembly processes performed by ARPP in India (*i.e.,* cutting (if necessary), folding (by hand) and packing (also by hand) the tissue paper from the PRC) necessarily represents a small proportion of the value of the finished tissue paper product shipped to the United States. The petitioner also states that this conclusion is supported by the Department's determination in the *Quijiang* anticircumvention inquiry, in which the Department determined that tissue paper converting processes are minor or insignificant.[4] *See* March 8, 2012, anticircumvention inquiry request at pages 32–33.

D. Value of Merchandise Produced in PRC

For the reasons stated in section C.5. above and for the purpose of section 781(b)(1)(D) of the Act, the petitioner contends that the value of the processing performed by ARPP is a minor portion of the cost of the completed merchandise. According to the petitioner, in this case, that analysis necessarily implies that the value of the PRC-origin jumbo rolls and cut-to-length sheets used by ARPP is a significant portion of the total value of the merchandise exported to the United States, because there are no other operations or components to take into account. In addition, the petitioner states that this conclusion is supported by the Department's determination in the *Quijiang* anticircumvention inquiry, in which the Department determined that the value of the PRC-origin jumbo rolls constitutes a great majority of the value of the finished merchandise. *See* March 8, 2012, anticircumvention inquiry request at pages 33–34.

E. Factors To Consider in Determining Whether Action Is Necessary

The petitioner states that, pursuant to sections 781(b)(1)(E) and (b)(3) of the Act, additional factors must be considered in the Department's decision to issue a finding of circumvention regarding imports of tissue paper from India. These factors are discussed below.

Pattern of Trade

Section 781(b)(3)(A) of the Act directs the Department to take into account patterns of trade when making a decision in an anticircumvention case. According to the petitioner, at the time the PRC tissue paper petition was filed in February 2004, the only source of imports of tissue paper products was the PRC. Based on ARPP's Web site information, publicly available ship manifest (PIERS) data and Global Trade Information Service (GTIS) data, the petitioner contends that a few months after the petition was filed, ARPP was established and it began commercial shipments in 2005. The petitioner also contends that the PIERS data show a pattern of trade since the initiation of the PRC tissue paper proceeding that is characteristic of circumvention (*i.e.,* that India rapidly emerged from being a source of no imports to being a source of substantial and growing imports of tissue paper). *See* March 18, 2012, anticircumvention inquiry request at pages 35–36, and Exhibit 1 and 6; and the April 16, submission at Exhibit 2.

Affiliation

Section 781(b)(3)(B) of the Act directs the Department to take into account whether the manufacturer or exporter of the merchandise is affiliated with the person who uses the merchandise to assemble or complete in the foreign country that is subsequently imported into the United States when making a decision in an anticircumvention case. The petitioner points out that ARPP is affiliated through common ownership with Stone Sapphire, a Chinese company identified on ARPP's Web site as manufacturing and sourcing tissue paper products in the PRC. Although the petitioner acknowledges that the degree of Stone Sapphire's involvement in shipments of PRC-origin tissue paper to ARPP is not currently known, the petitioner claims that the history of circumvention in this proceeding provides good cause to initiate a formal inquiry and develop a formal record of information from ARPP and its affiliates. *See* March 8, 2012, anticircumvention request at pages 36–37, and Exhibits 1 and 2; *Quijiang,* 73 FR 57593; and *Max Fortune Vietnam,* 76 FR 47551, and accompanying Issues and Decision Memorandum at Comment 4.

Subsequent Import Volume

Section 781(b)(3)(C) of the Act directs the Department to take into account whether imports of the merchandise into the foreign country have increased after the initiation of the investigation, which resulted in the issuance of the order, when making a decision in an anticircumvention case. According to the petitioner, given that India was not a source of tissue paper products in February 2004 (*i.e.,* the time when the less-than-fair-value (LTFV) investigation of tissue paper from the PRC was initiated), it is reasonable to infer that jumbo rolls and cut-to-length sheets of tissue paper were not being shipped to India for completion or assembly into finished tissue paper products because Chinese producers and exporters had no restrictions on their imports into the United States. In addition, the petitioner notes that ARPP did not exist in 2004, during the time the original LTFV investigation was initiated and

[4] Specifically, in the *Quijiang* anticircumvention inquiry, the petitioner states that the Department determined that the conversion processes of the respondent Quijiang (*i.e.,* allegedly the same type of conversion processes described above for ARPP) were minor or insignificant for purposes of the statute, and that inclusion of the resulting tissue paper in the order was appropriate to avoid circumvention of the order. *See Certain Tissue Paper Products From the People's Republic of China: Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order and Extension of Final Determination,* 73 FR 21580 (April 22, 2008) (which was upheld in *Certain Tissue Paper Products From the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order,* 73 FR 57591 (October 3, 2008)). In addition, the petitioner notes that the activities performed by Quijiang included processing such as dip-dying, which would add greater amounts of value than merely converting jumbo rolls and sheets of tissue paper. In contrast, the petitioner contends that ARPP is only converting the imported jumbo rolls and sheets without performing additional processing (such as dip-dying). *See* March 18, 2012, anticircumvention inquiry request at page 33.

conducted. Therefore, before that time, ARPP could not have imported tissue paper jumbo rolls and sheets from the PRC. However, since the initiation of the original investigation, imports of Chinese tissue paper into India have increased steadily and substantially. Specifically, the petitioner states that the GTIS data show that imports of jumbo rolls and sheets of tissue paper into India from the PRC were very small through the third quarter of 2004 (*i.e.,* the months after the petitioner filed the original petition). However, since that time, the petitioner claims that the GTIS data show that the volume of imports into India from the PRC has steadily and significantly increased. *See* March 8, 2012, anticircumvention inquiry request at pages 37–38.

Analysis

Based on our analysis of the petitioner's March 8, 2012, anticircumvention inquiry request, as supplemented on April 16, 2012, the Department determines that a formal anticircumvention inquiry is warranted. In accordance with 19 CFR 351.225(e), the Department finds that the issue of whether a product is included within the scope of an order cannot be determined based solely upon the request and the descriptions of the merchandise and the Department will notify by mail all parties on the Department's scope service list of the initiation of a scope inquiry, including an anticircumvention inquiry. In addition, in accordance with 19 CFR 351.225(f)(1), a notice of the initiation of an anticircumvention inquiry issued under 19 CFR 351.225(e) will include a description of the product that is the subject of the anticircumvention inquiry—in this case, cut-to-length tissue paper that has the characteristics identified in the scope of the order, as provided above—and an explanation of the reasons for the Department's decision to initiate an anticircumvention inquiry, as provided below.

With regard to whether the merchandise from India is of the same class or kind as the merchandise produced in the PRC, the petitioner has presented information indicating that the merchandise being imported from India is of the same class or kind as the tissue paper produced in the PRC, which is subject to the antidumping duty order. The merchandise from India shares physical characteristics with the merchandise covered by the antidumping duty order. *See* March 8, 2012, anticircumvention inquiry request at pages 8–9.

With regard to completion of merchandise in a foreign country, the petitioner has presented information that the tissue paper exported from India is tissue paper of PRC origin which is further processed in India. *See* March 8, 2012, anticircumvention inquiry request at Exhibits 5, 8, 9, and 10; and the April 16, 2012, submission at pages 2–10.

With regard to whether the conversion of PRC jumbo rolls and/or sheets of tissue paper into cut-to-length tissue paper in India is a ''minor or insignificant process,'' the petitioner addressed the relevant statutory factors used to determine whether the processing of jumbo rolls and/or sheets of tissue paper is minor or insignificant with the best information available to it at the time of its anticircumvention inquiry request. The petitioner relied on information obtained primarily from publicly available sources and affidavits for this purpose. *See* March 8, 2012, anticircumvention inquiry request at Exhibits 1, 8, 9, and 13.

We find that the information presented by the petitioner supports its request to initiate an anticircumvention inquiry. In particular, the petitioner provided evidence for each of the criteria enumerated in the statute, including the following: (1) The nature of ARPP's operations (*i.e.,* limited to converting operations) suggest little investment has been made in ARPP; (2) because ARPP's U.S. affiliate conducts R&D, it is reasonable to infer that any R&D takes place in the United States and not in India; (3) the cutting, folding and packaging activities (*i.e.,* the converting process) performed by ARPP do not alter the fundamental characteristics of the tissue paper and, therefore, reflect a production process which is minor or insignificant; (4) ARPP's basic converting operations suggest a significantly lower level of investment in production assets than that required by the capital-intensive nature of the papermaking process and, thus ARPP's facilities are minimal; and (5) ARPP's limited operations suggest that converting tissue paper adds little value to the merchandise imported into the United States.

With respect to the value of the merchandise produced in the PRC, the petitioner relied on the information and arguments in the ''minor or insignificant process'' portion of its anticircumvention request to indicate that the value of the PRC jumbo rolls and sheets of tissue paper is significant relative to the total value of finished merchandise exported to the United States. We find that this information adequately meets the requirements of this factor, as discussed above.

Finally, the petitioner argued that the Department should also consider the pattern of trade, affiliation, and subsequent import volume as factors in determining whether to initiate the anticircumvention inquiry. The import information submitted by the petitioner indicates that U.S. imports of tissue paper from India, as well as Indian imports of tissue paper from China, rose significantly after the initiation of the investigation and the establishment of ARPP. In addition, the petitioner provides information showing ARPP's affiliation with a known producer of tissue paper in the PRC, the timing of ARPP's establishment, and that the nature of ARPP's operations reflect an intention to shift completion of merchandise subject to the PRC tissue paper order from the PRC to India.

Accordingly, we are initiating a formal anticircumvention inquiry concerning the antidumping duty order on certain tissue paper products from the PRC, pursuant to section 781(b) of the Act. In accordance with 19 CFR 351.225(l)(2), if the Department issues a preliminary affirmative determination, we will then instruct U.S. Customs and Border Protection to suspend liquidation and require a cash deposit of estimated duties, at the applicable rate, for each unliquidated entry of the merchandise at issue, entered or withdrawn from warehouse for consumption on or after the date of initiation of the inquiry.

The Department is focusing its analysis of the significance of the production process in India on the single company identified by the petitioner, namely ARPP, in its March 8, 2012, anticircumvention inquiry request. If the Department receives a formal request from an interested party regarding potential circumvention by other Indian companies involved in processing PRC jumbo rolls and/or sheets for export to the United States within sufficient time, we will consider conducting the inquiries concurrently.

The Department will, following consultation with interested parties, establish a schedule for questionnaires and comments on the issues. The Department intends to issue its final determination within 300 days of the date of publication of this initiation consistent with section 781(f) of the Act.

This notice is published in accordance with section 781(b) of the Act and 19 CFR 351.225(f).

Dated: May 3, 2012.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. 2012–11217 Filed 5–9–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–801]

Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On December 13, 2011, the Department of Commerce (''Department'') published in the **Federal Register** the preliminary results of the new shipper review of the antidumping duty order on certain frozen fish fillets (''frozen fish fillets'') from the Socialist Republic of Vietnam (''Vietnam'').[1] We gave interested parties an opportunity to comment on the *Preliminary Results* and, based upon our analysis of the comments and information received, we made changes to the margin calculation for the final results of this new shipper review. The final weighted-average margins are listed below in the ''Final Results of Review'' section of this notice. The period of review (''POR'') is August 1, 2010, through January 31, 2011.

DATES: *Effective Date:* May 10, 2012.

FOR FURTHER INFORMATION CONTACT: Emeka Chukwudebe, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0219.

SUPPLEMENTARY INFORMATION:

Background

As noted above, on December 13, 2011, the Department published the *Preliminary Results* of this new shipper review. We invited interested parties to comment on the *Preliminary Results.* We extended the deadlines for submission of surrogate value comments and case briefs on multiple occasions.[2] On January 10, 2012, the Department published a notice fully extending the time limit for completion of the final results of this new shipper review.[3] Between March 16, 2012, and March 21, 2012, we received case and rebuttal briefs from Petitioners[4] and the respondent.[5] As a result of our analysis, we have made changes to the *Preliminary Results.*

Scope of the Order

The product covered by the order is frozen fish fillets, including regular, shank, and strip fillets and portions thereof, whether or not breaded or marinated, of the species *Pangasius Bocourti, Pangasius Hypophthalmus* (also known as *Pangasius Pangasius*), and *Pangasius Micronemus.* Frozen fish fillets are lengthwise cuts of whole fish. The fillet products covered by the scope include boneless fillets with the belly flap intact (''regular'' fillets), boneless fillets with the belly flap removed (''shank'' fillets), boneless shank fillets cut into strips (''fillet strips/finger''), which include fillets cut into strips, chunks, blocks, skewers, or any other shape. Specifically excluded from the scope are frozen whole fish (whether or not dressed), frozen steaks, and frozen belly-flap nuggets. Frozen whole dressed fish are deheaded, skinned, and eviscerated. Steaks are bone-in, cross-section cuts of dressed fish. Nuggets are the belly-flaps. The subject merchandise will be hereinafter referred to as frozen ''basa'' and ''tra'' fillets, which are the Vietnamese common names for these species of fish. These products are classifiable under tariff article codes 0304.29.6033, 0304.62.0020, 0305.59.0000, 0305.59.4000, 1604.19.2000, 1604.19.2100, 1604.19.3000, 1604.19.3100, 1604.19.4000, 1604.19.4100, 1604.19.5000, 1604.19.5100, 1604.19.6100, 1604.19.8100 (Frozen Fish Fillets of the species *Pangasius* including basa and tra) of the Harmonized Tariff Schedule of the United States (''HTSUS'').[6] The order covers all frozen fish fillets meeting the above specification, regardless of tariff classification. Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties are addressed in the ''Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Issues and Decision Memorandum for the Final Results of the New Shipper Review,'' dated concurrently with this notice (''I&D Memo''), and which is hereby adopted by this notice. A list of the issues which parties raised is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this new shipper review and the corresponding recommendation in this public memorandum which is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Services System (''IA ACCESS''). Access to IA ACCESS is available in the Central Records Unit (''CRU'') of the main Commerce Building, Room 7046. In addition, a complete version of the I&D Memo is accessible on the Web at *http://trade.gov/frn.* The paper copy and electronic versions of the I&D Memo are identical in content.

[1] *See Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Preliminary Results of the New Shipper Review,* 76 FR 77485 (December 13, 2011) (''*Preliminary Results*'').

[2] *See* Memorandum for All Interested Parties, from Alexis Polovina, Case Analyst, Import Administration, Re: Antidumping Duty New Shipper Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Extension of Time to Submit Surrogate Value Comments, dated December 30, 2011. *See also* Memorandum for All Interested Parties, from Emeka Chukwudebe, Case Analyst, Import Administration, Re: Antidumping Duty New Shipper Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Extension of Surrogate Value Comments & Case Briefs Deadlines, dated January 5, 2012. *See also* Memorandum for All Interested Parties, from Emeka Chukwudebe, Case Analyst, Import Administration, Re: Antidumping Duty New Shipper Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Second Extension of Case and Rebuttal Briefs, dated, February 29, 2012. *See also* Memorandum for All Interested Parties, from Emeka Chukwudebe, Case Analyst, Import Administration, Re: Antidumping Duty New Shipper Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Revised Extension of Case and Rebuttal Briefs, dated, March 8, 2012.

[3] *See Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Extension of Time for Final Results of the New Shipper Review,* 77 FR 1470 (January 10, 2012).

[4] The Catfish Farmers of America and individual U.S. Catfish Processors: America's Catch, Consolidated Catfish Companies, LLC dba Country Select Catfish, Delta Pride Catfish, Inc., Harvest Select Catfish, Inc., Heartland Catfish Company, Pride of the Pond, Simmons Farm Raised Catfish, Inc., and Southern Pride Catfish Company LLC (collectively, ''Petitioners'').

[5] Thuan An Production Trading & Services Co., Ltd. (''TAFISHCO'').

[6] Until July 1, 2004, these products were classifiable under tariff article codes 0304.20.60.30 (Frozen Catfish Fillets), 0304.20.60.96 (Frozen Fish Fillets, NESOI), 0304.20.60.43 (Frozen Freshwater Fish Fillets) and 0304.20.60.57 (Frozen Sole Fillets) of the HTSUS. Until February 1, 2007, these products were classifiable under tariff article code 0304.20.60.33 (Frozen Fish Fillets of the species *Pangasius* including basa and tra) of the HTSUS. On March 2, 2011, the Department added two HTSUS numbers at the request of U.S. Customs and Border Protection (''CBP''): 1604.19.2000 and 1604 19.3000. On January 30, 2012, the Department added eight HTSUS numbers at the request of U.S. CBP: 0304.62.0020, 0305.59.0000, 1604.19.2100, 1604.19.3100, 1604.19.4100, 1604.19.5100, 1604.19.6100, 1604.19.8100.

Changes Since the Preliminary Results

Based on a review of the record and comments received from interested parties regarding our *Preliminary Results,* we have made certain revisions to the margin calculation for TAFISHCO. For the reasons explained in the I&D Memo at Comment I, we have changed our primary surrogate country selection from Indonesia to Bangladesh. For all other changes to the calculation of TAFISHCO, *see* the I&D Memo and company-specific analysis memorandum. For changes to the surrogate values, *see* the I&D Memo and ''Memorandum to the File, through Matthew Renkey, Acting Program Manager, AC/CVD Operations, Office 9, from Emeka Chukwudebe, Case Analyst, AD/CVD Operations, Office 9, Antidumping New Shipper Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Surrogate Values for the Final Results,'' dated May 3, 2012.

Final Results of Review

The dumping margin for the POR is as follows:

Manufacturer/exporter	Weighted-average margin (dollars per kilogram)
Thuan An Production Trading & Services Co., Ltd	0.00

Assessment

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review. Pursuant to 19 CFR 351.212(b)(1), we will calculate importer-specific (or customer) *ad valorem* duty assessment rates based on the ratio of the total amount of the dumping margins calculated for the examined sales to the total entered value of those same sales. In accordance with 19 CFR 351.106(c)(2), we will instruct CBP to liquidate, without regard to antidumping duties, all entries of subject merchandise during the POR for which the importer-specific assessment rate is zero or *de minimis.*

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this new shipper review for all shipments of the subject merchandise from Vietnam entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Tariff Act of 1930, as amended (''Act''): (1) For subject merchandise produced and exported by TAFISHCO, the cash deposit rate will be the rate established in the final results of this new shipper review. If the cash deposit rate calculated in the final results is zero or *de minimis,* no cash deposit will be required for the specific producer-exporter combination listed above; (2) for subject merchandise exported by TAFISHCO, but not manufactured by TAFISHCO, the cash deposit rate will continue to be the Vietnam-wide rate (*i.e.,* $2.11/Kilogram); and (3) for subject merchandise manufactured by TAFISHCO, but exported by any other party, the cash deposit rate will be the Vietnam-wide rate (*i.e.,* $2.11/Kilogram). The cash deposit requirement, when imposed, shall remain in effect until further notice.

Reimbursement of Duties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties has occurred and the subsequent assessment of doubled antidumping duties.

Administrative Protective Order

In accordance with 19 CFR 351.305(a)(3), this notice also serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under the APO, 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 subject to sanction.

We are issuing and publishing this new shipper review and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: May 3, 2012.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

Appendix I—Issues & Decision Memorandum

COMMENT I: SELECTION OF SURROGATE COUNTRY
- A. Economic Comparability
- B. Significant Producer of the Comparable Merchandise
- C. Data Considerations

COMMENT II: SURROGATE VALUES
- A. Financial Ratios
- B. Fish Waste
- C. Fingerlings, Fish Feed, Nutrients, Lime
- D. Salt
- E. STPP, CO Gas, PE Bags, Cartons, Tape, Label, Plastic Sheet, Banding, Diesel
- F. Labor
- G. Brokerage & Handling

COMMENT III: CORRECTION OF PRELIMINARY MARGIN CALCULATION

[FR Doc. 2012–11218 Filed 5–9–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Stevens Institute of Technology, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Electron Microscope

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by

Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 3720, U.S. Department of Commerce, 14th and Constitution Avenue NW, Washington, DC

Docket Number: 12–008. Applicant: Stevens Institute of Technology, Hoboken, NJ 07030. Instrument: Quanta 450 Scanning Electron Microscope. Manufacturer: FEI Company, Czech Republic. Intended Use: See notice at 77 FR 20360, April 4, 2012.

Docket Number: 12–009. Applicant: Humboldt State University, Arcata, CA 95521. Instrument: Quanta 250 Scanning Electron Microscope. Manufacturer: FEI Company, Czech Republic. Intended Use: See notice at 77 FR 20360, April 4, 2012.

Docket Number: 12–010. Applicant: Howard Hughes Medical Institute, Chevy Chase, MD 20815. Instrument: Tecnai G2 F20T Transmission Electron Microscope. Manufacturer: FEI Company, Czech Republic. Intended Use: See notice at 77 FR 20360, April 4, 2012.

Docket Number: 12–012. Applicant: Alliance for Sustainable Energy, Golden, CO 80401–3305. Instrument: Tecnai G2 20 S–TWIN Transmission Electron Microscope. Manufacturer: FEI Company, Czech Republic. Intended Use: See notice at 77 FR 20360, April 4, 2012.

Docket Number: 12–014. Applicant: California Institute of Technology, Pasadena, CA 91125. Instrument: Nova NanoSEM 450 Scanning Electron Microscope. Manufacturer: FEI Company, Czech Republic. Intended Use: See notice at 77 FR 20360, April 4, 2012.

Docket Number: 12–015. Applicant: University of Nebraska-Lincoln, Lincoln, NE 68588. Instrument: Nova NanoSEM 450 Scanning Electron Microscope. Manufacturer: FEI Company, Czech Republic. Intended Use: See notice at 77 FR 20360, April 4, 2012.

Docket Number: 12–016. Applicant: University of Nebraska- Lincoln, Lincoln, NE 68588. Instrument: Tecnai Osiris Field Emission Scanning Electron Microscope. Manufacturer: FEI Company, Czech Republic. Intended Use: See notice at 77 FR 20360, April 4, 2012.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, is being manufactured in the United States at the time the instrument was ordered. Reasons: Each foreign instrument is an electron microscope and is intended for research or scientific educational uses requiring an electron microscope. We know of no electron microscope, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order of each instrument.

Dated: May 1, 2012.

Gregory W. Campbell,

Director, Subsidies Enforcement Office, Import Administration.

[FR Doc. 2012–11226 Filed 5–9–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–984]

Drawn Stainless Steel Sinks From the People's Republic of China: Postponement of Preliminary Determination in the Countervailing Duty Investigation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* May 10, 2012.

FOR FURTHER INFORMATION CONTACT: Shane Subler or Hermes Pinilla, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0189 or (202) 482–3477, respectively.

Background

On March 21, 2012, the Department of Commerce (''the Department'') initiated an investigation of drawn stainless steel sink from the People's Republic of China (''PRC''). *See Drawn Stainless Steel Sinks from the People's Republic of China: Initiation of Countervailing Duty Investigation,* 77 FR 18211 (March 27, 2012). Currently, the preliminary determination is due no later than May 25, 2012.

Postponement of Due Date for Preliminary Determination

Section 703(b)(1) of the Tariff Act of 1930, as amended (the Act), requires the Department to issue the preliminary determination in a countervailing duty investigation within 65 days after the date on which the Department initiated the investigation. However, if the Department concludes that the parties concerned in the investigation are cooperating and determines that the investigation is extraordinarily complicated, section 703(c)(1)(B) of the Act allows the Department to postpone making the preliminary determination until no later than 130 days after the date on which the administering authority initiates an investigation. The Department finds that the instant case is extraordinarily complicated because of the number and complexity of the alleged countervailable subsidy practices, and the need to determine the extent to which particular countervailable subsidies are used by individual manufacturers, producers, and exporters. In addition, the Department finds that the parties thus far identified in the investigation are cooperating. Therefore, the Department is extending the due date for the preliminary determination by 130 days after the day on which the investigation was initiated (*i.e.,* until July 29, 2012). However, July 29, 2012, falls on a Sunday. It is the Department's long-standing practice to issue a determination the next business day when the statutory deadline falls on a weekend, federal holiday, or any other day when the Department is closed. *See Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended,* 70 FR 24533 (May 10, 2005). Accordingly, the deadline for completion of the preliminary determination is no later than July 30, 2012.

As the Department is aware, Section 703(c)(2) of the Act and 19 CFR 351.205(f) state that if the Department postpones the preliminary determination, it will notify all parties to the proceeding no later than 20 days prior to the scheduled date of the preliminary determination. The Department acknowledges that it inadvertently missed this deadline. The Department received numerous comments regarding the respondent selection, which delayed the issuance of questionnaires, and intended to extend the deadline to issue the preliminary determination, but due to the administrative oversight we did not complete an extension notice on time.

This notice is issued and published pursuant to section 703(c)(2) of the Act and 19 CFR 351.205(f).

Dated: May 4, 2012.

Christian Marsh,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2012–11341 Filed 5–9–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–921]

Lightweight Thermal Paper From the People's Republic of China: Rescission of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* May 10, 2012.

FOR FURTHER INFORMATION CONTACT: Michael Chappell or Mary Kolberg, 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) 482–3124 or (202) 482–1785, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 1, 2011, the Department of Commerce (''the Department'') published a notice announcing the opportunity to request an administrative review of the countervailing duty order on lightweight thermal paper from the People's Republic of China for the period of January 1, 2010, through December 31, 2010. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 76 FR 67413 (November 1, 2011). On November 30, 2011, in accordance with 19 CFR 351.213(b), the Department received a timely request from Appleton Papers, Inc., the petitioner, to conduct an administrative review of Guandong Guanhao High-Tech Co., Ltd. (''Guanhao'').

On December 30, 2011, the Department published a notice of initiation of a countervailing duty administrative review of Guanhao. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 76 FR 82268 (December 30, 2011).

Rescission of Administrative Review

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if the party that requested the review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review. On March 29, 2012, the petitioner withdrew its request for review within the 90-day period. No other party requested a review of Guanhao. Therefore, pursuant in response to the petitioner's timely withdrawal request, the Department is rescinding this administrative review.

Assessment

The Department will instruct U.S. Customs and Border Protection (''CBP'') to assess countervailing duties on all appropriate entries. For Guanhao, countervailing duties shall be assessed at rates equal to the cash deposit rate in effect on the date of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions to CBP 15 days after publication of this notice of rescission of administrative review.

Notification Regarding Administrative Protective Order

This notice serves as a final reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of 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 sanctionable violation.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: May 3, 2012.

Christian Marsh,

Deputy Assistant Secretary or Antidumping and Countervailing Duty Operations.

[FR Doc. 2012–11344 Filed 5–9–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–818]

Certain Corrosion-Resistant Carbon Steel Flat Products From Korea: Final Results of Expedited Five-Year (''Sunset'') Review of the Countervailing Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On January 3, 2012, the Department of Commerce (''the Department'') published in the **Federal Register** the notice of initiation of the third five-year sunset review of the countervailing duty order on certain corrosion-resistant carbon steel flat products (''CORE'') from the Republic of Korea (''Korea''), pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). *See Initiation of Five-Year* (''*Sunset*'') *Review,* 77 FR 85 (January 3, 2012) (''*Third Sunset Review*''. On the basis of a notice of intent to participate and an adequate substantive response filed on behalf of domestic interested parties, and an inadequate response from respondent interested parties (in this case, no response), the Department has conducted an expedited sunset review of this order pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(B). As a result of this sunset review, the Department finds that revocation of the countervailing duty order is likely to lead to continuation or recurrence of a countervailable subsidy at the level indicated in the ''Final Results of Review'' section of this notice.

DATES: *Effective Date:* May 10, 2012.

FOR FURTHER INFORMATION CONTACT: Robert Copyak, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–2209.

SUPPLEMENTARY INFORMATION:

Background

The countervailing duty order on CORE from Korea was published in the **Federal Register** on August 17, 1993. *See Countervailing Duty Orders and Amendments to Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Korea,* 58 FR 43752 (August 17, 1993). On January 3, 2012, the Department initiated the third sunset review of the countervailing duty order on CORE from Korea, pursuant to section 751(c) of the Act. *See Third Sunset Review.* The Department received notices of intent to participate from ArcelorMittal USA, LLC, Nucor Corporation, and United States Steel Corporation (collectively, ''domestic interested parties''), within the deadline specified in 19 CFR 351.218(d)(1)(i). Domestic interested parties claimed interested party status under section 771(9)(C) of the Act, as U.S. producers engaged in the manufacture, production, or wholesale of CORE in the United States.

The Department received a complete substantive response from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). However, the Department did not receive a substantive response from any respondent interested party to this proceeding. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted an expedited review of the order.

Scope of the Order

The merchandise covered by the order includes flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of

0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule of the United States (''HTSUS'') under item numbers 7210.31.0000, 7210.39.0000, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.60.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.21.0000, 7212.29.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.5000, 7217.12.1000, 7217.13.1000, 7217.19.1000, 7217.19.5000, 7217.22.5000, 7217.23.5000, 7217.29.1000, 7217.29.5000, 7217.32.5000, 7217.33.5000, 7217.39.1000, and 7217.39.5000. Included in the order are flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.,* products which have been ''worked after rolling'')—for example, products which have been beveled or rounded at the edges. Excluded from the order are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead (''terne plate''), or both chromium and chromium oxides (''tin-free steel''), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Excluded from the order are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness. Also excluded from the order are certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a 20%–60%–20% ratio. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise covered by the order is dispositive.

Analysis of Comments Received

All issues raised in this review are addressed in the Issues and Decision Memorandum (''Decision Memorandum'') from Gary Taverman, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Acting Assistant Secretary for Import Administration, dated concurrently with this notice, which is hereby adopted by this notice. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS''). Access to IA ACCESS is available in the Central Records Unit, room 7046, of the main Commerce building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at *http://ia.ita.doc.gov/frn.* The electronic versions of the Decision Memorandum in IA ACCESS and on the Web are identical in content.

Final Results of Review

The Department determines that revocation of the countervailing duty order on CORE from Korea is likely to lead to continuation or recurrence of countervailable subsidies at the following countervailing duty rates:

Manufacturer/exporter	Net subsidy margin (percent)
Pohang Iron and Steel Company	0.57
Dongbu Steel Ltd.	0.75
Country-Wide [1]	1.26

[1] Union Steel Manufacturing Co. was excluded from the order on the basis of a *de minimis* net subsidy rate. *See Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea: Amended Final Affirmative Countervailing Duty Determinations in Accordance with Decision Upon Remand,* 66 FR 16656 (March 27, 2001).

Notification Regarding Administrative Protective Order

This notice serves as the only reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing these final results and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: May 2, 2012.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. 2012–11221 Filed 5–9–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Advisory Committee on Earthquake Hazards Reduction Meeting

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Earthquake Hazards Reduction (ACEHR or Committee), will hold a meeting via teleconference on Friday, June 1, 2012 from 1 p.m. to 3 p.m. Eastern Time. The primary purpose of this meeting is to finalize the Committee's draft annual report to the NIST Director. Any draft meeting materials will be posted on the NEHRP Web site at *http://nehrp.gov/.* Interested members of the public will be able to participate in the meeting from remote locations by calling into a central phone number.

DATES: The ACEHR will hold a meeting via teleconference on Friday, June 1, 2012, from 1 p.m. until 3 p.m. Eastern Time.

ADDRESSES: Questions regarding the meeting should be sent to National Earthquake Hazards Reduction Program Director, National Institute of Standards and Technology, 100 Bureau Drive Mail Stop 8604, Gaithersburg, Maryland 20899–8604. For instructions on how to participate in the meeting, please see the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Dr. Jack Hayes, National Earthquake Hazards Reduction Program Director, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 8604, Gaithersburg, Maryland 20899–8604. Dr. Hayes' email address is *jack.hayes@nist.gov* and his phone number is (301) 975–5640.

SUPPLEMENTARY INFORMATION: The Committee was established in accordance with the requirements of Section 103 of the NEHRP Reauthorization Act of 2004 (Pub. L. 108–360). The Committee is composed of 12 members appointed by the Director of NIST, who were selected for

their technical expertise and experience, established records of distinguished professional service, and their knowledge of issues affecting the National Earthquake Hazards Reduction Program. In addition, the Chairperson of the U.S. Geological Survey (USGS) Scientific Earthquake Studies Advisory Committee (SESAC) serves in an ex-officio capacity on the Committee. The Committee assesses:

- Trends and developments in the science and engineering of earthquake hazards reduction;
- The effectiveness of NEHRP in performing its statutory activities (improved design and construction methods and practices; land use controls and redevelopment; prediction techniques and early-warning systems; coordinated emergency preparedness plans; and public education and involvement programs);
- Any need to revise NEHRP; and
- The management, coordination, implementation, and activities of NEHRP.

Background information on NEHRP and the Advisory Committee is available at *http://nehrp.gov/*.

Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app., notice is hereby given that the ACEHR will hold a meeting via teleconference on Friday, June 1, 2012, from 1 p.m. until 3 p.m. Eastern Time. There will be no central meeting location. Interested members of the public will be able to participate in the meeting from remote locations by calling into a central phone number. The primary purpose of this meeting is to finalize the Committee's draft annual report to the NIST Director. Any draft meeting materials will be posted on the NEHRP Web site at *http://nehrp.gov/*.

Individuals and representatives of organizations who would like to offer comments and suggestions related to the Committee's affairs are invited to request detailed instructions by contacting Michelle Harman on how to dial in from a remote location to participate in the meeting. Michelle Harman's email address is *michelle.harman@nist.gov*, and her phone number is 301–975–5324. Approximately fifteen minutes will be reserved from 2:45 p.m.–3 p.m. Eastern Time for public comments; speaking times will be assigned on a first-come, first-serve basis. The amount of time per speaker will be determined by the number of requests received, but is likely to be about 3 minutes each. Questions from the public will not be considered during this period. Speakers who wish to expand upon their oral statements, those who had wished to speak but could not be accommodated, and those who were unable to participate are invited to submit written statements to the ACEHR, National Institute of Standards and Technology, 100 Bureau Drive MS 8604, Gaithersburg, Maryland 20899–8604, via fax at (301) 975–5433, or electronically by email to *info@nehrp.gov*.

All participants of the meeting are required to pre-register. Anyone wishing to participate must register by close of business Friday, May 25, 2012, in order to be included. Please submit your name, email address, and phone number to Michelle Harman. After registering, participants will be provided with detailed instructions on how to dial in from a remote location in order to participate. Michelle Harman's email address is *michelle.harman@nist.gov*, and her phone number is (301) 975–5324.

Dated: May 3, 2012.

David Robinson,

Associate Director for Management Resources.

[FR Doc. 2012–11237 Filed 5–9–12; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Whiting Oversight Committee on May 29, 2012 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Tuesday, May 29, 2012 at 1 p.m.

ADDRESSES: The meeting will be held at the Holiday Inn, 31 Hampshire Street, Mansfield, MA 02048; telephone: (508) 339–2200; fax: (508) 339–1040.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The Whiting Committee will review public comments on and analyses of the potential effects of raising the silver hake (whiting) possession limit from 30,000 lbs. to as high as 40,000 lbs. in all or part of the Southern New England and Mid-Atlantic Exemption Areas. The Committee will consider making a recommendation to the Council for a final alternative. Other small-mesh multispecies management issues may also be discussed.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard, Executive Director, at 978–465–0492, at least 5 days prior to the meeting date.

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

Dated: May 7, 2012.

Tracey L. Thompson,

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

[FR Doc. 2012–11279 Filed 5–9–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

New England Fishery Management Council; Public Hearings

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

ACTION: Public Hearing; Request for Comments.

SUMMARY: The New England Fishery Management Council (Council) will hold a supplemental public hearing to solicit Scoping comments on Draft Amendment 19 to the Northeast Small-Mesh Multispecies Fishery Management Plan (FMP).

DATES: The public hearing will be held on Tuesday, May 29, 2012 at 10 a.m.

ADDRESSES: The Council will take comments at the public hearing at the Holiday Inn, 31 Hampshire Street,

Mansfield, MA 02048; telephone: (508) 339–2200.

The written comment period has been extended and should be sent to Paul Howard, Executive Director, 50 Water Street, Mill 2, Newburyport, MA 01950. Comments may also be sent via fax to (978) 465–3116 or submitted via email to *comment@nefmc.org* with ''Comment on Small Mesh Multispecies Amendment 19'' in the subject line. Requests for copies of the public hearing document and other information should be directed to Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950; telephone: (978) 465–0492. The public hearing document is also accessible electronically via the Internet at *http://www.nefmc.org/mesh/index.html.*

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: Council staff will provide information on the status of Amendment 19 to the Northeast Multispecies FMP. The draft alternatives include annual limits on catch and landings by fishery program and/or stock, in-season and post-season accountability measures including incidental possession limits, year round red hake possession limits, monitoring and specification setting procedures, and a proposed increase in the 30,000 lbs. silver hake possession limit in the Southern New England and Mid-Atlantic Exemption Areas. Final alternatives were approved at the April 24–26, 2012 Council meeting, but the Council will take supplemental action at the June 19–21, 2012 Council meeting on proposed increase in the 30,000 lbs. silver hake (whiting) possession limit. There will be time available for questions and answers.

Written comment period has been extended on the draft amendment and must be received by 5 p.m. EDT, Thursday, May 24, 2012 and may be mailed to the Council office at the address above, faxed to (978) 465–3116 or emailed to: *comment@nefmc.org* (attention/subject line: Comment on Small Mesh Multispecies Amendment 19).

Special Accommodations

The hearing is physically accessible to people with physical disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

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

Dated: May 7, 2012.

Tracey L. Thompson,

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

[FR Doc. 2012–11280 Filed 5–9–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA774

Marine Mammals; File No. 13927

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

ACTION: Notice; receipt of application for permit amendment.

SUMMARY: Notice is hereby given that Dr. James H.W. Hain, Associated Scientists at Woods Hole, Box 721, Woods Hole, MA 02543, has applied for an amendment to Scientific Research Permit No. 13927.

DATES: Written, telefaxed, or email comments must be received on or before June 11, 2012.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the *Features* box on the Applications and Permits for Protected Species home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 13927 from the list of available applications.

These documents are also available upon written request or by appointment in the following offices:

Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376; and

Southeast Region, NMFS, 263 13th Avenue South, Saint Petersburg, FL 33701; phone (727) 824–5312; fax (727) 824–5309.

Written comments on this application should be submitted to the Chief, Permits and Conservation Division, at the address listed above. Comments may also be submitted by facsimile to (301) 713–0376, or by email to *NMFS.Pr1Comments@noaa.gov.* Please include the File No. in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits, Conservation and Education Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Carrie Hubard or Amy Hapeman, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject amendment to Permit No. 13927 is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

Permit No. 13927, issued on October 19, 2011 (76 FR 67151), authorizes the permit holder to take North Atlantic right (*Eubalaena glacialis*) and humpback whales (*Megaptera novaeangliae*) during aerial and vessel surveys off the U.S. southeast coast. Bottlenose (*Tursiops truncatus*) and Atlantic spotted dolphins (*Stenella frontalis*) may be incidentally harassed during research activities. The field season is December through April. The permit is valid through October 31, 2016. The permit holder is requesting the permit be amended to increase take numbers of North Atlantic right whales from 50 to 100 per year during aerial surveys and from ten to 60 per year during vessel surveys. The permit holder is not increasing his research effort or asking for changes to methodologies, location, species, field season, or permit duration. The permit holder is requesting the increase because the take numbers he originally requested and is currently authorized do not allow him to conduct his research as planned. Without the increases, a few groups of whales could exhaust his take numbers. As a result, he would have to end his field seasons prematurely and would lose the opportunity to collect data on whales only observed at the end of the season.

A draft supplemental environmental assessment (SEA) has been prepared in compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), to examine whether significant environmental impacts could result from issuance of the proposed scientific research permit. The draft SEA is available for review and comment simultaneous with the scientific research permit application.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: May 7, 2012.

Tammy C. Adams,

Acting Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–11306 Filed 5–9–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARMENT OF COMMERCE

National Telecommunications and Information Administration

Recruitment of First Responder Network Authority Board of Directors

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice.

SUMMARY: Pursuant to the Middle Class Tax Relief and Job Creation Act of 2012 (''the Act''), Public Law 112–96, 126 Stat. 156 (2012), the National Telecommunications and Information Administration (NTIA) announces the recruitment of the Board of Directors of the First Responder Network Authority (FirstNet). The Act created FirstNet as an independent authority within NTIA that will establish a single nationwide, interoperable public safety broadband network. The Board of Directors will be responsible for making strategic decisions regarding FirstNet's operations. Expressions of interest for membership on the FirstNet Board of Directors will be accepted until May 25, 2012.

DATES: Expressions of interest must be postmarked or electronically transmitted on or before May 25, 2012.

ADDRESSES: Persons wishing to submit expressions of interest as described below should send that information to: Jim Wasilewski, Deputy Chief of Staff, by email to *FirstNetBoard@ntia.doc.gov;* by U.S. mail or commercial delivery service to: Office of the Assistant Secretary, National Telecommunications and Information Administration, 1401 Constitution Avenue NW., Room 4898, Washington, DC 20230; or by facsimile transmission to (202) 501–0536.

FOR FURTHER INFORMATION CONTACT: Jim Wasilewski, National Telecommunications and Information Administration, 1401 Constitution Avenue NW., Room 4898, Washington, DC 20230, (202) 482–1840, *jwasilewski@ntia.doc.gov*.

SUPPLEMENTARY INFORMATION:

I. Background and Authority

Title VI of the Act provides 20 megahertz of spectrum and $7 billion to establish a single nationwide, interoperable public safety broadband network. It also establishes FirstNet as an independent authority within NTIA to build, deploy, and operate the network and to hold the single public safety license granted for wireless public safety broadband deployment.[1] The Act also sets forth the structure of FirstNet's Board of Directors.[2] Under the Act, the Board will be responsible for making strategic decisions regarding FirstNet's operations and ensuring the success of Congress's vision for the network. The Act requires that the Board be established no later than August 20, 2012.

II. Structure

The FirstNet Board of Directors will be composed of 15 individuals.[3] The Act names the Secretary of Homeland Security, the Attorney General, and the Director of the Office of Management and Budget as permanent members of the Board.[4] The Secretary of Commerce will select the remaining 12 members.[5] Each Board member must have expertise in at least one of the following substantive areas: Public safety, technical, network, and financial.[6] In addition, three Board members must represent the collective interests of states, localities, tribes, and territories; three Board members must have served as public safety professionals; and the Board as a whole should reflect geographical and regional diversity as well as rural and urban representation.[7]

Responsibilities of the Board will include creating the over-arching strategic framework for the public safety network, ensuring nationwide standards for use and access to the network based on commercial standards, working to deliver economies of scale for public safety, maximizing opportunities for long-term cost savings and improved functionality, integrating federal first responders and public-safety-related uses to maximize the efficiency of the new network, and formulating a fee collection system to ensure FirstNet self-sustainability.

III. Compensation and Status as Government Employees

FirstNet Board members will be appointed as federal government employees. FirstNet Board members will be compensated at the daily rate of basic pay for level IV of the Executive Schedule (approximately $155,000 per year).[8] Each Board member must be a United States citizen, cannot be a registered lobbyist, and cannot be a registered agent of, employed by, or receive payments from, a foreign government. The Board will meet at the call of the Chair and not less than once each quarter. Initial Board members will serve one, two, or three year terms. Subsequent Board members will be appointed for a term of three years, and Board members may not serve more than two consecutive terms.

IV. Financial Disclosure and Conflicts of Interest

FirstNet Board members will be required to comply with certain federal conflict of interest statutes and ethics regulations, including some financial disclosure requirements. FirstNet Board members will generally be prohibited from participating on any particular matter that will have a direct and predictable effect on his or her personal financial interests or on the interests of the appointee's spouse, minor children, or non-Federal employer.

V. Selection Process

At the direction of the Secretary of Commerce, NTIA has been conducting outreach to the public safety community and industry to solicit nominations for candidates to the Board who satisfy the statutory requirements for membership. In addition, by this Notice, the Secretary of Commerce, through NTIA, will accept expressions of interest from any individual or organization who wishes to propose a candidate. All parties wishing to be considered should submit their full name, address, telephone number, email address, a current resume, and a statement of qualifications referencing the Act's eligibility requirements as described in this Notice.

The Secretary of Commerce will select FirstNet Board candidates based on the eligibility requirements in the Act and input and recommendations from NTIA. Board candidates will be evaluated based on their ability to contribute to the goals and objectives of FirstNet as set forth in the Act. Board candidates will be vetted through the Department of Commerce. FirstNet Board candidates may be subject to an appropriate background check for security clearance.

[1] *See* Middle Class Tax Relief and Job Creation Act of 2012 § 6201, Public Law 112–96, 126 Stat. 156 (2012).

[2] Id. § 6204(a).

[3] Id. § 6204(b).

[4] Id. § 6204(b)(1).

[5] Id. § 6204(b)(1)(d).

[6] Id. § 6204(b)(2)(B)(i).

[7] Id. § 6204(b)(2)(A).

[8] Id. § 6204(g)(1).

Dated: May 7, 2012.

Lawrence E. Strickling,

Assistant Secretary for Communications and Information.

[FR Doc. 2012–11283 Filed 5–9–12; 8:45 am]

BILLING CODE 3510–60–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

[Docket No.: PTO–P–2012–0022]

Quick Path Information Disclosure Statement (QPIDS) Pilot Program

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice.

SUMMARY: The United States Patent and Trademark Office (USPTO) is implementing a pilot program intended to reduce pendency and applicant costs when an information disclosure statement (IDS) is filed after payment of the issue fee. This pilot program will permit an examiner to consider an IDS after payment of the issue fee without the need to reopen prosecution, effectively obviating the need to pursue a request for continued examination (RCE). Where the examiner determines that no item of information in the IDS necessitates reopening prosecution, the Office will issue a corrected notice of allowability. In addition to reducing pendency, this pilot program will promote efficiency in the examination process. There will be no fee required to use this program, beyond existing fees, e.g., fees for IDS submission.

DATES: *Effective Date:* May 16, 2012.

Duration: The QPIDS Pilot Program will run from its effective date until September 30, 2012. Therefore, an IDS submitted under this pilot program must be filed on or before September 30, 2012. The USPTO may extend this pilot program (with or without modifications) depending on feedback from the participants and the effectiveness of the program.

FOR FURTHER INFORMATION CONTACT: Nicole D. Haines, Legal Advisor, or Raul Tamayo, Legal Advisor, Office of Patent Legal Administration, Office of the Deputy Commissioner for Patent Examination Policy, by telephone at (571) 272–7717 or (571) 272–7728, respectively, or by mail addressed to: Mail Stop Comments—Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450.

SUPPLEMENTARY INFORMATION: Applicants who become aware of information after payment of the issue fee often file RCEs to have this information considered by an examiner. This is because 37 CFR 1.97 does not provide applicants with the opportunity to file an IDS after payment of the issue fee. Thus, applicants who determine that they need to file an IDS after payment of the issue fee must either file a petition under 37 CFR 1.313(c)(2) to withdraw the application from issue in order to permit entry of an RCE and have the accompanying IDS considered by the examiner, or file a petition under 37 CFR 1.313(c)(3) to withdraw the application from issue for express abandonment in favor of a continuing application. These applications experience delays associated with the filing and processing of the RCE (or continuing application), even if the information in the IDS would not have otherwise necessitated reopening prosecution.

In order to reduce pendency delays and costs associated with the current process for considering IDS submissions filed after payment of the issue fee, IDS submissions made in accordance with this pilot program will be considered by the examiner before determining whether prosecution should be reopened. Under this pilot program, prosecution will only be reopened where the examiner determines that reopening prosecution is necessary to address an item of information in the IDS. When the items of information in the IDS do not require prosecution to be reopened, the application will pass to issue, thereby eliminating the delays and costs associated with RCE practice.

A. QPIDS Pilot Program Requirements

In order to be eligible to participate in this pilot program, an application must be a utility or reissue application (*i.e.,* this pilot program does not pertain to design or plant applications). In addition, as set forth in detail below, a QPIDS submission must include the following items: (1) A transmittal form that designates the submission as a QPIDS submission, such as form PTO/SB/09; (2) an IDS accompanied by a timeliness statement set forth in 37 CFR 1.97(e), with the IDS fee set forth in 37 CFR 1.17(p); (3) a Web-based ePetition to withdraw from issue under 37 CFR 1.313(c)(2), with the petition fee set forth in 37 CFR 1.17(h); and (4) an RCE, which will be treated as a ''conditional'' RCE, with the RCE fee under 37 CFR 1.17(e). All papers associated with this pilot program must be filed via the USPTO's Electronic Filing System-Web (EFS-Web), and all fees must be paid by authorization to charge a deposit account.

1. Transmittal Form

A new transmittal form, PTO/SB/09, has been made available at *http://www.uspto.gov/forms/index.jsp* to identify submissions made pursuant to this pilot program. Use of this form will help the Office to quickly identify QPIDS submissions and facilitate timely processing of such submissions. The Office of Management and Budget (OMB) has determined that, under 5 CFR 1320.3(h), Form PTO/SB/09 does not collect ''information'' within the meaning of the Paperwork Reduction Act of 1995.

2. IDS With Timeliness Statement and Fee

A submission under this pilot program must include an IDS in accordance with 37 CFR 1.97 and 37 CFR 1.98. Because 37 CFR 1.97(d) does not provide for the filing of an IDS submission after payment of the issue fee, the USPTO is *sua sponte* waiving 37 CFR 1.97(d) for IDS submissions filed under this pilot program to the extent that IDS submissions pursuant to this pilot program may be filed after payment of the issue fee. However, the requirements of 37 CFR 1.97(d)(1) and (d)(2) that the IDS be accompanied by a timeliness statement specified in 37 CFR 1.97(e) and the fee set forth in 37 CFR 1.17(p) are not waived.

IDS submissions made under this pilot program must be accompanied by either the timeliness statement set forth in 37 CFR 1.97(e)(1) or the timeliness statement set forth in 37 CFR 1.97(e)(2). The QPIDS transmittal form PTO/SB/09 provides the appropriate timeliness statements for selection by applicant. Additionally, the IDS submission must include the IDS fee set forth in 37 CFR 1.17(p), by including an authorization to charge a deposit account. The QPIDS transmittal form PTO/SB/09 provides an authorization to charge a deposit account for payment of the IDS fee. A submission that provides for payment of the IDS fee (or any other required fee) via a fee transmittal form authorizing another form of payment does not comply with the requirements of this pilot program. Thus, applicants must have an established USPTO deposit account to participate in this pilot program. Information on USPTO deposit accounts is available at *http://www.uspto.gov/about/offices/cfo/finance/Dep_Account_Rules_and_Info.jsp.*

3. Web-Based ePetition and Fee

A submission under this pilot program must be filed with a ''Petition to Withdraw from Issue After Payment of the Issue Fee'' (37 CFR 1.313(c)(2))

submitted as a Web-based ePetition via EFS–Web with the petition fee set forth in 37 CFR 1.17(h). Information regarding submission of Web-based ePetitions is available at *http://www.uspto.gov/patents/process/file/efs/guidance/epetition-info.jsp.* Depending on whether a patent number has been assigned, applicants must select either the ''Petition to Withdraw from Issue after Payment of the Issue Fee (37 CFR 1.313(c)(1) or (2))'' or the ''Petition to Withdraw from Issue after Payment of the Issue Fee (37 CFR 1.313(c)(1) or (2) with Assigned Patent Number).'' The RCE that accompanies a QPIDS submission under this pilot program will be deemed sufficient to satisfy the requirement in 37 CFR 1.313(c)(2) that the petition to withdraw from issue is for consideration of an RCE in compliance with 37 CFR 1.114, even though the RCE will only be processed if the examiner determines that any item of information in the IDS necessitates reopening prosecution.

4. RCE and Fee

A submission under this pilot program must include an RCE, with the IDS meeting the submission requirement for the RCE. The RCE will be treated as a ''conditional'' RCE until the examiner determines whether any item of information in the IDS necessitates reopening prosecution. Additionally, the QPIDS submission must be accompanied by the RCE fee under 37 CFR 1.17(e) in order to process the ePetition to withdraw the application from issue under 37 CFR 1.313(c)(2).

Under this pilot program, the RCE will be processed and treated as an RCE under 37 CFR 1.114 in the event the examiner determines that any item of information contained in the IDS necessitates the reopening of prosecution in the application. In this instance, the IDS fee under 37 CFR 1.17(p) will be automatically returned because the IDS complies with 37 CFR 1.97(b)(4). Otherwise, if the examiner determines that no item of information in the IDS necessitates reopening prosecution, the RCE will *not* be processed and the RCE fee will be automatically returned. This will save applicants both the time and costs associated with RCE practice. An RCE filed pursuant to this pilot program complies with the timing requirement of 37 CFR 1.114(a)(1). This pilot program is an exception to the provision in MPEP 706.07(h), which provides that the Office will treat a ''conditional'' RCE as if an RCE had been filed. Otherwise, the Office generally treats conditional requests without regard to the ''conditional'' designation (*see, e.g.,* MPEP 201.06(d), MPEP 706.07(g), and MPEP 714.13).

B. Processing of QPIDS Pilot Program Submissions

A compliant ePetition to withdraw the application from issue, pursuant to 37 CFR 1.313(c)(2), will be granted immediately upon submission. After the grant of such a petition, the IDS submission made under this pilot program will be identified and placed on the examiner's ''expedited'' docket for consideration. If the examiner determines that no item of information in the IDS necessitates reopening prosecution, the examiner will issue a corrected notice of allowability (*i.e.,* form PTOL–37). The corrected notice of allowability will identify the IDS and be accompanied by a copy of the submitted IDS listing (*e.g.,* form PTO/SB/08) as considered by the examiner. *See* MPEP 609.05(b). Considered information will be printed on the patent pursuant to MPEP 609.06. No applicant response to the corrected notice of allowability will be necessary. In this instance, the RCE will *not* be processed and the RCE fee will be automatically returned by the Office (the IDS and petition fees will not be returned). In this instance, where the examiner has determined that prosecution does not need to be reopened, a new notice of allowance and fee(s) due (*i.e.,* PTOL–85) will not be issued. To the extent provisions of 37 CFR 1.313(a) are not consistent with this pilot program, such provisions are hereby waived for QPIDS pilot program submissions.

If the examiner determines that any item of information in the IDS necessitates reopening prosecution, the RCE will be processed and placed on the examiner's docket. In this instance, the RCE will be deemed filed as of the filing date of the QPIDS submission, and the IDS fee will be automatically returned by the Office because the IDS complies with 37 CFR 1.97(b)(4) (the petition fee will not be returned). The applicant will be notified that prosecution is being reopened (via a form PTO–2300), and such notification will identify the IDS and be accompanied by a copy of the submitted IDS listing (*e.g.,* form PTO/SB/08) as considered by the examiner. *See* MPEP 609.05(b). If the application is subsequently again found allowable, the applicant may request that the previously paid issue fee be reapplied toward the issue fee that is now due in the same application. *See* MPEP 1306.

A non-compliant QPIDS submission that otherwise complies with the requirements of 37 CFR 1.114 will be treated as an RCE. For example, failure to provide an authorization to charge a deposit account for payment of the IDS fee or failure to select or otherwise provide an appropriate timeliness statement will result in the RCE being processed. Similarly, a submission under this pilot program that includes an amendment will be processed as an RCE.

Taking post-issue fee payment processing times into consideration, applicants are strongly encouraged to file IDS submissions under this pilot program as soon as the applicants become aware that it is necessary to submit an IDS. Applicants are reminded, where applicable, to include a statement under 37 CFR 1.704(d) so as to avoid reduction in patent term adjustment pursuant to 37 CFR 1.704(c)(10). *See, Revision of Patent Term Adjustment Provisions Relating to Information Disclosure Statements,* 76 FR 74700, 74701 (December 1, 2011) (final rule).

Additional information regarding this pilot program will be made available on the USPTO's Web site at *http://www.uspto.gov/patents/init_events/qpids.jsp.*

Dated: May 3, 2012.

David J. Kappos,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2012–11222 Filed 5–9–12; 8:45 am]

BILLING CODE 3510–16–P

SECURITIES AND EXCHANGE COMMISSION

COMMODITY FUTURES TRADING COMMISSION

[Release Nos. 34–66932; File No. 265–26]

Joint CFTC–SEC Advisory Committee on Emerging Regulatory Issues

AGENCIES: Securities and Exchange Commission (''SEC'') and Commodity Futures Trading Commission (''CFTC'') (each, an ''Agency,'' and collectively, ''Agencies'').

ACTION: Notice of Federal Advisory Committee Renewal.

SUMMARY: The Chairmen of the SEC and CFTC, with the concurrence of the other SEC and CFTC Commissioners, respectively, intend to renew the charter of the Joint CFTC–SEC Advisory Committee on Emerging Regulatory Issues (the ''Committee'').

Comments

Because the Agencies will jointly review all comments submitted, interested parties may send comments

to either Agency and need not submit responses to both Agencies. Respondents are encouraged to use the title ''Joint CFTC–SEC Advisory Committee'' to facilitate the organization and distribution of comments between the Agencies. Interested parties are invited to submit responses to:

Securities and Exchange Commission: Written comments may be submitted by the following methods:

Electronic Comments

- Use the SEC's Internet submission form (*http://www.sec.gov/rules/other/shtml*); or
- Send an email to *rule-comments@sec.gov.*

Please include File No. 265–26 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F St. NE., Washington 20549. All submissions should refer to File No. 265–26.

To help the SEC process and review your comments more efficiently, please use only one method. The SEC staff will post all comments on the SEC's Internet Web site (*http://www.sec.gov/rules/shtml*). Comments will also be available for Web site viewing and printing in the SEC's Public Reference Room, 100 F St. NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. All comments received will be posted without change; we do not edit personal identifying information from your submissions. You should submit only information that you wish to make available publicly.

Commodity Futures Trading Commission

- Written comments may be mailed to the Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street NW., Washington, DC 20581, attention Office of the Secretary; transmitted by facsimile to the CFTC at (202) 418–5521; or transmitted electronically to *Jointcommittee@cftc.gov.* Reference should be made to ''Joint CFTC–SEC Advisory Committee.''

FOR FURTHER INFORMATION CONTACT: Ronesha Butler, Special Counsel, at (202) 551–5629, Division of Trading and Markets, Securities and Exchange Commission, 100 F St. NE., Washington DC 20549, or Gail Scott, Committee Management Officer, at (202) 418–5139, Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street, NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION: In accordance with the requirements of the Federal Advisory Committee Act, 5 U.S.C. App. 2, the Agencies are publishing this notice that the Chairmen of the SEC and CFTC, with the concurrence of the other SEC and CFTC Commissioners, intend to renew the charter of the Committee. The Committee was originally established on May 10, 2010, to operate for a term of two years.[1] The Committee's objectives and scope of activities are to conduct public meetings, submit reports and recommendations to the CFTC and the SEC and otherwise to serve as a vehicle for discussion and communication on regulatory issues of mutual concern and their effect on the CFTC's and SEC's statutory responsibilities. Subjects to be addressed by the Committee will include, but will not be limited to, identification of emerging regulatory risks, assessment and quantification of the impact of such risks and their implications for investors and market participants, and to further the Agencies' efforts on regulatory harmonization. The Committee will work to develop clear and specific goals toward identifying and addressing emerging regulatory risks, protecting investors and customers, and furthering regulatory harmonization, and to recommend processes and procedures for achieving and reporting on those goals.

To achieve the Committee's goals, the Chairmen of the SEC and CFTC may appoint approximately 10–15 members. There will be two co-designated federal officers of the Committee. The Chairman of the CFTC will appoint a CFTC employee to serve as one co-designated federal officer of the Committee and the Chairman of the SEC will appoint an SEC employee to serve as the other co-designated federal officer of the Committee. The co-designated federal officers jointly call all of the Committee's and subcommittees' meetings, prepare and jointly approve all meeting agendas, adjourn any meeting when they jointly determine adjournment to be in the public interest, and chair meetings when directed to do so. The co-designated federal officers also will attend all Committee and subcommittee meetings. The Chairmen of the CFTC and of the SEC continue to serve as Co-Chairmen of the Committee. The Committee's membership will be fairly balanced in terms of points of view represented and the functions to be performed.

The Committee's charter will be filed with the Senate Committee on Agriculture, Nutrition and Forestry; the House of Representatives Committee on Agriculture; the Senate Committee on Banking, Housing, and Urban Affairs; the House Committee on Financial Services; and U.S. General Services Administration Committee Management Secretariat (''Secretariat''). A copy of the charter also will be filed with the SEC, CFTC and the Library of Congress. The charter will be available for Web site viewing and printing in the Public Reference Room at the SEC's headquarters and posted on the SEC's Web site at *www.sec.gov* and the CFTC's Web site at *www.cftc.gov.*

The Committee will continue to operate for an additional two years from the date of renewal of the charter unless, before the expiration of that time period, its charter is re-established or renewed in accordance with the Federal Advisory Committee Act or unless either the Chairman of the SEC or the Chairman of the CFTC determines that the Committee's continuance is no longer in the public interest.

The Committee will meet at such intervals as are necessary to carry out its functions. It is estimated that the meetings will occur six times per year. Meetings of subgroups or subcommittees of the full Committee may occur more frequently.

The charter will provide that the duties of the Committee are to be solely advisory. Each Agency alone will make any determinations of action to be taken and policy to be expressed with respect to matters within their respective authority as to which the Committee provides advice or makes recommendations.

The Chairmen of the Agencies affirm that the renewal of the Committee is necessary and in the public interest.

By the Securities and Exchange Commission.

Elizabeth M. Murphy,

Secretary.

By the Commodity Futures Trading Commission.

Dated: May 7, 2012.

David A. Stawick,

Secretary.

[FR Doc. 2012–11324 Filed 5–9–12; 8:45 am]

BILLING CODE P

[1] *See* Securities Act Release No. 9123, 75 FR 27028 (May 13, 2010) (File No. 265–26).

BUREAU OF CONSUMER FINANCIAL PROTECTION

Privacy Act of 1974, as Amended

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice of Proposed Privacy Act System of Records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, the Bureau of Consumer Financial Protection, herein referred to as the Consumer Financial Protection Bureau (''CFPB'') or the ''Bureau'', gives notice of the establishment of a Privacy Act System of Records.

DATES: Comments must be received no later than June 11, 2012. The new system of records will be effective June 19, 2012 unless the comments received result in a contrary determination.

ADDRESSES: You may submit comments by any of the following methods:

- *Electronic: privacy@cfpb.gov.*
- *Mail or Hand Delivery/Courier:* Claire Stapleton, Chief Privacy Officer, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552.

Comments will be available for public inspection and copying at 1700 G Street NW., Washington, DC 20552 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) 435–7220. All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Claire Stapleton, Chief Privacy Officer, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552, (202) 435–7220.

SUPPLEMENTARY INFORMATION: The Dodd-Frank Wall Street Reform and Consumer Protection Act (''Act''), Public Law 111–203, Title X, established the CFPB. The CFPB administers, enforces, and implements federal consumer financial law, and, among other powers, has authority to protect consumers from unfair, deceptive, abusive, and discriminatory practices when obtaining consumer financial products or services. The CFPB will maintain the records covered by this notice.

The new system of records described in this notice, CFPB.018—Litigation Files will track and store electronic information, including both imaged and paper documents, to allow the Bureau to represent itself and its components in court cases and administrative proceedings.

The report of a new system of records has been submitted to the Committee on Oversight and Government Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Office of Management and Budget, pursuant to Appendix I to OMB Circular A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated November 30, 2000, and the Privacy Act, 5 U.S.C. 552a(r).

The system of records entitled, ''CFPB.018—Litigation Files'' is published in its entirety below.

Dated: May 4, 2012.

Claire Stapleton,

Chief Privacy Officer.

CFPB.018

SYSTEM NAME:

Litigation Files.

SYSTEM LOCATION:

Consumer Financial Protection Bureau, 1700 G Street NW., Washington DC, 20552.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system include, but are not limited to: (1) Individuals who are involved in litigation with the Bureau or the United States (regarding matters within the jurisdiction of the Bureau) either as plaintiffs or as defendants in both civil and criminal matters; (2) individuals who are involved in litigation regarding matters within the jurisdiction of the Bureau, either as plaintiffs or as defendants, in which the Bureau becomes involved as an amicus curiae or intervener; (3) individuals who either file administrative complaints against the Bureau or are the subjects of administrative complaints initiated by the Bureau; (4) CFPB or other federal employees whose duties are related to litigation activities; (5) participants in CFPB referrals, investigations, rulemaking, advisory, and law enforcement proceedings; (6) parties requesting formal advisory opinions; (7) parties involved in a contract claim or bid protest; and (8) parties who request review by the Bureau or other federal agencies of potential settlements under the Class Action Fairness Act (''CAFA''). Information collected regarding consumer products and services is subject to the Privacy Act only to the extent that it concerns individuals; information pertaining to corporations and other business entities and aggregate, non-identifiable information is not subject to the Privacy Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in this system contain information pertaining to the subject matter of the litigation, administrative complaint, or adverse personnel action as well as records generated during the process of creating the litigation function of the Bureau. Such records may include complaints, litigation reports, administrative transcripts, various litigation documents, investigative materials, correspondence, briefs, court orders and judgments, affidavits and other statements from witnesses, internal staff memoranda, interview notes, investigative notes, staff working papers, draft materials, and other related documents and records, correspondence and internal status reports including matter initiation reports and closing reports.

Records maintained in the system may contain: Identifiable information about individuals such as name, address, email address, phone number, social security number, employment status, age, date of birth, financial information, credit information, and personal history.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Law 111–203, Title X, Section 1012, codified at 12 U.S.C. § 5492, and Section 1054, codified at 12 U.S.C. § 5564.

PURPOSE(S):

This system will track and store electronic information, including imaged and paper documents, to allow the Bureau to represent itself and its components in court cases and administrative proceedings.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be disclosed, consistent with the CFPB Disclosure of Records and Information Rules, promulgated at 12 CFR part 1070 et seq., to:

(1) Appropriate agencies, entities, and persons when: (a) The CFPB suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the CFPB has determined that, as a result of the suspected or confirmed compromise, there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the CFPB or another agency or entity) that

rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the CFPB's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(2) Another federal or state agency to: (a) Permit a decision as to access, amendment or correction of records to be made in consultation with or by that agency; or (b) verify the identity of an individual or the accuracy of information submitted by an individual who has requested access to or amendment or correction of records;

(3) The Office of the President in response to an inquiry from that office made at the request of the subject of a record or a third party on that person's behalf;

(4) Congressional offices in response to an inquiry made at the request of the individual to whom the record pertains;

(5) Contractors, agents, or other authorized individuals performing work on a contract, service, cooperative agreement, job, or other activity on behalf of the CFPB or Federal Government and who have a need to access the information in the performance of their duties or activities;

(6) The U.S. Department of Justice (''DOJ'') for its use in providing legal advice to the CFPB, or in representing the CFPB in a proceeding before a court, adjudicative body, or other administrative body, where the use of such information by the DOJ is deemed by the CFPB to be relevant and necessary to the advice or proceeding, and in the case of a proceeding, such proceeding names as a party in interest:

(a) The CFPB;

(b) Any employee of the CFPB in his or her official capacity;

(c) Any employee of the CFPB in his or her individual capacity where DOJ or the CFPB has agreed to represent the employee; or

(d) The United States, where the CFPB determines that litigation is likely to affect the CFPB or any of its components;

(7) The Federal Trade Commission (''FTC'') or other federal banking agencies, for their use in providing legal advice to the CFPB, where the use of such information by these agencies is deemed by the CFPB to be relevant and necessary to the Bureau's involvement in a proceeding as a party, amicus curiae or intervener;

(8) DOJ, the FTC, or other federal banking agencies, in connection with the CFPB's or these agencies' review of CAFA notices that the CFPB has received;

(9) A grand jury pursuant either to a federal or state grand jury subpoena, or to a prosecution request that such record be released for the purpose of its introduction to a grand jury, where the subpoena or request has been specifically approved by a court. In those cases where the Federal Government is not a party to the proceeding, records may be disclosed if a subpoena has been signed by a judge;

(10) A court, magistrate, or administrative tribunal in the course of an administrative proceeding or judicial proceeding, including disclosures to opposing counsel or witnesses (including expert witnesses) in the course of discovery or other pre-hearing exchanges of information, litigation, or settlement negotiations, where relevant or potentially relevant to a proceeding, or in connection with criminal law proceedings;

(11) Appropriate agencies, entities, and persons, including but not limited to potential expert witnesses or witnesses in the course of investigations, to the extent necessary to secure information relevant to the investigation;

(12) Appropriate federal, state, local, foreign, tribal, or self-regulatory organizations or agencies responsible for investigating, prosecuting, enforcing, implementing, issuing, or carrying out a statute, rule, regulation, order, policy, or license if the information may be relevant to a potential violation of civil or criminal law, rule, regulation, order, policy or license; and

(13) Officials of a labor organization when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

POLICIES AND PRACTIES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPENSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records maintained in this system are stored electronically and in file folders. Paper copies of individual records are made by the authorized CFPB staff.

RETRIEVABILITY:

Records are retrievable by a variety of fields including, without limitation, name of the individual involved in a case, address, account number, social security number, phone number, date of birth, or by some combination thereof.

SAFEGUARDS:

Access to electronic records is restricted to authorized personnel who have been issued non-transferrable access codes and passwords. Other records are maintained in locked file cabinets or rooms with access limited to those personnel whose official duties require access.

RETENTION AND DISPOSAL:

The CFPB will maintain computer and paper records indefinitely until the National Archives and Records Administration approves the CFPB's records disposition schedule.

SYSTEM MANAGER(S) AND ADDRESS:

Consumer Financial Protection Bureau, Assistant General Counsel for Litigation, Office of General Counsel, 1700 G Street NW., Washington, DC 20552.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing in Title 12, Chapter 10 of the CFR, ''Disclosure of Records and Information.'' Address such requests to: Chief Privacy Officer, Bureau of Consumer Financial Protection, 1700 G Street NW., Washington, DC 20552.

RECORD ACCESS PROCEDURE:

See ''Notification Procedures'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedures'' above.

RECORD SOURCE CATEGORIES:

Information in this system is obtained from individuals who are involved in litigation, including CFPB or other federal employees, participants in CFPB investigations, rulemaking, advisory, and law enforcement proceedings and those requesting formal advisory opinions.

EXEMTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2012–11233 Filed 5–9–12; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense Wage Committee; Notice of Closed Meetings

AGENCY: Department of Defense (DoD).

ACTION: Notice of closed meetings.

SUMMARY: Pursuant to the provisions of section 10 of Public Law 92–463, the Federal Advisory Committee Act, notice is hereby given that a closed meeting of the Department of Defense Wage Committee will be held.

DATES: Tuesday, May 15, 2012, at 10 a.m.

ADDRESSES: 1400 Key Boulevard, Level A, Room A101, Rosslyn, Virginia 22209.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the meetings may be obtained by writing to the Chairman, Department of Defense Wage Committee, 4000 Defense Pentagon, Washington, DC 20301–4000.

SUPPLEMENTARY INFORMATION: Under the provisions of section 10(d) of Public Law 92–463, the Department of Defense has determined that the meetings meet the criteria to close meetings to the public because the matters to be considered are related to internal rules and practices of the Department of Defense and the detailed wage data to be considered were obtained from officials of private establishments with a guarantee that the data will be held in confidence.

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Due to internal DoD difficulties, beyond the control of the Department of Defense Wage Committee or its Designated Federal Officer, the Committee was unable to process the **Federal Register** notice for its May 15, 2012 meeting as required by 41 CFR 102–3.150(a). Accordingly, the Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement.

Dated: May 7, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–11269 Filed 5–9–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

Amended Notice of Intent To Revise the Scope of an Environmental Impact Statement for the Recapitalization of Infrastructure Supporting Naval Spent Nuclear Fuel at the Idaho National Laboratory

AGENCY: Department of Energy.

ACTION: Amended Notice of Intent to Revise the Scope of an Environmental Impact Statement.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality regulations for implementing the procedural provisions of NEPA (40 CFR part 1500–1508), and the Department of Energy (DOE) implementing procedures (10 CFR part 1021), the DOE Naval Nuclear Propulsion Program (NNPP) announces its intent to revise the scope to the Environmental Impact Statement (EIS) for the Recapitalization of Naval Spent Nuclear Fuel Handling and Examination Facilities at the Idaho National Laboratory (INL). The NNPP issued its Notice of Intent (NOI) to prepare the EIS for the Recapitalization of Naval Spent Nuclear Fuel Handling and Examination on July 20, 2010 (75 FR 42082).

DATES: The NNPP invites interested parties to comment on the revised scope of the EIS. NNPP will consider all comments received by June 11, 2012, and to the extent practical comments received after that date, in the preparation of the EIS.

ADDRESSES: Written comments on the revised scope of the EIS may be submitted by mailing to: Ms. Samantha O'Hara (08U–Naval Reactors), Naval Sea Systems Command, 1240 Isaac Hull Avenue SE., Stop 8036, Washington Navy Yard, DC 20376–8036.

Comments provided by email should be submitted to *ecfrecapitalization@unnpp.gov.*

FOR FURTHER INFORMATION CONTACT: For further information about this project, contact Ms. Samantha O'Hara, as described above.

SUPPLEMENTARY INFORMATION: The NNPP is responsible for all aspects of U.S. Navy nuclear power and propulsion. These responsibilities include design, maintenance, and safe operation of nuclear propulsion systems throughout their operational life cycles. A crucial component of this mission, naval spent nuclear fuel handling, occurs at the end of a nuclear propulsion system's useful life. Once a naval nuclear core is depleted, the NNPP is responsible for removal of the spent nuclear fuel through a defueling or refueling operation. Both operations remove the spent nuclear fuel from a reactor core, but a refueling operation also involves installing new fuel into the reactor core, allowing the nuclear-powered ship to be redeployed into the U.S. Navy fleet. After the naval spent nuclear fuel has been removed from an aircraft carrier or submarine, NNPP spent fuel handling includes the subsequent transfer, preparation, and packaging required for dry storage pending transportation of the fuel to a national geologic repository or interim storage site.

The NNPP ensures that naval spent nuclear fuel handling is performed in a safe and environmentally responsible manner in accordance with 50 U.S.C. 2406, 2511 (codifying Executive Order 12344). Nuclear fuel handling is an intricate and intensive process requiring a complex infrastructure. Naval spent nuclear fuel handling includes the transfer of spent nuclear fuel removed from a reactor to the Expended Core Facility (ECF) at the Naval Reactors Facility (NRF) at the INL, where it is received, unloaded, prepared, and packaged for disposal.

The NNPP is proposing to recapitalize the existing ECF infrastructure at the INL. The purpose of the proposed action is to ensure the continued availability of the infrastructure needed to support the transfer, handling, examination, and packaging of naval spent nuclear fuel removed from nuclear-powered aircraft carriers and submarines, as well as from land-based prototype reactors for at least the next 40 years. This action is needed because, although the ECF at the NRF, where this work is currently supported, continues to be maintained and operated in a safe and environmentally responsible manner, a significant portion of the ECF infrastructure has been in service for over 50 years. Deterioration of the ECF infrastructure could immediately and profoundly impact the NNPP mission, including the NNPP's ability to support refueling and defueling of nuclear powered submarines and aircraft carriers. The ECF capabilities to transfer, prepare, examine, and package naval spent nuclear fuel, and other irradiated materials are vital to the NNPP's mission of maintaining the reliable operation of the naval nuclear-powered fleet and developing militarily effective nuclear propulsion plants.

Consistent with the Record of Decision for the April 1995 *DOE Programmatic EIS for Spent Nuclear Fuel Management (DOE/EIS–0203–F),* naval spent nuclear fuel is shipped by rail from shipyards and prototype facilities to NRF for examination and processing. After processing, naval spent nuclear fuel is transferred into dry storage containers and placed into temporary storage at NRF, prior to off-site transfer consistent with the Record of Decision for the November 1996 *Navy EIS for a Container System for Management of Naval Spent Nuclear Fuel (DOE/EIS–0251).* Ongoing efforts to sustain the infrastructure needed to transfer, prepare, examine, and package naval spent nuclear fuel will preserve these essential capabilities and ensure that the NNPP high standards for protecting the public and the environment continue to be met. Facility age, however, is expected to cause a growing maintenance burden and increase the likelihood of

unacceptable workflow interruptions that could adversely impact the fleet.

The NNPP proposes to recapitalize the infrastructure for transferring, preparing, examining, and packaging naval spent nuclear fuel and other irradiated materials, to ensure these capabilities are maintained for the vital NNPP mission of supporting the naval nuclear-powered fleet. The recapitalization will be carried out as two projects. The first project will be the Spent Fuel Handling Recapitalization Project; the second project will be the Examination Recapitalization Project. The NNPP was initially pursuing two recapitalization projects in the same time frame; however, since the initiation of the NEPA process, the project schedules have changed such that the Spent Fuel Handling Recapitalization Project has progressed further than the Examination Recapitalization Project. Preparing one EIS that includes both projects would require decisions about the Examination Recapitalization Project too early in the design process prior to having sufficient information to fully analyze the environmental impacts of the project. Additionally, funding uncertainties have made the timing of the Examination Recapitalization Project speculative in nature. To ensure an EIS is completed in support of the Navy's need for the Spent Fuel Handling Recapitalization Project, it is necessary to reduce the scope of the EIS to cover only the Spent Fuel Handling Recapitalization Project. The proposed Examination Recapitalization Project will be considered in the cumulative impacts section of the EIS along with other reasonably foreseeable projects on the INL. A separate document will be prepared in accordance with NEPA for the Examination Recapitalization Project once this project has been more clearly defined.

The EIS will consider the environmental effects related to the Spent Fuel Handling Recapitalization Project. The alternatives being evaluated have been revised to remove aspects related to an Examination Recapitalization Project and to address public comments received during initial EIS scoping. The NNPP will evaluate building a new facility at two potential sites on the NRF, an ECF Overhaul Alternative, and a No Action Alternative:

- Alternative 1—Construct and operate a new facility for spent fuel handling capabilities at one of two potential locations at the NRF on the INL.
- Alternative 2—Overhaul the spent fuel handling capabilities of the ECF at NRF by implementing major infrastructure and water pool refurbishment projects while performing corrective maintenance and repair actions as necessary.
- Alternative 3 (No Action)—Maintain the spent fuel handling capabilities of the ECF by continuing to use the current ECF infrastructure while performing corrective maintenance and repairs necessary to keep the infrastructure in good working order (i.e., actions sufficient to sustain the proper functioning of structures, systems, and components).

The NNPP proposes to address the issues listed below when considering the potential impacts of the proposed alternatives in the EIS. This list is presented to facilitate public comment during the scoping period and is not intended to be comprehensive, or to imply any predetermination of impacts. Issues include:

- Potential impacts of emissions on air and water quality.
- Potential impacts on plants, animals, and their habitats, including species that are listed by either State or Federal government as threatened, endangered, or of special concern.
- Potential impacts from postulated accidents, as well as potential impacts from acts of terrorism or sabotage.
- Potential effects on the public health from exposure to hazardous materials or radiological releases under routine operations.
- Potential safety and health impacts to workers.
- Impacts on cultural resources, such as historic, archeological, and Native American culturally important sites.
- Socioeconomic impacts to the potentially affected communities.
- Compliance with applicable Federal and state regulations.
- Potential disproportionately high and adverse effects on low-income and minority populations (environmental justice).
- Cumulative impacts.

NEPA implementing regulations require an early and open process for determining the scope of an EIS and for identifying the significant issues related to the proposed action. Accordingly, NNPP invites Federal agencies; Tribal, State, and local governments; and the general public to comment on the revised scope of the EIS including identification of reasonable alternatives and specific issues that should be addressed. All public comments received as described above will be considered during the development of the EIS.

Issued in Washington, DC, on May 4, 2012.

John M. McKenzie,

Director, Regulatory Affairs, Naval Nuclear Propulsion Program.

[FR Doc. 2012–11292 Filed 5–9–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings in Existing Proceedings

Docket Numbers: RP12–465–000.
Applicants: Equitrans, L.P.
Description: Equitrans, L.P. Response to FERC's March 30 Order under RP12–465.
Filed Date: 4/19/12.
Accession Number: 20120419–5249.
Comments Due: 5 p.m. ET 5/9/12.

Docket Numbers: RP12–719–000.
Applicants: Columbia Gas Transmission, LLC.
Description: Negotiated Rate Service Agreement—NNE to be effective 5/4/2012.
Filed Date: 5/3/12.
Accession Number: 20120503–5052.
Comments Due: 5 p.m. ET 5/15/12.

Docket Numbers: RP12–720–000.
Applicants: CenterPoint Energy Gas Transmission Company, LLC.
Description: CEGT LLC—May 3, 2012 Negotiated Rate Filing to be effective 5/3/2012.
Filed Date: 5/3/12.
Accession Number: 20120503–5094.
Comments Due: 5 p.m. ET 5/15/12.

Docket Numbers: RP12–721–000.
Applicants: Midwestern Gas Transmission Company.
Description: Non-Conforming Agreement Clean Up to be effective 6/4/2012.
Filed Date: 5/4/12.
Accession Number: 20120504–5079.
Comments Due: 5 p.m. ET 5/16/12.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, and service can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 4, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–11275 Filed 5–9–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP12–668–000.
Applicants: WPX Energy Marketing, LLC, Williams Energy Resources LLC.
Description: Joint Petition of WPX Energy Marketing, LLC, et al. for Limited Waiver of Capacity Release Regulations.
Filed Date: 4/27/12.
Accession Number: 20120427–5410.
Comments Due: 5 p.m. ET 5/7/12.

Docket Numbers: RP12–708–000.
Applicants: Equitrans, L.P.
Description: Curtailment of Service and Operational Flow Order Revisions to be effective 6/1/2012.
Filed Date: 5/1/12.
Accession Number: 20120501–5226.
Comments Due: 5 p.m. ET 5/14/12.

Docket Numbers: RP12–709–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: Bay State 510066 Negotiated Rate to be effective 5/1/2012.
Filed Date: 5/1/12.
Accession Number: 20120501–5242.
Comments Due: 5 p.m. ET 5/14/12.

Docket Numbers: RP12–710–000.
Applicants: Wyoming Interstate Company, L.L.C.
Description: WIC Quarterly Fuel filed 5–1–12 to be effective 6/1/2012.
Filed Date: 5/1/12.
Accession Number: 20120501–5292.
Comments Due: 5 p.m. ET 5/14/12.

Docket Numbers: RP12–711–000.
Applicants: Tennessee Gas Pipeline Company, L.L.C.
Description: Regional Net Pipeline Position (RNPP) to be effective 6/1/2012.
Filed Date: 5/1/12.
Accession Number: 20120501–5304.
Comments Due: 5 p.m. ET 5/14/12.

Docket Numbers: RP12–712–000.
Applicants: ETC Tiger Pipeline, LLC.
Description: Tiger Semi-Annual Fuel Filing May 2012 to be effective 6/1/2012.
Filed Date: 5/1/12.
Accession Number: 20120501–5315.
Comments Due: 5 p.m. ET 5/14/12.

Docket Numbers: RP12–713–000.
Applicants: El Paso Natural Gas Company.
Description: Nomination Cycles Update to be effective 6/1/2012.
Filed Date: 5/1/12.
Accession Number: 20120501–5317.
Comments Due: 5 p.m. ET 5/14/12.

Docket Numbers: RP12–714–000.
Applicants: Dominion Transmission, Inc.
Description: DTI—May 1, 2012 Negotiated Rate Agreements to be effective 5/2/2012.
Filed Date: 5/1/12.
Accession Number: 20120501–5320.
Comments Due: 5 p.m. ET 5/14/12.

Docket Numbers: RP12–715–000.
Applicants: Ruby Pipeline, L.L.C.
Description: FL&U and EPC Rate Adjustment Filing to be effective 6/1/2012.
Filed Date: 5/1/12.
Accession Number: 20120501–5321.
Comments Due: 5 p.m. ET 5/14/12.

Docket Numbers: RP12–716–000.
Applicants: CenterPoint Energy Gas Transmission Company, LLC.
Description: CEGT LLC—May 1, 2012 Negotiated Rate Filing to be effective 5/1/2012.
Filed Date: 5/1/12.
Accession Number: 20120501–5325.
Comments Due: 5 p.m. ET 5/14/12.

Docket Numbers: RP12–717–000.
Applicants: Hardy Storage Company, LLC.
Description: RAM 2012 to be effective 6/1/2012.
Filed Date: 5/1/12.
Accession Number: 20120501–5329.
Comments Due: 5 p.m. ET 5/14/12.

Docket Numbers: RP12–718–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Capacity Negotiated Rate Agreement filing—Chesapeake 34683 to Texla 39889 to be effective 5/2/2012.
Filed Date: 5/2/12.
Accession Number: 20120502–5064.
Comments Due: 5 p.m. ET 5/14/12.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP12–498–001.
Applicants: CenterPoint Energy Gas Transmission Company, LLC.
Description: CEGT LLC—Fuel Tracker—Effective May 1, 2012—Compliance Filing to be effective 5/1/2012.
Filed Date: 5/1/12.
Accession Number: 20120501–5233.
Comments Due: 5 p.m. ET 5/14/12.

Docket Numbers: RP12–704–001.
Applicants: Gulf South Pipeline Company, LP.
Description: Amendment to RP12–704–000 to be effective 5/2/2012.
Filed Date: 5/2/12.
Accession Number: 20120502–5060.
Comments Due: 5 p.m. ET 5/14/12.

Docket Numbers: RP11–1435–002.
Applicants: Columbia Gulf Transmission Company.
Description: Settlement Refund Report to be effective N/A.
Filed Date: 5/2/12.
Accession Number: 20120502–5163.
Comments Due: 5 p.m. ET 5/14/12.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, and service can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 3, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–11276 Filed 5–9–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL12–62–000]

PPL Montana, LLC; Notice of Petition for Declaratory Order

Take notice that on April 26, 2012, pursuant to Rule 207 of the

Commission's Rules of Practices and Procedure, 18 CFR 385.207, PPL Montana, LLC, submitted a petition requesting the Commission to issue a declaratory order that (1) issues relating to compliance with the standards of the Commission's Uniform System of Accounts (USoA) are not within the scope of issues to be decided by the board of arbitration, as that board is described in Ordering Paragraph (C)(3)(a) of the License and (2) that licensee costs of environmental mitigation required under Articles 63, 64, 65, 66, 67, 68, 70, 71, 72, 73 and 76 of the License, to the extent (i) properly accounted for under the USoA as a capitalized cost of the Kerr Project and (ii) not authorized by the Montana Public Service Commission to be recovered by the Montana Power Company from its customers, are properly included in the calculation of the ''Conveyance Price'' under Ordering Paragraph (C)(2) of the License.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on May 28, 2012.

Dated: May 4, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–11295 Filed 5–9–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2790–055]

Boott Hydropower, Inc.; Notice of Section 106 Consultation Meeting

On May 24, 2012, Federal Energy Regulatory Commission (Commission) staff will participate in a meeting with staff from the U.S. Department of the Interior, the National Park Service, the Massachusetts State Historic Preservation Officer, the Advisory Council on Historic Preservation, Boott Hydropower, Inc., and any other consulting parties for the section 106 process for the proposed license amendment application for the Lowell Hydroelectric Project (FERC No. 2790–055). Currently, the Commission is reviewing an amendment application for the project to replace the wooden flashboards with a pneumatic crest gate system on the Pawtucket Dam. The meeting will be limited to discussion of the issues involved in the section 106 consultation process and mitigation options for impacts to historic properties from installation of the pneumatic crest gate system, as required by the National Historic Preservation Act. Interested members of the public may attend and observe the meeting, but participation is limited to the applicant and agencies involved in the section 106 consultation process.

The meeting will begin at 1:00 p.m. EDT at the Countinghouse at the Boott Cotton Mills Museum, 115 John Street, Lowell, MA 01852. Interested parties wishing to attend should contact Shana High at (202) 502–8674 or by email at *Shana.High@ferc.gov,* or Heather Campbell at (202) 502–6182 or by email at *Heather.Campbell@ferc.gov.*

Dated: May 4, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–11294 Filed 5–9–12; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–OW–EPA–HQ–OW–2011–1013; FRL–9671–1]

Permitting Guidance for Oil and Gas Hydraulic Fracturing Activities Using Diesel Fuels—Draft: Underground Injection Control Program Guidance #84

AGENCY: Environmental Protection Agency (EPA).

ACTION: Request for Comment on Draft Guidance Document.

SUMMARY: EPA is taking comment on a draft document that describes Underground Injection Control (UIC) Program guidance for permitting the underground injection of oil- and gas-related hydraulic fracturing (HF) using diesel fuels where the U.S. Environmental Protection Agency (EPA) is the permitting authority. The draft guidance includes EPA's interpretation of the Safe Drinking Water Act (SDWA) and regulations regarding UIC permitting of oil and gas hydraulic fracturing operations using diesel fuels as a fracturing fluid or as a component of a fracturing fluid, specifically that they are subject to Class II UIC permitting requirements. EPA's goal is to provide greater regulatory clarity and certainty to the industry, which will in turn improve compliance with the SDWA requirements and strengthen environmental protections consistent with existing law. The draft guidance will not impose any new requirements. See Supporting Information section.

DATES: EPA will consider comments received on or before July 9, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OW–2011–1013 by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: OW-Docket@epa.gov@epa.gov.*
- *Mail:* Permitting Guidance for Oil and Gas Hydraulic Fracturing Activities Using Diesel Fuels—Draft, Environmental Protection Agency, Mailcode: 4606M, 1200 Pennsylvania Ave. NW., Washington, DC 20460.
- *Hand Delivery:* Office of Water (OW) Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OW–2011–

1013. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov.* The *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 *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *www.regulations.gov index.* Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the OW Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OW Docket is (202) 566–2426.

FOR FURTHER INFORMATION CONTACT: Chitra Kumar, Underground Injection Control Program, Drinking Water Protection Division, Office of Ground Water and Drinking Water (MC–4606M), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 564–2232; email address: *kumar.chitra@epa.gov.* For general information, visit the Underground Injection Control Program's Hydraulic Fracturing and the Safe Drinking Water Act Web site, *http://water.epa.gov/type/groundwater/uic/class2/hydraulicfracturing/hydraulic-fracturing.cfm.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

Underground injection of fluids through wells is subject to the requirements of the SDWA except where specifically excluded by the statute. In the 2005 Energy Policy Act (EP Act), Congress revised the SDWA definition of ''underground injection'' to specifically exclude from UIC regulation the ''underground injection of fluids or propping agents (other than diesel fuels) pursuant to hydraulic fracturing operations related to oil, gas, or geothermal production activities'' (SDWA Section 1421(d)(1)(B)). UIC regulations further provide that ''[a]ny underground injection, except into a well authorized by rule or except as authorized by permit issued under the UIC program, is prohibited'' (40 CFR 144.11). Thus, owners or operators who inject diesel fuels during HF related to oil, gas, or geothermal operations must obtain a UIC permit before injection begins. While the EP Act references HF related to geothermal activities, the draft guidance only covers hydraulic fracturing using diesel fuels related to oil and gas activities. Permits for oil and gas HF using diesel fuels are available through the UIC Class II Program, the well class for oil and gas activities.[1]

The guidance provides information on SDWA UIC Class II requirements and recommendations for permitting hydraulic fracturing injection wells where diesel fuels are used in fluids or propping agents. The guidance is intended for EPA permit writers and, as a result, is relevant where EPA directly implements the UIC Class II program. Implementation of the UIC Program may be carried out by EPA Regions, or by states, tribes, or territories, depending on whether a state has received primary enforcement responsibility (primacy) approval from EPA to implement the UIC Program (Reference to ''states'' includes tribes and territories pursuant to 40 CFR 144.3). To the extent that states may choose to follow some aspects of EPA guidance in implementing their own programs, it may also be relevant in areas where EPA is not the permitting authority. Information on states that have primacy is available at *http://water.epa.gov/type/groundwater/uic/Primacy.cfm.*

Recommendations in this draft guidance may change based on the comments we receive on the draft publication and this will be reflected in the final guidance. EPA understands that a permit writer who receives a permit application in the interim period before this guidance is finalized will have to make decisions about how to permit diesel fuels hydraulic fracturing wells. While this guidance undergoes public notice and comment, EPA expects that decisions about permitting hydraulic fracturing operations that use diesel fuels will be made on a case-by-case basis, considering the facts and circumstances of the specific injection activity and applicable statutes, regulations and case law, and will not cite to this draft guidance as a basis for decision.

Decisions made regarding a particular permit will be based on the applicable statutes, regulations, and case law, and at times may differ from the recommendations described in this guidance. Thus, this document will not impose legally binding requirements and will not be implemented as binding in practice; nor will it impose any obligations on private parties. Legally binding requirements for injection wells are found at 40 CFR Parts 124 and 144 through 148.

EPA UIC permit writers reviewing diesel fuels HF permit applications should refer to the provisions at 40 CFR Parts 124 and 144 through 147 as they make permitting decisions. This guidance does not substitute for UIC Class II regulations and is not itself a regulation. EPA focused on specific topics in this guidance, which are useful for tailoring Class II requirements to the unique attributes of hydraulic fracturing when diesel fuels are used.

The technical topics covered in the draft guidance include: A description of diesel fuels; authorizing multiple wells through area permits; establishing a permit duration and applying UIC well closure requirements; considerations for application submission and review; determining an area of review; permit application materials; well construction requirements for both newly constructed and already constructed wells; operation, mechanical integrity, monitoring and reporting requirements; applicable financial responsibility requirements; and public notification and environmental justice considerations.

[1] Geothermal activities are not considered Class II.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the guidance by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

3. *Request for Comment:*

EPA has decided to seek public input on the draft guidance because of the importance of the guidance to its Federal and state partners, to the regulated community, and to the public. Additionally, EPA believes considering and receiving public input will ensure that the guidance adequately addresses remaining questions raised about permitting HF using diesel fuels. This public comment opportunity will be available until July 9, 2012. Although the Administrative Procedure Act requirements for notice and comment do not apply, EPA will consider significant public comments and will address significant issues raised by the public when the final guidance is issued.

EPA will provide the final version of the guidance to permit writers where EPA is the UIC permitting authority. EPA expects that the interpretation and recommendations in the final guidance may also be useful to state permit writers.

EPA requests that commenters focus their comments on the following issues, as this will be most helpful to the Agency and facilitate efficient consideration of comments.

a. Diesel Fuels Description

1. The draft guidance recommends using six Chemical Abstracts Service Registry Numbers (CASRNs) as the basis for determining whether diesel fuels are used as fluids or propping agents pursuant to hydraulic fracturing operations related to oil or gas production activities. The draft guidance, directed toward EPA UIC permit writers, recommends considering whether any portion of the injectate has the following CASRNs, or is referred to by any of their associated common synonyms, some of which are provided as follows:

68334–30–5 Primary Name: Fuels, Diesel

Common Synonyms: *Automotive diesel oil; Diesel fuel; Diesel oil (petroleum); Diesel oils; Diesel test fuel; Diesel fuels; Diesel Fuel No. 1; Diesel fuel [United Nations-North America (UN/NA) number 1993]; Diesel fuel oil;* European Inventory of Existing Commercial Chemical Substances 269–822–7.

68476–34–6 Primary Name: Fuels, Diesel, No. 2

Common Synonyms: *Diesel Fuel No. 2; Diesel fuels no. 2;* EINECS 270–676–1, *No. 2 Diesel Fuel*

68476–30–2 Primary Name: Fuel Oil No. 2

Common Synonyms: *Diesel fuel; Gas oil or diesel fuel* or heating oil, light [UN1202] #2 Home heating oils; API No. 2 fuel oil; EINECS 270–671–4; Fuel Oil No. 2; Home heating oil No. 2; Number 2 burner fuel; Distillate fuel oils, light; Fuel No. 2; Fuel oil (No. 1, 2, 4, 5 or 6) [NA1993];

68476–31–3 Primary Name: Fuel Oil, No. 4

Common Synonyms: Caswell No. 333AB (A Caswell No. is an alphanumeric chemical identifier implemented by Robert L. Caswell in the 1960s and 1970s in conjunction with acceptable common names of pesticides names for labeling purposes); Cat cracker feed stock; EINECS 270–673–5; EPA Pesticide Chemical Code 063514; Fuel oil No. 4; *Diesel Fuel No. 4*

8008–20–6 Primary Name: Kerosene

Common Synonyms: JP–5 navy fuel/*marine diesel fuel;* Deodorized kerosene; JP5 Jet fuel; AF 100 (Pesticide); Caswell No. 517; EINECS 232–366–4; EPA Pesticide Chemical Code 063501; Fuel oil No. 1; Fuels, kerosine; Shell 140; Shellsol 2046; Distillate fuel oils, light; Kerosene, straight run; Kerosine, (petroleum); Several Others

68410–00–4 Primary Name: Distillates (Petroleum), Crude Oil

Common Synonyms: *Fuel, diesel (VDF)* (U.S. EPA Substance Registry System), *Straight PWN diesel* (EPA SRS), Aruba gas oil; EINECS 270–072–8.

Based on the six listed CASRNs, a review of data available on the voluntary hydraulic fracturing chemical disclosure Web site, FracFocus (*http://www.Fracfocus.org*), in early August, 2011, suggested that approximately 2% of wells that hydraulically fracture would be subject to SDWA UIC permitting requirements in states where EPA administers the UIC Program. This estimate is necessarily approximate due to data limitations. In addition, EPA is aware that operational practices are rapidly evolving in this industry, and past practice with regard to the use of diesel fuels may not be reflective of future practice.

EPA selected these six CASRNs because either their primary name, or their common synonyms, contained the term ''diesel fuel'' and they meet the chemical and physical properties of ''diesel fuel,'' as provided in the Toxic Substances Control Act (TSCA) Inventory.[2] The TSCA description reads as follows:

> Diesel fuel is a complex combination of hydrocarbons produced by the distillation of crude oil. It consists of hydrocarbons having carbon numbers predominantly in the range of C9 through C20 and boiling in the range of approximately 163 °C to 357 °C (325 °F to 675 °F).

While this description provided in the guidance was derived from a particular CASRN in the TSCA Inventory, a number of chemical compounds could

[2] TSCA Inventory Reporting Rule established the TSCA Inventory which now includes the identities of over 83,000 chemical substances.

meet these characteristics, including all of the compounds included in the recommended list of CASRNs. These CASRNs are commonly identified as diesel fuels by other industry and regulatory applications, as well.

Alternative Descriptions: EPA also reviewed a number of alternative descriptions, as follows:

A. Diesel fuel is:

- A complex combination of hydrocarbons produced by the distillation of crude oil or the processing of other petroleum-derived hydrocarbons; and
- Having a carbon number range of C9 to C20; and
- Having a boiling point range of 163 degrees Centigrade (°C) to 357 °C (325 degrees Fahrenheit (°F) to 675 °F); and
- Could be used to run a diesel engine;

or

- Has any of the CASRNs, 68334–30–5, 68476–30–2, 68476–31–3, 68476–34–6, 8008–20–6, or 68410–00–4.

To address the possibility that permit requirements could be avoided for substances that are essentially the same as the diesel fuels description provided in the guidance even if they are not known by the name ''diesel fuels,'' EPA considered this diesel fuels description consisting of the chemical, physical, and use-based attributes of diesel fuels along with a list of CASRNs. One such compound, which does not have the synonym, ''diesel fuels,'' but has the same chemical and physical characteristics of diesel fuels and could be used to run a diesel engine, is CASRN 64741–44–2, Distillates (petroleum), Straight run middle; Gas oil; Gas oil, blend, EINECS 265–044–7. EPA also recognizes that new compounds are regularly introduced into the market and may meet the physical and chemical criteria of this TSCA description, and may or may not contain the words ''diesel fuels'' in the primary name or any of its synonyms.

This description does not correspond solely to a specific set of CAS Registry Numbers. Thus, under this approach, EPA is not able to estimate the number of oil and gas wells that hydraulically fracture that would be subject to UIC permitting requirements in states where EPA is the permitting authority.

B. Diesel fuel is a complex combination of hydrocarbons produced by the distillation of crude oil or the processing of other petroleum-derived hydrocarbons, having a carbon number range within C9 to C20 and a boiling point range within 163° to 357 °C (325 °F to 675 °F) and that may contain impurities, or are otherwise identified as diesel fuel. This approach would cover a greater number of CASRNs than the recommended description. EPA is not recommending this approach because it would include some compounds that are not suitable to run in a diesel engine, which is a consideration in several of the existing descriptions of diesel fuels that EPA reviewed.

C. Diesel fuel is a complex combination of hydrocarbons produced by the distillation of crude oil or the processing of other petroleum-derived hydrocarbons, having carbon numbers predominately in the range of C9 to C20 and a boiling point range of approximately 163 degrees °C to 357 °C (325 degrees °F to 675 °F) and that may contain impurities. Under this description diesel fuels include any petroleum derived substance with CASRN's that overlap the diesel fuel predominant carbon range or boiling point range, or are otherwise identified as diesel fuel. This approach would cover a much greater number of CASRNs than the recommended description. EPA is not recommending this approach because it would include many compounds that are not suitable to run in a diesel engine, and would be challenging for permit writers and applicants to implement, based on the common methods of determining the composition of fracturing fluids.

Questions Related to the Diesel Fuels Description

Do the six CASRNs in the recommended description adequately describe diesel fuels? If not, what other factors should be considered in the definition? Are there additional CASRNs that should be included? Are there any among the six that do not belong? Please address the relative importance of having a description that is static and unchanged versus capturing new chemical compounds being developed that are substantially similar to the six recommended CASRNs.

- Would a description based on chemical, physical and use-based attributes, such as the five-consideration alternative EPA considered in (i), more adequately and appropriately characterize diesel fuels in a manner that prevents endangerment of human health and underground sources of drinking water on an ongoing basis? Are there other ways the Agency could address any existing or newly developed compounds, such as CASRN 64741–44–2, not on the current list of six CASRNs in the draft guidance that may meet the chemical, physical and use-based attributes of the six CASRNs of the recommended description of diesel fuels, whether or not they have ''diesel fuels'' in the name or description?
- Would approach (ii), based on the strict limits of the TSCA physical and chemical characteristics, but with no reference to suitability for use in a diesel engine, be a more appropriate description for permitting diesel fuels under the EPA UIC Program? Please explain why this approach is preferred.
- Would approach (iii), which captures many more compounds that may or may not be suitable to run a diesel engine, more adequately and appropriately characterize diesel fuels for EPA UIC permitting purposes? How would you suggest permit writers and applicants efficiently and effectively identify chemicals meeting this description?
- What other approaches should EPA consider in describing diesel fuels?

In the 2005 Energy Policy Act, Congress revised the SDWA definition of ''underground injection'' to specifically exclude from UIC regulation the ''underground injection of fluids or propping agents (other than diesel fuels) pursuant to hydraulic fracturing operations related to oil, gas, or geothermal production activities'' (SDWA Section 1421(d)(1)(B)). The Energy Policy Act of 2005 does not specify a threshold concentration or percentage of diesel fuels in the HF injectate that would qualify for exclusion from regulation. EPA requests comment on whether some *de minimis* level of diesel fuel constituents in HF fluids or propping agents should be used. Commenters who support such an approach should also recommend how such a *de minimis* standard should be defined or described and explain the basis for their recommendations.

b. Diesel Fuels Usage Information

Questions Related to Diesel Fuels Usage Information

- EPA seeks reliable data about volumes and frequency of diesel fuel usage in hydraulic fracturing fluids or propping agents (based on the recommended description). EPA welcomes data of this nature at any time.
- In developing the draft guidance, EPA found that the primary uses of diesel fuels in hydraulic fracturing are as a primary base (or carrier) fluid, or added to hydraulic fracturing fluids as a component of a chemical additive. In some cases diesel fuels-based fracturing fluids are more efficient for transporting and delivering propping agents into fractures, as compared to water-based compounds. As an additive component,

diesel fuels may be used for a range of purposes, including adjusting fluid properties (e.g., viscosity and lubricity) or as a solvent to aid in the delivery of gelling agents. EPA seeks additional information on the uses of diesel fuels during underground injection associated with hydraulic fracturing, and information about the efficacy of any substitutes for diesel fuels, including where substitution may be infeasible or raise other technical issues.

c. Permit Duration and Well Closure

UIC regulations provide for Class II permits to be issued up to the operating life of the facility, or for a shorter period. Class II UIC permits usually extend through the time of plugging, abandonment and closure of a well. However, because hydraulic fracturing activities are immediately followed by oil or gas production, the draft guidance recommends two approaches for permitting wells allowable under the UIC Class II regulations to address the unique nature of hydraulic fracturing. EPA permit writers may: (1) Issue short-duration permits and convert wells out of the UIC program upon completion of the diesel fuels hydraulic fracturing activity, or (2) they may assign the well to ''temporarily abandoned'' status. The first approach releases the well from UIC requirements after the permit expires, while the second maintains the permit in active status until final plugging and abandonment of the well, with the possibility of reduced monitoring and reporting during production. The second approach may be beneficial to operators who might conduct future hydraulic fracturing of the well using diesel fuel, as it would avoid the need for them to obtain a new UIC permit for this activity.

Question Related to Permit Duration and Well Closure

- What additional approaches should EPA consider for UIC permitting of diesel fuels hydraulic fracturing injection wells to effectively address well closure, plugging and abandonment requirements?

d. Area of Review.

Delineating and evaluating an AoR is one of the cornerstones of the UIC Program. It ensures that there are no conduits in the vicinity of the injection well that could enable fluids to migrate into USDWs. Before proceeding with the project, owners or operators must define the appropriate AoR; assess that area for conduits of potential fluid movement; and, if necessary, perform corrective action, such as the plugging of improperly abandoned and orphaned wells, or re-siting the well to account for any conduits that could potentially cause migration of contaminants into USDWs. There are two methods for delineating AoR: (1) Determining the zone of endangering influence (ZEI), or (2) using a minimum one-quarter (¼) mile fixed radius around the well. The recommended approach in the draft guidance provides four alternatives to these approaches that address the importance of using a site-specific area of review calculation and take into account not only the wellhead, but also the horizontal section of the well. EPA also recommends EPA permit writers avoid using the modified Theis equation when delineating the AoR.

Questions Related to Area of Review

- What additional area of review delineation approaches would you consider effective for the purposes of permitting hydraulic fracturing using diesel fuels?
- How would you ensure that the area of review appropriately accounts for the horizontally drilled sections of the well without being computationally burdensome?
- Are there circumstances where it would be appropriate to use the standard approaches (e.g., ¼ mile radius around the well) for determining AoR? Commenters should explain how the standard approach would provide appropriate protection for USDWs.

e. Information Submitted With the Permit Application

Information submitted and evaluated during the permit application process supports permitting decisions and ensures that appropriate safeguards (e.g., permit conditions) are established to prevent or remedy contamination to USDWs. HF using diesel fuels may pose a number of unique risks to USDWs. Due to high injection pressures, there is potential to induce fractures that may serve as conduits for fluid migration, including harmful chemicals found in diesel fuels. In addition, there has been concern about induced seismic events related to Class II activities. The UIC regulations allow flexibility in permitting to account for local conditions and practices. Under 40 CFR 144.52(a)(9), EPA permit writers may request and review additional information from the owner or operator when evaluating a permit application for a diesel fuels HF well.

Questions Related to Information Submitted With the Permit Application

- Standard industry research and exploration field collections, such as geologic cores, outcrop data, seismic surveys, and well logs, provide additional data on the injection and confining zones, including their areal extent, mineralogy, porosity, permeability, and capillary pressures and geology or facies changes. Access to this data could provide EPA with critical information needed to make effective permit determinations. Should EPA recommend collection of such data with the permit application? Commenters should consider the relative importance of these data to protection of human health and underground sources of drinking water versus any additional workload for applicants.
- Geomechanical characteristics of the confining zone such as, information on fractures, stress, ductility, rock strength, and in situ fluid pressures, help predict the propagation of fractures and indicate the potential risk of fluid migration. Should EPA recommend collection of geomechanical data with the permit application to assist EPA in making effective permit determinations? Commenters should consider the relative importance of these data to protection of human health and underground sources of drinking water versus any additional workload for applicants.
- Should the Agency request submittal of seismic data, such as the presence and depth of known seismic events and a determination that injection would not cause seismicity that interferes with containment, with the permit application? How useful would inclusion of these data be to minimize potential risk of endangerment to USDWs? Please provide rationale in support of your response.
- What other information, if any, should EPA recommend be submitted with the permit application to make permitting decisions that are protective of human health and underground sources of drinking water?

f. Monitoring

Question Related to Monitoring

- The recommended monitoring approaches include specifications for mechanical integrity testing prior to and after hydraulic fracturing injection using diesel fuels. These recommendations ensure that the well maintains integrity during operations, given the high pressures and nature of fluids injected during hydraulic fracturing. What additional approaches for monitoring of well integrity should EPA consider to ensure safe and effective injection well operation?

• According to standard industry monitoring practice, data are collected through means such as microseismic monitoring and/or tiltmeter monitoring to characterize the actual fracture network and compare it with the predictive fracture model. Should EPA include a microseismic and/or tiltmeter monitoring, or any other approaches, in the guidance recommendations, to ensure that the fracture network does not pose a potential risk to USDWs? Please provide a rationale for your answer.

• Baseline and periodic monitoring of water quality for all USDWs within the area of review help demonstrate the protectiveness of permitted operations and are recommended by the American Petroleum Institute (HF1, 2009). Water quality monitoring can be especially important in cases where owners or operators wish to exercise a flexibility recommended in the guidance of either being released from the UIC program or operating as temporarily abandoned after injection has ceased and production has begun. To utilize these flexibilities, owners or operators need to demonstrate that their operations have not (or will not) endangered USDWs in the project area. Should EPA include baseline and/or periodic monitoring of USDWs as a recommended monitoring approach in the guidance? If so, what water quality monitoring data should be included to best ensure non-endangerment of USDWs?

Dated: May 4, 2012.

Nancy K. Stoner,

Acting Assistant Administrator, Office of Water.

[FR Doc. 2012–11288 Filed 5–9–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

FEDERAL RESERVE SYSTEM

FEDERAL DEPOSIT INSURANCE CORPORATION

Guidance on the Effective Date of Section 716 of the Dodd-Frank Wall Street Reform and Consumer Protection Act

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); and Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of joint guidance.

SUMMARY: The Office of the Comptroller of the Currency (''OCC''), Board of Governors of the Federal Reserve System (''Board''), and the Federal Deposit Insurance Corporation (''FDIC'') are issuing this guidance to provide clarity regarding the effective date of section 716 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act'') [1] with respect to entities for which each is the prudential regulator.

DATES: May 10, 2012.

FOR FURTHER INFORMATION CONTACT:

OCC: Ellen Broadman, Director, Securities and Corporate Practices Division (202) 874–5210, Ted Dowd, Assistant Director, Securities & Corporate Practices Division (202) 874–5327, or Jamey Basham, Assistant Director, Legislative and Regulatory Activities Division (202) 874–5090, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219.

Board: Christine Graham, Senior Attorney (202) 452–3005, or Christopher Paridon, Counsel (202) 452–3274, Legal Division; Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551. For the deaf, hard of hearing, and speech impaired only, teletypewriter (TTY), (202) 263–4869.

FDIC: Thomas Hearn, Counsel (202) 898–6967, or Mark Flanigan, Counsel (202) 898–7426, Legal Division; Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429. For the hearing impaired only, telecommunications device for the deaf TDD: 800–925–4618.

SUPPLEMENTARY INFORMATION:

Background

Section 716 prohibits the provision of Federal assistance to any entity defined under that section to be a swaps entity with respect to any swap, security-based swap, or other activity of the swaps entity.[2] ''Federal assistance'' is defined for purposes of section 716 as ''the use of any advances from any Federal Reserve credit facility or discount window that is not part of a program with broad-based eligibility under section 13(3)(A) of the Federal Reserve Act,'' and ''[FDIC] insurance or guarantees'' for certain purposes specified in section 716(b)(1).[3]

The prudential regulator (as defined in the Commodity Exchange Act) [4] of a swaps entity is authorized to prescribe rules implementing section 716 with respect to that swaps entity.[5] The Board is the prudential regulator for state member banks, bank holding companies, savings and loan holding companies, state branches and agencies of foreign banks, and certain other swaps entities.[6] In addition, the Board is charged with responsibility for establishing and overseeing the provision of credit through any Federal Reserve credit facility and the discount window. The FDIC is the prudential regulator for state nonmember banks and state savings associations.[7] In addition, the FDIC is charged with insuring the deposits of banks and savings associations and managing the Deposit Insurance Fund. The OCC is the prudential regulator for national banks, federal savings associations, and Federal branches and agencies of foreign banks.[8]

Effective Date

Section 716(h) provides that its general prohibition on Federal assistance is ''effective 2 years following the date on which this Act is effective.'' [9] Section 716 is contained in Title VII of the Dodd-Frank Act. Section 701 in Title VII provides that Title VII may be cited as the ''Wall Street Transparency and Accountability Act of 2010.'' [10] Thus, while enacted within the Dodd-Frank Act, Title VII is itself ''an Act,'' and references within Title VII to ''this Act'' should be, in context, interpreted as references to the Wall Street Transparency and Accountability Act of 2010, not to the broader Dodd-Frank Act. This interpretation is supported by the fact that section 716(m) refers specifically to the Dodd-Frank Act by name—a reference that would not be necessary if the reference to ''this Act'' in section 716(h) and other provisions of the Wall Street Transparency and Accountability Act were intended to refer to the Dodd-Frank Act. Nothing in the context of subsection (m) or other provisions of

[1] Section 716 of Public Law 111–203, 124 Stat. 1376; 15 U.S.C. 8305.

[2] *See,* section 716(a) of the Dodd-Frank Act; 15 U.S.C. 8305(a).

[3] *See,* section 716(b)(1) of the Dodd-Frank Act; 15 U.S.C. 8305(b)(1).

[4] Pursuant to section 711 of the Dodd-Frank Act, the term ''prudential regulator'' as used in section 716 has the same meaning as in the Commodity Exchange Act. 15 U.S.C. 8301.

[5] Section 716(k) of the Dodd-Frank Act; 15 U.S.C. 8305(k).

[6] *See* 7 U.S.C. 1a(39)(A).

[7] *See id.* at section 1a(39)(C).

[8] *See id.* at section 1a(39)(B).

[9] *See* section 716(h) of the Dodd-Frank Act; 15 U.S.C. 8305(h).

[10] *See* section 701 of the Dodd-Frank Act; 15 U.S.C. 8301 note.

section 716 suggest a different reading was intended.[11]

In general, the Wall Street Transparency and Accountability Act became effective on July 16, 2011, which is later than the effective date of the Dodd-Frank Act generally. The Wall Street Transparency and Accountability Act has two subtitles. Both subtitles contain provisions that establish an effective date that is 360 days after the enactment of the subtitle (unless otherwise noted in that subtitle).[12] The date of enactment was July 21, 2010, making the effective date of the subtitles comprising the Wall Street Transparency and Accountability Act July 16, 2011. Because section 716 specifically adopts an effective date that is 2 years following the effective date of the Wall Street Transparency and Accountability Act, section 716 will become effective on July 16, 2013.[13]

Thomas J. Curry,

Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, April 10, 2012.

Jennifer J. Johnson,

Secretary of the Board.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, this 10th day of April 2012.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2012–11326 Filed 5–9–12; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P

[11] Section 716(m) of the Dodd-Frank Act; 15 U.S.C. 8305(m).

[12] Section 754 sets forth the effective date of subtitle A of Title VII, and section 774 sets forth the effective date of subtitle B of Title VII. *See* 7 U.S.C. 7a note and 15 U.S.C. 77b note.

[13] The agencies intend to invite comment on a separate proposal that would establish the appropriate transition period for insured depository institutions pursuant to section 716(f).

FEDERAL ELECTION COMMISSION

Sunshine Act Meetings

AGENCY: Federal Election Commission.

Federal Register Citation of Previous Announcement: 77 FR 26759 (May 7, 2012).

DATE AND TIME: Thursday, May 10, 2012 at 10:00 a.m.

PLACE: 999 E Street NW., Washington, DC, (ninth floor).

STATUS: This meeting will be open to the public.

CHANGES IN THE MEETING: The following item has been added to the agenda:

Draft Advisory Opinion 2012–08: Repledge Individuals who plan to attend and require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Shawn Woodhead Werth, Secretary and Clerk, at (202) 694–1040, at least 72 hours prior to the hearing date.

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Shawn Woodhead Werth,

Secretary of the Commission.

[FR Doc. 2012–11325 Filed 5–8–12; 11:15 am]

BILLING CODE 6715–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for a license as a Non-Vessel-Operating Common Carrier (NVO) and/or Ocean Freight Forwarder (OFF)—Ocean Transportation Intermediary (OTI) pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. Chapter 409 and 46 CFR 515). Notice is also hereby given of the filing of applications to amend an existing OTI license or the Qualifying Individual (QI) for a license.

Interested persons may contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573, by telephone at (202) 523–5843 or by email at *OTI@fmc.gov.*

DTS World Cargo Services, Inc. dba DTS World Cargo (NVO & OFF), 8338 Park Place, Suite A, Houston, TX 77017, Officer: Martha I. Mendez-Cazares, President/Secretary (Qualifying Individual), Application Type: New NVO & OFF License.

Expedited American Cargo, Corp (NVO & OFF), 9462 NW 13th Street, #70, Miami, FL 33172, Officers: Miluska Berrocal, President (Qualifying Individual), Blanca B. Guerra, Secretary, Application Type: New NVO & OFF License.

Four Points Ocean Inc. (NVO & OFF), 1460 Route 9 North, Suite 303, Woodbridge, NJ 07095, Officers: Joseph Felitto, President/Director/Treasurer (Qualifying Individual), William Roach, Vice President/Director, Application Type: Add NVO Service.

Global Shipping Ministries, Inc. (OFF), 725 Mountain Ash Way, Deltona, FL 32725, Officers: Mikhail A. Menendez, President (Qualifying Individual), Saperna L. Menendez, Vice President, Application Type: New OFF.

NW Forwarding, LLC (NVO & OFF), 618 S. 223rd Street, #3, Des Moines, WA 98198, Officer: Bruce R. Harris, Member (Qualifying Individual), Application Type: New NVO & OFF License.

Piscon Guardian Overseas, Inc. (OFF), 2428 Moreland Avenue, Atlanta, GA 30315, Officers: Obewu Ojebe, CEO/CFO (Qualifying Individual), Saroya Hardaway, Secretary, Application Type: New OFF.

Senderex Cargo Inc. (NVO & OFF), 5451 104th Street, Los Angeles, CA 90045, Officer: Roger C. Anderson, CEO (Qualifying Individual), Application Type: Add NVO Service.

Transcar De Oriente USA LLC (NVO & OFF), 7512 NW. 54th Street, Miami, FL 33166, Officers: Claudia Lopez, Manager (Qualifying Individual), Alejandro Tortorella, Manager, Application Type: New NVO & OFF License.

ULG Logistics Inc (NVO & OFF), 3952 Merrick Road, Seaford, NY 11783, Officers: Joseph P. Ting, President (Qualifying Individual), Man C. Soo, Treasurer, Application Type: New NVO & OFF License.

Warehouse Division of World Terminal and Distributing, Corporation dba WTDC (NVO & OFF), 2801 NW. 74th Avenue, #100, Miami, FL 33122, Officer: Ralph Gazitua, President/Secretary (Qualifying Individual), Application Type: New NVO & OFF License.

Worldwide Cargo Services, Inc. (NVO), 2 Johnson Road, Lawrence, NY 11559, Officers: Scott Halfon, Treasurer (Qualifying Individual), Mark A. Parrotto, President/Secretary, Application Type: New NVO License.

Dated: May 4, 2012.

Karen V. Gregory,

Secretary.

[FR Doc. 2012–11236 Filed 5–9–12; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocation

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. Chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR Part 515, effective on the corresponding date shown below:

License Number: 2802F.

Name: Charles Dorsch Ship's Agent, Inc.
Address: 1981 Main Street, San Diego, CA 92113.
Date Revoked: April 9, 2012.
Reason: Failed to maintain a valid bond.

License Number: 4217F.
Name: Reliable Van & Storage Co., Inc.
Address: 550 Division Street, Elizabeth, NJ 07201.
Date Revoked: March 24, 2012.
Reason: Failed to maintain a valid bond.

License Number: 004422NF.
Name: C & C Group, Inc.
Address: 1409 NW 84th Avenue, Miami, FL 33126.
Date Revoked: March 2, 2012.
Reason: Failed to maintain a valid bond.

License Number: 004471F.
Name: B.R.A.L. Miami, Inc.
Address: 7766 NW 46th Street, Miami, FL 33166.
Date Revoked: March 20, 2012.
Reason: Failed to maintain a valid bond.

License Number: 6098N.
Name: Sunshine Express Line, Inc.
Address: 8433 NW 68th Street, Miami, FL 33166.
Date Revoked: April 8, 2012.
Reason: Failed to maintain a valid bond.

License Number: 15369N.
Name: Caribbean Ocean Corporation.
Address: 8005 NW 80th Street, Unit 4, Bldg. E, Miami, FL 33166.
Date Revoked: April 2, 2012.
Reason: Failed to maintain a valid bond.

License Number: 16397N.
Name: Kesco Shipping Inc.
Address: 17595 Almahurst Street, Suite 210, City of Industry, CA 91748.
Date Revoked: April 14, 2012.
Reason: Failed to maintain a valid bond.

License Number: 017511N.
Name: Royal Cargo Line, Inc.
Address: 1928 NW 82nd Avenue, Miami, FL 33126.
Date Revoked: March 23, 2012.
Reason: Failed to maintain a valid bond.

License Number: 017524N.
Name: Natco International Transports USA, L.L.C.
Address: 12415 SW 136th Avenue, Bay 4, Miami, FL 33186.
Date Revoked: April 8, 2012.
Reason: Failed to maintain a valid bond.

License Number: 017692NF.
Name: American Links Logistics International, Inc.
Address: 3591 Highland Drive, San Bruno, CA 94066.
Date Revoked: April 2, 2012.
Reason: Voluntarily surrendered license.

License Number: 018184N.
Name: JP Express Shipping, Corp.
Address: 1873 Bathgate Avenue, Bronx, NY 10457.
Date Revoked: March 27, 2012.
Reason: Failed to maintain a valid bond.

License Number: 018196N.
Name: PMJ International Inc.
Address: 519 Mountainview Drive, North Plainfield, NJ 07063.
Date Revoked: March 23, 2012.
Reason: Failed to maintain a valid bond.

License Number: 018250F.
Name: Consolidation Shipping & Logistic (USA), Inc.
Address: 219 Stuyvesant Avenue, Lyndhurst, NJ 01071.
Date Revoked: April 15, 2012.
Reason: Failed to maintain a valid bond.

License Number: 018269N.
Name: Zaklee International Corporation.
Address: 777 Henderson Blvd., Suite 2A, Folcroft, PA 19032.
Date Revoked: March 1, 2012.
Reason: Voluntarily surrendered license.

License Number: 019311N.
Name: Turkish Express Line, Inc.
Address: 115 River Road, Suite 827, Edgewater, NJ 07020.
Date Revoked: April 16, 2012.
Reason: Failed to maintain a valid bond.

License Number: 019398NF.
Name: Copacabana Enterprises Group, Inc.
Address: 6500 NW 84th Avenue, Miami, FL 33166.
Date Revoked: April 17, 2012.
Reason: Failed to maintain valid bonds.

License Number: 019704NF.
Name: All Services & Merchandise, Corp. dba Asam dba Cargo Mundo.
Address: 2840 NW 108th Avenue, Miami, FL 33172.
Date Revoked: April 8, 2012.
Reason: Failed to maintain valid bonds.

License Number: 019808N.
Name: Centro America Envios, Inc.
Address: 1741 W. Flager Street, Miami, FL 33135.
Date Revoked: April 19, 2012.
Reason: Failed to maintain a valid bond.

License Number: 020381F.
Name: Active Link Logistics, L.L.C.
Address: 1201 Grand Avenue, Suite 205, West Des Moines, IA 50265.
Date Revoked: April 20, 2012.
Reason: Voluntarily surrendered license.

License Number: 020784NF.
Name: Matson Global Distribution Services, Inc.
Address: 555 12th Street, Suite 700, Oakland, CA 94607.
Date Revoked: April 16, 2012.
Reason: Failed to maintain valid bonds.

License Number: 021459N.
Name: Pax Global Cargo U.S.A., LLC.
Address: 23133 Hawthorne Blvd., Suite B–02, Torrance, CA 90505.
Date Revoked: April 15, 2012.
Reason: Failed to maintain a valid bond.

License Number: 021957N.
Name: Foothills Logistics, Inc.
Address: 327–B West Phillips Road, Greer, SC 29650.
Date Revoked: March 15, 2012.
Reason: Voluntarily surrendered license.

License Number: 022397NF.
Name: Meridian Logistics LLC.
Address: 4008 Chancery Place, Fort Wayne, IN 46804.
Date Revoked: March 1, 2012.
Reason: Voluntarily surrendered license.

License Number: 022845NF.
Name: Arlette P. Porras dba RA International.
Address: 1900 Los Alamitos Drive, Placentia, CA 92870.
Date Revoked: March 22, 2012.
Reason: Failed to maintain valid bonds.

License Number: 023220NF.
Name: Asencomex, LLC.
Address: 8510 NW 70th Street, Miami, FL 33166
Date Revoked: April 20, 2012.
Reason: Voluntarily surrendered license.

Vern W. Hill,
Director, Bureau of Certification and Licensing.

[FR Doc. 2012–11235 Filed 5–9–12; 8:45 am]
BILLING CODE 6730–01–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 May 29, 2012.

A. Federal Reserve Bank of Cleveland (Nadine Wallman, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101–2566:

1. *LM III TriState Holdings LLC; LM III–A TriState Holdings LLC; Lovell Minnick Equity Partners III LP; Lovell Minnick Equity Partners III–A LP; Lovell Minnick Equity Advisors III LP; Fund III UGP LLC; Lovell Minnick Partners LLC; and Lovell Minnick Holdings LLC; all of Radnor, Pennsylvania,* to acquire voting shares of TriState Capital Holdings, Inc., and thereby indirectly control TriState Capital Bank, both of Pittsburgh, Pennsylvania.

Board of Governors of the Federal Reserve System, May 7, 2012.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2012–11301 Filed 5–9–12; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

HIT Policy Committee Advisory Meeting; Notice of Meeting

AGENCY: Office of the National Coordinator for Health Information Technology, HHS.

ACTION: Notice of meeting.

This notice announces a forthcoming meeting of a public advisory committee of the Office of the National Coordinator for Health Information Technology (ONC). The meeting will be open to the public.

Name of Committee: HIT Policy Committee.

General Function of the Committee: to provide recommendations to the National Coordinator on a policy framework for the development and adoption of a nationwide health information technology infrastructure that permits the electronic exchange and use of health information as is consistent with the Federal Health IT Strategic Plan and that includes recommendations on the areas in which standards, implementation specifications, and certification criteria are needed.

Date and Time: The meeting will be held on June 6, 2012, from 10:00 a.m. to 3:00 p.m. eastern time.

Location: Washington Marriott, 1221 22nd Street NW., Washington, DC 20037. For up-to-date information, go to the ONC Web site, *http://healthit.hhs.gov.*

Contact Person: MacKenzie Robertson, Office of the National Coordinator, HHS, 355 E Street SW., Washington, DC 20201, 202–205–8089, Fax: 202–260–1276, email: *mackenzie.robertson@hhs.gov.* Please call the contact person for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice.

Agenda: The committee will hear reports from its workgroups and updates from ONC and other Federal agencies. ONC intends to make background material available to the public no later than two (2) business days prior to the meeting. If ONC is unable to post the background material on its Web site prior to the meeting, it will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on ONC's Web site after the meeting, at *http://healthit.hhs.gov*.

Procedure: ONC is committed to the orderly conduct of its advisory committee meetings. Interested persons may present data, information, or views, orally or in writing, on issues pending before the Committee. Written submissions may be made to the contact person on or before two days prior to the Committee's meeting date. Oral comments from the public will be scheduled in the agenda. Time allotted for each presentation will be limited to three minutes. If the number of speakers requesting to comment is greater than can be reasonably accommodated during the scheduled public comment period, ONC will take written comments after the meeting until close of business on that day.

Persons attending ONC's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

ONC welcomes the attendance of the public at its advisory committee meetings. Seating is limited at the location, and ONC will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact MacKenzie Robertson at least seven (7) days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App. 2).

Dated: May 2, 2012.

MacKenzie Robertson,

FACA Program Lead, Office of Policy and Planning, Office of the National Coordinator for Health Information Technology.

[FR Doc. 2012–11286 Filed 5–9–12; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

HIT Standards Committee Advisory Meeting; Notice of Meeting

AGENCY: Office of the National Coordinator for Health Information Technology, HHS.

ACTION: Notice of meeting.

This notice announces a forthcoming meeting of a public advisory committee of the Office of the National Coordinator for Health Information Technology (ONC). The meeting will be open to the public.

Name of Committee: HIT Standards Committee.

General Function of the Committee: To provide recommendations to the National Coordinator on standards, implementation specifications, and certification criteria for the electronic exchange and use of health information for purposes of adoption, consistent with the implementation of the Federal Health IT Strategic Plan, and in accordance with policies developed by the HIT Policy Committee.

Date and Time: The meeting will be held on June 20, 2012, from 9 a.m. to 3 p.m./Eastern Time.

Location: Holiday Inn Capitol, 550 C Street SW., Washington, DC 20024. For up-to-date information, go to the ONC Web site, *http://healthit.hhs.gov*.

Contact Person: MacKenzie Robertson, Office of the National Coordinator, HHS, 355 E Street SW., Washington, DC 20201, 202–205–8089, Fax: 202–260–1276, email: *mackenzie.robertson@hhs.gov*. Please call the contact person for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice.

Agenda: The committee will hear reports from its workgroups and updates from ONC and other Federal agencies. ONC intends to make background material available to the public no later

than two (2) business days prior to the meeting. If ONC is unable to post the background material on its Web site prior to the meeting, it will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on ONC's Web site after the meeting, at *http://healthit.hhs.gov*.

Procedure: ONC is committed to the orderly conduct of its advisory committee meetings. Interested persons may present data, information, or views, orally or in writing, on issues pending before the Committee. Written submissions may be made to the contact person on or before two days prior to the Committee's meeting date. Oral comments from the public will be scheduled in the agenda. Time allotted for each presentation will be limited to three minutes. If the number of speakers requesting to comment is greater than can be reasonably accommodated during the scheduled public comment period, ONC will take written comments after the meeting until close of business on that day.

Persons attending ONC's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

ONC welcomes the attendance of the public at its advisory committee meetings. Seating is limited at the location, and ONC will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact MacKenzie Robertson at least seven (7) days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (Pub. L. No. 92–463, 5 U.S.C., App. 2).

Dated: May 2, 2012.

MacKenzie Robertson,

FACA Program Lead, Office of Policy and Planning, Office of the National Coordinator for Health Information Technology.

[FR Doc. 2012–11287 Filed 5–9–12; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Initial Review

The meeting announced below concerns Conducting Public Health Research in China RFA GH–12–005, and Conducting Public Health Research in Thailand by the Ministry of Public Health (MOPH) (FOA)GH–11–002, initial review.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

Time and Date 12:00 p.m.—4:00 p.m., June 12, 2012 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the initial review, discussion, and evaluation of applications received in response to ''Conducting Public Health Research in China FOA GH–12–005'', and ''Conducting Public Health Research in Thailand by the Ministry of Public Health (MOPH) FOA GH–11–002.''

Contact Person for More Information: Lata Kumar, Scientific Review Officer, CGH Science Office, Center for Global Health, CDC, 1600 Clifton Road, NE., Mailstop D–69, Atlanta, Georgia 30033, Telephone (404) 639–7618.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: May 2, 2012.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2012–11263 Filed 5–9–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Subsidized and Transitional Employment Demonstration (STED) and Enhanced Transitional Jobs Demonstration (ETJD).

OMB No.: New Collection.

Description: The Administration for Children and Families (ACF) within the U.S. Department of Health and Human Services (HHS) has launched a national evaluation called the Subsidized and Transitional Employment Demonstration (STED). At the same time, the Employment and Training Administration (ETA) within the Department of labor (DOL) is conducting an evaluation of the Enhanced Transitional Jobs Demonstration (ETJD). These evaluations will inform the Federal government about the effectiveness of subsidized and transitional employment programs in helping vulnerable populations secure unsubsidized jobs in the labor market and achieve self-sufficiency. The projects will evaluate up to twelve subsidized and transitional employment programs nationwide.

ACF and ETA are collaborating on the two evaluations. In 2011, ETA awarded grants to seven transitional jobs programs as part of the ETJD, which is testing the effect of combining transitional jobs with enhanced services to assist ex-offenders and noncustodial parents improve labor market outcomes, reduce criminal recidivism and improve family engagement.

The STED and ETJD projects have complementary goals and are focusing on related program models and target populations. Thus, ACF and ETA have agreed to collaborate on the design of data collection instruments to promote consistency across the projects. In addition, two of the seven DOL-funded ETJD programs will be evaluated as part of the STED Project.

The proposed information collection described here will be used for both the STED and ETJD projects. It is being submitted by ACE' on behalf of both collaborating agencies.

As noted earlier, each project plans to include a total of seven evaluation sites. However, because two of the ETJD sites will be evaluated under STED, the agencies estimate that there will be a total of twelve sites in the two projects combined. Individuals will be randomly assigned to a treatment or control group at each site.

Data for the study will be collected from the following three major sources:

1. *Baseline Forms.* Each subject will be asked to complete two data-collection forms upon entry into the study: (1) A contact sheet, which will obtain contact information for people who may help locate the subject for follow-up surveys; and (2) a baseline information form, which will collect demographic data and information on the subject's work and education history.

2. *Follow-Up Surveys.* Follow-up telephone surveys will be conducted with all participants. There will be three follow-up surveys in each of the five

STED-only sites, approximately 6, 12, and 24 months after study entry. There will be up to three follow-up surveys, at approximately 6, 12 and 36 months, in the five ETJD sites that are not part of STED. In the two sites which are part of both the STED and ETJD projects, there will be follow-up surveys at approximately 6, 12, 24, and 36 months.

The 6-month survey is intended to gather information from treatment and control group members while treatment group members are still participating in—or have very recently completed—a subsidized job. It will focus on self efficacy, well-being, worksite experiences, and other domains that are most likely to be directly affected by employment.

The 12-month survey will collect data on study participants' receipt of services and attainment of education credentials, labor market status, material hardship, household income, criminal justice, self-sufficiency and family engagement, including, child support payments and parent-child contact. Participants will again be contacted 24 or 36 months after random assignment to follow-up and measure progress on similar domains as were measured at the 12-month point.

In addition to the surveys, each respondent will be contacted periodically by mail and asked to provide updated contact information.

3. *Implementation Research and Site Visits.* Data on the context for the programs and their implementation will be collected during two rounds of site visits to each of the twelve sites, including interviews, focus groups, observations, and case file reviews. These data will be supplemented by short questionnaires for program staff, clients, worksite supervisors, and participating employers, as well as a time-use study for program staff.

The purpose of this submission is to request approval of the baseline forms, the 6- and 12-month surveys, the implementation research protocols, and to request a waiver for subsequent 60-day notices for the other documents listed above.

Respondents: Study participants in the treatment and control groups will respond to the baseline and follow-up surveys. Program staff or employers who work with the subsidized employment programs, as well as clients participating in subsidized or transitional employment programs will respond to the implementation research interviews and questionnaires.

ANNUAL BURDEN ESTIMATES

Instrument	Annual number of respondents	Number of responses per respondent	Average burden hour per response	Annual estimated burdent hours[1]
Participant Contact Information Form (5 STED sites)	1,667	1	.08	133
Participant Baseline Information Form (5 STED sites)	1,667	1	.17	283
Participant STED tracking letters	770	5	.05	193
Participant ETJD tracking letters	550	6	.05	165
Participant 6-month survey	1,867	1	.5	934
Participant 12-month survey	3,200	1	.75	2,400
Participant Implementation Questionnaire	200	1	.17	34
Participant Focus Group Discussion Guide	80	1	.75	60
Program Staff Implementation Questionnaire	40	1	.17	7
Worksite Supervisor Implementation Questionnaire	80	1	.17	14
Employer Implementation Questionnaire	80	1	.17	14
Program Staff Interview Guides	40	2	1	80
Program Staff Cost Data Collection Protocol	4	1	1	4
Employer Interview Guides	8	2	1	16
Referral Partner Interview Guides	8	2	1	16
Program Staff Time-Use Worksheet	40	1	1	40

Estimated Total Annual Burden Hours: 4,393.

Additional Information

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: OPRE Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *OPREinfocollection@acf.hhs.gov.*

OMB Comment

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following:

Office of Management and Budget, Paperwork Reduction Project, Email: *OIRA_SUBMISSION@OMB.EOP.GOV,* Attn: Desk Officer for the Administration for Children and Families.

Steven M. Hanmer,

OPRE Reports Clearance Officer.

[FR Doc. 2012–11188 Filed 5–9–12; 8:45 am]

BILLING CODE 4184–09–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–D–0384]

Draft Guidance for Industry and Food and Drug Administration Staff; Pediatric Information for X-Ray Imaging Device Premarket Notifications; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance entitled ''Pediatric Information for X-ray Imaging Device Premarket Notifications.'' This draft guidance document outlines FDA's current thinking on information that should be

provided in premarket notifications for x-ray imaging devices with indications for use in pediatric populations. FDA intends for this guidance to minimize uncertainty during the premarket review process of 510(k)s for x-ray imaging devices for pediatric use, to encourage the inclusion of pediatric indications for use for x-ray imaging device premarket notifications, and to provide recommendations on information to support such indications. This draft guidance applies only to complete x-ray imaging devices that could be used on pediatric patients. This draft guidance is not final nor is it in effect at this time.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment of this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by September 7, 2012.

ADDRESSES: Submit written requests for single copies of the draft guidance document entitled ''Pediatric Information for X-ray Imaging Device Premarket Notifications'' to the Division of Small Manufacturers, International and Consumer Assistance, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 4613, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 301–847–8149. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit electronic comments on the draft guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Thalia Mills, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave. Bldg. 66, rm. 4527, Silver Spring, MD 20993–0002, 301–796–6641.

SUPPLEMENTARY INFORMATION:

I. Background

Currently, most x-ray imaging devices are marketed with a general indication for use (IFU) statement. Many general use x-ray imaging devices have neither addressed the unique issues associated with pediatric use nor contain labeling specific for use on pediatric patients, even though many (if not all) of these devices are used or could be used to image pediatric patients.

Exposure to ionizing radiation is of particular concern in pediatric patients for three reasons: (1) Younger patients are more radiosensitive than adults (i.e., the cancer risk per unit dose of ionizing radiation is higher for younger patients) (Ref. 1); (2) younger patients have a longer expected lifetime for the effects of radiation exposure to manifest as cancer; and (3) use of equipment and exposure settings designed for adult use can result in excessive radiation exposure for the smaller patient. The third point is of special concern because many pediatric imaging exams are performed in facilities lacking specialized expertise in pediatric imaging (Ref. 2).

In 2004, the Agency issued general pediatric guidance entitled ''Premarket Assessment of Pediatric Medical Devices'' (Ref. 3). The guidance, which applies to all devices, defines pediatric subpopulations and the general information that should be provided for different types of premarket submissions for devices intended for use in pediatric populations.

In February 2010, FDA launched an ''Initiative to Reduce Unnecessary Radiation Exposure from Medical Imaging'' (Ref. 4)'' and on March 30 and 31, 2010, the Agency held a public meeting entitled ''Device Improvements to Reduce Unnecessary Radiation Exposure from Medical Imaging'' (Ref. 5). At the meeting, FDA sought advice on ''steps that manufacturers of CT (computerized tomography) and fluoroscopic devices could take to reduce unnecessary radiation exposure through improved product design, enhanced labeling, or improved instructions and training for equipment use and quality assurance at medical imaging facilities.'' The Agency asked whether manufacturers should incorporate special provisions for pediatric patients, particularly with regard to hardware and software features. Recommendations received by FDA, which apply to all general-use x-ray imaging modalities, included making available pediatric protocols and control settings, targeted instructions and educational materials emphasizing pediatric dose reduction, quality assurance tools for facilities emphasizing radiation dose management, and dose information applicable to pediatric patients. Many of the recommendations from pediatric experts focused on expanding the flexibility or range of features already available on x-ray imaging devices, which may also improve adult imaging for nonstandard applications (Ref. 5).

Experts have commented that many radiological devices are sold without the design features or labeling information that would help users optimize benefit (clinically-usable images) in comparison to risk (radiation exposure) for pediatric imaging. Imaging professionals can safely use existing equipment that may not have specific features or instructions for pediatric use by consulting recommendations provided by the Alliance for Radiation Safety in Pediatric Imaging (ARSPI) and other organizations. FDA has reviewed the recommendations from ARSPI and believes they are appropriate. Because of the special concerns about excessive exposure to radiation in children, FDA believes the new x-ray imaging devices should be demonstrated to be appropriate for pediatric use or use in pediatric populations should be cautioned against. The end user can then make more informed decisions about use of the device on pediatric patients.

Manufacturers seeking marketing clearance for a new x-ray imaging device with a pediatric indication should provide data supporting the safety and effectiveness of the device in pediatric populations. Manufacturers who seek marketing clearance only for general indications or do not submit adequate data to the FDA to support a pediatric indication for use for x-ray imaging devices where pediatric use is likely should label their x-ray imaging device with the statement ''*CAUTION: Not for use on patients less than approximately [insert patient size (e.g., body part thickness or height and weight appropriate to your device)].*'' as part of the IFU statement. This statement should be revised depending on the size subgroups (see section 4 of the draft guidance) for which manufacturers submit data and be prominently displayed on the device itself (e.g., control panel).

This draft guidance applies only to complete x-ray imaging devices that could be used on pediatric patients. This document does not apply to imaging equipment sold as components or accessories (such as tube-housing assemblies, tables, or detectors). This guidance should be used in conjunction with other guidance specific to your type of x-ray imaging device (e.g., x-ray CT, general radiography and dental radiography, and diagnostic and interventional fluoroscopy devices) that addresses how you should meet premarket notification (510(k)) submission requirements under 21 CFR part 807. This guidance supplements

other FDA documents regarding the general content and format requirements of a 510(k) submission.

II. Significance of Guidance

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the Agency's current thinking on information necessary to establish substantial equivalence to a predicate device and thus provide reasonable assurance of the safety and effectiveness for x-ray imaging devices that may be used on pediatric populations. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by using the Internet. The FDA draft guidance entitled ''Pediatric Information for X-ray Imaging Device Premarket Notifications'' is available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/ucm300850.htm.* Guidance documents are also available at *http://www.regulations.gov.* To receive ''Pediatric Information for X-ray Imaging Device Premarket Notifications,'' you may either send an email request to *dsmica@fda.hhs.gov* to receive an electronic copy of the document or send a fax request to 301–847–8149 to receive a hard copy. Please use the document number 1771 to identify the guidance you are requesting.

IV. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations and guidance documents. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 807, subpart E have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 801 have been approved under OMB control number 0910–0485; and the collections of information in 21 CFR parts 1002, 1010, 1020, 1030, 1040, and 1050 have been approved under OMB control number 0910–0025. In addition, FDA concludes that the Indications for Use warning label does not constitute a ''collection of information'' under the PRA. Rather, the labeling statements are ''public disclosure[s] of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public.'' (5 CFR 1320.3(c)(2)).

V. References

The following references have been placed on display in the Division of Dockets Management (see **ADDRESSES**), and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday. (FDA has verified the Web site addresses, but we are not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.)

1. NAS National Research Council Committee to Assess Health Risks from Exposure to Low Levels of Ionizing Radiation, ''Health risks from exposure to low levels of ionizing radiation: BEIR VII phase 2.'' Washington, DC: National Academy of Sciences, National Academies Press, 2006.
2. Larson, D.B. et al., ''Rising Use of CT in Child Visits to the Emergency Department in the United States, 1995–2008,'' *Radiology,* vol. 259(3), pp. 793–801, 2011.
3. The FDA pediatric guidance entitled ''Premarket Assessment of Pediatric Medical Devices,'' available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/ucm089740.htm,* 2004.
4. The FDA initiative entitled ''Initiative to Reduce Unnecessary Radiation Exposure from Medical Imaging,'' available at *http://www.fda.gov/Radiation-EmittingProducts/RadiationSafety/RadiationDoseReduction/default.htm.*
5. The recommendations from pediatric experts at FDA's Public Meeting: Device Improvements to Reduce Unnecessary Radiation Exposure from Medical Imaging, available at *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/ucm201448.htm,* March 30–31, 2010.

VI. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 4, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–11260 Filed 5–9–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0385]

Device Improvements for Pediatric X-Ray Imaging; Public Meeting; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of meeting; request for comments.

SUMMARY: FDA is announcing the following public meeting on the draft guidance ''Pediatric Information for X-ray Imaging Device Premarket Notifications.'' This guidance will apply to x-ray computed tomography, general and dental radiography, and diagnostic and interventional fluoroscopy devices. FDA has organized this meeting to solicit public feedback on the draft guidance and to help identify issues relevant to radiation safety in pediatric x-ray imaging that may benefit from standards development or further research.

DATES: *Date and Time:* The meeting will be held on July 16, 2012, from 8 a.m. to 5 p.m.

Location: The meeting will be held at FDA White Oak Campus, 10903 New Hampshire Ave., Building 31 Conference Center, the Great Room (rm. 1503), Silver Spring, MD 20993–0002. Entrance for the public meeting participants (non-FDA employees) is through Building 1 where routine security check procedures will be performed. For parking and security information, please refer to *http://www.fda.gov/AboutFDA/WorkingatFDA/BuildingsandFacilities/WhiteOakCampusInformation/ucm241740.htm.*

Contact: Thalia Mills, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 4527, Silver Spring, MD 20993, 301–796–6641, FAX: 301–847–8502, email: *Thalia.Mills@fda.hhs.gov.*

Registration: Registration is free and on a first-come, first-served basis. Persons interested in attending this meeting, but not requesting to speak or participate in the roundtable, must register online by 5 p.m. on July 9, 2012. Note that all meeting participants will be able to listen to all the presentations and roundtable discussion, as well as submit questions for the roundtable during the meeting. Early registration is recommended because facilities are limited, and therefore, FDA may also limit the number of participants from

each organization. If time and space permit, onsite registration on the day of the public workshop will be provided beginning at 7:30 a.m. If you need special accommodations due to a disability, please contact Cindy Garris (email: *Cynthia.Garris@fda.hhs.gov* or phone: 301–796–5861) no later than July 9, 2012.

To register for the meeting, please visit the following Web site: *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences* (select this public workshop from the posted events list). Please provide complete contact information for each attendee, including name, title, affiliation, address, email, and telephone number. Those without Internet access should contact Cindy Garris (email: *Cynthia.Garris@fda.hhs.gov* or phone: 301–796–5861) for registration. Registrants will receive confirmation once they have been accepted. You will be notified if you are on a waiting list.

Streaming Webcast of Pediatric X-ray Imaging Meeting: This meeting will also be webcast. Persons interested in viewing the webcast must register online by 5 p.m. on July 9, 2012. Early registration is recommended because webcast connections are limited. Organizations are requested to register all participants, but to view using one connection per location. Webcast participants will be sent technical system requirements after registration, and will be sent connection access information after July 12, 2012. If you have never attended a Connect Pro event before, test your connection at *https://collaboration.fda.gov/common/help/en/support/meeting_test.htm.* To get a quick overview of the Connect Pro program, visit *http://www.adobe.com/go/connectpro_overview.*

Requests for Oral Presentations: This meeting includes a public comment session. During online registration you may indicate if you wish to make an oral presentation during the public comment session, and the topic you wish to address in your presentation. If you wish to make a presentation during the public comment session, you must register online by 5 p.m. on June 25, 2012. FDA has included topics and questions for comment in this document. FDA will do its best to accommodate requests to make public comment. Individuals and organizations with common interests are urged to consolidate or coordinate their presentations, and request time for a joint presentation, or submit requests for designated representatives to participate in the public comment session. Following the close of registration, FDA will determine the amount of time allotted to each presenter and the approximate time each oral presentation is to begin, and will select and notify participants. All requests to make oral presentations must be made at the time of registration. Presentation materials for selected oral presentations must be emailed to Thalia Mills no later than July 9, 2012. No commercial or promotional material will be permitted to be presented or distributed at the meeting.

Requests to Participate in Roundtable Discussion: This workshop also includes a roundtable discussion. During online registration you may indicate if you wish to participate in the roundtable discussion. If you wish to request to participate, you must register online by 5 p.m. on June 25, 2012. The number of roundtable participants will be limited, but all meeting participants will have the opportunity to view and submit questions to the roundtable. A request to be a participant does not guarantee a place in the roundtable discussion; participants will be chosen to represent a broad variety of specialties.

Comments: FDA is holding this public meeting to obtain public comment on the draft guidance ''Pediatric Information for X-ray Imaging Device Premarket Notifications.'' Relevant issues include device design features, labeling information, and testing specific to pediatric use. The deadline for submitting comments related to this public meeting is September 7, 2012.

Regardless of attendance at the public meeting, interested persons may submit written or electronic comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov.* It is only necessary to submit one set of comments. Please identify comments with the docket number found in the brackets in the heading of this notice. In addition, when responding to specific questions as outlined in section IV of this document, please identify the question that you are addressing. Received written comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday. Electronic comments can be viewed in the public docket for this meeting at *http://www.regulations.gov.*

Transcripts: As soon as a transcript is available, it will be accessible at *http://www.regulations.gov.* It may also be viewed at the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD. A transcript will also be available in either hardcopy or on CD–ROM, after submission of a Freedom of Information request. Written requests are to be sent to Division of Freedom of Information (HFI–35), Office of Management Programs, Food and Drug Administration, 5600 Fishers Lane, rm. 6–30, Rockville, MD 20857.

SUPPLEMENTARY INFORMATION:

I. Background

The development of this draft guidance is part of FDA's larger Initiative to Reduce Unnecessary Radiation Exposure from Medical Imaging (Ref. 1). While the benefit of a clinically appropriate x-ray imaging exam far outweighs the risk, efforts should be made to minimize this risk by reducing unnecessary exposure to ionizing radiation. Ionizing radiation exposure to pediatric patients from medical imaging procedures is of particular concern to the Agency for three reasons: (1) Younger patients are more radiosensitive than adults (*i.e.,* the cancer risk per unit dose of ionizing radiation is higher) (Ref. 2); (2) younger patients have a longer expected lifetime for the effects of radiation exposure to manifest as cancer; and (3) use of equipment and exposure settings designed for adults can result in excessive radiation exposure for the smaller patient. The third point is of special concern because many pediatric imaging exams are performed in facilities lacking specialized expertise in pediatric imaging (Ref. 3).

On March 30 and 31, 2010, the Agency held a public meeting entitled ''Device Improvements to Reduce Unnecessary Radiation Exposure from Medical Imaging'' (Ref. 4). The Agency asked whether manufacturers should incorporate special provisions for pediatric patients, particularly with regard to hardware and software features (Ref. 5). Recommendations received by FDA, which apply to all general-use x-ray imaging modalities, included making available pediatric protocols and control settings, targeted instructions and educational materials emphasizing pediatric dose reduction, quality assurance tools for facilities emphasizing radiation dose management, and dose information applicable to pediatric patients. Many of the recommendations from pediatric experts focused on expanding the flexibility or range of features already available on x-ray imaging devices, which may also improve adult imaging for non-standard applications.

At the March 2010 meeting, experts commented that many radiological devices are sold without the design features or labeling information that

would help users optimize benefit (clinically-usable images) in comparison to risk (radiation exposure) for pediatric imaging (Ref. 6). Imaging professionals can safely use existing equipment that may not have specific features or instructions for pediatric use by consulting recommendations provided by the Alliance for Radiation Safety in Pediatric Imaging (ARSPI) and other organizations. FDA has reviewed the recommendations from ARSPI and believes they are appropriate. Because of the special concerns about excessive exposure to radiation in children, FDA believes that new x-ray imaging devices should be demonstrated to be appropriate for pediatric use or use in pediatric populations should be cautioned against. The end user can then make more informed decisions about use of the device on pediatric patients. FDA has therefore published a draft guidance entitled ''Pediatric Information for X-ray Imaging Device Premarket Notifications'' and is holding this public meeting to solicit public comment on the draft guidance and broader radiation safety issues for use of x-ray imaging devices on pediatric populations (Ref. 7).

In addition to drafting guidance, FDA is also engaged in complementary outreach efforts aimed at providing imaging practitioners with tools to reduce dose to pediatric patients. The Center for Devices and Radiological Health and FDA's Critical Path Program funded two contracts awarded in 2010 and 2011 to the Alliance for Radiation Safety in Pediatric Imaging. The goal of the work is to develop improved training material and instructions for pediatric digital radiography (Ref. 8) and fluoroscopy (ongoing project). These materials will be publicly available as a resource to both imaging facilities and device manufacturers. FDA believes that engaging in such partnerships with professional organizations helps ensure that the end user perspective is incorporated into improved device features, instructions, and training.

In order to inform health care professionals and the public, FDA has also posted a new Web page on Pediatric X-ray Imaging (Ref. 9). More information on the benefits and risks of x-ray imaging, as well as radiation safety recommendations and resources specific to pediatric patients, can be found on this Web page.

II. Draft Guidance: Pediatric Information for X-Ray Imaging Device Premarket Notifications

Elsewhere in this issue of the **Federal Register**, FDA is announcing the availability of the draft guidance entitled ''Pediatric Information for X-ray Imaging Device Premarket Notifications.'' This draft guidance document provides industry and Agency staff with FDA's current thinking on information that should be provided in premarket notifications for x-ray imaging devices with indications for use in pediatric populations. The Agency intends for this guidance to minimize uncertainty during the premarket review process of 510(k)s for x-ray imaging devices for pediatric use, to encourage the inclusion of pediatric indications for use for x-ray imaging device premarket notifications, and to provide recommendations on information to support such indications. This draft guidance is not final nor is it in effect at this time.

The draft guidance provides as follows: ''Manufacturers seeking marketing clearance for a new x-ray imaging device with a pediatric indication should provide data supporting the safety and effectiveness of the device in pediatric populations. Manufacturers who seek marketing clearance only for general indications or do not submit adequate data to the FDA to support a pediatric indication for use for x-ray imaging devices where pediatric use is likely should label their x-ray imaging device with the statement *'CAUTION: Not for use on patients less than approximately [insert patient size (e.g., body part thickness or height and weight appropriate to your device)].'* as part of the IFU statement. This statement should also be prominently displayed on the device itself (*e.g.,* control panel). The statement should be revised depending on the size subgroups (see section 4 of the draft guidance) for which manufacturers submit data.'' (Ref. 10).

This draft guidance applies only to complete x-ray imaging devices that could be used on pediatric patients (*e.g.,* x-ray computed tomography, general and dental radiography, and diagnostic and interventional fluoroscopy devices). The guidance is intended to be used in conjunction with other guidance specific to particular x-ray imaging modalities.

III. Purpose and Scope of the Meeting

Before the draft guidance ''Pediatric Information for X-ray Imaging Device Premarket Notifications'' is finalized, FDA believes it is crucial to receive public input from both industry and x-ray imaging device users, particularly from those with pediatric expertise, on the overall effort and on a number of specific questions (see section IV of this document). In order to assist the public in providing targeted comments, the FDA will present general background information on the 510(k) clearance process, the role of guidance, and the FDA's approach to pediatric use of medical devices.

In addition to discussion of the guidance itself, another goal of this meeting is to help identify issues relevant to radiation safety in pediatric x-ray imaging that may benefit from standards development or further research. FDA recognizes that a one-day meeting cannot cover all the relevant issues; we are therefore soliciting ideas on how device manufacturers, professional organizations, and FDA can best follow up on the issues identified through a coordinated effort.

IV. Specific Questions for Discussion at the Public Meeting

In your submissions to the public docket and in oral presentations, please consider the following questions. FDA will also consider your comments on topics related to safe and effective use of x-ray imaging devices on pediatric populations that are not covered by the questions below or the draft guidance:

1. While radiation-induced cancer risk depends on a number of factors including the patient's age, patient size (not age) is a major factor in optimization of radiation exposure vs. image quality. Although CDRH has defined the ''pediatric population'' as including patients from birth to 21 years (Ref. 11), Section 4—''Pediatric population'' of the draft guidance divides the pediatric population into subgroups based on patient size rather than age. The intent of the draft guidance is to extend the range of testing and labeling information to small pediatric patients that may not be covered in adult size ranges. Please provide comments on how pediatric subgroups are covered in the guidance with respect to labeling information and testing data. Specifically:

a. In the suggested language for the example caution statement to appear in the labeling, FDA assumed that if a device is designed for a broad range of adults, it will be capable of imaging patients over about 50 kg in weight and 150 cm in height. In your experience, are most general-use x-ray imaging devices adequately designed for patients over this size? Is the overall wording of the suggested example caution statement appropriate? The example statement referred to in this question reads: ''*CAUTION: This device is not intended for use on patients less than approximately 50 kg (110 lb) in weight and 150 cm (59 in) in height; these height and weight measurements*

approximately correspond to that of an average 12 year old or a 5th percentile U.S. adult female [Ref. 12]. Use of equipment and exposure settings designed for adults of average size can result in excessive radiation exposure for a smaller patient. Studies have shown that pediatric patients may be more radiosensitive than adults (i.e. the cancer risk per unit dose of ionizing radiation is higher), and so unnecessary radiation exposure is of particular concern for pediatric patients [Ref. 13].''

b. The draft guidance states that patient thickness is a more appropriate metric than height and weight for describing populations and gives references to literature data for thickness or circumference. Which metric should be used in defining subgroups (*e.g.,* anteroposterior and transverse body diameter or circumference)? Is it appropriate to choose one body region (*e.g.,* chest or abdomen) to generally categorize population subgroups in terms of thickness or circumference?

c. For tests that require phantoms, how many different sized phantoms should be tested for a sponsor to demonstrate safe pediatric use? Would a large adult-sized phantom and a small pediatric-sized phantom be sufficient to demonstrate coverage of the entire range of patient sizes? (Currently the draft guidance recommends at a minimum a range of phantoms that represent birth-1 month, 1-year old, 5-year old, 12-year old, and adult sizes.)

d. For tests that do not involve phantoms, the document states ''that the range of settings and conditions for testing include those that would normally be used during pediatric imaging'' (see Section 9 of the draft guidance). Do you have suggestions on how this range should be covered? (*e.g.,* would it be acceptable to perform tests with settings matching those used only on the smallest and largest patients?)

2. In the 510(k) premarket review process, FDA relies on the concept of ''substantial equivalence'' to a predicate device to demonstrate safe and effective use. The submitter of a 510(k) must provide a statement of the intended use of the device. If the device has specific indications for use that are different from those of the predicate device, the 510(k) summary must contain an explanation as to why the differences do not affect the safety and effectiveness of the device when used as labeled (Ref. 14). Because many predicate x-ray imaging devices that are on the market do not have a specific indication for pediatric use, new x-ray imaging devices with a specific indication for pediatric use will have to demonstrate that they are as safe and effective as the predicate devices that are not indicated for pediatric use. Especially with regard to sections 9 (Laboratory Image Quality and Dose Assessment) and 10 (Clinical Image Quality Assessment) in the draft guidance, FDA has outstanding questions regarding how to demonstrate that an x-ray imaging device that has a specific indication for pediatric use is as safe and effective as an x-ray imaging device with only a general indication for use:

a. Can you think of a situation where phantom testing (objective image quality and dose assessment) alone would be insufficient to demonstrate safe and effective pediatric use and clinical data would be necessary?

b. In those cases, would it be acceptable to provide images of anthropomorphic phantoms instead of pediatric patients?

3. As currently written, the draft guidance document recommends that any performance characteristics expected to change based on the size of the object being imaged should be tested specifically for pediatric use. FDA requests help identifying what these tests are, *i.e.,* which device features are size-dependent? (Tube current modulation and/or automatic exposure control and data collection speed are examples.) Because this guidance document is intended to cover all x-ray imaging devices that could be used on pediatric patients, this question relates specifically to x-ray computed tomography, fluoroscopy, and general and dental radiography devices.

4. Table 3 in the Appendix of the draft guidance lists specific pediatric issues currently addressed by applicable standards. Establishing safe and effective use of x-ray imaging devices on pediatric populations may involve special design features, labeling (*e.g.* instructions for use) and training information, and performance tests. The guidance covers these topics generally, but each modality will have different issues. A variety of approaches for these topics exist in the literature, but in many cases it may be beneficial if the x-ray imaging community further developed prioritized, consensus recommendations. FDA participates in development of national and international standards. While FDA does not control the content of these standards, standards liaisons can make recommendations. Do you have specific recommendations for pediatric use issues that should be covered by standards for performance features, testing, or labeling?

V. References

The following references have been placed on display in the Division of Dockets Management (see **ADDRESSES**), and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday. (FDA has verified the Web site addresses, but we are not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.)

1. FDA White Paper, ''Initiative to Reduce Unnecessary Radiation Exposure from Medical Imaging,'' available at *http://www.fda.gov/RadiationEmittingProducts/RadiationSafety/RadiationDoseReduction/default.htm,* February 2010.
2. National Research Council of the National Academies, Committee to Assess Health Risks from Exposure to Low Levels of Ionizing Radiation, ''Health Risks from Exposure to Low Levels of Ionizing Radiation: BEIR VII Phase,'' *National Academy of Sciences* (National Academies Press, 2006).
3. For example, the following study found that non-pediatric focused emergency departments made up 89.4 percent of emergency department visits associated with CT (computed tomography) in children: Larson, D.B., et al., ''Rising Use of CT in Child Visits to the Emergency Department in the United States, 1995–2008,'' *Radiology,* 259(3), 793–801, 2011.
4. FDA Public Meeting: Device Improvements to Reduce Unnecessary Radiation Exposure from Medical Imaging, March 30–31, 2010, agenda and transcripts, available at *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/ucm201448.htm,* public docket submissions, available at *http://www.regulations.gov/#!docketDetail;rpp=10;po=0;D=FDA-2010-N-0080.*
5. The **Federal Register** notice (75 FR 8375–8377) lists all the questions asked at the meeting, February 24, 2010, available at *http://edocket.access.gpo.gov/2010/2010-3674.htm.*
6. The principles of radiation protection in medicine, including ''optimization'' are described in ''Radiological Protection in Medicine, International Commission on Radiological Protection,'' *Annals of the ICRP,* 37(6), 2007. Optimization of radiation exposure for x-ray imaging means the following: Examinations should use techniques that are adjusted to administer the lowest radiation dose that yields an image quality adequate for diagnosis or intervention (*i.e.,* radiation doses should be ''As Low as Reasonably Achievable'' (ALARA)).
7. The FDA draft guidance entitled ''Pediatric Information for X-ray Imaging Device Premarket Notifications,'' is available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/ucm300850.htm.*
8. The Image Gently/FDA Digital Radiography Safety Checklist and accompanying documents are available at *http://www.pedrad.org/associations/*

5364/ig/index.cfm?page=775.
9. The FDA Web page for information on Pediatric X-ray Imaging, is available at *http://www.fda.gov/RadiationEmittingProducts/RadiationEmittingProductsandProcedures/MedicalImaging/ucm298899.htm.*
10. Under section 513(i)(1)(E)(i) of the Federal Food, Drug, and Cosmetic Act, when determining that a device is substantially equivalent to a predicate device, FDA may require limitations in device labeling about off-label use of the device when ''there is a reasonable likelihood'' of such use, and if ''such use could cause harm.'' Such determinations are made on a case by case basis and other requirements must be met, including a consultation between FDA and the 510(k) submitter, before such limitations can be required. FDA's policy on when a device may be found ''substantially equivalent with limitations'' is discussed further in the guidance entitled ''Determination of Intended Use for 510(k) Devices; Guidance for CDRH Staff (Update to K98–1),'' available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/ucm082162.htm,* December 3, 2003.
11. The FDA guidance entitled ''Premarket Assessment of Pediatric Medical Devices,'' is available at *http://www.fda.gov/downloads/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/ucm089742.pdf,* May 14, 2004.
12. McDowell, M.A., C.D. Fryar, C.L. Ogden, and K. M. Flegal, ''Anthropomorphic Reference Data for Children and Adults: United States, 2003–2006,'' *National Health Statistics Reports,* vol. 10, 1–48, available at *http://www.cdc.gov/nchs/data/nhsr/nhsr010.pdf,* October 22, 2008.
13. National Research Council of the National Academies, Committee to Assess Health Risks from Exposure to Low Levels of Ionizing Radiation, ''Health Risks from Exposure to Low Levels of Ionizing Radiation: BEIR VII Phase,'' *National Academy of Sciences* (National Academies Press), is available at *http://www.nap.edu/openbook.php?isbn=030909156X,* 2006.
14. See 21 CFR 807.92.

Dated: May 4, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–11262 Filed 5–9–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Proposed Information Collection; Request for Public Comment: Indian Health Service Loan Repayment Program (LRP)

AGENCY: Indian Health Service, HHS.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, which requires 30 days for public comment on proposed information collection projects, the Indian Health Service (IHS) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection project was previously published in the **Federal Register** (77 FR 11558) on February 27, 2012 and allowed 60 days for public comment. No public comment was received in response to the notice. The purpose of this notice is to allow 30 days for public comment to be submitted directly to OMB.

Proposed Collection: Title: 0917–0014, ''Indian Health Service Loan Repayment Program.'' *Type of Information Collection Request:* Revision of currently approved information collection, 0917–0014, ''Indian Health Service Loan Repayment Program.'' The LRP application has been revised so that it is now available in an electronically fillable and fileable format. *Form(s):* The IHS LRP Information Booklet contains the instructions and the application formats. *Need and Use of Information Collection:* The IHS LRP identifies health professionals with pre-existing financial obligations for education expenses that meet program criteria and who are qualified and willing to serve at, often remote, IHS health care facilities. Under the program, eligible health professionals sign a contract through which the IHS agrees to repay part or all of their indebtedness for professional training time in IHS health care facilities. This program is necessary to augment the critically low health professional staff at IHS health care facilities.

Any health professional wishing to have their health education loans repaid may apply to the IHS LRP. A two-year contract obligation is signed by both parties, and the individual agrees to work at an IHS location and provide health services to American Indian and Alaska Native individuals.

The information collected via the on-line application from individuals is analyzed and a score is given to each applicant. This score will determine which applicants will be awarded each fiscal year. The administrative scoring system assigns a score to the geographic location according to vacancy rates for that fiscal year and also considers whether the location is in an isolated area. When an applicant accepts employment at a location, they in turn ''pick-up'' the score of that location. *Affected Public:* Individuals and households. *Type of Respondents:* Individuals.

The table below provides: Types of data collection instruments, Estimated number of respondents, Number of responses per respondent, Annual number of responses, Average burden hour per response, and Total annual burden hour(s).

ESTIMATED BURDEN HOURS

Data collection instrument(s)	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual responses (in hours)
LRP Application	510	1	1.5	765

There are no Capital Costs, Operating Costs, and/or Maintenance Costs to report.

Requests for Comments: Your comments and/or suggestions are invited on one or more of the following points:

(a) Whether the information collection activity is necessary to carry out an agency function;

(b) Whether the agency processes the information collected in a useful and timely fashion;

(c) The accuracy of public burden estimate (the estimated amount of time needed for individual respondents to provide the requested information);

(d) Whether the methodology and assumptions used to determine the estimates are logical;

(e) Ways to enhance the quality, utility, and clarity of the information being collected; and

(f) How the newly created online application assists the applicant efficiently and effectively.

Direct your comments to OMB: Send your comments and suggestions regarding the proposed information collection contained in this notice, especially regarding the estimated public burden and associated response time to: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for IHS.

To request more information on the proposed collection, or to obtain a copy of the data collection instruments and/or instruction(s) contact: Ms. Tamara Clay, IHS Reports Clearance Officer, 801 Thompson Avenue, TMP, Suite 450–30, Rockville, MD 20852–1627; call non-toll free (301) 443–4750; send via facsimile to (301) 443–2316; or send your email requests, comments, and return address to: *Tamara.Clay@ihs.gov. Comment Due Date:* June 11, 2012. Your comments regarding this information collection are best assured of having full effect if received within 30 days of the date of this publication.

Dated: May 4, 2012.

Yvette Roubideaux,

Director, Indian Health Service.

[FR Doc. 2012–11284 Filed 5–9–12; 8:45 am]

BILLING CODE 4165–16–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Topics in Development, Signaling, and Disease.

Date: May 15, 2012.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Cathy J. Wedeen, Ph.D., Scientific Review Officer, Division of Scientific Review, OD, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01–G, Bethesda, MD 20892, 301–435–6878, *wedeenc@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: May 4, 2012.

Anna P. Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–11347 Filed 5–9–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel Congenital Defects Topics.

Date: May 18, 2012.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Cathy J. Wedeen, Ph.D., Scientific Review Officer, Division of Scientific Review, OD, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01–G, Bethesda, MD 20892, 301–435–6878, *wedeenc@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: May 4, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–11332 Filed 5–9–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review, Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Integrative Neuroscience.

Date: May 30–31, 2012.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Edwin C Clayton, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, 301–408–9041, *claytone@csr.nih.gov.*

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group; Synthetic and Biological Chemistry B Study Section.

Date: May 30–31, 2012.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: InterContinental Chicago Hotel, 505 North Michigan Avenue, Chicago, IL 60611.

Contact Person: Kathryn M Koeller, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4166, MSC 7806, Bethesda, MD 20892, 301–435–2681, *koellerk@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Neurobiology of Sensory Information Processing.

Date: May 31, 2012.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Wei-Qin Zhao, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5181, MSC 7846, Bethesda, MD 20892–7846, 301–435–1236, *zhaow@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Mechanisms of Sensory, Perceptual, and Cognitive Processes Study Section.

Date: June 4–5, 2012.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Maggiano's Little Italy, 5333 Wisconsin Avenue NW., Washington, DC 20015.

Contact Person: Kirk Thompson, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5184, MSC 7844, Bethesda, MD 20892, 301–435–1242, *kgt@mail.nih.gov.*

Name of Committee: Population Sciences and Epidemiology Integrated Review Group; Behavioral Genetics and Epidemiology Study Section.

Date: June 4, 2012.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street NW., Washington, DC 20036.

Contact Person: George Vogler, Ph.D., Scientific Review Officer, PSE IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3140, Bethesda, MD 20892, 301–435–0694.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–11–259: Pregnancy in Women with Disabilities.

Date: June 4, 2012.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Priscah Mujuru, RN, MPH, DRPH, COHNS, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3139, MSC 7770, Bethesda, MD 20892, 301–594–6594, *mujurup@mail.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Auditory System Study Section.

Date: June 5–6, 2012.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Lynn E Luethke, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5166, MSC 7844, Bethesda, MD 20892, (301) 806–3323, *luethkel@csr.nih.gov.*

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group; Macromolecular Structure and Function D Study Section.

Date: June 5, 2012.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street NW., Washington, DC 20037.

Contact Person: James W. Mack, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4154, MSC 7806, Bethesda, MD 20892, (301) 435–2037, *mackj2@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Mentored Research Scientist Development Award in Metabolomics.

Date: June 5, 2012.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Allen Richon, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6184, MSC 7892, Bethesda, MD 20892, 301–435–1024, *allen.richon@nih.hhs.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Bioanalytical Technologies.

Date: June 5, 2012.

Time: 2:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Sergei Ruvinov, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4158, MSC 7806, Bethesda, MD 20892, 301–435–1180, *ruvinser@csr.nih.gov.*

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group; Arthritis, Connective Tissue and Skin Study Section.

Date: June 6–7, 2012.

Time: 8:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: BWI Airport Marriott, 1743 West Nursery Road, Linthicum, MD 21090.

Contact Person: Aftab A Ansari, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4108, MSC 7814, Bethesda, MD 20892, 301–237–9931, *ansaria@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Development of Courses or Workshops in Metabolomics (R25).

Date: June 6, 2012.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Allen Richon, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6184, MSC 7892, Bethesda, MD 20892, 301–435–1024, *allen.richon@nih.hhs.gov.*

Name of Committee: Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group; Clinical Molecular Imaging and Probe Development.

Date: June 6–7, 2012.

Time: 7:00 p.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Miami, 400 South East Second Avenue, Miami, FL 33131.

Contact Person: Eileen W Bradley, DSC, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5100, MSC 7854, Bethesda, MD 20892, (301) 435–1179, *bradleye@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 4, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–11323 Filed 5–9–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material,

and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Initial Review Group Interventions Committee for Disorders Involving Children and Their Families.

Date: June 4, 2012.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: David I. Sommers, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, 6001 Executive Blvd., Room 6154, MSC 9609, Bethesda, MD 20892–9606, 301–443–7861, *dsommers@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Initial Review Group Interventions Committee for Adult Disorders.

Date: June 7–8, 2012.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: David I. Sommers, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, 6001 Executive Blvd., Room 6154, MSC 9606, Bethesda, MD 20892–9606, 301–443–7861, *dsommers@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Initial Review Group Mental Health Services Research Committee.

Date: June 19, 2012.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Ave. NW., Washington, DC 20037.

Contact Person: Aileen Schulte, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6136, MSC 9606, Bethesda, MD 20852, 301–443–1225, *aschulte@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: May 4, 2012.

Anna P. Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–11322 Filed 5–9–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Arthritis and Musculoskeletal and Skin Diseases Initial Review Group;Arthritis and Musculoskeletal and Skin Diseases Special Grants Review Committee.

Date: June 11–12, 2012.

Time: 7:30 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Helen Lin, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute of Arthritis, Musculoskeletal and Skin Diseases, National Institutes of Health, 6701 Democracy Blvd., Suite 800, Bethesda, MD 20892, 301–594–4952, *linh1@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: May 3, 2012.

Anna P. Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–11315 Filed 5–9–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group; Risk, Prevention and Intervention for Addictions Study Section.

Date: June 7–8, 2012.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Sir Francis Drake Hotel, 450 Powell Street at Sutter, San Francisco, CA 94102.

Contact Person: Gabriel B Fosu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3108, MSC 7808, Bethesda, MD 20892, (301) 435–3562, *fosug@csr.nih.gov.*

Name of Committee: Cell Biology Integrated Review Group; Membrane Biology and Protein Processing Study Section.

Date: June 7–8, 2012.

Time: 8:00 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Nikko San Francisco, 222 Mason Street, San Francisco, CA 94102.

Contact Person: Janet M. Larkin, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5142, MSC 7840, Bethesda, MD 20892, 301–806–2765, *larkinja@csr.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Brain Injury and Neurovascular Pathologies Study Section.

Date: June 7–8, 2012.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: W Chicago Lakeshore, 644 N. Lakeshore Drive, Chicago, IL 60611.

Contact Person: Alexander Yakovlev, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5206, MSC 7846, Bethesda, MD 20892, 301–435–1254, *yakovleva@csr.nih.gov.*

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group; Nanotechnology Study Section.

Date: June 7–8, 2012.

Time: 8:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance, Washington, DC Hotel, 999 Ninth Street NW., Washington, DC 20001–4427.

Contact Person: James J. Li, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5148, MSC 7849, Bethesda, MD 20892, 301–806–8065, *lijames@csr.nih.gov.*

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group; Genomics, Computational Biology and Technology Study Section.

Date: June 7–8, 2012.

Time: 8:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Avenue Crowne Plaza Chicago, 160 E. Huron Street, Chicago, IL 60611.

Contact Person: Barbara J. Thomas, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2218, MSC 7890, Bethesda, MD 20892, 301–435–0603, *bthomas@csr.nih.gov.*

Name of Committee: Surgical Sciences, Biomedical Imaging and Bioengineering Integrated, Review Group; Medical Imaging Study Section.

Date: June 7–8, 2012.

Time: 7:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Miami, 400 SE. 2nd Street, Miami, FL 33131.

Contact Person: Xiang-Ning Li, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5112, MSC 7854, Bethesda, MD 20892, 301–435–1744, *lixiang@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 3, 2012.

Anna P. Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–11313 Filed 5–9–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Advisory Council for Human Genome Research, May 21, 2012, 8:30 a.m. to May 22, 2012, 5:00 p.m., National Institutes of Health, 5635 Fishers Lane, Terrace Level Conference Room, Rockville, MD, 20892 which was published in the **Federal Register** on January 19, 2012, 77FR2735.

The agenda has changed for May 21. Closed session 8:30 a.m. to 10:00 a.m., Open session 10:15 a.m. to 3:00 p.m., and Closed session 3:00 p.m to 5:00 p.m. The meeting is partially Closed to the public.

Dated: May 4, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–11312 Filed 5–9–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; 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 Sleep Disorders Research Advisory Board.

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 section 552b(c)(6), Title 5 U.S.C., as amended because the premature disclosure of other and the discussions would likely to significantly frustrate implementation of recommendations.

Name of Committee: Sleep Disorders Research Advisory Board.

Date: May 30–31, 2012.

Open: May 30, 2012, 8:00 a.m. to 11:30 a.m.

Agenda: To discuss and provide updates on sleep and circadian research developments and the NIH sleep research plan. Members of the public unable to attend the meeting in person may hear the public portion of all discussions by dialing 800–779–2692, access code 3088143#.

Place: National Institutes of Health, 6701 Rockledge Drive, 9th Floor Conference Facility, Bethesda, MD 20892.

Closed: May 30, 2012, 11:30 a.m. to 12:00 p.m.

Agenda: To review and evaluate to nominate and select the next member to serve as Chair.

Place: National Institutes of Health, 6701 Rockledge Drive, 9th Floor Conference Facility, Bethesda, MD 20892.

Open: May 30, 2012, 12:30 p.m. to 5:00 p.m.

Agenda: To discuss and provide updates on sleep and circadian research developments and the NIH sleep research plan.

Place: National Institutes of Health, 6701 Rockledge Drive, 9th Floor Conference Facility, Bethesda, MD 20892.

Open: May 31, 2012, 8:00 a.m. to 12:00 p.m.

Agenda: To discuss and provide updates on sleep and circadian research developments and the NIH sleep research plan.

Place: National Institutes of Health, 6701 Rockledge Drive, 9th Floor Conference Facility, Bethesda, MD 20892.

Contact Person: Michael J. Twery, Ph.D., Director, National Center on Sleep Disorders Research, Division of Lung Diseases, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Suite 10038, Bethesda, MD 20892–7952, 301–435–0199, *twerym@nhlbi.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *www.nhlbi.nih.gov/meetings/index.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: May 4, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–11310 Filed 5–9–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group; Pediatrics Subcommittee

Date: June 14, 2012.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda, (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Rita Anand, Ph.D., Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, 301–496–1487, *anandr@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: May 4, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–11303 Filed 5–9–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2012–0231]

Information Collection Request to Office of Management and Budget

AGENCY: Coast Guard, DHS.

ACTION: Sixty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625–0046, Certificates of Financial Responsibility under the Oil Pollution Act of 1990. Our ICR describes the information we seek to collect from the public. Before submitting this ICR to OIRA, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before July 9, 2012.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2012–0231] to the Docket Management Facility (DMF) at the U.S. Department of Transportation (DOT). To avoid duplicate submissions, please use only one of the following means:

(1) *Online: http://www.regulations.gov.*

(2) *Mail:* DMF (M–30), DOT, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(3) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(4) *Fax:* 202–493–2251: To ensure your comments are received in a timely manner, mark the fax, to attention Desk Officer for the Coast Guard.

The DMF maintains the public docket for this Notice. Comments and material received from the public, as well as documents mentioned in this Notice as being available in the docket, will become part of this docket and will be available for inspection or copying at room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find the docket on the Internet at *http://www.regulations.gov.*

A copy of the ICR is available through the docket on the Internet at *http://www.regulations.gov.* Additionally, copies are available from: COMMANDANT (CG–611), ATTN PAPERWORK REDUCTION ACT MANAGER, US COAST GUARD, 2100 2ND ST SW STOP 7101, WASHINGTON, DC 20593–7101.

FOR FURTHER INFORMATION CONTACT: Contact Ms. Kenlinishia Tyler, Office of Information Management, telephone 202–475–3652, or fax 202–475–3929, for questions on these documents. Contact Ms. Renee V. Wright, Program Manager, Docket Operations, 202–366–9826, for questions on the docket.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection. The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. In response to your comments, we may revise this ICR or decide not to seek an extension of approval for the Collection. We will consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, [USCG–2012–0231, and must be received by July 9, 2012. We will post all comments received, without change, to *http://www.regulations.gov.* They will include any personal information you provide. We have an agreement with DOT to use their DMF. Please see the ''Privacy Act'' paragraph below.

Submitting comments: If you submit a comment, please include the docket number [USCG–2012–0231], indicate the specific section of the document to which each comment applies, providing a reason for each comment. You may submit your comments and material online (*via http://www.regulations.gov*), by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the DMF. We recommend you include your name, mailing address, an email address, or other contact information in the body of your document so that we can contact you if we have questions regarding your submission.

You may submit your comments and material by electronic means, mail, fax, or delivery to the DMF at the address under **ADDRESSES**; but please submit them by only one means. To submit your comment online, go to *http://www.regulations.gov,* and type ''USCG–2012–0231'' in the ''Keyword'' box. If you submit your comments by mail or delivery, submit them in an unbound format, no larger than 8–½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We

will consider all comments and material received during the comment period and will address them accordingly.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this Notice as being available in the docket, go to *http://www.regulations.gov,* click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''USCG–2012–0231'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit the DMF in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act

Anyone can search the electronic form of comments received in dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act statement regarding Coast Guard public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Information Collection Request

Title: Certificates of Financial Responsibility under the Oil Pollution Act of 1990.

OMB Control Number: 1625–0046.

Summary: The information collection requirements described in this supporting statement are necessary to provide evidence of a respondent's ability to pay for removal costs and damages associated with discharges or substantial threats of discharges of hazardous material or oil into the navigable waters, adjoining shorelines or the exclusive economic zone of the United States. The requirements are imposed generally on operators and financial guarantors of vessels over 300 gross tons.

Need: If the requested information is not collected, the Coast Guard will be unable to comply with the provisions of OPA and CERCLA to ensure that responsible parties have the ability to pay for cleanup costs and damages when there is an oil or hazardous material spill or threat of a spill.

Legal authority: Section 1002 of OPA 90, as limited by section 1004(a), or section 107(a)1) of CERCLA.

Forms: CG–5585, CG–5586–1, –2, –3, –4.

Respondents: Vessel operators and approved insurers.

Frequency: On occasion.

Burden Estimate: The estimated burden remains 3,400 hours a year.

Dated: May 3, 2012.

R.E. Day,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. 2012–11238 Filed 5–9–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I–924; Extension of an Existing Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review: Application for Regional Center under the Immigrant Investor Pilot Program.

The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act (PRA) of 1995. This information collection notice is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for 60 days until July 9, 2012.

During this 60-day period, USCIS will be evaluating whether to revise the Application for Regional Center Under the Immigrant Investor Pilot Program, Form I–924. Should USCIS decide to revise the Application for Regional Center Under the Immigrant Investor Pilot Program, Form I–924, we will advise the public when we publish the 30-day notice in the **Federal Register** in accordance with the PRA. The public will then have 30 days to comment on any revisions to the Application for Regional Center Under the Immigrant Investor Pilot Program, Form I–924.

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to the DHS, USCIS, Chief, Regulatory Coordination Division, Office of Policy and Strategy, 20 Massachusetts Avenue NW., Washington, DC 20529–2020. Comments may also be submitted to DHS via facsimile to 202–272–8518 or via email at *USCISFRComment@dhs.gov.* When submitting comments by email, please add the OMB Control Number 1615–0061 in the subject box.

Note: The address listed in this notice should only be used to submit comments concerning this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check ''My Case Status'' online at: *https://egov.uscis.gov/cris/Dashboard.do,* or call the USCIS National Customer Service Center at 1–800–375–5283.

Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

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

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of an existing information collection.

(2) *Title of the Form/Collection:* Application for Regional Center Under the Immigrant Investor Pilot Program.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–924; U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or households, for-profit organizations, and not-for-profit organizations.* This collection will be used by individuals, for-profit organizations, and not-for-profit organizations to file a request for USCIS approval and designation as a regional center on behalf of an entity under the Immigrant Investor Pilot Program.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 278 responses filing Form I–924 at 40 hours per response; and 192 responses filing Form I–924A at 3 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 11,696 annual burden hours.

If you have additional comments, suggestions, or need a copy of the information collection instrument, please visit: *http://www.regulations.gov.*

We may also be contacted at: USCIS, Regulatory Coordination Division, Office of Policy and Strategy, 20 Massachusetts Avenue NW., Washington, DC 20529–2020, Telephone number 202–272–8377.

Dated: May 7, 2012.

Sunday Aigbe,

Acting Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2012–11318 Filed 5–9–12; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I–687; Extension of an Existing Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review; Application for Status as Temporary Resident under Section 245A of the INA, Form I–687.

The Department Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act (PRA) of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for 60 days until July 9, 2012.

During this 60-day period, USCIS will be evaluating whether to revise the Form I–687. Should USCIS decide to revise Form I–687, we will advise the public when we publish the 30-day notice in the **Federal Register** in accordance with the PRA. The public will then have 30 days to comment on any revisions to the Form I–687.

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 DHS, USCIS, Chief, Regulatory Coordination Division, Office of Policy and Strategy, 20 Massachusetts Avenue NW., Washington, DC 20529–2210. Comments may also be submitted to DHS via facsimile to 202–272–8518 or via email at *USCISFRComment@dhs.gov.* When submitting comments by email, please make sure to add OMB Control No. 1615–0090 in the subject box.

Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

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

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of an existing information collection.

(2) *Title of the Form/Collection:* Application for Status as Temporary Resident under Section 245A of the INA.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–687; 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. The collection of information on Form I–687 is required to verify the applicant's eligibility for temporary status, and if the applicant is deemed eligible, to grant the applicant the benefit sought.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 30 responses at 1 hour and 10 minutes (1.166 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 35 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 Coordination Division, Office of Policy and Strategy, 20 Massachusetts Avenue NW., Washington, DC 20529–2210, Telephone number 202–272–8377.

Dated: May 7, 2012.

Sunday Aigbe,

Acting Chief, Regulatory Coordination Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2012–11319 Filed 5–9–12; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form N–648, Revision of an Existing Information Collection Request; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review: Form N–648, Medical Certification for Disability Exceptions.

The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request for review and clearance in accordance with the Paperwork Reduction Act (PRA) of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for 60 days until July 9, 2012.

During this 60-day period, USCIS will be evaluating whether to revise the Form N–648. Should USCIS decide to revise Form N–648, we will advise the public when we publish the 30-day notice in the **Federal Register** in accordance with the PRA. The public will then have 30 days to comment on any revision to the Form N–648.

Written comments and suggestions regarding items contained in this notice, especially with regard to the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Coordination Division, Office of Policy

and Strategy, 20 Massachusetts Avenue NW., Washington, DC 20529–2210. Comments may also be submitted to DHS via facsimile to 202–272–8518, or via email at *USCISFRComment@dhs.gov.* When submitting comments by email, please make sure to add the OMB Control Number 1615–0060 in the subject box.

Note: The address listed in this notice should only be used to submit comments concerning this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check ''My Case Status'' online at: *https://egov.uscis.gov/cris/Dashboard.do,* or call the USCIS National Customer Service Center at 1–800–375–5283.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the 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 collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of an existing information collection.

(2) *Title of the Form/Collection:* Medical Certification for Disability Exceptions.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form N–648. 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 uses Form N–648 to substantiate an applicant's claim for an exception to the requirements of section 312 (a) 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:* 13,801 responses at 2 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 27,602 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 Coordination Division, Office of Policy and Strategy, 20 Massachusetts Avenue NW., Washington, DC 20529–2210, Telephone number 202–272–8377.

Dated: May 7, 2012.

Sunday Aigbe,

Acting Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2012–11321 Filed 5–9–12; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5415–FA–25]

Announcement of Funding Awards; Choice Neighborhoods Grant Program for Fiscal Years (FY) 2010 and 2011

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the FY2010 and FY2011 Notice of Funding Availability (NOFA) for the Choice Neighborhoods Grant Program. This announcement contains the consolidated names and addresses of award recipients under the Choice Neighborhoods Grant Program.

FOR FURTHER INFORMATION CONTACT: Caroline Clayton, Office of Public Housing Investments, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 4130, Washington, DC 20410, telephone 202–401–8812. Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: Building upon the successes achieved and the lessons learned from the HOPE VI program, the Choice Neighborhoods Program employs a comprehensive approach to community development centered on housing transformation. The program aims to transform neighborhoods of poverty into viable mixed-income neighborhoods with access to economic opportunities by revitalizing severely distressed public and assisted housing and investing and leveraging investments in well-functioning services, effective schools and education programs, public assets, public transportation, and improved access to jobs. Choice Neighborhoods grants primarily funds the transformation of public and/or HUD-assisted housing developments through preservation, rehabilitation, and management improvements as well as demolition and new construction. In addition, these funds can be used on a limited basis (and combined with other funding) for improvements to the surrounding community, public services, facilities, assets and supportive services. Choice Neighborhoods grant funds are intended to catalyze other investments that will be directed toward necessary community improvements. For FY2010 and FY2011, HUD awarded two types of grants for the Choice Neighborhoods Initiative: Planning Grants and Implementation Grants.

(1) Planning Grants enable those communities that are not yet able to fully undertake a successful neighborhood transformation to build the capacity to do so, with the Federal government supporting their endeavors and incentivizing local support. The Planning Grants enable more communities to create a rigorously-developed plan and build support necessary for neighborhood transformation to be successful.

(2) Implementation Grants provide a significant amount of Federal support to those communities that have undergone a comprehensive local planning process and are now moving forward with their ''Transformation Plan'' to redevelop the neighborhood.

The FY2010 Choice Neighborhoods Planning Grant awards totaled $4,000,000, and 17 applicants were selected for funding in a competition, the results of which were announced on March 18, 2011. At that time, and in addition to the applicant and Congressional notification processes, the grantees were posted to the HUD Web site at: *http://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2011/HUDNo.11–032* and *http://portal.hud.gov/*

hudportal/HUD?src=/program_offices/public_indian_housing/programs/ph/cn/fy10funding. Applications were scored and selected for funding based on the selection criteria in the FY2010 Choice Neighborhoods Round 1 NOFA.

The FY2011 Choice Neighborhoods Planning Grant awards totaled $3,600,000, and 13 applicants were selected for funding in a competition, the results of which were announced on January 10, 2012. At that time, and in addition to the applicant and Congressional notification processes, the grantees were posted to the HUD Web site at: *http://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2012/HUDNo.12-003* and *http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/ph/cn/planninggrants*. Applications were scored and selected for funding based on the selection criteria in the FY2011 Choice Neighborhoods Planning Grant NOFA.

The FY2010 Choice Neighborhoods Implementation Grant awards totaled $122,270,000, which included funds from both the FY2010 and FY2011 Choice Neighborhoods appropriation. The FY2010 Choice Neighborhoods appropriation only allowed for the funding of three applications submitted in response to the FY2010 NOFA. In addition to the FY2010 Choice Neighborhoods appropriation, HUD used the FY2011 Choice Neighborhoods appropriation to fund two additional FY2010 applicants due to the need to award the FY2011 appropriation to communities as soon as possible, the importance of which was heightened by the late date of the FY2011 appropriation. The results of HUD's Choice Neighborhoods Implementation FY2010 selections were announced on August 31, 2011. At that time, and in addition to the applicant and Congressional notification processes, five grantees and the amount of each award was posted to the HUD Web site at: *http://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2011/HUDNo.11–181* and *http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/ph/cn/fy10funding*. Applications were scored and selected for funding based on the selection criteria in the FY2010 Choice Neighborhoods Round 1 and Round 2 NOFAs.

In accordance with Section 102 (a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing the names, addresses, and amounts of the Choice Neighborhoods awards made under these competitions in Appendix A to this document.

Dated: May 3, 2012.

Sandra B. Henriquez,

Assistant Secretary for Public and Indian Housing.

Appendix A

FY2010 Choice neighborhoods planning, grantee name and contact information	Amount funded	Project funded
Buffalo Municipal Housing Authority, 300 Perry Street, Buffalo, NY 14204–2270.	$250,000	Commodore Perry Homes and Woodson Gardens; Commodore Perry Homes neighborhood.
Community Action Project of Tulsa County, Inc., 4606 S. Garnett, Suite 100, Tulsa, OK 74146–5216.	250,000	Brightwater Apartment Complex; Eugene Field neighborhood.
Housing Authority of Kansas City, Missouri, 301 East Armour Blvd., Suite 200, Kansas City, MO 64111–1254.	250,000	Chouteau Courts; Paseo Gateway neighborhood.
Housing Authority of the City of Albany, 521 Pine Avenue, Albany, GA 31701–2401.	250,000	McIntosh Homes; West Central Albany neighborhood.
Housing Authority of the City of Atlanta, 230 John Wesley Dobbs Avenue, Atlanta, GA 30303–2421.	250,000	University Homes; Atlanta University Center/Westside of Atlanta neighborhood.
Housing Authority of the City of Norwalk, 24½ Monroe Street, Norwalk, CT 06856–0508.	250,000	Washington Village; South Norwalk neighborhood.
Housing Authority of the City of Salisbury, NC, 200 S. Martin Luther King Jr. Ave., Salisbury, NC 28145–0159.	170,000	Civic Park Apartments; Westend neighborhood.
Housing Authority of the City of Wilmington, NC, 1524 South 16th Street, Wilmington, NC 28401–6426.	200,000	Hillcrest; Southside neighborhood.
Jackson Housing Authority, 125 Preston Street, Jackson, TN 38301–4888.	167,000	Allenton Heights; Allenton Heights neighborhood.
Jersey City Housing Authority, 400 U.S. Highway #1, Jersey City, NJ 07306–3123.	250,000	Montgomery Gardens; McGinley Square/Montgomery Corridor neighborhood.
Jubilee Baltimore, Inc., 1228 N. Calvert Street, Baltimore, MD 21202–3909.	213,000	Pedestal Gardens; Central West Baltimore neighborhood.
Memphis Housing Authority, 700 Adams Avenue, Memphis, TN 38105–5029.	250,000	Foote Homes; Vance Avenue neighborhood.
Mt. Vernon Manor, Inc., 3311 Wallace Street, Philadelphia, PA 19104–2047.	250,000	Mt. Vernon Manor Apartments; Mantua neighborhood.
Norfolk Redevelopment and Housing Authority, 201 Granby Street, Suite 401, Norfolk, VA 23510–1816.	250,000	Tidewater Park Gardens; Expanded St. Paul's Area neighborhood.
Northwest Louisiana Council of Governments, 401 Market Street, Shreveport, LA 71101–3280.	250,000	Galilee Majestic Arms and Naomi D. Jackson Heights; Allendale and Ledbetter Heights neighborhood.
Providence Housing Authority, 100 Broad Street, Providence, RI 02903–4145.	250,000	Manton Heights; Olneyville neighborhood.
San Antonio Housing Authority, 818 S. Flores, San Antonio, TX 78204–1430.	250,000	Wheatley Courts; Eastside neighborhood.

FY2010/2011 Choice neighborhoods implementation, grantee name and contact information	Amount funded	Project funded
City of Boston, 26 Court Street, 11th Floor, Boston, MA 02108–2501.	$20,500,000	Woodledge/Morrant Bay; Dorchester neighborhood.

FY2010/2011 Choice neighborhoods implementation, grantee name and contact information	Amount funded	Project funded
Housing Authority of New Orleans 4100 Touro Street, New Orleans, LA 70122–3143.	30,500,000	Iberville Housing Development; Iberville/Treme neighborhood.
Housing Authority of the City of Seattle, 120 6th Avenue North, Seattle, WA 98109.	10,270,000	Yesler Terrace; Yesler neighborhood.
McCormack Baron Salazar, Inc. (project in San Francisco, CA), 720 Olive Street, Suite 2500, St. Louis, MO 63101–2313.	30,500,000	Alice Griffith; Eastern Bayview neighborhood.
Preservation of Affordable Housing, Inc. (project in Chicago, IL), 40 Court Street, Suite 700, Boston, MA 02108–2202.	30,500,000	Grove Parc Plaza Apartments; Woodlawn neighborhood.

FY2011 Choice neighborhoods planning, grantee name and contact information	Amount funded	Project funded
Cincinnati Metropolitan Housing Authority, 16 W. Central Parkway, Cincinnati, OH 45202–7210.	$201,844	English Woods; Fairmount neighborhood.
City of Springfield, 36 Court Street, Springfield, MA 01103–1699.	300,000	Marble Street Apartments, Concord Heights, and Hollywood Apartments I & II; South End neighborhood.
Columbus Metropolitan Housing Authority, 880 E. 11th Avenue, Columbus, OH 43211–2771.	300,000	Poindexter Village; Near East Side neighborhood.
Cuyahoga Metropolitan Housing Authority, 8120 Kinsman Road, Cleveland, OH 44104–4310.	300,000	Cedar Extension; Central Choice neighborhood.
District of Columbia Housing Authority, 1133 North Capitol Street NE., Washington, DC 20002–7599.	300,000	Kenilworth Courts and Kenilworth Parkside Resident Management Corporation units; Parkside-Kenilworth neighorhood.
Housing Authority of Savannah, 1407 Wheaton Street, Savannah, GA 31404–1730.	300,000	Robert Hitch Village and Fred Wessels Homes; East Savannah Gateway neighborhood.
Housing Authority of the City of Little Rock, 100 South Arch Street, Little Rock, AR 72201–2302.	300,000	Sunset Terrace and Elm Street; Southeast of Downtown neighborhood.
Housing Authority of the City of Meridian, 2425 E Street, Meridian, MS 39302–0870.	242,500	George M. Reese Court; East End neighborhood.
Housing Authority of the City of Wilson, P.O. Box 185, Wilson, NC 27893–4130.	200,000	Whitfield Homes; Center City neighborhood.
Housing Authority of the County of Sacramento, 801 12th Street, Sacramento, CA 95814–2947.	300,000	Twin Rivers; River District-Railyards neighborhood.
Opa-locka Community Development Corporation, 490 Opa-locka Boulevard, Suite 20, Opa-locka, FL 33054–3563.	300,000	The Gardens; Nile Gardens neighborhood.
Rockford Housing Authority, 223 S. Winnebago Street, Rockford, IL 61102–9904.	300,000	Fairgrounds Valley; Fairgrounds/Ellis Heights neighborhood.
Suffolk Redevelopment and Housing Authority, 530 E. Pinner Street, Suffolk, VA 23434–3023.	255,656	Parker Riddick and Cypress Manor; East Washington Street neighborhood.

[FR Doc. 2012–11305 Filed 5–9–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Renewal of Agency Information Collection for the Tribal Reassumption of Jurisdiction Over Child Custody Proceedings

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Bureau of Indian Affairs (BIA) is seeking comments on renewal of Office of Management and Budget (OMB) approval for the collection of information for the Tribal Reassumption of Jurisdiction over Child Custody Proceedings, authorized by OMB Control Number 1076–0112. This information collection expires September 30, 2012.

DATE: Submit comments on or before July 9, 2012.

ADDRESSES: You may submit comments on the information collection to Sue Settles, Chief, Division of Human Services, Office of Indian Services, Bureau of Indian Affairs, U.S. Department of the Interior, 1849 C Street NW., Mailstop 4513 MIB, Washington, DC 20240, or fax to (202) 208–2648, or email: *Sue.Settles@bia.gov.*

FOR FURTHER INFORMATION CONTACT: Sue Settles, (202) 513–7621.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Department has issued regulations at 25 CFR part 13 prescribing procedures by which an Indian tribe that occupies a reservation over which a state asserts any jurisdiction pursuant to federal law may reassume jurisdiction over Indian child proceedings as authorized by the Indian Child Welfare Act, Public Law 95–608, 92 Stat. 3069, 25 U.S.C. 1918.

II. Request for Comments

The BIA requests your comments on this collection concerning: (a) The necessity of this information collection 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 (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) Ways we could enhance the quality, utility, and clarity of the information to be collected; and (d) Ways we could minimize the burden of the collection of the information on the respondents, such as through the use of automated collection techniques or other forms of information technology.

Please note that an agency may not conduct or sponsor, and an individual need not respond to, a collection of

information unless it has a valid OMB Control Number.

It is our policy to make all comments available to the public for review at the location listed in the **ADDRESSES** section. Before including your address, phone number, email address or other personally identifiable information, be advised that your entire comment—including your personally identifiable information—may be made public at any time. While you may request that we withhold your personally identifiable information, we cannot guarantee that we will be able to do so.

III. Data

OMB Control Number: 1076–0112.

Title: Tribal Reassumption of Jurisdiction over Child Custody Proceedings, 25 CFR part 13.

Brief Description of Collection: The collection of information will ensure that the provisions of Public Law 95–608 are met. Any Indian Tribe that became subject to State jurisdiction pursuant to the provisions of the Act of August 15, 1953 (67 Stat. 588), as amended by title IV of the Act of April 11, 1968 (82 Stat. 73,78), or pursuant to any other Federal law, may reassume jurisdiction over child custody proceedings. The collection of information provides data that will be used in considering the petition and feasibility of the plan of the Tribe for reassumption of jurisdiction over Indian child custody proceedings. We collect the following information: full name, address, and telephone number of petitioning Tribe or Tribes; a Tribal resolution; estimated total number of members in the petitioning Tribe of Tribes with an explanation of how the number was estimated; current criteria for Tribal membership; citation to provision in Tribal constitution authorizing the Tribal governing body to exercise jurisdiction over Indian child custody matter; description of Tribal court; copy of any Tribal ordinances or Tribal court rules establishing procedures or rules for exercise of jurisdiction over child custody matters; and all other information required by 25 CFR 13.11. Response is required to obtain or retain a benefit.

Type of Review: Extension without change of a currently approved collection.

Respondents: Federally recognized Tribes who submit Tribal reassumption petitions for review and approval by the Secretary of the Interior.

Frequency of Response: Annually.

Number of Respondents: 2.

Estimated Time per Response: 8 hours.

Estimated Total Annual Hour Burden: 16 hours.

Dated: May 5, 2012.

Alvin Foster,

Assistant Director for Information Resources.

[FR Doc. 2012–11266 Filed 5–9–12; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWY922000–L13200000–EL0000, WYW180757]

Notice of Invitation To Participate; Coal Exploration License Application WYW180757, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Pursuant to the Mineral Leasing Act of 1920, as amended by the Federal Coal Leasing Amendments Act of 1976, and to Bureau of Land Management (BLM) regulations, all interested parties are hereby invited to participate with Alpha Coal West, Inc., on a pro rata cost-sharing basis, in its program for the exploration of coal deposits owned by the United States of America in Campbell County, Wyoming.

DATES: This notice of invitation will be published in the *Gillette News-Record* once each week for 2 consecutive weeks beginning the week of May 7, 2012, and in the **Federal Register**. Any party electing to participate in this exploration program must send written notice to both the BLM and Alpha Coal West, Inc., as provided in the **ADDRESSES** section below, no later than 30 days after publication of this invitation in the **Federal Register**.

ADDRESSES: Copies of the exploration plan are available for review during normal business hours in the following offices (serializ number WYW180757): BLM, Wyoming State Office, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, Wyoming 82003; and BLM, High Plains District Office, 2987 Prospector Circle, Casper, Wyoming 82604. The written notice should be sent to the following addresses: Alpha Coal West, Inc., Attn: Dave Olson, P.O. Box 3040, Gillette, Wyoming 82177 and the BLM, Wyoming State Office, Branch of Solid Minerals, Attn: Joyce Gulliver, P.O. Box 1828, Cheyenne, Wyoming 82003.

FOR FURTHER INFORMATION CONTACT: Joyce Gulliver, Land Law Examiner, at 307–775–6208. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: Alpha Coal West, Inc. has applied to the BLM for a coal exploration license on public land adjacent to its Belle Ayr Coal Mine. The purpose of the exploration program is to obtain structural and quality information of the coal. The BLM regulations at 43 CFR 3410 require the publication of an invitation to participate in the coal exploration in the **Federal Register**. The Federal coal resources included in the exploration license application are located in the following-described lands in Wyoming:

6th Principal Meridian

T. 47 N., R. 72 W.,
Sec. 1, lot 6;
Sec. 2, lots 5 through 12 inclusive;
T. 48 N., R. 72 W.,
Sec. 23, lots 1 through 16 inclusive;
Sec. 24, lots 2 through 7 inclusive and lots 9 through 16 inclusive;
Sec. 25, lots 1 through 16 inclusive;
Sec. 26, lots 1 through 16 inclusive; and
Sec. 35, lots 1 through 15 inclusive.

Containing 3,494.92 acres, more or less, in Campbell County.

The proposed exploration program is fully described and will be conducted pursuant to an exploration plan to be approved by the BLM.

Authority: 43 CFR 3410.2–1(c)(1).

Mary E. Trautner,

Acting State Director.

[FR Doc. 2012–11146 Filed 5–9–12; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCAD01500 L13400000 DS0000]

Notice of Availability of the Draft Environmental Impact Statement and Draft Proposed California Desert Conservation Area Plan Amendment for the Haiwee Geothermal Leasing Area in Inyo County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended, and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) has prepared a Draft Proposed California Desert Conservation

Area (CDCA) Plan Amendment and a Draft Environmental Impact Statement (EIS) for the Haiwee Geothermal Leasing Area (HGLA), Inyo County, California, and by this notice is announcing the opening of the comment period.

DATES: To ensure that comments will be considered, the BLM must receive written comments on the Draft Proposed CDCA Plan Amendment and Draft EIS within 90 days following the date the Environmental Protection Agency publishes its Notice of Availability in the **Federal Register**. The BLM will announce future meetings or hearings and any other public involvement activities at least 15 days in advance through public notices, media releases, and/or mailings.

ADDRESSES: You may submit comments related to the Haiwee Geothermal Leasing Area Draft EIS/Draft Proposed CDCA Plan Amendment by any of the following methods:

- *Web site: cahaiwee@blm.gov.*
- *Email: Peter_Godfrey@blm.gov.*
- *Fax:* 951–697–5299.
- *Mail:* BLM, California Desert District Office, 22835 Calle San Juan de Los Lagos, Moreno Valley, California 92553, Attn: Peter Godfrey, Project Manager.

Copies of the Draft EIS and Draft Proposed CDCA Plan Amendment for the HGLA are available in the Ridgecrest Field Office at 300 S. Richmond Road, Ridgecrest, California 93555.

FOR FURTHER INFORMATION CONTACT: Peter Godfrey, Project Manager, telephone (951) 697–5385; address: 22835 Calle San Juan de Los Lagos, Moreno Valley, California 92553; email: *Peter_Godfrey@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at (800) 877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The Draft EIS analyzes the potential impacts of opening public lands to geothermal leasing and potential development of federally owned geothermal resources in the HGLA of southwestern Inyo County, California, east of the Inyo National Forest, west of the China Lake Naval Weapons Station, and south of the South Haiwee Reservoir. The HGLA consists of an estimated 22,805 acres of BLM-administered federal mineral estate that would be considered for competitive geothermal leasing under 43 CFR part 3200. An updated inventory of lands with wilderness characteristics determined that lands with wilderness characteristics are not found within the HGLA. The proposed action is to amend the CDCA Plan to identify public lands as being suitable for geothermal leasing and allow the project area to be leased under the authority of the Geothermal Steam Act of 1970, as amended (30 U.S.C. 1001 *et seq.*), and to approve three pending non-competitive geothermal leases applications. The purpose and need for amending the CDCA Plan is to establish a management framework for appropriate exploration and development of geothermal resources, based upon evaluation of the various land use, and environmental resources within the HGLA. The BLM's purpose and need for approving the pending lease applications, for approximately 4,460 acres of Federal mineral estate, is to facilitate appropriate exploration and development of geothermal resources in the HGLA, consistent with the BLM's management of other important resources in the HGLA.

Alternatives thus far identified for evaluation in the EIS include:

(a) Open the entire HGLA to geothermal exploration and development, with restrictions on water use and authorize the pending leases;

(b) Close the HGLA to geothermal exploration and development and deny the pending leases;

(c) Open the HGLA to geothermal exploration and development with additional specific stipulations and restrictions regarding surface occupancy and water use and authorize the pending leases;

(d) Close sensitive resource areas within the HGLA to geothermal exploration and development, leave open all other areas, and authorize the pending leases; and

(e) The no action alternative, which would not identify the HGLA as suitable or unsuitable for geothermal exploration, development, and utilization, and would deny the pending leases.

The BLM published a Notice of Intent to prepare an EIS on September 11, 2009, in the **Federal Register** [74 FR 46786]. Publication of the Notice of Intent initiated a public scoping period, which included four public scoping meetings. Through the public scoping process the BLM received 14 comment letters and numerous verbal comments. Comments received through the scoping process and consultation carried out pursuant to Section 106 of the National Historic Preservation Act and other Federal mandates, identified the following issues and concerns to be considered when developing the EIS: The BLM's purpose and need, alternatives development, air quality, geothermal resources, hazardous materials, Native American concerns, potential land use conflicts with agriculture and recreation, public health and safety, social and economic issues, transportation, noise, cumulative impacts, cultural resources, wildlife, visual resources, and surface or groundwater resources. Lands with wilderness characteristics are not present within the planning area.

The BLM, in compliance with Federal Lands Policy and Management Act of 1976, National Environmental Policy Act of 1969, and all other relevant Federal laws, Executive orders, and management policies of the BLM, used an interdisciplinary approach in development of the plans, working collaboratively, in order to consider the variety of resource issues and concerns identified.

Please note that public comments and information submitted including names, street addresses, and email addresses of persons who submit comments will be available for public review and disclosure at the above address during regular business hours (8 a.m. to 4 p.m.), Monday through Friday, except holidays.

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: 40 CFR 1506.6, 1506.10, and 43 CFR 1610.2.

Cynthia Staszak,

Associate Deputy State Director.

[FR Doc. 2012–11290 Filed 5–7–12; 4:15 pm]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLOR957000–L63100000–HD0000: HAG12–0179]

Filing of Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled

to be officially filed in the Bureau of Land Management Oregon/Washington State Office, Portland, Oregon, 30 days from the date of this publication.

Willamette Meridian

Oregon

T. 15 S., R. 2 W., accepted April 20, 2012.
T. 24 S., R. 6 W., accepted April 20, 2012.

Washington

T. 14 N., R. 11 W., accepted April 25, 2012.

ADDRESSES: A copy of the plats may be obtained from the Land Office at the Bureau of Land Management, Oregon/Washington State Office, 333 SW. 1st Avenue, Portland, Oregon 97204, upon required payment. A person or party who wishes to protest against a survey must file a notice that they wish to protest (at the above address) with the Oregon/Washington State Director, Bureau of Land Management, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Kyle Hensley, (503) 808–6124, Branch of Geographic Sciences, Bureau of Land Management, 333 SW. 1st Avenue, Portland, Oregon 97204. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: Before including your address, phone number, 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.

Mary J.M. Hartel,

Chief, Cadastral Surveyor of Oregon/Washington.

[FR Doc. 2012–11194 Filed 5–9–12; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCAC069 L1711.0000 AL.0000 025B]

Notice of Public Meeting of the Carrizo Plain National Monument Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM) Carrizo Plain National Monument Advisory Council (MAC) will meet as indicated below.

DATES: The meeting will be held on Saturday, June 30, 2012, at the Carrisa Plains Elementary School, located approximately 2 miles northwest of Soda Lake Road on Highway 58. The meeting will begin at 10:00 a.m. and finish at 2:00 p.m. The meeting will focus on the Travel Management Plan, accomplishments completed and continued implementation of the Resource Management Plan. There will be a public comment period from 1:00 p.m. to 2:00 p.m. Lunch will be available for $8.

FOR FURTHER INFORMATION CONTACT: The BLM, Johna Hurl, Monument Manager, Bakersfield Field Office, 3801 Pegasus Drive, Bakersfield, CA 93308, (661) 391–6093, *jhurl@blm.gov.*

SUPPLEMENTARY INFORMATION: The ten-member MAC advises the Secretary of the Interior, through the BLM, on a variety of public land issues associated with public land management in the Carrizo Plain National Monument in Central California. At this meeting, Monument staff will outline the process for developing the Travel Management Plan for the monument, provide updated information on continued implementation of the Resource Management Plan and accomplishments. This meeting is open to the public. Depending on the number of persons wishing to comment and the time available, the time allotted for individual oral comments may be limited. Individuals who plan to attend and need special assistance such as sign language interpretation or other reasonable accommodations should contact the BLM as indicated above.

Dated: May 1, 2012.

Timothy Z. Smith,

Field Manager, Bakersfield Field Office.

[FR Doc. 2012–11265 Filed 5–9–12; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

Outer Continental Shelf Scientific Committee; Announcement of Plenary Session

AGENCY: Bureau of Ocean Energy Management (BOEM), Interior.

ACTION: Notice of Meeting.

SUMMARY: The Outer Continental Shelf (OCS) Scientific Committee (SC) will meet at the Fess Parker's Doubletree Resort.

DATES: Tuesday, May 22, 2012, from 8:30 a.m. to 5:00 p.m.; Wednesday, May 23, 2012, from 8:30 a.m. to 5:00 p.m.; and on Thursday, May 24, 2012, from 9:00 a.m. to 3:30 p.m.

ADDRESSES: 633 East Cabrillo Boulevard, Santa Barbara, California 93103, telephone (805) 564–4333.

FOR FURTHER INFORMATION CONTACT: A copy of the agenda may be requested from BOEM by emailing Ms. Phyllis Clark at *Phyllis.Clark@boem.gov.* Other inquiries concerning the OCS SC meeting should be addressed to Dr. Rodney Cluck, Executive Secretary to the OCS SC, Bureau of Ocean Energy Management, 381 Elden Street, Mail Stop HM–3115, Herndon, Virginia 20170–4817, or by calling (703) 787–1087 or via email at *Rodney.Cluck@boem.gov.*

SUPPLEMENTARY INFORMATION: The OCS SC will provide advice on the feasibility, appropriateness, and scientific value of the OCS Environmental Studies Program to the Secretary of the Interior through the Director of BOEM. The SC will review the relevance of the research and data being produced to meet BOEM's scientific information needs for decision making and may recommend changes in scope, direction, and emphasis.

The Committee will meet in plenary session on Tuesday, May 22. The Chief Environmental Officer will address the Committee on the general status of BOEM and its activities. There will be an update from each region's Environmental Studies Chief on OCS activities and current issues.

On Wednesday, May 23, the Committee will meet in discipline breakout groups (i.e., biology/ecology, physical sciences, and social sciences) to review the specific research plans of BOEM's regional offices for Fiscal Years 2013 and 2014.

On Thursday, May 24, the Committee will meet in plenary session for reports of the individual discipline breakout sessions of the previous day and to continue with Committee business.

The meetings are open to the public. Approximately 30 visitors can be accommodated on a first-come-first-served basis at the plenary session.

Authority: Federal Advisory Committee Act, Pub. L. 92–463, 5 U.S.C., Appendix I, and the Office of Management and Budget's Circular A–63, Revised.

Dated: May 3, 2012.

Alan Thornhill,

Chief Environmental Officer, Bureau of Ocean Energy Management.

[FR Doc. 2012–11277 Filed 5–9–12; 8:45 am]

BILLING CODE 4310–VH–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. *Exelon Corporation, et al.;* Public Comment and Response on Proposed Final Judgment

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), the United States hereby publishes below the comment received on the proposed Final Judgment in *United States* v. *Exelon Corporation, et al.,* Civil Action No. 1:11–CV–02276–EGS, which was filed in the United States District Court for the District of Columbia on April 26, 2012, together with the response of the United States to the comment.

Copies of the comment and the response are available for inspection at the Department of Justice Antitrust Division, 450 Fifth Street NW., Suite 1010, Washington, DC 20530 (telephone: 202–514–2481), on the Department of Justice's Web site at *http://www.justice.gov/atr,* and at the Office of the Clerk of the United States District Court for the District of Columbia, 333 Constitution Avenue NW., Washington, DC 20001. Copies of any of these materials may be obtained upon request and payment of a copying fee.

Patricia A. Brink,

Director of Civil Enforcement.

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA *Plaintiff,* v. EXELON CORPORATION, and CONSTELLATION ENERGY GROUP, INC. *Defendants.* Case: 1:11–cv–02276.

RESPONSE OF PLAINTIFF UNITED STATES TO PUBLIC COMMENT ON THE PROPOSED FINAL JUDGMENT

Pursuant to the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)–(h) (''APPA'' or ''Tunney Act''), plaintiff, the United States of America (''United States'') hereby files the public comment concerning the proposed Final Judgment in this case and the United States' response to that comment. After careful consideration of the comment submitted, the United States continues to believe that the proposed Final Judgment will provide an effective and appropriate remedy for the antitrust violation alleged in the Complaint. The United States will move the Court for entry of the proposed Final Judgment after the public comment and this response have been published in the **Federal Register**, pursuant to 15 U.S.C. § 16(d).

I. BACKGROUND

A. Procedural History

On April 28, 2011, Defendant Exelon Corporation (''Exelon'') agreed to merge with Defendant Constellation Energy Group, Inc. (''Constellation''). Exelon and Constellation are two of the largest sellers of wholesale electricity in all or parts of Delaware, Illinois, Indiana, Kentucky, Maryland, Michigan, New Jersey, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia and the District of Columbia. Wholesale electricity is resold to customers by utilities and other organizations, generally for resale to end-use consumers.

On December 21, 2011, the United States filed a civil antitrust Complaint alleging that the proposed merger of Exelon and Constellation would substantially lessen competition in the provision of wholesale electricity in parts of the Mid-Atlantic states in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, and result in higher wholesale electricity prices, raising retail electricity prices for residential, commercial, and industrial customers in these markets. Simultaneously with the filing of the Complaint, the United States filed the proposed Final Judgment and a Hold Separate Stipulation and Order (''Hold Separate Order'') signed by the United States and Defendants consenting to the entry of the proposed Final Judgment after compliance with the requirements of the APPA, 15 U.S.C. § 16. The Court signed and entered the Hold Separate Order on December 30, 2011.

Pursuant to the requirements of the APPA, the United States filed a Competitive Impact Statement (''CIS'') in this Court on December 21, 2011; published the proposed Final Judgment and CIS in the **Federal Register** on December 28, 2011 (see 76 Fed. Reg. 81528); and arranged for the publication of a summary of the terms of the proposed Final Judgment, together with directions for the submission of written comments relating to the proposed Final Judgment, in The Washington Post for seven days beginning on December 26, 2011 and ending on January 2, 2012. The Defendants filed the statement required by 15 U.S.C. § 16(g) on January 3, 2012. The 60-day period for public comments ended on March 2, 2012; one comment was received as described in Section III below and is attached hereto.

B. The Complaint and Proposed Final Judgment

The Complaint alleges that the combination of Exelon's and Constellation's generating units would enhance post-merger Exelon's ability and incentive to reduce output and raise wholesale electricity prices, likely resulting in increased retail electricity prices for customers in two regions, PJM Mid-Atlantic North and PJM Mid-Atlantic South, as defined in the Complaint and as discussed in detail in the CIS (at pp. 8–12). Absent the merger, Exelon and Constellation would compete against each other to sell electricity at wholesale. As explained in the CIS, the proposed merger would substantially lessen competition by combining the ownership or control of (a) low-cost baseload units that provide the incentive to raise prices with (b) higher-cost units that provide the ability to raise prices, and thus substantially increasing the likelihood that post-merger Exelon would find it profitable to withhold output and raise prices.

The proposed Final Judgment would preserve the competition that would have been lost had the merger gone forward without divestitures. The remedy in the proposed Final Judgment resolves the alleged competitive effects by requiring defendants to divest three electric generating plants to a viable purchaser approved by the United States in its sole discretion. In addition, the proposed Final Judgment prohibits the merged company from reacquiring or controlling any of the divested assets. See CIS at pp. 12–15.

C. Review of Proposed Merger by Other Government Agencies

In addition to a review under the antitrust laws by the United States Department of Justice, which led to the Complaint and proposed Final Judgment, the proposed merger required approvals from the Federal Energy Regulatory Commission, the Public Service Commissions of Maryland and New York, the Public Utility Commission of Texas, the Federal Communications Commission, and the

Nuclear Regulatory Commission. Exelon and Constellation sought and have received all of the required approvals.[1] The parties completed their merger on March 12, 2012.

II. STANDARD OF REVIEW UNDER THE TUNNEY ACT

As discussed in the CIS (at pp. 18–22), the Tunney Act calls for the Court, in making its public interest determination, to consider certain factors relating to the competitive impact of the proposed Final Judgment and whether it adequately remedies the harm alleged in the complaint. See 15 U.S.C. § 16(e)(1)(A) & (B) (listing factors to be considered).

This public interest inquiry is necessarily a limited one as the United States is entitled to deference in crafting its antitrust settlements. See generally United States v. SBC Commc'ns, 489 F. Supp. 2d 1 (D.D.C. 2007); see also United States v. Microsoft Corp., 56 F.3d 1448, 1458–62 (DC Cir. 1995); Massachusetts v. Microsoft Corp., 373 F.3d 1199, 1236 (DC Cir. 2004) (A ''district court's 'public interest' inquiry into the merits of the consent decree is a narrow one.'').

With respect to the scope of the complaint, the Tunney Act review does not provide for an examination of possible competitive harms the United States did not allege. See, e.g., Microsoft, 56 F.3d at 1459 (holding that it is improper to reach beyond the complaint to evaluate claims that the government did not make); SBC Commc'ns, 489 F. Supp. 2d at 12.

With respect to the sufficiency of the proposed remedy, the United States is entitled to deference as to its views of the nature of the case, its perception of the market structure, and its predictions as to the effect of proposed remedies. See, e.g., SBC Commc'ns, 489 F. Supp. 2d at 17 (holding that the United States is entitled to deference as to predictions about the efficacy of its remedies); United States v. KeySpan, 763 F. Supp. 2d 633, 642 (S.D.N.Y. 2011). Under this standard, the United States need not show that a settlement will perfectly remedy the alleged antitrust harm; rather, it need only provide a factual basis for concluding that the settlement is a reasonably adequate remedy for the alleged harm. SBC Commc'ns, 489 F. Supp. 2d at 17. A court should not reject the United States' proposed remedies merely because other remedies may be preferable. KeySpan, 763 F. Supp. 2d at 637–38.

III. SUMMARY OF PUBLIC COMMENT AND THE UNITED STATES' RESPONSE

During the sixty-day comment period, the United States received one public comment, authored by Dr. Charles L. Rogers, which is attached hereto. As explained below, after careful review, the United States continues to believe that the proposed Final Judgment is in the public interest.

A. Summary of the Public Comment

Dr. Rogers raises a concern that the three generating units to be divested under the proposed Final Judgment are not sufficient to address the potential negative impact of the merger.[2] Dr. Rogers states his belief that the plants to be divested are ''three old dirty generating plants.''[3] Thus, Dr. Rogers's comment reflects concerns about the type of units being divested and the sufficiency of the divestiture.[4]

B. Response to Comment

The remedy called for in the proposed Final Judgment is an effective one given the facts and circumstances of this matter. As explained in the CIS, the primary competitive issue presented by Exelon's merger with Constellation is the potential that the combined portfolio of the merged firm would substantially increase the likelihood that the merged firm would find it profitable to withhold output and raise price. The cost of operating a generating unit varies depending on the cost of fuel for the unit and the efficiency of the unit's technology in transforming the energy in fuel into electricity. Baseload units, such as nuclear and efficient coal-fired steam, typically generate electricity around the clock during most of the year at relatively low cost. These low-cost units, which run frequently, benefit from an increase in wholesale electricity prices and thus act as an incentive for a firm to attempt to raise prices. Higher-cost units that run somewhat less frequently, such as the ones to be divested, provide the ability to withhold output to increase market-clearing prices; and because their costs are closer to the market-clearing price than lower-cost units, the lost profit on the withheld output, and therefore the cost of withholding output from these units, is less than it would be for lower-cost units. Here, by giving post-merger Exelon an increased amount of relatively lower-cost capacity, combined with an increased share of higher-cost capacity, the merger substantially increases the likelihood that Exelon would find it profitable to withhold output and raise price by giving Exelon both additional incentive and additional ability to reduce output and raise market prices.

The divestiture will essentially remove from the firm's combined portfolio all of the higher-cost units, other than those already being retired by Exelon, that are well suited to being systematically withheld as part of an effort to exercise market power. The merged firm will be left with only low-cost nuclear ''baseload'' units that run almost constantly and natural gas-fired ''peaking'' units that run rarely. By depriving the merged firm of key assets that would have made it profitable for it to withhold output and raise prices, the proposed Final Judgment seeks to restore effective competition and assure that the merger is not likely to lead to consumer harm.

VI. CONCLUSION

After careful consideration of the public comment, the United States has determined that the proposed Final Judgment, as drafted, provides an effective and appropriate remedy for the antitrust violations alleged in the Complaint and is therefore in the public

[1] See Federal Energy Regulatory Commission, ''Order Conditionally Authorizing Merger and Disposition of Jurisdictional Facilities [in Docket Nos. EC11–83–000 and EC11–83–001],'' March 9, 2012, available at *www.ferc.gov/EventCalendar/Files/20120309175632-EC11-83-000a.pdf;* Maryland Public Service Commission, ''Order No. 84698 [in Case 9271],'' available at *webapp.psc.state md.us/Intranet/Casenum/CaseAction_new.cfm?Case Number=9271, Item 278;* New York Public Service Commission, ''Sale of Upstate Nuclear Power Plants Approved — Exelon Can Acquire Nine Mile, Ginna Power Plants from Constellation,'' available at *www3.dps ny.gov/pscweb/WebFileRoomn nsf/Web/6CC8C521EDC6A62F85257967005A45F6/$File/pr11104.pdf?OpenElement;* Public Utility Commission of Texas, ''Order [in Docket 39413],'' available at *interchange.puc.state.tx.us/WebApp/Interchange/Documents/39413_11_703899.pdf;* Federal Communications Commission, ''ULS Application 0004826990,'' available at *wireless2 fcc.gov/UlsApp/ApplicationSearch/applMain.jsp?applID=6358842;* Nuclear Regulatory Commission, ''NRC Approves Exelon-Constellation Merger, Indirect Transfer of Five Nuclear Power Plant Licenses,'' available at *pbadupws.nrc.gov/docs/ML1204/ML120470203.pdf.*

[2] Comment at 1–2.

[3] Comment at 2.

[4] Dr. Rogers also raises other concerns that do not relate to the settlement or allegations raised in the Complaint. See e.g., Comment at 1–2 (raising concerns about topics such as access to natural gas services on the distal peninsula of Anne Arundel county, the reliability of the utility grid, and the ability of the state public service commissions to oversee the behavior of utilities that do business in more than one state). These concerns are beyond the scope of the Complaint and therefore outside Tunney Act review. As noted above, other state and federal agencies conducted independent reviews of the merger to address public interest and other factors as appropriate. In addition, Dr. Rogers expresses his concern with the content and tone of two emails that were inadvertently sent to him by Antitrust Division attorneys in response to one of his emails. Upon realizing what had occurred, a Division attorney contacted Dr. Rogers to apologize, and all Division managers and staff have been reminded to exercise caution and professionalism in the use of email communications.

interest. The United States will move this Court to enter the proposed Final Judgment after the comment and this response are published in the **Federal Register**.

Dated: April 26, 2012.

Respectfully submitted,

/s/

Tracy Fisher,

Attorney, Transportation, Energy and Agriculture Section, Antitrust Division, U.S. Department of Justice, 450 Fifth Street NW., Suite 8000, Washington DC 20530.

Telephone: (202) 616–1650.
Facsimile: (202) 307–2784.
Email: *tracy.fisher@usdoj.gov.*

CERTIFICATE OF SERVICE

I hereby certify that on April 26, 2012, I caused the Response of Plaintiff United States to Public Comment on the Proposed Final Judgment and attached exhibit to be electronically filed with the Clerk of the Court using the CM/ECF system, which will provide electronic notice to the following counsel.

Counsel for Defendant Exelon Corporation, Steven C. Sunshine (DC Bar #450078), John H. Lyons (DC Bar # 453191), Skadden, Arps, Slate, Meagher & Flom LLP & Affiliates, 1440 New York Ave. NW., Washington, DC 20005–2111, Tel: (202) 371–7860, Fax: (202) 661–0560.

Counsel for Defendant Constellation Energy Group, Inc., Bilal Sayyed (DC Bar #977975), Kirkland & Ellis LLP, 655 15th Street NW., Washington, DC 20005, Tel: (202) 879–5192, Fax: (202) 654–9629.

Respectfully Submitted,

/s/

Tracy Fisher,

Attorney, Transportation, Energy and Agriculture Section, Antitrust Division, U.S. Department of Justice, 450 Fifth Street NW., Suite 8000, Washington, DC 20530.

Telephone: (202) 616–1650
Facsimile: (202) 307–2784
Email: *tracy.fisher@usdoj.gov.*

William H. Stallings,
Chief, Transportation, Energy & Agriculture Section, Antitrust Division, United States Department of Justice, 450 Fifth Street NW., Suite 8000, Washington, DC 20001.

Dear Mr. Stallings,

Thank you for your generous offer Actually, I had given up hope of having any impact, based on the stonewall I have encountered at the USDOJ other than Ms. Tracy Fisher Time is our most important resource and as I get older I have less and less interest in beating my head against a bureaucracy that appears impregnable, wasting time of which all of us have a limited amount on this earth I will send this letter by snail mail in addition to electronically I have written myself silly, literally dozens of emails with hard economic reasoning comparing competitors to these merger applicants listed below regarding the economic and potentially negative impact that the creation of an electrical and natural gas utility can have should an untoward economic event occur taking down a $37 Nihon market capitalization behemoth, both merger partners of which carry corporate bond ratings of BBB or BBB- Just one notch above ''junk bond'' status With the sole exception of Ms. Tracy Fisher, my email communication with the USDOJ have been met with total silence by Ms. Sharis Pozen and abusive and snarky insults by Angela Hughes as well as Ms. Janet Urban, such that I have lost respect of or hope that the USDOJ gives a damn about the citizens of this country.

Additionally, BCE has been so irresponsible that there are several public schools in Anne Arundel County which have no access to natural gas for heating forcing the county to heat the schools with fuel oil not to mention thousands of residents. Does anyone believe a $37 billion corporation gives a flying flip about building out a natural gas distribution system or that the citizens of Anne Arundel County will have any impact on the corporate bureaucracy of such a huge utility that stretches across 1/3rd of the country? If they do, I have a bridge for sale in New York City, inexpensively!

We desperately need access to natural gas on all the distal peninsula's of Anne Arundel County, but I see this merger as the deathnell of that possibility, despite having started an electronic petition seeking natural gas infrastructure here to present to my State Senator John Astle with whom I last spoke in December. He agreed with me in his own words that energy deregulation ''does not work'' It caused the greatest white collar crime wave in history in the form of Enron, and now threatens to make a mega-merger like Constellation Energy and Exelon a government unto itself, making the rules itself, and playing by them. I should know, because BCE burned down my house in February 1994, then lied about it for three years, while they mitigated their costs by 10%/yr in a high interest rate environment When I proved their liability they finally settled out of court, minus the 30% I lost to inflation and the 33% the lawyers received Even the insurance company received subrogation compensation, while I was left with trying to rebuild the house in the Critical Areas requiring three variances, being treated arrogantly by the judge that I dare ask for a building permit to rebuild the house.

To say that I am outraged at the irresponsibility of the entire state and Federal government's USDOJ arrogance and impotence is without question. Were this type of treatment be meted out to someone fortunate enough to be represented by the ACLU over a civil rights issue, I have little doubt that there would be a substantially less abusive behavior of all mentioned and a more constructive outcome, but I had to fight these battles alone.

There are thousands of citizens living within an hour's drive of the Capital building living like they are in the 19th century, heating their houses with wood. Some of them are approaching 90 or more, with no access to natural gas Now with this merger, which the Exelon executives bought the USDOJ anti-trust's division blessing by palming off three old generating plants consisting of about 70% coal, 20% oil and 10% natural gas generation relieving themselves of major costs to upgrade or replace dirty old generating plants, even less hope of ever being able to convince a mega corporation that access to gas is critical Once again the USDOJ was suckered and they bought it hook, line, and sinker We also live with a 19th century electrical grid which fails routinely, courtesy of Constellation Energy Residents of Columbia, MD laugh at Anne Arundel County when the power is out. They almost never have power outages because their utilities are underground. I lived in rural Fairfax county with underground utilities for 30 years and can remember only a handful of power outages, none lasting more than 6–8 hours In the winter this is potentially a life saving situation. Constellation Energy appears to care more about the $36,000,000 its executives will collect for this merger than the customers it serves, a true oxymoron.

As a secretary of the local Catholic church said this afternoon, the government has us exactly where they want us, working like dogs without the time or resources to protect ourselves from the Wall Street-Constellation crowd who will reap another $36,000,000 from this merger after throwing away nearly $112 billion on the 2008 default by BGE to be bought by Mid American Energy (see Edgar filing of Mid American Energy 9/23/2008), or protect ourselves from our own government.

http://wwwsecgov/Archives/edgar/data/1081316/000095012308011286/y00178e8vk_htm.

Mid American Energy is a regulated electrical energy company serving (in the most complete sense), unlike Constellation, 2 4 million of its customers over Iowa, Wyoming, and parts of Utah, a geographical area many times that of Constellation for a total cost of $0 0635/KVVH and hasn't raise its rates since 1999 Additionally it has been able to generate $5.4 billion to invest in 2,909 megawatts of wind power. BGE charges $0 13–14/KWH and Exelon charges PECO customers in Philadelphia $0 017/KWH, fully more than twice Mid American's charges In fact Mid American Energy Is selling power into Commonwealth Edison Energy' s market in Chicago $0 0635/KWH (originally part of the Exelon merger with PECO in 2004) as reported on the Maryland Public Service Web site

How can the USDOJ allow itself to be bought off by Exelon dumping three old dirty generating plants thereby relieving itself of massive costs to comply with EPA requirements and roll over by this magical madness'? The anti-trust division of the USDOJ has failed miserably to do its job, while allowing a massive multi-state energy merger, which degrades each state Public Service Commission's ability to prevent abuse of the customers This is the very definition of restraint of trade and abuse of government sanctioned franchise power

Ida Tarbell was right Vituperation is not the way to fight monopolistic power, for the public will soon tire of such nonsense, but the bald facts of abuse of power speak for themselves in the form of Exelon's and Constellation Energy's price structure compared with MidAmerican Energy

When people are abused by their governments, they frequently vote with their feet, as happened in the middle of the last century from 1947 to 1960 when as Churchill famously said, ''From Stettin on the Baltic, to Trieste on the Adriatic an iron curtain descended across Europe enslaving Eastern Europe and all of Soviet Asia'' But the Soviets left an escape hatch, West Berlin. The flood of those who left everything behind and walked into freedom became such a Tsunami that the East German Government built a wall around West Berlin, then started shooting people who tried to climb over the wall, and then the most determined to get out tunneled underneath the wall. It took thirty years and a determined group of church and political leaders, Pope John Paul II, Ronald Reagan, and Margaret Thatcher to bring down that wall and allow freedom from economic and political slavery to end. No wall can be built around Maryland or the USA to keep people inside

I hope the above is a cogent argument why such mega mergers of giant electrical and gas utilities are inherently anticompetitive, and reduce the power of individual state Public Service Commissions, because the utilities have a choke hold on the delivery of BOTH electrical and natural gas energy The argument should be sell evident to the most casual observer, but then I have little faith, based of previous experience that the USDOJ is interested in anything more than ''snarky'' insulting email messages and Ms. Sharis Pozen simply ignores the citizenry I believe that the courts are more interested in themselves than improving the lives of the citizens, and I am not the only person I know who is so cynical. This letter cannot be mailed until Friday 3/9 so it may well be as impotent as other opposition to this travesty which appears simply yet a second example of legalized extortion of the ratepayers of Constellation Energy since 2008

I would expect such a decision by a Republican USDOJ on philosophical grounds, but for a Democratic USDOJ to make such a foolish and boneheaded blunder is beyond comprehension If this sounds like I'm angry you are absolutely correct. The generalized disgust and cynicism about the government both local and Federal among those with whom I have talked (and there are many) is so palpable one could cut it with a knife This is what the ''Occupy Wall Street Protest movement is all about Just wait until Michael Bloomberg brings out the mounted police to clear out the park in Manhattan His political career will be toast just like Gray Davis in California for failure to control Enron The USDOJ is failing just like Davis did

In my case, at the risk of sounding extreme (Barry Goldwater thought extremism in the defense of liberty was no vice, but what is forgotten is that he followed up that incendiary comment with the following statement And let me remind you also, that moderation in the pursuit of justice is no virtue!)

I know I have ventured far afield from a legal brief opposing the Exelon Constellation Energy merger, but it that is what it takes to make people wake up and smell the coffee I will do it again, and again, and again until some order is brought out of chaos, and sanity is created from madness, if something constructive and reasonable does not occur here in Maryland, I plan to sell all real estate, and leave Maryland, possibly the USA Costa Rica and/or New Zealand are looking better and better all the time

All the best,

Charles L. Rogers, MD

PS

Below are the juvenile and insulting comments by Ms Hughes and Ms. Urban when I praised Ms Fisher for her decency and integrity, providing me with Information how to engage this process I hope you are as proud of them as they seem to be of themselves

From ''Hughes, Angela''

Date: Feb 15, 2012 12.59 54 p.m.

Subject RE RE: Exelon-Constellation

To

Okay now his emails to you are getting creepy.

From:

Sent: Wednesday, February 15, 2012 12:55 p.m. To: Fisher, Tracy;

Subject: Re: RE: Exelon-Constellation

Dear Ms. Fisher,

I hope you will accept this thought in the sense it is offered. You are truly a beautiful person I will augment and edit the last letter I wrote to you and submit it via certified mail return receipt I will also notify Ron Herzfeld at the Maryland Office of Public Counsel should he not be aware of this opportunity He has consistently exhibited unimpeachable integrity over this issue and should be given the opportunity to participate, should he find his thoughts pertinent.

Urban, Janet/*Janet Urban@usdoj gov*/ Add to Contacts

Wednesday, Feb 15 02 02 p.m./Hide Details/View source

reply-to *Janet.Urban@usdoj.gov*

to

RE RE. Exelon-Constellation

Sheesh, he really thinks he's your BFF

From:

Sent: Wednesday, February 15, 2012 12:55 p.m. To: Fisher, Tracy;

Subject: Re: RE: Exelon-Constellation

Dear Ms Fisher,

I hope you will accept this thought in the sense it is offered. You are truly a beautiful person. I will augment and edit the last letter I wrote to you and submit it via certified mall return receipt I will also notify Ron Herzfeld at the Maryland Office of Public Counsel should he not be aware of this opportunity He has consistently exhibited unimpeachable integrity over this issue and should be given the opportunity to participate, should he find his thoughts pertinent.

With kindest and best regards,

Charles L Rogers, MD

On 03/08/12, Stallings, *William<William__Stallings@usdoj gov>* wrote

Dr. Rogers,

Under the Tunney Act, we must publish formal comments on the

proposed Exelon-Constellation settlement and the Department's response to the comments in the **Federal Register** and submit copies of them to the court. In your email to Tracy Fisher of February 15, 2012, you indicated that you intended to send a letter offering formal comments on the merger via certified mail. To date, we have not received such a letter from you. If you sent a letter or intend to do so, please let me know. As you know, the statutory deadline to file comments was last Friday, March 2, 2012, but we would be willing to accept your comments if you send them this week.

Thank you for your interest in this matter.

[FR Doc. 2012–11125 Filed 5–9–12; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Parole Commission

Sunshine Act Meetings

TIME AND DATE: 10:00 a.m., Thursday, May 17, 2012.

PLACE: U.S. Parole Commission, 90 K Street NE., 3rd Floor, Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: Approval of minutes for February 9, 2012 meeting; reports from the Chairman, the Commissioners, and senior staff; report on Short-Term Intervention for Success project; report on project regarding special hearing dockets for mental health 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: May 8, 2012.

Rockne Chickinell,

General Counsel, U.S. Parole Commission.

[FR Doc. 2012–11427 Filed 5–8–12; 4:15 pm]

BILLING CODE 4410–31–P

DEPARTMENT OF JUSTICE

Parole Commission

Sunshine Act Meeting

TIME AND DATE: 11:30 a.m., May 17, 2012.

PLACE: U.S. Parole Commission, 90 K Street NE., 3rd Floor, Washington, DC.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Determination on three 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: May 8, 2012.

Rockne Chickinell,

General Counsel, U.S. Parole Commission.

[FR Doc. 2012–11429 Filed 5–8–12; 4:15 pm]

BILLING CODE 4410–31–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Experience Rating Report

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employment and Training Administration (ETA) sponsored information collection request (ICR) titled, ''Experience Rating Report,'' to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 et seq.).

DATES: Submit comments on or before June 11, 2012.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain,* on the day following publication of this notice or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–ETA, Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–6929/Fax: 202–395–6881 (these are not toll-free numbers), email: *OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The Experience Rating Report (Form ETA–204) provides data to the ETA for the study of seasonality, employment, or payroll fluctuations and stabilization, expansion, or contraction in operations on employment experience. The data are used to provide an indication of whether solvency problems exist in a State's Unemployment Insurance Trust Fund accounts and in analyzing factors that give rise to solvency problems. The data are also used to complete the Experience Rating Index.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under OMB Control Number 1205–0164. The current OMB approval is scheduled to expire on May 31, 2012; however, it should be noted that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on January 13, 2012 (77 FR 2089).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should reference OMB Control Number 1205–0164. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or

other forms of information technology, e.g., permitting electronic submission of responses.

Agency: DOL–ETA.

Title of Collection: Experience Rating Report.

OMB Control Number: 1205–0164.

Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Respondents: 53.

Total Estimated Number of Responses: 53.

Total Estimated Annual Burden Hours: 27.

Total Estimated Annual Other Costs Burden: $0.

Dated: May 3, 2012.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2012–11211 Filed 5–9–12; 8:45 am]

BILLING CODE 4510–FW–P

NATIONAL FOUNDATION FOR THE ARTS AND HUMANITIES

Notice of Continuance for General Clearance for Guidelines, Applications and Reporting Forms

AGENCY: Institute of Museum and Library Services, National Foundation for the Arts and Humanities.

ACTION: Notice, request for comments, collection of information.

SUMMARY: The Institute of Museum and Library Services (IMLS), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act (44 U.S.C. chapter 35). This pre-clearance consultation program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. By this notice, IMLS is soliciting comments on IMLS program guidelines and reporting requirements.

A copy of the proposed information collection request can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before July 9, 2012.

The IMLS is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

ADDRESSES: For a copy of the documents contact: Kim A. Miller, Management Analyst, Institute of Museum and Library Services, 1800 M Street NW., 9th Floor, Washington, DC 20036. Ms. Miller can be reached by telephone: 202–653–4762; fax: 202–653–4600; email: *kmiller@imls.gov* or by or by teletype (TTY/TDD) for persons with hearing difficulty at 202–653–4614.

SUPPLEMENTARY INFORMATION:

I. Background

The Institute of Museum and Library Services is the primary source of federal support for the Nation's 123,000 libraries and 17,500 museums. The mission of IMLS is to inspire libraries and museums to advance innovation, lifelong learning, and cultural and civic engagement. We provide leadership through research, policy development, and grant making. IMLS provides a variety of grant programs to assist the Nation's museums and libraries in improving their operations and enhancing their services to the public. (20 U.S.C. 9101 *et seq.*).

II. Current Actions

To administer these programs of grants, cooperative agreements and contracts, IMLS must develop application guidelines and reporting forms.

Agency: Institute of Museum and Library Services.

Title: IMLS Guidelines, and Applications and Reporting Forms.

OMB Number: 3137–0029, 3137–0071.

Agency Number: 3137.

Frequency: Annually, Semi-annually.

Affected Public: State Library Administrative Agencies, museums, libraries, institutions of higher education, library and museum professional associations, and museum and library professionals, Indian tribes (including any Alaska native village, regional corporation, or village corporation), and organizations that primarily serve and represent Native Hawaiians.

Number of Respondents: 7961.

Estimated Time per Respondent: .08–90 hours.

Total Burden Hours: 70,092.

Total Annualized capital/startup costs: 0.

Total Annual Costs: $1,921,209.

Contact: For a copy of the documents contact: Kim Miller, Management Analyst, Institute of Museum and Library Services, 1800 M Street NW., 9th Floor, Washington, DC 20036. Ms. Miller can be reached by telephone: 202–653–4762; fax: 202–653–4600; or email: *kmiller@imls.gov.*

Dated: May 4, 2012.

Kim A. Miller,

Management Analyst, Office of Policy, Planning, Research, and Communication.

[FR Doc. 2012–11264 Filed 5–9–12; 8:45 am]

BILLING CODE 7036–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2012–0009]

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The NRC published a **Federal Register** Notice with a 60-day comment period on this information collection on February 2, 2012 (77 FR 5279).

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* 10 CFR part 62, ''Criteria and Procedures for Emergency Access to

Non-Federal and Regional Low-Level Waste Disposal Facilities.''

3. *Current OMB approval number:* 3150–0143.

4. *The form number if applicable:* N/A.

5. *How often the collection is required:* The collection would only be required upon application for a Commission emergency access determination when access to a non-Federal or regional low-level waste disposal facility is denied, which results in an immediate public health and safety and/or common defense and security concern.

6. *Who will be required or asked to report:* Generators of low-level radioactive waste, or the Governor of a State on behalf of any generator or generators located in his or her State who are denied access to a non-Federal or regional low-level radioactive wastes and who wish to request emergency access for disposal at a non-Federal or regional LLW disposal facility pursuant to 10 CFR part 62.

7. *An estimate of the number of annual responses:* 1.

8. *The estimated number of annual respondents:* 1.

9. *An estimate of the total number of hours needed annually to complete the requirement or request:* 233.

10. *Abstract:* 10 CFR part 62 sets out the information which must be provided to the NRC by any low-level waste generator or Governor of a State on behalf of generators seeking emergency access to an operating low-level waste disposal facility. The information is required to allow the NRC to determine if denial of disposal constitutes a serious and immediate threat to public health and safety or common defense and security. 10 CFR part 62 also provides that the Commission may grant an exemption from the requirements in this Part upon application of an interested person or upon its own initiative.

The public may examine and have copied for a fee, publicly available documents, including the final supporting statement, at the NRC's Public Document Room, Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. OMB clearance requests are available at the NRC's Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by June 11, 2012. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. Chad Whiteman, Desk Officer, Office of Information and Regulatory Affairs (3150–0143), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be emailed to *Chad_S_Whiteman@omb.eop.gov* or submitted by telephone at 202 395–4718.

The NRC Clearance Officer is Tremaine Donnell, 301 415–6258.

Dated at Rockville, Maryland, this 3th day of May, 2012.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 2012–11240 Filed 5–9–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–57, NRC–2012–0103]

License Amendment Request From The State University of New York, University of Buffalo Reactor Facility

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of decommissioning plan, proposed license amendment and opportunity to provide comments, request a hearing and to petition for leave to intervene.

DATES: Submit comments by July 9, 2012. Requests for a hearing or leave to intervene must be filed by July 9, 2012.

ADDRESSES: You may access information and comment submissions related to this document by searching on *http://www.regulations.gov* under Docket ID NRC–2012–0103. You may submit comments by the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0103. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.*
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
- *Fax comments to:* RADB at 301–492–3446.

For additional direction on accessing information and submitting comments, see ''Accessing Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Theodore Smith, Project Manager, Reactor Decommissioning Branch, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6721; email: *Theodore.Smith@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2012–0103 when contacting the NRC about the availability of information regarding this document. You may access information related to this document by the following methods:

- *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0103.

NRC's Agencywide Documents Access and Management System (ADAMS): You may access publicly-available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The University of Buffalo Decommissioning Plan and License Amendment Request is available electronically under ADAMS Accession Number ML120540187.

- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2012–0103 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed. The NRC posts all comment submissions at *http://www.regulations.gov* as well as entering the comment submissions into ADAMS, and the NRC does not edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information in their comment submissions that they do not want to be publicly disclosed. Your request should state that the NRC will not edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Introduction

The U.S. Nuclear Regulatory Commission (NRC or the Commission) has received, by letter dated February 17, 2012, (ADAMS Accession Number ML12054A116) a proposed decommissioning plan and license amendment application from the State University of New York, University of Buffalo requesting approval of a decommissioning plan and addition of a license condition for its Buffalo Materials Research Center Reactor Facility site located in Buffalo, New York, license No. R–77. Specifically, the amendment adds a license condition requiring a final status survey plan to be submitted and approved by the NRC prior to conducting final status surveys for license termination.

An NRC administrative review found the application acceptable to begin a technical review. If the NRC approves the amendment, the approval will be documented in an amendment to NRC License No R–77. However, before approving the proposed amendment, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended, and the NRC's regulations. These findings will be documented in a Safety Evaluation Report. This license amendment appears to qualify for a categorical exclusion in Title 10 of the *Code of Federal Regulations* (10 CFR) 51.22.

III. Notice and Solicitation of Comments

In accordance with 10 CFR 20.1405, the Commission is providing notice and soliciting comments from local and State governments in the vicinity of the site and any Federally-recognized Indian tribe that could be affected by the decommissioning. This notice and solicitation of comments is published pursuant to 10 CFR 20.1405, which provides for publication in the **Federal Register** and in a forum, such as local newspapers, letters to State or local organizations, or other appropriate forum, that is readily accessible to individuals in the vicinity of the site. Comments should be provided within 30 days of the date of this notice.

Further, in accordance with 10 CFR 50.82(b)(5), notice is also provided to interested persons of the Commission's intent to approve the plan by amendment, subject to such conditions and limitations as it deems appropriate and necessary, if the plan demonstrates that decommissioning will be performed in accordance with the regulations in this chapter and will not be inimical to the common defense and security or to the health and safety of the public.

IV. Opportunity To Request a Hearing; Petitions for Leave To Intervene

Within 60 days after the date of publication of this **Federal Register** notice, any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene with respect to the license amendment request. Requirements for hearing requests and petitions for leave to intervene are found in 10 CFR 2.309, ''Hearing requests, Petitions to Intervene, Requirements for Standing, and Contentions.'' Interested persons should consult 10 CFR 2.309, which is available at the NRC's Public Document Room (PDR), Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852 (or call the PDR at 1–800–397–4209 or 301–415–4737). The NRC's regulations are available online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.*

Any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition must provide the name, address, and telephone number of the petitioner and specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order that may be entered in the proceeding on the petitioner's interest.

A petition for leave to intervene must also include a specification of the contentions that the petitioner seeks to have litigated in the hearing. For each contention, the petitioner must provide a specific statement of the issue of law or fact to be raised or controverted, as well as a brief explanation of the basis for the contention. Additionally, the petitioner must demonstrate that the issue raised by each contention is within the scope of the proceeding and is material to the findings the NRC must make to support the granting of a license amendment in response to the application. The petition must also include a concise statement of the alleged facts or expert opinions which support the position of the petitioner and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the petitioner intends to rely. Finally, the petition must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact, including references to specific portions of the application for amendment that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application for amendment fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief. Each contention must be one that, if proven, would entitle the petitioner to relief.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that person's admitted contentions, including the opportunity to present evidence and to submit a cross-examination plan for cross-examination of witnesses, consistent with the NRC regulations, policies, and procedures. The Atomic Safety and Licensing Board will set the time and place for any prehearing conferences and evidentiary hearings, and the appropriate notices will be provided.

Non-timely petitions for leave to intervene and contentions, amended petitions, and supplemental petitions will not be entertained absent a determination by the Commission, the Atomic Safety and Licensing Board or a Presiding Officer that the petition should be granted and/or the contentions should be admitted based upon a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

A State, county, municipality, Federally-recognized Indian tribe, or agencies thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(d)(2). The petition should state the nature and

extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission by July 9, 2012. The petition must be filed in accordance with the filing instructions in Section V of this document, and should meet the requirements for petitions for leave to intervene set forth in this section, except that State and Federally-recognized Indian tribes do not need to address the standing requirements in 10 CFR 2.309(d)(1) if the facility is located within its boundaries. The entities listed above could also seek to participate in a hearing as a nonparty pursuant to 10 CFR 2.315(c).

Any person who does not wish, or is not qualified, to become a party to this proceeding may request permission to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of position on the issues, but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to such limits and conditions as may be imposed by the Atomic Safety and Licensing Board. Persons desiring to make a limited appearance are requested to inform the Secretary of the Commission by July 9, 2012.

V. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the Internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in the NRC's ''Guidance for Electronic Submission,'' which is available on the agency's public Web site at *http://www.nrc.gov/site-help/esubmittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/esubmittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with the NRC guidance available on the NRC's public Web site at *http://www.nrc.gov/sitehelp/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC's Web site at *http://www.nrc.gov/site-help/esubmittals.html,* by email at *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/EHD/,* unless excluded

pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from May 10, 2012. Non-timely filings will not be entertained absent a determination by the presiding officer that the petition or request should be granted or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

Dated at Rockville, Maryland, this 30th day of April 2012.

For the U.S. Nuclear Regulatory Commission.

Bruce A. Watson,

Acting Deputy Director, Decommissioning and Uranium Recovery Licensing Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. 2012–11297 Filed 5–9–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2012–0104]

Plant-Specific Adoption, Revision 4 of the Improved Standard Technical Specifications

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Availability.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) is announcing the availability of Revision 4.0 of the Improved Standard Technical Specifications, NUREG–1430, ''Standard Technical Specifications, Babcock and Wilcox Plants,'' NUREG–1431, ''Standard Technical Specifications, Westinghouse Plants,'' NUREG–1432, ''Standard Technical Specifications, Combustion Engineering Plants,'' NUREG–1433, ''Standard Technical Specifications, General Electric Plants, BWR/4,'' and NUREG–1434, ''Standard Technical Specifications, General Electric Plants, BWR/6.''

ADDRESSES: Please refer to Docket ID NRC–2012–0104 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and is publicly available, using the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0104. Address questions about NRC dockets to Carol Gallagher; telephone: 301 492–3668; email: *Carol.Gallagher@nrc.gov.*
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.''* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* NUREG–1430, ''Standard Technical Specifications, Babcock and Wilcox Plants'' Revision 4, is available in ADAMS under Accession No. ML12100A177 (Technical Specifications) and ML12100A178 (Bases), NUREG–1431, ''Standard Technical Specifications, Westinghouse Plants'' Revision 4, ADAMS Accession No. ML12100A222 (Technical Specifications) and ML12100A228 (Bases); NUREG–1432, ''Standard Technical Specifications, Combustion Engineering Plants'' Revision 4, ADAMS Accession No. ML12102A165 (Technical Specifications) and ML12102A165 (Bases), NUREG–1433, ''Standard Technical Specifications, General Electric Plants, BWR/4'' Revision 4, ADAMS Accession No. ML12104A192 (Technical Specifications) and ML12104A193 (Bases), and NUREG–1434, ''Standard Technical Specifications, General Electric Plants, BWR/6'' Revision 4, ADAMS Accession No. ML12104A195 (Technical Specifications) and ML12104A196 (Bases).
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Mr. Shaun M. Anderson, Reactor Systems Engineer, Technical Specifications Branch, Mail Stop: O–7 C2A, Division of Safety Systems, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC, 20555–0001; telephone 301–415–2039 or email at *Shaun.Anderson@nrc.gov* or Mr. Gerald Waig, Technical Specifications Branch, Mail Stop: O–7 C2A, Division of Safety Systems, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone 301–415–2260 or email; *Gerald.Waig@nrc.gov.*

SUPPLEMENTARY INFORMATION: The changes reflected in Revision 4 result from the experience gained from plant operation using the improved standard technical specifications (STS) and extensive public technical meetings and discussions among the NRC staff and various nuclear power plant licensees and the Nuclear Steam Supply System (NSSS) Owners Groups.

The improved STS were developed based on the criteria in the Final Commission Policy Statement on Technical Specifications Improvements for Nuclear Power Reactors, dated July 22, 1993 (58 FR 39132), which was subsequently codified by changes to Title 10 of the Code of Federal Regulations (10 CFR) 50.36, published on July 19, 1995 (60 FR 36953). Licensees are encouraged to upgrade their technical specifications consistent with those criteria and conforming, to the practical extent, to Revision 4 to the improved STS. The Commission continues to place the highest priority on requests for complete conversions to the improved STS. Licensees adopting portions of the improved STS to existing technical specifications should adopt all related requirements, as applicable, to achieve a high degree of standardization and consistency.

Licensees opting to apply for an improved STS conversion are responsible for reviewing the NRC staff STS and the applicable technical bases, providing any necessary plant-specific information, and assessing the completeness and accuracy of their license amendment request (LAR). The NRC will process each amendment application responding to the Notice of Availability according to applicable NRC rules and procedures.

The proposed changes do not prevent licensees from requesting an alternate approach or proposing changes other than those proposed in the Improved STS, Revision 4. However, significant deviations from the approach recommended in this notice or the inclusion of additional changes to the license will require additional NRC staff review. This may increase the time and resources needed for the review or result in NRC staff rejection of the LAR. Licensees desiring significant deviations or additional changes should instead

submit an LAR that does not claim to adopt an Improved STS, Revision 4.

NUREG	Volume 1 technical specifications	Volume 2 bases
NUREG–1430, "Standard Technical Specifications, Babcock and Wilcox Plants"	ML12100A177	ML12100A178
NUREG–1431, "Standard Technical Specifications, Westinghouse Plants"	ML12100A222	ML12100A228
NUREG–1432, "Standard Technical Specifications, Combustion Engineering Plants"	ML12102A165	ML12102A169
NUREG–1433, "Standard Technical Specifications, General Electric BWR/4 Plants"	ML12104A192	ML12104A193
NUREG–1434, "Standard Technical Specifications, General Electric BWR/6 Plants"	ML12104A195	ML12104A196

Dated at Rockville, Maryland, this 30th day of April 2012.

For the Nuclear Regulatory Commission.

Robert Elliott,

Chief, Technical Specifications Branch, Division of Safety Systems, Office of Nuclear Reactor Regulation.

[FR Doc. 2012–11299 Filed 5–9–12; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. MC2012–14 and R2012–8; Order No. 1330]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service request to add a negotiated service agreement with Valassis Direct Mail, Inc. to the market dominant product list. This notice addresses procedural steps associated with this filing.

DATES: *Comments are due:* May 23, 2012.

Reply Comments are due: May 30, 2012.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Commenters who cannot submit their views electronically should contact the person identified in **FOR FURTHER INFORMATION CONTACT** by telephone for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Notice of Filing
III. Ordering Paragraphs

I. Introduction

On April 30, 2012, the Postal Service filed a request pursuant to 39 U.S.C. 3622 and 3642, as well as 39 CFR 3010 and 3020 et seq., to add a negotiated service agreement (NSA) with Valassis Direct Mail, Inc. (Valassis) to the market dominant product list.[1]

Request. In support of its Request, the Postal Service filed six attachments as follows:

- Attachment A—a copy of Governors' Resolution No. 11–4, establishing mail classifications and rates corresponding to Domestic Market Dominant Agreements, Inbound International Market Dominant Agreements, and Other Non-Published Market Dominant Rates;
- Attachment B—a copy of the instant contract;
- Attachment C—proposed changes to the Mail Classification Schedule (MCS);
- Attachment D—a proposed data collection plan;
- Attachment E–a Statement of Supporting Justification as required by 39 CFR 3020.32, which the Postal Service is also using to satisfy the requirements of 39 CFR 3010.42(b)–(e); and
- Attachment F—a financial model, by which the Postal Service demonstrates that it believes that the instant contract will generate an additional $13 million to $42 million in contribution.

In its Request, the Postal Service identifies Michelle Yorgey, Acting Manager, Pricing Strategy, as the official able to provide responses to queries from the Commission. *Id.* at 2. David Mastervich, Manager, Saturation and Catalogs, provides the Statement of Supporting Justification. *Id.,* Attachment E. In his Statement of Supporting Justification, Mr. Mastervich reviews the factors and objectives of section 3622(c) and concludes, *inter alia,* that the instant contract will provide an incentive for profitable new mail; will enhance the financial position of the Postal Service; will increase mail volume; and will not imperil the ability of Standard Mail (or the instant contract) to cover its attributable costs. *Id.* at 1–3.

The Postal Service believes that this NSA conforms to the policies of the Postal Accountability and Enhancement Act, and meets the statutory standards supporting the desirability of special classifications that improve the net financial position of the Postal Service by increasing contribution. *Id.* at 3.

Instant contract. The Postal Service states that the objective of the instant contract is twofold: (a) To maintain the total contribution the Postal Service receives from Valassis Saturation Mail Postage, and (b) to provide an incentive for Valassis to find innovative ways to expand its use of Standard Mail. Request at 2. The Postal Service describes the instant contract and its four key components: Mailer eligibility, mail eligibility, mailing and volume commitments, and rebates on Standard Mail Saturation Flats Mail. *Id.* at 4.

To be eligible for the contract prices, Valassis must initiate new shared saturation mail programs (limited to advertising of durable and semi-durable goods with a physical retail outlet presence in 30 or more states) in markets where it has maintained an existing Standard Mail Saturation mailing program on at least a monthly basis during the 2 years prior to the execution of the instant contract. Valassis must also maintain its pre-existing shared mail program for the duration of the instant contract, and cannot transfer or consolidate advertising from current advertisers into the new program, extend the new program to ZIP Codes or carrier routes that are beyond the market profile of its existing programs, or migrate advertising circular business from the solo mail stream into its new program. *Id.*

Mailpieces eligible under this program are Standard Mail Saturation Flats entered at a destination Sectional Center Facility (SCF) or Destination Delivery Unit (DDU). *Id.* at 3. Qualifying mailpieces must have dimensions between 6.125″ x 11.5″ x .25″ and

[1] Notice of the United States Postal Service of Filing of Contract and Supporting Data and Request to Add Valassis Direct Mail, Inc. Negotiated Service Agreement to the Market-Dominant Product List, April 30, 2012 (Request).

12″ x 15″ x .75″, and must contain between 3 and 10 advertising inserts during at least 9 of the 12 months of each contract year. *Id.* at 5. The volume mailed to DDUs must exceed 85 percent of the total volume of pieces mailed. *Id.*

Valassis has agreed to initiate mailings under the instant agreement within 90 days of its effective date. Otherwise, either party may cancel the agreement within 30 days. *Id.* The effective date is defined as the date on which the Commission approves the contract. *Id.,* Attachment B at 5. If Valassis decides to proceed with the agreement, it must mail at least 1,000,000 pieces during the following 12 months or pay the Postal Service a one-time fee of $100,000. Request at 5.

If all the above conditions are met, Valassis will earn an annual rebate on published prices as follows:

Weight per piece	DDU rate	SCF rate
4.5 to 6.5 ounces	20% off published rates at the time of mailing	20% off published rates at the time of mailing.
6.5 to 9 ounces	$0.172	$0.185.
9.0 ounces to 11 ounces	$0.211	$0.229.
Over 11 ounces	20% off published rates at the time of mailing	20% off published rates at the time of mailing.

The annual rebate will be paid after the end of each contract year. *Id.* at 5–6. If the Postal Service implements price adjustments during the term of the agreement, the rebate prices for the 6.5- to 9.0-ounce and 9.0- to 11-ounce mailpieces will be adjusted in an amount equal to the percentage price change for Standard Mail Saturation Flats, provided that the rebates remain in the range of 22 percent to 34 percent. *Id.* at 6. The mailpieces sent under the instant contract will be entered exclusively under dedicated PostalOne™ permit accounts. *Id.*

The Postal Service expects that the value of the agreement to still be positive if the penalty provision is triggered, reducing the risk of the agreement. *Id.* at 7.

Similarly situated mailers. With respect to potential similarly situated mailers, the Postal Service states that the design imperative—to generate additional contribution—and the basic structure of the agreement with Valassis as described in the Request, will guide the Postal Service in the negotiation of similar agreements and may, in other NSAs, yield parameters that are substantially different from those in the instant contract. *Id.* at 6–7. It states that in assessing the desirability of the instant contract, it believes that the defining characteristics of Valassis are its size, nationwide distribution network, and significant volume of Saturation Mail. *Id.* at 7. It maintains that these characteristics enable Valassis to provide a new opportunity to retail advertisers of durable and semi-durable goods that is scalable across multiple media markets. *Id.* In offering similar agreements, the Postal Service will look for all of these characteristics, as well as other conditions that might affect a favorable contractual agreement. *Id.*

Notice. The Postal Service represents that it will inform customers of the new classification changes and associated price effects through a press release, notification on *www.usps.com,* and publication in the **Federal Register**.

II. Notice of Filing

The Commission establishes Docket Nos. MC2012–14 and R2012–8 for consideration of the Request pertaining to the proposed new product and the related contract, respectively.

Interested persons may submit comments on whether the Postal Service's filing in the captioned dockets are consistent with the policies of 39 U.S.C. 3622 and 3642 as well as 39 CFR parts 3010 and 3020. Comments are due no later than May 23, 2012. Reply comments to initial comments are due May 30, 2012. The filing can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Malin G. Moench to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2012–14 and R2012–8 for consideration of the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, Malin G. Moench is appointed to serve as officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

3. Initial comments by interested persons in these proceedings are due no later than May 23, 2012.

4. Reply comments may be filed no later than May 30, 2012.

5. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

[FR Doc. 2012–11204 Filed 5–9–12; 8:45 am]

BILLING CODE 7710–FW–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:

Form 1–E, Regulation E, SEC File No. 270–221, OMB Control No. 3235–0232.

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 (the ''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information of the Office of Management and Budget for extension and approval.

Form 1–E (17 CFR 239.200) under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) (''Securities Act'') is the form that a small business investment company (''SBIC'') or business development company (''BDC'') uses to notify the Commission that it is claiming an exemption under Regulation E from registering its securities under the Securities Act. Rule 605 of Regulation E (17 CFR 230.605) under the Securities Act requires an SBIC or BDC claiming such an exemption to file an offering circular with the Commission that must also be provided to persons to whom an offer is made. Form 1–E requires an issuer to provide the names and addresses of the issuer, its affiliates, directors, officers, and counsel; a description of events which would make the exemption unavailable; the jurisdictions in which the issuer intends to offer the securities; information about unregistered securities issued or sold by the issuer within one year before filing the notification on Form 1–E; information as to whether the issuer is

presently offering or contemplating offering any other securities; and exhibits, including copies of the rule 605 offering circular and any underwriting contracts.

The Commission uses the information provided in the notification on Form 1–E and the offering circular to determine whether an offering qualifies for the exemption under Regulation E. It is estimated that one issuer files approximately two notifications, together with attached offering circulars, on Form 1–E with the Commission annually. The Commission estimates that the total burden hours for preparing these notifications would be 200 hours in the aggregate. Estimates of the burden hours are made solely for the purposes of the PRA, and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules and forms.

Written 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 will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information 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, VA 22312; or send an email to: *PRA_Mailbox@sec.gov.*

Dated: May 4, 2012.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–11250 Filed 5–9–12; 8:45 am]

BILLING CODE 8011–01–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:

Rule 17f–6, SEC File No. 270–392, OMB Control No. 3235–0447.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (the ''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.

Rule 17f–6 (17 CFR 270.17f–6) under the Investment Company Act of 1940 (15 U.S.C. 80a) permits registered investment companies (''funds'') to maintain assets (*i.e.,* margin) with futures commission merchants (''FCMs'') in connection with commodity transactions effected on both domestic and foreign exchanges. Prior to the rule's adoption, funds generally were required to maintain these assets in special accounts with a custodian bank.

The rule requires a written contract that contains certain provisions designed to ensure important safeguards and other benefits relating to the custody of fund assets by FCMs. To protect fund assets, the contract must require that FCMs comply with the segregation or secured amount requirements of the Commodity Exchange Act (''CEA'') and the rules under that statute. The contract also must contain a requirement that FCMs obtain an acknowledgment from any clearing organization that the fund's assets are held on behalf of the FCM's customers according to CEA provisions.

Because rule 17f–6 does not impose any ongoing obligations on funds or FCMs, Commission staff estimates there are no costs related to existing contracts between funds and FCMs. This estimate does not include the time required by an FCM to comply with the rule's contract requirements because, to the extent that complying with the contract provisions could be considered ''collections of information,'' the burden hours for compliance are already included in other PRA submissions.[1]

Thus, Commission staff estimates that any burden of the rule would be borne by funds and FCMs entering into new contracts pursuant to the rule. Commission staff estimates that approximately 761 fund complexes and 1997 funds currently effect commodities transactions and could deposit margin with FCMs in connection with those transactions pursuant to rule 17f–6.[2] Staff further estimates that of this number, 76 fund complexes and 200 funds enter into new contracts with FCMs each year.[3]

Based on conversations with fund representatives, Commission staff understands that fund complexes typically enter into contracts with FCMs on behalf of all funds in the fund complex that engage in commodities transactions. Funds covered by the contract are typically listed in an attachment, which may be amended to encompass new funds. Commission staff estimates that the burden for a fund complex to enter into a contract with an FCM that contains the contract requirements of rule 17f–6 is one hour, and further estimates that the burden to add a fund to an existing contract between a fund complex and an FCM is 6 minutes.

Accordingly, Commission staff estimates that funds and FCMs spend 96 burden hours annually complying with the information collection requirements of rule 17f–6.[4] At $378 per hour of professional (attorney) time, Commission staff estimates that the annual dollar cost for the 96 hours is $36,288.[5] These estimates are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

Compliance with the collection of information requirements of the rule is necessary to obtain the benefit of relying on the rule. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

[1] The rule requires a contract with the FCM to contain two provisions requiring the FCM to comply with existing requirements under the CEA and rules adopted under that Act. Thus, to the extent these provisions could be considered collections of information; the hours required for compliance would be included in the collection of information burden hours submitted by the CFTC for its rules.

[2] This estimate is based on the number of funds that reported on Form N–SAR from July 1, 2011–December 31, 2011, in response to items (b) through (i) of question 70, the ability to engage in futures and commodity option transactions.

[3] These estimates are based on the assumption that 10% of fund complexes and funds enter into new FCM contracts each year. This assumption encompasses fund complexes and funds that enter into FCM contracts for the first time, as well as fund complexes and fund that change the FCM with whom they maintain margin accounts for commodities transactions.

[4] This estimate is based upon the following calculation: (76 fund complexes × 1 hour) + (200 funds × 0.1 hours) = 96 hours.

[5] The $378 per hour figure for an attorney is from SIFMA's *Management & Professional Earnings in the Securities Industry 2011,* modified by Commission staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

Written comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burden of 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 after 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, VA 22312; or send an email to: *PRA_Mailbox@sec.gov.*

Dated: May 4, 2012.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–11249 Filed 5–9–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 30060; 813–194]

SK Private Investment Fund 1998 LLC, et al.; Notice of Application

May 4, 2012.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under sections 6(b) and 6(e) of the Investment Company Act of 1940 (the ''Act'') granting an exemption from all provisions of the Act, except sections 9, 17, 30 and 36 through 53, and the rules and regulations under the Act (the ''Rules and Regulations''). With respect to sections 17(a), (d), (f), (g), and (j) of the Act, sections 30(a), (b), (e), and (h) of the Act and the Rules and Regulations and rule 38a–1 under the Act, applicants request a limited exemption as set forth in the application.

SUMMARY: *Summary of the Application:* Applicants request an order to exempt certain limited liability companies formed for the benefit of eligible employees of Skadden, Arps, Slate, Meagher & Flom and its affiliates from certain provisions of the Act. Each limited liability company will be an ''employees' securities company'' within the meaning of section 2(a)(13) of the Act.

Applicants: SK Private Investment Fund 1998 LLC, Project Capital 2004 Investment Fund LLC, Project Capital 2006 Investment Fund LLC, and Project Capital 2008 Investment Fund LLC (''Existing Funds''), and Skadden, Arps, Slate, Meagher & Flom LLP (''Skadden Arps LLP'').

DATES: *Filing Dates:* The application was filed on June 5, 1998 and amended on February 18, 1999, April 2, 1999, August 30, 2000, February 1, 2005, May 18, 2009, November 17, 2009, October 25, 2010, November 18, 2011, March 20, 2012, and May 3, 2012.

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 May 30, 2012 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, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. Applicants, Four Times Square, New York, New York 10036.

FOR FURTHER INFORMATION CONTACT: Marilyn Mann, Special Counsel, at (202) 551–6813 or Mary Kay Frech, 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 for an applicant using the Company name box, at *http://www.sec.gov/search/seach.htm* or by calling (202) 551–8090.

Applicants' Representations

1. The Existing Funds are Delaware limited liability companies formed pursuant to limited liability company agreements. The applicants may in the future offer additional pooled investment vehicles identical in all material respects (other than form of organization, investment objective and/or strategy) to the same class of investors as those investing in the Existing Funds (the ''Subsequent Funds'' and, together with the Existing Funds, the ''Investment Funds''). The applicants anticipate that each Subsequent Fund will also be structured as a limited liability company, although a Subsequent Fund could be structured as a domestic or offshore general partnership, limited partnership or corporation. The operating agreements of the Investment Funds are the ''Investment Fund Agreements.'' An Investment Fund may include a single vehicle designed to issue interests in series (''Series'') or having similar features to enable a single fund to function as if it were several successive funds for ease of administration. Each Investment Fund will be an employees' securities company within the meaning of section 2(a)(13) of the Act. Skadden Arps LLP, a Delaware limited liability partnership, and any ''affiliates,'' as defined in rule 12b–2 under the Securities Exchange Act of 1934 (the ''Exchange Act''), that are organized to practice law are referred to collectively as ''Skadden Arps'' and individually as a ''Skadden Arps Entity.''

2. In light of the community of interest that exists between Skadden Arps and the Eligible Investors (as defined below), the Investment Funds have been, and will be, established and controlled by Skadden Arps, within the meaning of section 2(a)(9) of the Act, so as to enable the Eligible Investors to participate in certain investment opportunities that come to the attention of Skadden Arps. Such opportunities may include separate accounts, registered investment companies, investment companies exempt from registration under the Act, commodity pools, real estate investment funds, and other securities investments (each particular investment, except any investment that is a ''Temporary Investment,'' [1] is referred to as an ''Investment''). Participation as investors in the Investment Funds will allow the Eligible Investors who are members of the Investment Funds (the ''Members'') to diversify their investments and to have the opportunity to participate in investments that might not otherwise be available to them or

[1] It is anticipated that capital will be contributed to an Investment Fund only in connection with the funding of an Investment. Pending the payment of the full purchase price for an Investment, funds contributed to the Investment Fund will be invested in high quality short-term investments, shares of money market funds, or bank deposits (collectively, ''Temporary Investments'').

that might be beyond their individual means.

3. Interests in an Investment Fund (''Units'') will be offered and sold in reliance upon the exemption from registration under the Securities Act of 1933 (the ''Securities Act'') contained in section 4(2) of the Securities Act or Regulation D under the Securities Act. Units will be offered only to persons (''Eligible Investors'') who meet the following criteria: (a) Current or former partners of, or key administrative employees and lawyers employed by, Skadden Arps (collectively, ''Eligible Affiliates''), the immediate family members of Eligible Affiliates, which are a person's siblings, spouse, children, spouses of children, and grandchildren, including step and adoptive relationships (''Eligible Family Members''), or trusts or other entities the sole beneficiaries of which consist of Eligible Affiliates or their Eligible Family Members (''Eligible Trusts''); and (b) who are ''accredited investors'' as that term is defined in Regulation D under the Securities Act. Prior to offering a Unit to an individual, the Investment Committee (as defined below) must reasonably believe that the individual is a sophisticated investor capable of understanding and evaluating the risks of participating in the Investment Fund without the benefit of regulatory safeguards.

4. Each Investment Fund will have an investment committee (''Investment Committee''), which will consist of not less than two persons who are Eligible Affiliates and who may but are not required to be Members. The chief function of the Investment Committee will be to review possible Investments for the Investment Fund for submission to the Members for approval or disapproval. Members of the Investment Committee are selected by the executive managing partner of Skadden Arps, and typically include partners and key administrative employees of Skadden Arps knowledgeable in operation, taxation and regulation of Investments and of the Investment Funds. The Investment Committee may select Temporary Investments for the Investment Fund. No Investment will be made by an Investment Fund unless the Investment has been ''Approved by the Members,'' which means (i) with respect to any matter relating to the Investment Fund, the approval by Members representing at least a majority of the capital commitments of such Investment Fund and (ii) with respect to any matter relating to a particular Series, the approval by Members representing at least a majority of the capital commitments attributable to such Series. No Members will make or have the right to make an individual investment decision with respect to any Investment submitted to the Members for approval or disapproval. The Investment Committee will consider whether it or any other person involved in the operation of the Investment Fund is required to register under the Investment Advisers Act of 1940 (the ''Advisers Act''). Such persons will register as investment advisers under the Advisers Act if such registration is required under the Advisers Act and the rules under the Advisers Act.

5. Each Investment Fund will have an administrator (the ''Administrator'') who is selected by the executive managing partner of Skadden Arps and who is knowledgeable in the operation and taxation of the Investment Funds. The Administrator may, but is not required to be, a Member in the Investment Fund. The Administrator will not recommend Investments or exercise investment discretion. No management fee or other compensation will be paid by any Investment Fund or the Members to the Administrator.

6. Applicants represent and concede that each of the Administrator, the members of the Investment Committee and the Tax Matters Partner (as defined below) are, as applicable, an ''employee, officer, director, member of the an advisory board, investment adviser, or depositor'' of the Investment Funds within the meaning of section 9 of the Act and an ''officer, director, member of any advisory board, investment adviser, or depositor'' within the meaning of section 36 of the Act and are subject to those sections.

7. The specific investment objectives and strategies for a particular Investment Fund will be set forth in the Investment Fund Agreement and an information memorandum relating to the Units offered by the Investment Fund, and each Eligible Investor will receive a copy of the information memorandum and Investment Fund Agreement before making an investment in the Investment Fund. The terms of an Investment Fund will be disclosed to each Eligible Investor at the time the investor is invited to participate in the Investment Fund.

8. The value of the Members' capital accounts for the purpose of filing tax returns will be determined at such times as the Administrator, in consultation with the Tax Matters Partner under section 6231(a)(7) of the Internal Revenue Code of 1986 (the ''Tax Matters Partner'') deems appropriate or necessary; however, such valuation will be done at least annually at the Investment Fund's fiscal year-end. Tax Matters Partner for the Investment Funds is selected by the executive managing partner of Skadden Arps, and typically will be a partner or a senior administrative employee of Skadden Arps responsible for the preparation or administration of tax reporting in connection with the Investment Funds. The Administrator will value the assets of an Investment Fund at the current market price (closing price) in the case of marketable securities. All other securities or assets will be valued at fair value as determined in good faith by the Administrator.

9. Administration of the Investment Funds will be vested in the Investment Committee, Tax Matters Partner and the Administrator. Each Investment Fund Agreement provides that the Investment Fund will bear its own expenses or that such expenses shall be borne by Skadden Arps. No separate management fee will be charged to an Investment Fund by the Investment Committee or the Administrator. No compensation will be paid by any Investment Fund or its Members to the Administrator, Tax Matters Partner, or the members of the Investment Committee for their services in such capacity.

10. Whenever Skadden Arps, the members of the Investment Committees, the Administrator, the Tax Matters Partner or any other person acting for or on behalf of the Investment Funds is required or permitted to make a decision, take or approve an action or omit to do any of the foregoing in such person's discretion, then such person shall exercise such discretion in accordance with reasonableness and good faith and their fiduciary duties (if any) owed to the Investment Funds and their Members.

11. Each Investment Fund Agreement and any other organizational documents for and any other contractual arrangement regarding an Investment Fund will not contain any provision which protects or purports to protect Skadden Arps, the members of the Investment Committee, the Administrator, the Tax Matters Partner, or their delegates against any liability to the Investment Fund or the Members to which such person would otherwise be subject by reason of such person's willful misfeasance, bad faith, or gross negligence in the performance of such person's duties, or by reason of such person's reckless disregard of such person's obligations and duties under such contract or organizational documents.

12. Each Investment Fund will send its Members an annual report regarding its operations as soon as practicable after the end of each fiscal year. The

annual report of the Investment Fund will contain audited financial statements.[2] Each Investment Fund, within 120 days after the end of the tax year of such Investment Fund, if possible, or as soon as practicable thereafter, will transmit a report to each Member setting out information with respect to the Member's distributive share of income, gains, losses, credits and other items for federal income tax purposes, resulting from the operation of the Investment Fund during that year.

13. Members will not be entitled to redeem their respective Units. A Member will be permitted to transfer his or her Units only to Eligible Investors and only with the express consent of the Investment Committee or the Administrator. No fee of any kind will be charged in connection with the sale of Units of the Investment Fund.

14. Each Investment Fund Agreement provides that the Administrator may require a Member to withdraw from the Investment Fund if the Administrator, in its discretion, deems such withdrawal to be in the best interests of the Investment Fund, including in instances in which the Member is no longer an Eligible Investor or affiliated with Skadden Arps. Upon withdrawal, a Member will be entitled to receive at a minimum the lesser of (i) the amount actually paid by the Member to acquire the Units, plus interest, less those amounts returned to the Member as distributions, or (ii) the fair market value of the Units, determined at the time of withdrawal, as determined in good faith by the Administrator.

15. To provide flexibility in connection with an Investment Fund's obligation to contribute capital to fund an Investment, and the associated obligation of the Members to make capital contributions with respect to their capital commitments, each Investment Fund Agreement provides that the Investment Fund may engage in borrowings in connection with such funding of Investments. All borrowings by an Investment Fund will be debt of the Investment Fund and without recourse to the Members. The Investment Funds will not borrow from any person if the borrowing would cause any person not named in section 2(a)(13) of the Act to own any outstanding securities of the Investment Fund (other than short-term paper). If Skadden Arps makes a loan to an Investment Fund, it (as lender) will be entitled to receive interest at a rate no less favorable to the Investment Funds than the rate that could be obtained on an arm's length basis. Skadden Arps may in its discretion advance funds to Eligible Investors for the purpose of making their capital contributions. Skadden Arps will charge no interest with respect to such loans.

16. An Investment Fund will not acquire any security issued by a registered investment company if immediately after the acquisition, the Investment Fund would own more than 3% of the total outstanding voting stock of the registered investment company.

Applicants' Legal Analysis

1. Section 6(b) of the Act provides, in part, that the Commission will exempt employees' securities companies from the provisions of the Act to the extent that the exemption is consistent with the protection of investors. Section 6(b) provides that the Commission will consider, in determining the provisions of the Act from which the company should be exempt, the company's form of organization and capital structure, the persons owning and controlling its securities, the price of the company's securities and the amount of any sales load, the disposition of the proceeds of any sales of the company's securities, how the company's funds are invested, and the relationship between the company and the issuers of the securities in which it invests. Section 2(a)(13) defines an employees' securities company as any investment company all of whose securities (other than short-term paper) are beneficially owned (a) by current or former employees, or persons on retainer, of one or more affiliated employers, (b) by immediate family members of such persons, or (c) by such employer or employers together with any of the persons in (a) or (b).

2. Section 7 of the Act generally prohibits investment companies that are not registered under section 8 of the Act from selling or redeeming their securities. Section 6(e) of the Act provides that, in connection with any order exempting an investment company from any provision of section 7, certain provisions of the Act, as specified by the Commission, will be applicable to the company and other persons dealing with the company as though the company were registered under the Act. Applicants request an order under sections 6(b) and 6(e) of the Act exempting applicants from all provisions of the Act, except sections 9, 17, 30, 36 through 53, and the Rules and Regulations. With respect to sections 17(a), (d), (f), (g) and (j) and 30(a), (b), (e) and (h) of the Act and the Rules and Regulations, and rule 38a–1 under the Act, applicants request a limited exemption as set forth in the application.

3. Section 17(a) of the Act generally prohibits any affiliated person of a registered investment company, or any affiliated person of an affiliated person, acting as principal, from knowingly selling or purchasing any security or other property to or from the company. Applicants request an exemption from section 17(a) to permit an Investment Fund: to invest in or participate as a selling security-holder in a principal transaction with one or more affiliated persons (as defined in section 2(a)(3) of the Act) (''First-Tier Affiliates'') and affiliated persons of such First-Tier Affiliates (''Second-Tier Affiliates,'' and together with First-Tier Affiliates, ''Affiliates'') of an Investment Fund.

4. Applicants submit that the exemptions sought from section 17(a) are consistent with the purposes of the Act and the protection of investors. Applicants state that the Members will be informed in an Investment Fund's communications relating to a particular Investment of the possible extent of the dealings by such Investment and its sponsors with Skadden Arps or any affiliated person thereof. Applicants also state that, as experienced professionals acting on behalf of financial services businesses, the Members will be able to evaluate the risks associated with such dealings. Applicants assert that the community of interest among the Members and Skadden Arps will serve to reduce the risk of abuse in transactions involving the Investment Fund and Skadden Arps or any Affiliate thereof.

5. Section 17(d) of the Act and rule 17d–1 under the Act prohibit any affiliated person of a registered investment company, or any affiliated person of such person, acting as principal, from participating in any joint arrangement with the registered investment company unless authorized by the Commission. Applicants request an exemption from section 17(d) and rule 17d–1 to the extent necessary to permit an Investment Fund to engage in transactions in which an Affiliate participates as a joint or a joint and several participant with such Investment Fund.

6. Joint transactions in which an Investment Fund could participate might include the following: (a) A joint investment by one or more Investment Funds in a security in which Skadden Arps or another Investment Fund is a joint participant or plans to become a participant or (b) a joint investment by one or more Investment Funds in another Investment Fund or any other investment vehicle sponsored, offered

[2] For purposes of this requirement, ''audit'' shall have the meaning defined in rule 1–02(d) of Regulation S–X.

or managed by Skadden Arps or any Affiliate thereof; and (c) a joint investment by one or more Investment Funds in a security in which an Affiliate is an investor or plans to become an investor, including situations in which an Affiliate has a partnership or other interest in, or compensation arrangements with, such issuer, sponsor or offeror.

7. Applicants assert that compliance with section 17(d) and rule 17d–1 would cause an Investment Fund to forego investment opportunities simply because a Member, Skadden Arps or other Affiliates also had or contemplated making a similar investment. In addition, because attractive investment opportunities of the types considered by an Investment Fund often require that each participant make available funds in an amount that may be substantially greater than that available to the investor alone, there may be certain attractive opportunities of which an Investment Fund may be unable to take advantage except as a co-participant with other persons, including Affiliates. Applicants believe that the flexibility to structure co- and joint investments in the manner described above will not involve abuses of the type section 17(d) and rule 17d–1 were designed to prevent. Applicants acknowledge that any transactions subject to section 17(d) and rule 17d–1 for which exemptive relief has not been requested in the application would require specific approval by the Commission.

8. Section 17(f) of the Act designates the entities that may act as investment company custodians, and rule 17f–2 under the Act allows an investment company to act as self-custodian. Applicants request an exemption to permit the following exceptions from the requirements of rule 17f–2: (i) Compliance with paragraph (b) of the rule may be achieved through safekeeping in the locked files of Skadden Arps or of a partner of Skadden Arps; (ii) for the purposes of paragraph (d) of the rule, (A) employees of Skadden Arps will be deemed employees of the Investment Funds, (B) the Administrator will be deemed to be an officer of the Investment Funds, and (C) the members of the Investment Committee will be deemed to be the board of directors of the Investment Funds; and (iii) instead of the verification procedure under paragraph (f) of the rule, verification will be effected quarterly by two employees of Skadden Arps each of whom shall have sufficient knowledge, sophistication and experience in business matters to perform such examination. Investments also may be evidenced by partnership agreements or similar documents. Such instruments are most suitably kept in Skadden Arps' files, where they can be referred to as necessary. Applicants will comply with all other provisions of rule 17f–2.

9. Section 17(g) and rule 17g–1 generally require the bonding of officers and employees of a registered investment company who have access to its securities or funds. Rule 17g–1 requires that a majority of directors who are not interested persons of a registered investment company (''disinterested directors'') take certain actions and give certain approvals relating to fidelity bonding. Paragraph (g) of rule 17g–1 sets forth certain materials relating to the fidelity bond that must be filed with the Commission and certain notices relating to the fidelity bond that must be given to each member of the investment company's board of directors. Paragraph (h) of rule 17g–1 provides that an investment company must designate one of its officers to make the filings and give the notices required by paragraph (g). Paragraph (j) of rule 17g–1 exempts a joint insured bond provided and maintained by an investment company and one or more parties from section 17(d) of the Act and the rules thereunder. Rule 17g–1(j)(3) requires that the board of directors of an investment company satisfy the fund governance standards defined in rule 0–1(a)(7).

10. Applicants request an exemption from section 17(g) and rule 17g–1 to permit the Administrator to take actions and determinations as set forth in the rule. Applicants state that, because the Administrator will be an interested person of the Fund, the Fund could not comply with rule 17g–1 without the requested relief. Specifically, each Fund will comply with rule 17g–1 by having the Administrator take such actions and make approvals as are set forth in rule 17g–1. Applicants also request an exemption from the requirements of rule 17g–1(g) and (h) relating to the filing of copies of fidelity bonds and related information with the Commission and the provision of notices to the board of directors and from the requirements of rule 17g–1(j)(3). Applicants believe the filing requirements are burdensome and unnecessary as applied to the Investment Funds. The Administrator will maintain the materials otherwise required to be filed with the Commission by rule 17g–1(g) and agrees that all such material will be subject to examination by the Commission and its staff. Applicants also state that the notices otherwise required to be given to the board of directors are unnecessary in the case of the Investment Funds. The Funds will comply with all other requirements of rule 17g–1. The fidelity bond of the Investment Funds will cover all employees of Skadden Arps who have access to the securities or funds of the Investment Funds.

11. Applicants request an exemption from the requirements, contained in section 17(j) of the Act and rule 17j–1 under the Act, that every registered investment company adopt a written code of ethics and every ''access person'' of such registered investment company report to the investment company with respect to transactions in any security in which such access person has, or by reason of the transaction acquires, any direct or indirect beneficial ownership in the security. Applicants request an exemption from the requirements in rule 17j–1, with the exception of rule 17j–1(b), because they are burdensome and unnecessary as applied to the Investment Funds and because the exemption is consistent with the policy of the Act. Requiring the Investment Funds to adopt a written code of ethics and requiring access persons to report each of their securities transactions would be time-consuming and expensive and would serve little purpose in light of, among other things, the community of interest among the Members of the Investment Fund by virtue of their common association with Skadden Arps. Accordingly, the requested exemption is consistent with the purposes of the Act because the dangers against which section 17(j) and rule 17j–1 are intended to guard are not present in the case of the Investment Fund.

12. Applicants request an exemption from the requirements in sections 30(a), 30(b), and 30(e) of the Act, and the rules under those sections, that registered investment companies prepare and file with the Commission and mail to their shareholders certain periodic reports and financial statements. Applicants contend that the forms prescribed by the Commission for periodic reports have little relevance to the Investment Funds and would entail administrative and legal costs that outweigh any benefit to the Members. Applicants request exemptive relief to the extent necessary to permit the Investment Funds to report annually to their Members. Applicants also request an exemption from section 30(h) of the Act to the extent necessary to exempt the Administrator, the members of the Investment Committee, and any other person who may be deemed to be an officer, director, member of an advisory board, or otherwise subject to section

30(h), from filing Forms 3, 4 and 5 under section 16 of the Exchange Act with respect to their ownership of Units. Applicants assert that, because there would be no trading market and the transfer of Units is severely restricted, these filings are unnecessary for the protection of investors and burdensome to those required to make them.

13. Rule 38a–1 requires investment companies to adopt, implement and periodically review written policies reasonably designed to prevent violation of the federal securities laws and to appoint a chief compliance officer. Each Investment Fund will comply with rule 38a–1(a), (c) and (d), except that (i) because the Investment Fund does not have a formal board of directors, the Investment Committee will fulfill the responsibilities assigned to the board of directors under the rule, and (ii) because the Investment Committee does not have any disinterested members, approval by a majority of the disinterested board members required by rule 38a–1 will not be obtained. In addition, the Investment Funds will comply with the requirement in rule 38a–1(a)(4)(iv) that the chief compliance officer meet with the independent directors by having the chief compliance officer meet with the Investment Committee.

Applicants' Conditions

The applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Each proposed transaction, to which an Investment Fund is a party, otherwise prohibited by section 17(a) or section 17(d) and rule 17d–1 (the ''Section 17 Transactions'') will be effected only if the Investment Committee determines that: (a) The terms of the Section 17 Transaction, including the consideration to be paid or received, are fair and reasonable to Members of such Investment Fund and do not involve overreaching of such Investment Fund or its Members on the part of any person concerned; and (b) the Section 17 Transaction is consistent with the interests of the Members of such Investment Fund, the Investment Fund's organizational documents and the Investment Fund's reports to its Members.

In addition, the Administrator will record and preserve a description of such Section 17 Transactions, the findings of the Investment Committee, the information or materials upon which their findings are based and the basis therefor. All such records will be maintained for the life of such Investment Fund and at least six years thereafter, and will be subject to examination by the Commission and its staff. All such records will be maintained in an easily accessible place for at least the first two years.

2. If purchases or sales are made by an Investment Fund from or to an entity affiliated with the Investment Fund by reason of a member of the Investment Committee (a) serving as an officer, director, general partner or investment adviser of the entity, or (b) having a 5% or more investment in the entity, such individual will not participate in (i) the Investment Committee's determination of whether or not to submit such Investment to the Members of the Investment Fund for approval and (ii) the vote of the Members to approve or disapprove the Investment.

3. The Investment Committee will adopt, and periodically review and update, procedures designed to ensure that reasonable inquiry is made, prior to the consummation of any Section 17 Transaction, with respect to the possible involvement in the transaction of any affiliated person or promoter of or principal underwriter for such Investment Fund, or any affiliated person of such a person, promoter, or principal underwriter.

4. The Investment Committee will not make available to the Members of an Investment Fund any investment in which a Co-Investor, as defined below, has or proposes to acquire the same class of securities of the same issuer, where the investment involves a joint enterprise or other joint arrangement within the meaning of rule 17d–1 in which the Investment Fund and the Co-Investor are participants, unless any such Co-Investor, prior to disposing of all or part of its investment, (a) gives the Investment Fund sufficient, but not less than one day's, notice of its intent to dispose of its investment, and (b) refrains from disposing of its investment unless the Investment Fund holding such investment has the opportunity to dispose of its investment prior to or concurrently with, on the same terms as, and on a pro rata basis with, the Co-Investor. The term ''Co-Investor'' with respect to any Investment Fund means any person who is (a) an ''affiliated person'' (as defined in section 2(a)(3) of the Act) of the Investment Fund; (b) Skadden Arps; (c) a partner, lawyer, or employee of Skadden Arps; (d) an investment vehicle offered, sponsored, or managed by Skadden Arps or an affiliated person of Skadden Arps; or (e) an entity in which Skadden Arps acts as a general partner or has a similar capacity to control the sale or other disposition of the entity's securities.

The restrictions contained in this condition, however, shall not be deemed to limit or prevent the disposition of an investment by a Co-Investor: (a) To its direct or indirect wholly-owned subsidiary, to any company (a ''Parent'') of which the Co-Investor is a direct or indirect wholly-owned subsidiary, or to a direct or indirect wholly-owned subsidiary of its Parent; (b) to immediate family members of the Co-Investor or a trust established for the benefit of any such immediate family member; (c) when the investment is comprised of securities that are listed on a national securities exchange registered under section 6 of the Exchange Act; or (d) when the investment is comprised of securities that are NMS Stocks pursuant to section 11A(a)(2) of the Exchange Act and Rule 600(b) under the Exchange Act.

5. Each Investment Fund will send to each person who was a Member in such Investment Fund at any time during the fiscal year then ended audited financial statements with respect to those Series in which the Member held Units. At the end of each fiscal year, the Administrator will make a valuation or have a valuation made of all of the assets of the Investment Fund as of the fiscal year end. In addition, as soon as practicable after the end of each fiscal year of each Investment Fund, the Investment Fund shall send a report to each person who was a Member at any time during the fiscal year then ended, setting forth such tax information as shall be necessary for the preparation by the Member of his or her federal and state income tax returns and a report of the investment activities of such Investment Fund during such year.

6. Each Investment Fund will maintain and preserve, for the life of such Investment Fund and at least six years thereafter, such accounts, books, and other documents as constitute the record forming the basis for the audited financial statements and annual reports of such Investment Fund to be provided to its Members, and agree that all such records will be subject to examination by the Commission and its staff. All such records will be maintained in an easily accessible place for at least the first two years.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–11256 Filed 5–9–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 30059; 812–13574–01]

Destra Capital Investments LLC and Destra Unit Investment Trust; Notice of Application

May 3, 2012.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under (a) section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from sections 2(a)(32), 2(a)(35), 14(a), 19(b), 22(d) and 26(a)(2)(C) of the Act and rules 19b–1 and rule 22c–1 thereunder and (b) sections 11(a) and 11(c) of the Act for approval of certain exchange and rollover privileges.

Applicants: Destra Investments LLC (''Destra'') and Destra Unit Investment Trust (''DUIT'').[1]

SUMMARY: *Summary of Application:* Applicants request an order to permit certain unit investment trusts to: (a) Impose sales charges on a deferred basis and waive deferred sales charges in certain cases; (b) offer unitholders certain exchange and rollover options; (c) publicly offer units without requiring the Depositor to take for its own account $100,000 worth of units; and (d) distribute capital gains resulting from the sale of portfolio securities within a reasonable time after receipt.

DATES: *Filing Dates:* The application was filed on September 15, 2008, and amended on June 1, 2011, and February 8, 2012.

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 May 29, 2012, and should be accompanied by proof of service on the 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: Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090; Applicants, 901 Warrenville Road, Suite 15, Lisle, Illinois 60532.

FOR FURTHER INFORMATION CONTACT: Lewis B. Reich, Senior Counsel, at (202) 551–6919, or Jennifer L. Sawin, Branch Chief, at (202) 551–6821 (Office of Investment Company Regulation, Division of Investment Management).

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. DUIT is a unit investment trust (''UIT'') that is registered under the Act. Any future Trust will be a registered UIT. Destra, a Delaware limited liability company, is registered under the Securities Exchange Act of 1934 as a broker-dealer and is the Depositor of DUIT. Each Series will be created by a trust indenture between the Depositor and a banking institution or trust company as trustee (''Trustee'').

2. The Depositor acquires a portfolio of securities, which it deposits with the Trustee in exchange for certificates representing units of fractional undivided interest in the Series' portfolio (''Units''). The Units are offered to the public through the Depositor and dealers at a price which, during the initial offering period, is based upon the aggregate market value of the underlying securities, or, the aggregate offering side evaluation of the underlying securities if the underlying securities are not listed on a securities exchange, plus a front-end sales charge (and/or a deferred sales charge as described below). The maximum sales charge may be reduced in compliance with rule 22d–1 under the Act in certain circumstances, which are disclosed in the Series' prospectus.

3. The Depositor may, but is not legally obligated to, maintain a secondary market for Units of outstanding Series. Other broker-dealers may or may not maintain a secondary market for Units of a Series. If a secondary market is maintained, investors will be able to purchase Units on the secondary market at the current public offering price plus a front-end sales charge. If such a market is not maintained at any time for any Series, holders of the Units (''Unitholders'') of that Series may redeem their Units through the Trustee.

A. Proposed Deferred Sales Charge Program

1. Applicants request an order to permit one or more Series to impose a sales charge on a deferred basis (''DSC''). For each Series, the Depositor would set a maximum sales charge per Unit, a portion of which the Depositor may (and presently anticipates would be) collected ''up front'' (*i.e.,* at the time an investor purchases the Units).[2] The DSC would be collected subsequently in installment payments over time as described in the application. The Depositor would not add any amount for interest or any similar or related charge to adjust for such deferral.

2. When a Unitholder redeems or sells Units, the Depositor intends to deduct any unpaid DSC from the redemption or sale proceeds. When calculating the amount due, the Depositor will assume that Units on which the DSC has been paid in full are redeemed or sold first. With respect to Units on which the DSC has not been paid in full, the Depositor will assume that the Units held for the longest time are redeemed or sold first. Applicants represent that the DSC collected at the time of redemption or sale, together with the installment payments and any amount collected up front, will not exceed the maximum sales charge per Unit. Under certain circumstances, the Depositor may waive the collection of any unpaid DSC in connection with redemptions or sales of Units. These circumstances will be disclosed in the prospectus for the relevant Series and implemented in accordance with rule 22d–1 under the Act.

3. Each Series offering Units subject to a DSC will state the maximum charge per Unit in its prospectus. In addition, the prospectus for each such Series will include the table required by Form N–1A (modified as appropriate to reflect the difference between UITs and open-end management investment companies) and a schedule setting forth the number and date of each installment payment, along with the duration of the period for the collection of the DSC. The prospectus also will disclose that portfolio securities may be sold to pay the DSC if distribution income is

[1] Applicants also request relief for future unit investment trusts (collectively, with DUIT, the ''Trusts'') and series of the Trusts (''Series'') that are sponsored by Destra or any entity controlling, controlled by or under common control with Destra (together with Destra, the ''Depositors''). Any future Trusts and Series that rely on the requested order will comply with the terms and conditions of the application. All existing entities that currently intend to rely on the requested order are named as applicants.

[2] The maximum sales charge will not exceed the limits set forth in NASD Conduct Rule 2830. Any reference to NASD Conduct Rule 2830 includes any successor or replacement rule that may be adopted by the Financial Industry Regulatory Authority.

insufficient and that securities will be sold pro rata, if practicable, otherwise a specific security will be designated for sale.

B. Exchange Option and Rollover Option

1. Applicants request an order to the extent necessary to permit Unitholders of a Series to exchange their Units for Units of another Series (''Exchange Option'') and Unitholders of a Series that is terminating to exchange their Units for Units of a new Series of the same or similar type (''Rollover Option'') and to approve such exchanges. The Exchange Option and Rollover Option would apply to all exchanges of Units sold with a front-end sales charge or DSC.

2. A Unitholder who purchases Units under the Exchange Option or Rollover Option would pay a lower sales charge than that which would be paid for the Units by a new investor. The reduced sales charge under the Exchange Option and Rollover Option will be reasonably related to the expenses incurred in connection with the administration of the DSC program, which may include an amount that will fairly and adequately compensate the Depositor and participating underwriters and brokers for their services in providing the DSC program.

Applicants' Legal Analysis

A. DSC and Waiver of DSC

1. Section 4(2) of the Act defines a ''unit investment trust'' as an investment company that issues only redeemable securities. Section 2(a)(32) of the Act defines a ''redeemable security'' as a security that, upon its presentation to the issuer, entitles the holder to receive approximately his or her proportionate share of the issuer's current net assets or the cash equivalent of those assets. Rule 22c–1 under the Act requires that the price of a redeemable security issued by a registered investment company for purposes of sale, redemption or repurchase be based on the security's current net asset value (''NAV''). Because the collection of any unpaid DSC may cause a redeeming Unitholder to receive an amount less than the NAV of the redeemed Units, applicants request relief from section 2(a)(32) and rule 22c–1.

2. Section 22(d) of the Act and rule 22d–1 under the Act require a registered investment company and its principal underwriter and dealers to sell securities only at the current public offering price described in the investment company's prospectus, with the exception of sales of redeemable securities at prices that reflect scheduled variations in the sales load. Section 2(a)(35) of the Act defines the term ''sales load'' as the difference between the sales price and the portion of the proceeds invested by the depositor or trustee. Applicants request relief from section 2(a)(35) and section 22(d) to permit waivers, deferrals or other scheduled variations of the sales load.

3. Under section 6(c) of the Act, the Commission may exempt classes of transactions, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants state that their proposal meets the standards of section 6(c). Applicants state that the provisions of section 22(d) are intended to prevent (a) riskless trading in investment company securities due to backward pricing, (b) disruption of orderly distribution by dealers selling shares at a discount, and (c) discrimination among investors resulting from different prices charged to different investors. Applicants assert that the proposed DSC program will present none of these abuses. Applicants further state that all scheduled variations in the sales load will be disclosed in the prospectus of each Series and applied uniformly to all investors, and that applicants will comply with all the conditions set forth in rule 22d–1.

4. Section 26(a)(2)(C) of the Act, in relevant part, prohibits a trustee or custodian of a UIT from collecting from the trust as an expense any payment to the trust's depositor or principal underwriter. Because the Trustee's payment of the DSC to the Depositor may be deemed to be an expense under section 26(a)(2)(C), applicants request relief under section 6(c) from section 26(a)(2)(C) to the extent necessary to permit the Trustee to collect installment payments and disburse them to the Depositor. Applicants submit that the relief is appropriate because the DSC is more properly characterized as a sales load.

B. Exchange Option and Rollover Option

1. Sections 11(a) and 11(c) of the Act prohibit any offer of exchange by a UIT for the securities of another investment company unless the terms of the offer have been approved in advance by the Commission. Applicants request an order under sections 11(a) and 11(c) for Commission approval of the Exchange Option and the Rollover Option.

C. Net Worth Requirement

1. Section 14(a) of the Act requires that a registered investment company have $100,000 of net worth prior to making a public offering. Applicants state that each Series will comply with this requirement because the Depositor will deposit more than $100,000 of securities. Applicants assert, however, that the Commission has interpreted section 14(a) as requiring that the initial capital investment in an investment company be made without any intention to dispose of the investment. Applicants state that, under this interpretation, a Series would not satisfy section 14(a) because of the Depositor's intention to sell all the Units of the Series.

2. Rule 14a–3 under the Act exempts UITs from section 14(a) if certain conditions are met, one of which is that the UIT invest only in ''eligible trust securities,'' as defined in the rule. Applicants state that they may not rely on rule 14a–3 because certain Series (collectively, ''Equity Series'') will invest all or a portion of their assets in equity securities or shares of registered investment companies which do not satisfy the definition of eligible trust securities.

3. Applicants request an exemption under section 6(c) of the Act to the extent necessary to exempt the Equity Series from the net worth requirement in section 14(a). Applicants state that the Series and the Depositor will comply in all respects with the requirements of rule 14a–3, except that the Equity Series will not restrict their portfolio investments to ''eligible trust securities.''

D. Capital Gains Distribution

1. Section 19(b) of the Act and rule 19b–1 under the Act provide that, except under limited circumstances, no registered investment company may distribute long-term gains more than once every twelve months. Rule 19b–1(c), under certain circumstances, exempts a UIT investing in eligible trust securities (as defined in rule 14a–3) from the requirements of rule 19b–1. Because the Equity Series do not limit their investments to eligible trust securities, however, the Equity Series will not qualify for the exemption in paragraph (c) of rule 19b–1. Applicants therefore request an exemption under section 6(c) from section 19(b) and rule 19b–1 to the extent necessary to permit capital gains earned in connection with the sale of portfolio securities to be distributed to Unitholders along with the Equity Series' regular distributions. In all other respects, applicants will

comply with section 19(b) and rule 19b–1.

2. Applicants state that their proposal meets the standards of section 6(c). Applicants assert that any sale of portfolio securities would be triggered by the need to meet Trust expenses, installment payments, or by redemption requests, events over which the Depositor and the Equity Series do not have control. Applicants further state that, because principal distributions must be clearly indicated in accompanying reports to Unitholders as a return of principal and will be relatively small in comparison to normal dividend distributions, there is little danger of confusion from failure to differentiate among distributions.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

A. DSC Relief and Exchange and Rollover Options

1. Whenever the Exchange Option or the Rollover Option is to be terminated or its terms are to be amended materially, any holder of a security subject to that privilege will be given prominent notice of the impending termination or amendment at least 60 days prior to the date of termination or the effective date of the amendment, provided that: (a) No such notice need be given if the only material effect of an amendment is to reduce or eliminate the sales charge payable at the time of an exchange, to add one or more new Series eligible for the Exchange Option or the Rollover Option, or to delete a Series which has terminated; and (b) no notice need be given if, under extraordinary circumstances, either (i) there is a suspension of the redemption of Units of the Series under section 22(e) of the Act and the rules and regulations promulgated thereunder, or (ii) a Series temporarily delays or ceases the sale of its Units because it is unable to invest amounts effectively in accordance with applicable investment objectives, policies and restrictions.

2. An investor who purchases Units under the Exchange Option or the Rollover Option will pay a lower sales charge than that which would be paid for the Units by a new investor.

3. The prospectus of each Series offering exchanges or rollovers and any sales literature or advertising that mentions the existence of the Exchange Option or Rollover Option will disclose that the Exchange Option and the Rollover Option are subject to modification, termination or suspension without notice, except in certain limited cases.

4. Any DSC imposed on a Series' Units will comply with the requirements of subparagraphs (1), (2) and (3) of rule 6c–10(a) under the Act.

5. Each Series offering Units subject to a DSC will include in its prospectus the disclosure required by Form N–1A relating to deferred sales charges (modified as appropriate to reflect the differences between UITs and open-end management investment companies) and a schedule setting forth the number and date of each installment payment.

B. Net Worth Requirement

1. Applicants will comply in all respects with the requirements of rule 14a–3 under the Act, except that the Equity Series will not restrict their portfolio investments to ''eligible trust securities.''

For the Commission, by the Division of Investment Management, under delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–11248 Filed 5–9–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

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 Tuesday, May 8, 2012 at 1:15 p.m.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions as set forth in 5 U.S.C. 552b(c)(2) and (6) and 17 CFR 200.402(a)(2) and (6), permit consideration of the scheduled matter at the Closed Meeting.

Commissioner Paredes, as duty officer, voted to consider the item listed for the Closed Meeting in closed session, and determined that no earlier notice thereof was possible.

The subject matter of the May 8, 2012 Closed Meeting will be:

A personnel matter

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: May 8, 2012.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–11442 Filed 5–8–12; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

In the Matter of One Voice Technologies, Inc., Orchestra Therapeutics, Inc., Path 1 Network Technologies, Inc., Pavilion Energy Resources, Inc. (f/k/a Global Business Services, Inc.), Pine Valley Mining Corp., Platina Energy Group, Inc., Pop N Go, Inc., and Powercold Corp., File No. 500–1; Order of Suspension of Trading

May 8, 2012.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of One Voice Technologies, Inc. because it has not filed any periodic reports since the period ended September 30, 2009.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Orchestra Therapeutics, Inc. because it has not filed any periodic reports since the period ended June 30, 2007.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Path 1 Network Technologies, Inc. because it has not filed any periodic reports since the period ended September 30, 2006.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Pavilion Energy Resources, Inc. (f/k/a Global Business Services, Inc.) because it has not filed any periodic reports between the periods ended June 30, 2005 and June 30, 2009.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Pine Valley Mining Corp. because it has not filed any periodic reports since the period ended March 31, 2006.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Platina Energy Group, Inc. because it has not filed any periodic reports since the period ended September 30, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information

concerning the securities of Pop N Go, Inc. because it has not filed any periodic reports since the period ended June 30, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Powercold Corp. because it has not filed any periodic reports since the period ended September 30, 2005.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EDT on May 8, 2012, through 11:59 p.m. EDT on May 21, 2012.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–11403 Filed 5–8–12; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66912; File No. SR–CME–2012–17]

Self-Regulatory Organizations; Chicago Mercantile Exchange Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change To Amend Rules Regarding IRS Clearing Member Obligations and Qualifications

May 3, 2012.

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 April 23, 2012, Chicago Mercantile Exchange Inc. (''CME'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I and II, below, which items have been prepared substantially by CME. The Commission is publishing this Notice and Order to solicit comments on the proposed rule change from interested persons and to approve the proposed rule change on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CME proposes to amend certain of its rules to comply with pending revisions to the CFTC Regulations. The text of the proposed rule change is available at the CME's Web site at *http://www.cmegroup.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 and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization 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

CME is registered as a derivatives clearing organization with the Commodity Futures Trading Commission (''CFTC'') and operates a substantial business clearing futures and swaps contracts subject to the jurisdiction of the CFTC. CME proposes to amend certain of its rules to comply with certain mandatory revisions that are related to recent changes in CFTC Regulations that will become effective on May 7, 2012. More specifically, CME proposes to adopt revisions to CME Rule 8G04 (IRS Clearing Member Obligations and Qualifications).

As described above, the CFTC adopted a number of new regulations designed to implement the core principles for derivatives clearing organizations (DCOs) in the Commodity Exchange Act, as amended by the Dodd-Frank Act. CFTC Regulation 39.12, which becomes effective on May 7, 2012, provides for participant and product eligibility requirements. CFTC Regulation 39.12(a)(iii) provides that a DCO ''shall not set minimum capital requirements of more than $50 million for any person that seeks to become a clearing member in order to clear swaps.'' CFTC Regulation 39.12(a)(2)(ii) provides that ''[c]apital requirements shall be scalable to the risks posed by clearing members.'' CFTC Regulation 39.12(a) provides that a DCO ''shall establish appropriate admission and continuing participation requirements for clearing members of the derivatives clearing organization that are objective, publicly disclosed, and risk-based.''

In order to comply with these CFTC Regulations, CME plans to amend CME Rule 8G04. New CME Rule 8G04.1 sets minimum capital for an IRS Clearing Member at $50 million and defines ''capital'' consistent with Regulation 39.12(a)(2)(i). In order to scale the capital requirements of IRS Clearing Members to the risks posed by such IRS Clearing Members, new CME Rule 8G04.2 requires IRS Clearing Members to maintain capital of at least 20% of the aggregate performance bond requirement for its proprietary and customer IRS Contracts. New CME Rule 8G04.4 requires IRS Clearing Members to provide nominations for certain members of the IRS Risk Committee and IRS Default Management Committee. The proposed amendments comport with CFTC DCO Core Principle C (Participant and Product Eligibility) and with CFTC Regulation 39.12(a).

The text of the proposed rule change is available at the CME's Web site at *http://www.cmegroup.com.* CME also made a filing, CME Submission 12–123, with its primary regulator, the CFTC, with respect to the proposed rule changes.

CME believes the proposed changes are consistent with the requirements of the Exchange Act. First, CME, a derivatives clearing organization, is required to implement the proposed changes to comply with recent changes to CFTC Regulations. CME notes that the policies of the Commodity Exchange Act (''CEA'') with respect to clearing are comparable to a number of the policies underlying the Exchange Act, such as promoting market transparency for derivatives markets, promoting the prompt and accurate clearance of transactions and protecting investors and the public interest. Second, CME believes the proposed changes are specifically designed to promote the prompt and accurate clearance and settlement of derivative agreements, contracts, and transactions, and assure the safeguarding of securities and funds which are in the custody or control of CME, and, in general, protect investors and the public interest, because the rules changes establish objective and risk-based admission and continuing participation requirements for clearing members in compliance with applicable law.

B. Self-Regulatory Organization's Statement on Burden on Competition

CME does not believe that the proposed rule change will have any impact, or impose any burden, on competition.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

CME has not solicited, and does not intend to solicit, comments regarding this proposed rule change. CME has not received any unsolicited written comments from interested parties.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

- Electronic comments may be submitted by using the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*), or send an email to *rule-comments@sec.gov*. Please include File No. SR–CME–2012–17 on the subject line.
- Paper comments should be sent in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC, 20549–1090.

All submissions should refer to File Number SR–CME–2012–17. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule 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 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of CME. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CME–2012–17 and should be submitted on or before May 31, 2012.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

Section 19(b) of the Act [3] directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization.[4] In particular, Section 17A(b)(3)(F) of the Act requires that the rules of the clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions, and to the extent applicable, derivative agreements, contracts, and transactions.[5]

The proposed change would allow CME to expand the base of potential clearing members by lowering the net capital threshold for membership, thereby promoting the prompt and accurate clearance and settlement of securities transactions, and derivative agreements, contracts, and transactions. It should also allow CME to comply with new CFTC regulatory requirements, thereby promoting the prompt and accurate clearance and settlement of derivative agreements, contracts, and transactions.

In its filing, CME requested that the Commission approve this proposed rule change on an accelerated basis for good cause shown. CME cites as the reason for this request CME's operation as a DCO, which is subject to regulation by the CFTC under the CEA and, in particular, new CFTC regulations that become effective on May 7, 2012. Thus, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[6] for approving the proposed rule change prior to the 30th day after the date of publication of notice in the **Federal Register** because as a registered DCO, CME is required to comply with the new CFTC regulations by the time they become effective on May 7, 2012.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–CME–2012–17) is approved on an accelerated basis.[7]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–11241 Filed 5–9–12; 8:45 am]

BILLING CODE 8011–01–P

[3] 15 U.S.C. 78s(b).

[4] 15 U.S.C. 78s(b)(2)(B).

[5] 15 U.S.C. 78q–1(b)(3)(F).

[6] 15 U.S.C. 78s(b)(2).

[7] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66919; File No. SR–DTC–2012–02]

Self-Regulatory Organizations; The Depository Trust Company; Order Granting Approval of a Proposed Rule Change To Amend Rules Relating to the Issuance of and Maturity Presentment Processing for Money Market Instruments

May 3, 2012.

I. Introduction

On March 8, 2012, The Depository Trust Company (''DTC'') filed proposed rule change SR–DTC–2012–02 with the Securities and Exchange Commission (''Commission'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposed rule change was published in the **Federal Register** on March 26, 2012.[2] The Commission received no comment letters. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

II. Description

The Maturity Presentment processing for money market instruments (''MMIs'') is initiated automatically by DTC each morning for all of the MMIs maturing that day.[3] The automatic process electronically sweeps all maturing positions of MMI CUSIPs from a participant's accounts and credits the participant's account with the amount of the payments to be received with respect to such presentments. The matured MMIs are delivered to the account of the applicable issuing or paying agent (''IPA''),[4] also a DTC

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 66630 (March 20, 2012), 77 FR 17534 (March 26, 2012).

[3] The term ''Maturity Presentment'' is defined in Rule 1 of DTC's Rules and Procedures as a Delivery Versus Payment of matured MMI securities from the account of a presenting participant to the designated paying agent account for that issue as provided for in Rule 9(C) and as specified in DTC's procedures.

[4] Rule 1 of DTC's Rules and Procedures defines the term ''MMI Issuing Agent'' generally as a participant acting as an issuing agent for an issuer with respect to a particular issue of MMI securities of that issuer and an ''MMI Paying Agent'' generally

Continued

participant, and the IPA's account is debited for the amount of the maturity proceeds. The debited amount will be included in the IPA's net settlement amount. Similarly, the credits of participants that presented maturing MMIs will be included in those participants' net settlement amount.

MMI issuers and IPAs commonly view the primary source of funding for payments of MMI maturity presentments as flowing from new issuances of MMIs in the same program by that MMI issuer on that day. When the MMI issuer issues more new MMIs than the number of MMIs maturing, the MMI issuer would have no net funds payment due to the IPA on that day. When an issuer has more maturing MMIs than new issuances, it would have an obligation to pay to the IPA the net amount of the MMIs maturing that day over the new issuance. When net maturity presentments exceed issuances on a day, IPAs at their discretion may provide significant intraday credit to issuers for the excess. However, the IPA as an agent of an issuer is not obligated to fund the presentments at DTC unless it receives payment from the issuer.

The business relationships between IPAs and their MMI issuers play a key role in determining if an IPA will execute a refusal to pay at DTC with respect to presentment of an MMI issuance for which the IPA has not received funds from the MMI issuer. Because maturity presentments of an issuer's MMIs for which the IPA acts are processed automatically and randomly against the IPA's account, an IPA is permitted to refuse to pay for all of an issuer's maturities in an MMI program.[5] An IPA that refuses payment on an MMI maturity must communicate its intention to DTC using the DTC Participant Terminal/Browser Service (PTS/PBS) MMRP function. This function allows the IPA to enter a refusal to pay instruction for a particular issuer, referred to as an Issuer Failure/Refusal to Pay (''RTP''), up to 3:00 p.m. Eastern Time (''ET'') on the date of the relevant maturity presentment. Such an instruction causes DTC to reverse all transactions related to the relevant maturity presentment. An IPA RTP may have a significant market impact on the issuer's reputation and credit standing.

In late 2009, DTC and the Securities Industry and Financial Markets Association (''SIFMA'') formed the MMI Blue-Sky Task Force (''Task Force'') to address systemic and unique market risks associated with the MMI process, including those related to DTC's maturity presentment processing. The Task Force, along other money market industry members,[6] determined that DTC's current MMI processing schedule permits issuance and other transaction activity that can affect an issuer's net funding amount or proceeds after the 3:00 p.m. E.T. deadline for RTP instructions.[7] Accordingly, DTC is amending certain provisions in its Settlement Service Guide in order to provide increased transparency for IPAs before the 3:00 p.m. RTP deadline, which should in turn assist IPAs in making better informed credit decisions when an issuer has more maturities than new issuances. The rule changes to DTC's Settlement Service Guide, as approved, include:

1. Making all MMI issuance and deliver order transactions subject to DTC's Receiver Authorized Delivery (''RAD'') function for approval regardless of transaction value.[8]
2. Adjusting the MMI valued new issuance cut-off time from 3:20 p.m. E.T. to 2:00 p.m. E.T.
3. Requiring use of RAD for approval of all MMI issuance and deliver order transactions, regardless of value, and establishing a new MMI cutoff time of 2:45 p.m. E.T. instead of the current 3:30 p.m. E.T.[9]

DTC will implement the changes described above upon approval of this proposed rule change by the Commission.[10]

III. Discussion

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.[11] The Commission believes that the changes being made by this proposed rule change should help IPAs to determine earlier in the day if there is a funding shortfall with respect to an issuer and in turn help reduce late day reversals of MMI transactions by IPAs. Additionally, the changes to the Settlement Service Guide should serve to reinforce consistent MMI business practices by implementing earlier deadlines for issuances processing and receiver approvals and thereby make the processing of MMI issuances and maturities more efficient.

Accordingly, for the reasons stated above the Commission believes that the proposed rule change is consistent with DTC's obligation under Section 17A of the Act and the rules and regulations thereunder.[12]

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act, particularly with the requirements of Section 17A of the Act, and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–DTC–2012–02) be and hereby is approved.

as a participant acting as a paying agent for an issuer with respect to a particular issue of MMI securities of that issuer. Since MMI Issuing Agents and MMI Paying Agents are often a single entity, this filing refers to both entities collectively as ''IPAs.''

[5] DTC employs a four-character acronym to designate an issuer's MMI program. An issuer can have multiple acronyms. The IPA uses the acronym(s) when submitting an instruction of its refusal to pay for a given issuer's program(s).

[6] The money market industry members include the Commercial Paper Issuers Working Group, which is comprised of both bank and corporate commercial paper issuers, and the Asset Managers Forum, whose membership consists solely of buy-side investors.

[7] The Task Force's short-term recommendations focused on addressing the credit risk exposure that IPAs face because of a lack of transparency around the amount an issuer must fund to cover its maturities. The recommendations called for requiring issuers to fund maturity presentments by 1:00 p.m. if there is a net debit and for establishing new deadlines of 1:30 p.m. for the submission of all new valued issuance to DTC and of 2:15 p.m. for receivers of new valued issuance to accept delivery. These recommended new deadlines were intended to give an IPA sufficient time to calculate its exposure and if a funding shortfall exists work with the issuer to resolve the deficiency before 3:00 p.m., which is DTC's deadline for an IPA to fund the maturities or to issue an RTP. For more information, see DTCC Press Release ''DTCC and SIFMA Release Task Force Report Identifying Opportunities to Mitigate Systemic and Credit Risk in Processing of Money Market Instruments'' (March 31, 2011), which can be found at *www.dtcc.com/news/press/releases/2011/dtcc_sifma_task_force_report.php*.

[8] This change will eliminate the ability for a receiver to ''force'' a reclaim upon an IPA close to or after the 3:00 p.m. RTP cutoff that would alter the amount of funding an issuer needs to provide late in the day and would also eliminate matched reclaims that currently override participant risk management controls.

[9] If a transaction is not approved in RAD by 2:45 p.m. E.T., the transaction will drop and will need to be resubmitted.

[10] In addition to the changes described above, DTC is also making unrelated technical changes to its Settlement Service Guide in order to conform its rules to its current practices and to a previously approved rule filing, SR–DTC–2011–01. Securities Exchange Release Act No. 34–63775 (January 26, 2011), 76 FR 5843 (February 2, 2011).

[11] 15 U.S.C. 78q–1(b)(3)(F).

[12] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–11243 Filed 5–9–12; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66923; File No. SR–NSX–2012–05]

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Rules Regarding Routing of Limit Orders

May 4, 2012.

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 April 26, 2012, National Stock Exchange, Inc. (''NSX'' or ''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 Substance of the Proposed Rule Change

National Stock Exchange, Inc. (''NSX®'' or ''Exchange'') is proposing to modify the text of NSX Rule 11.15 to harmonize it with current system functionality of routed limit orders.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nsx.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change 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 parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NSX Rule 11.15(a)(ii)(A) (Routing to Away Trading Centers) currently provides that, for orders other than sweep orders that are, consistent with the terms of the order, routed to away trading centers, the order will be converted into one or more limit orders, as necessary, to be matched for execution against each protected quotation at the Protected National Best Bid or Offer (''NBBO'') available at away trading centers. With respect to the price of the routed limit order, Rule 11.15(a)(ii)(A) currently provides: ''Each such converted limit order shall be priced *at the price of the protected quotation* that it is to be matched for execution against'' (italics added).

Notwithstanding the text of Rule 11.15(a)(ii)(A), the Exchange's trading system, NSX BLADE® (''Blade''), currently prices each such converted limit order at a price that is one trading increment inside the best bid or offer on the NSX book, but in any case not higher (if a bid) or lower (if an offer) than the limit price specified by the terms of the original order. The proposed edits to Rule 11.15(a)(ii)(A) would conform the text of the rules to current Blade functionality. Specifically, new subsections (1) and (2) are proposed to be added to Rule 11.15(a)(ii)(A). Subsection (1) would address the pricing of routed market orders (the treatment of which remains unchanged, namely, such orders shall be routed at the price of the protected quotation that it is to be matched against for execution). Subsection (2) would address the pricing of converted limit orders, and specifies in clauses (x) and (y) the converted limit price for each a buy and sell order, respectively. In the case of a buy order, the converted limit price shall be the lower of the limit price of the original order and one increment lower than the lowest offer on the NSX book. In the case of a sell order, the converted limit price shall be the higher of the limit price of the original order and one increment higher than the highest bid on the NSX book.

The proposed pricing methodology benefits ETP Holders by minimizing the risk of non-fills or delayed fills that might arise as a result of the order being routed at the NBBO price. NBBO quotes may flicker and/or be cancelled by the time a routed order arrives at the away destination. Under such circumstances, if priced at the NBBO, a routed limit order may be rejected by the away destination and, upon return to NSX, undergo a re-evaluation within Blade (consistent with Regulation NMS and NSX rules), after which it may be subjected to one or more repeat cycles of the foregoing process (''unfilled routing cycles''). The orders are routed as Immediate or Cancel (''IOC'') orders and thus retain the full protections of Rule 611. By re-pricing routed limit orders as proposed above, the chances are maximized that an ETP Holder's routed limit order is filled quickly and at the best price available (and never worse than the original order's limit price), and not at a price that can otherwise be filled against the NSX book.

The following examples reflect both the current functionality of routed limit orders in Blade and also routed limit order pricing under the proposed rules:

EXAMPLE 1

Original order	NSX best offer	National best offer
Buy Limit @ 10.10	10.05	9.95

Result: The original limit order is converted to a buy limit order at a price of $10.04 (one increment lower than the lowest offer on the NSX book, which is lower than the original order limit price of $10.10), and routed to the market displaying the National Best Offer of $9.95. The order may then be executed at that away market, in whole or in part, subject to the applicable trading rules of

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

that trading center.[3] In this example, an execution at the away market would generally be at a price of $9.95.[4] Current rule text would price the routed limit order at $9.95 (the price of the protected quotation against which it is matched for execution). This pricing methodology (which routes the buy order at $10.04 rather than $9.95) is beneficial to an ETP Holder because it minimizes the chances of repeated unfilled routing cycles as described above, intends to access the best priced displayed liquidity, and does not route the order at a price that can be filled against the NSX book.

EXAMPLE 2

Original order	NSX best offer	National best offer
Buy Limit @ 10.00	10.05	9.95

Result: The original limit order is converted to a buy limit order at a price of $10.00 (the limit price of the original order, which is lower than one increment lower than the lowest offer on the NSX book) and routed to the market displaying the National Best Offer of $9.95. The order may then be executed at that away market, in whole or in part, subject to the applicable trading rules of that trading center. In this example, an execution at the away market would generally be at a price of $9.95.[5] Current rule text would price the routed limit order at $9.95 (the price of the protected quotation against which it is matched for execution). This pricing methodology (which routes the buy order at $10.00 rather than $9.95) is beneficial to an ETP Holder because it minimizes the chances of repeated unfilled routing cycles as described above, intends to access the best priced displayed liquidity, and does not route the order at a price higher than the limit price.

EXAMPLE 3

Original order	NSX best offer	National best offer
Buy Limit @ 9.95	10.05	9.95

Result: The original limit order is converted to a buy limit order at a price of $9.95 (the limit price of the original order, which is lower than one increment lower than the lowest offer on the NSX book) and routed to the market displaying the National Best Offer of $9.95. The order may then be executed at that away market, in whole or in part, subject to the applicable trading rules of that trading center. In this example, an execution at the away market would generally be at a price of $9.95.[6] Current rule text would likewise price the routed limit order at $9.95 (the price of the protected quotation against which it is matched for execution).

EXAMPLE 4

Original order	NSX best bid	National best bid
Sel Limit @ 9.90	9.95	10.05

Result: The original limit order is converted to a sell limit order at a price of $9.96 (one increment higher than the highest bid on the NSX book, which is higher than the original order limit price of $9.90) and routed to the market displaying the National Best Bid of $10.05. The order may then be executed at that away market, in whole or in part, subject to the applicable trading rules of that trading center. In this example, an execution at the away market would generally be at a price of $10.05.[7] Current rule text would price the routed limit order at $10.05 (the price of the protected quotation against which it is matched for execution). This pricing methodology (which routes the sell order at $9.96 rather than $10.05) is beneficial to an ETP Holder because it minimizes the chances of repeated unfilled routing cycles as described above, intends to access the best priced displayed liquidity, and does not route the order at a price that can be filled against the NSX book.

EXAMPLE 5

Original order	NSX best bid	National best bid
Sell Limit @ 10.00	9.95	10.05

[3] *See* NSX Rule 11.15(c)(i).

[4] This predicted result is dependent on the rules of the away market and assumes certain things, including without limitation the absence of an un-displayed, lower priced offer at the away market that would interact at a lower price, and that the away market's displayed NBO of 9.95 has not changed (e.g., been cancelled or improved by a lower priced offer) by the time the routed order is received at the away trading center.

[5] *Id.*

[6] *Id.*

[7] This predicted result is dependent on the rules of the away market and certain things, including without limitation the absence of an un-displayed, higher priced bid at the away market that would interact at a higher price, and that the away market's displayed NBB of 10.05 has not changed (e.g., been cancelled or improved by a higher priced bid) by the time the routed order is received at the away trading center.

Result: The original limit order is converted to a sell limit order at a price of $10.00 (the limit price of the original order, which is higher than one increment higher than the highest bid on the NSX book) and routed to the market displaying the National Best Bid of $10.05. The order may then be executed at that away market, in whole or in part, subject to the applicable trading rules of that trading center. In this example, an execution at the away market would generally be at a price of $10.05.[8] Current rule text would price the routed limit order at $10.05 (the price of the protected quotation against which it is matched for execution). This pricing methodology (which routes the sell order at $10.00 rather than $10.05) is beneficial to an ETP Holder because it minimizes the chances of repeated unfilled routing cycles as described above, intends to access the best priced displayed liquidity, and does not route the order at a price higher than the limit price.

EXAMPLE 6

Original order	NSX best bid	National best bid
Sell Limit @ 10.05	9.95	10.05

Result: The original limit order is converted to a sell limit order at a price of $10.05 (the limit price of the original order, which is higher than one increment higher than the highest bid on the NSX book) and routed to the market displaying the National Best Bid of $10.05. The order may then be executed at that away market, in whole or in part, subject to the applicable trading rules of that trading center. In this example, an execution at the away market would generally be at a price of $10.05.[9] Current rule text would likewise price the routed limit order at $10.05 (the price of the protected quotation against which it is matched for execution).

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6 of the Act,[10] and the rules and regulations thereunder and, in particular, the requirements of Section 6(b) of the Act.[11] Specifically, the Exchange believes the modification of Rule 11.15 furthers the objective of Section 6(b)(1) of the Act because it aligns the text of the rule with the actual functionality regarding how limit orders are currently routed. By conforming the text of the Exchange's rules to accurately reflect the method by which the Exchange's system currently re-prices routed limit orders, the proposed rule change harmonizes the Exchange's trading system functionality with the text of NSX rules and thereby promotes clarity and eliminates confusion. In addition, the manner in which limit orders are routed by the Exchange as described herein allows an ETP Holder's routed limit order to be filled more quickly and at the best price available (and never worse than the original order's limit price), and not at a price that can otherwise be filled against the NSX book. The Exchange believes that this manner of pricing routed limit orders best serves its ETP Holders. Accordingly, the Exchange believes that the proposed rule change promotes just and equitable principles of trade, removes impediments, and perfects the mechanism of a free and open market and a national market system and, in general, protects investors and the public interest.

The proposed rule change provides transparency and certainty with respect to routed limit orders by providing detail on precisely how Blade prices and routes limit orders to away market centers. In so doing, the proposed rule change promotes the maintenance of a fair and orderly market, the protection of investors and the protection of the public interest, consistent with the Act and the rules promulgated thereunder.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the 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 if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6) thereunder.[13] At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NSX–2012–05 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–NSX–2012–05. This file number should be included on the subject line if email is used. To help the Commission process and review your

[8] *Id.*

[9] *Id.*

[10] 15 U.S.C. 78f.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change along with a brief description and the text of 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.

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 10:00 a.m. and 3:00 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–NSX–2012–05 and should be submitted on or before May 31, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–11245 Filed 5–9–12; 8:45 am]

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[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66928; File Nos. SR–NYSE–2011–55; SR–NYSEAmex–2011–84]

Self-Regulatory Organizations; New York Stock Exchange LLC; NYSE Amex LLC; Notice of Designation of Longer Period for Commission Action on Proceedings To Determine Whether To Disapprove Proposed Rule Changes, as Modified by Amendments Nos. 1 and 2, Adopting NYSE Rule 107C To Establish a Retail Liquidity Program for NYSE-Listed Securities on a Pilot Basis Until 12 Months From Implementation Date, and Adopting NYSE Amex Rule 107C To Establish a Retail Liquidity Program for NYSE Amex Equities Traded Securities on a Pilot Basis Until 12 Months From Implementation Date

May 4, 2012.

On October 19, 2011, New York Stock Exchange LLC (''NYSE'') and NYSE Amex LLC (''NYSE Amex'' and together with NYSE, the ''Exchanges'') each 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 establish a Retail Liquidity Program (''Program'') on a pilot basis for a period of one year from the date of implementation, if approved. The proposed rule changes were published for comment in the **Federal Register** on November 9, 2011.[3]

The Commission received 28 comments on the NYSE proposal [4] and four comments on the NYSE Amex proposal.[5] On December 19, 2011, the Commission extended the time for Commission action on the proposed rule changes until February 7, 2012.[6] In connection with the proposals, the Exchanges requested exemptive relief from Rule 612(c) of Regulation NMS,[7] which prohibits a national securities exchange from accepting or ranking certain orders based on an increment smaller than the minimum pricing increment.[8] The Exchanges submitted a consolidated response letter on January 3, 2012.[9] On January 17, 2012, the Exchanges each filed Partial Amendment No. 1 to their proposals.[10]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release Nos. 65671 (November 2, 2011), 76 FR 69774 (SR–NYSE Amex–2011–84); and 65672 (November 2, 2011), 76 FR 69788 (SR–NYSE–2011–55).

[4] *See* Letters to the Commission from Sal Arnuk, Joe Saluzzi and Paul Zajac, Themis Trading LLC, dated October 17, 2011 (''Themis Letter''); Garret Cook, dated November 4, 2011 (''Cook Letter''); James Johannes, dated November 27, 2011 (''Johannes Letter''); Ken Voorhies, dated November 28, 2011 (''Voorhies Letter''); William Wuepper, dated November 28, 2011 (''Wuepper Letter''); A. Joseph, dated November 28, 2011 (''Joseph Letter''); Leonard Amoruso, General Counsel, Knight Capital, Inc., dated November 28, 2011 (''Knight Letter I''); Kevin Basic, dated November 28, 2011 (''Basic Letter''); J. Fournier, dated November 28, 2011 (''Fournier Letter''); Ullrich Fischer, CTO, PairCo, dated November 28, 2011 (''PairCo Letter''); James Angel, Associate Professor of Finance, McDonough School of Business, Georgetown University, dated November 28, 2011 (''Angel Letter''); Jordan Wollin, dated November 29, 2011 (''Wollin Letter''); Aaron Schafter, President, Great Mountain Capital Management LLC, dated November 29, 2011 (''Great Mountain Capital Letter''); Wayne Koch, Trader, Bright Trading, dated November 29, 2011 (''Koch Letter''); Kurt Schact, CFA, Managing Director, and James Allen, CFA, Head, Capital Markets Policy, CFA Institute, dated November 30, 2011 (''CFA Letter I''); David Green, Bright Trading, dated November 30, 2011 (''Green Letter''); Robert Bright, Chief Executive Officer, and Dennis Dick, CFA, Market Structure Consultant, Bright Trading LLC, dated November 30, 2011 (''Bright Trading Letter''); Bodil Jelsness, dated November 30, 2011 (''Jelsness Letter''); Christopher Nagy, Managing Director, Order Routing and Market Data Strategy, TD Ameritrade, dated November 30, 2011 (''TD Ameritrade Letter''); Laura Kenney, dated November 30, 2011 (''Kenney Letter''); Suhas Daftuar, Hudson River Trading LLC, dated November 30, 2011 (''Hudson River Trading Letter''); Bosier Parsons, Bright Trading LLC, dated November 30, 2011 (''Parsons Letter''); Mike Stewart, Head of Global Equities, UBS, dated November 30, 2011 (''UBS Letter''); Dr. Larry Paden, Bright Trading, dated December 1, 2011 (''Paden Letter''); Thomas Dercks, dated December 1, 2011 (''Dercks Letter''); Eric Swanson, Secretary, BATS Global Markets, Inc., dated December 6, 2011 (''BATS Letter''); Ann Vlcek, Director and Associate General Counsel, Securities Industry and Financial Markets Association, dated December 7, 2011 (''SIFMA Letter I''); and Al Patten, dated December 29, 2011 (''Patten Letter'').

[5] *See* Knight Letter I; CFA Letter I; TD Ameritrade Letter; and letter to the Commission from Shannon Jennewein, dated November 30, 2011 (''Jennewein Letter'').

[6] *See* Securities Exchange Act Release No. 66003, 76 FR 80445 (December 23, 2011).

[7] 17 CFR 242.612(c).

[8] *See* Letter from Janet M. McGinness, Senior Vice President-Legal and Corporate Secretary, Office of the General Counsel, NYSE Euronext to Elizabeth M. Murphy, Secretary, Commission, dated October 19, 2011. The Exchanges amended the exemptive relief request on January 13, 2012. *See* Letter from Janet M. McGinness, Senior Vice President-Legal and Corporate Secretary, Office of the General Counsel, NYSE Euronext to Elizabeth M. Murphy, Secretary, Commission, dated January 13, 2012.

[9] *See* Letter to the Commission from Janet McGinnis, Senior Vice President, Legal & Corporate Secretary, Legal & Government Affairs, NYSE Euronext, dated January 3, 2012 (''Exchanges' Response Letter I'').

[10] In Amendment No. 1, the Exchanges propose to modify the proposals as follows: (1) To state that Retail Member Organizations may receive free executions for their retail orders and the fees and credits for liquidity providers and Retail Member Organizations would be determined based on experience with the Retail Liquidity Program in the first several months; (2) to correct a typographical error referring to the amount of minimum price improvement on a 500 share order; (3) to indicate the Retail Liquidity Identifier would be initially available on each Exchange's proprietary data feeds, and would be later available on the public market

On February 7, 2012, the Commission instituted proceedings to determine whether to disapprove the proposed rule changes, as modified by Amendments No. 1.[11] On February 16, 2012, the Exchanges each filed Partial Amendment No. 2 to their proposals, which the Commission published for comment in the **Federal Register** on March 1, 2012 (''Notice of Partial Amendment No. 2'').[12] In response to the Order Instituting Proceedings and the Notice of Partial Amendment No. 2, the Commission received four additional comment letters on the proposals.[13] On March 20, 2012, the Exchanges submitted a consolidated rebuttal letter in response to the Order Instituting Proceedings.[14] Additionally, on April 10, 2012, the Exchanges submitted a consolidated response to the comments concerning Partial Amendments No. 2.[15]

Section 19(b)(2) of the Act [16] provides that, after initiating disapproval proceedings, the Commission shall issue an order approving or disapproving the proposed rule changes not later than 180 days after the date of publication of notice of their filing. The Commission may extend the period for issuing an order approving or disapproving the proposed rule changes, however, by up to 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. In this case, the proposed rule changes were published for notice and comment in the **Federal Register** on November 9, 2011; May 7, 2012, is 180 days from that date, and July 6, 2012, is 240 days from that date.

The Commission finds it appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule changes so that it has sufficient time to consider the Program and the issues that commenters have raised concerning the Program. Specifically, as the Commission noted in the Order Instituting Proceedings, the Program raises several notable issues, including whether the Program is consistent with the Sub-Penny Rule and with the Quote Rule. The Commission's resolution of these issues could have an impact on overall market structure. As a result, the Commission continues to consider whether the proposed rule changes are consistent with these particular Regulation NMS Rules and with the Act.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[17] designates July 6, 2012, as the date by which the Commission shall either approve or disapprove the proposed rule changes (File Nos. SR–NYSE–2011–55 and SR–NYSEAmex–2011–84).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–11247 Filed 5–9–12; 8:45 am]

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data stream; and (4) to limit the Retail Liquidity Program to securities that trade at prices equal to or greater than $1 per share.

[11] *See* Securities Exchange Act Release No. 66346, 77 FR 7628 (February 13, 2012) (''Order Instituting Proceedings'').

[12] *See* Securities Exchange Act Release No. 66464 (February 24, 2012), 77 FR 12629.

[13] *See* Letters to the Commission from Leonard Amoruso, General Counsel, Knight Capital, Inc., dated March 7, 2012 (''Knight Letter II''); Kurt Schact, CFA, Managing Director, Rhodri Preece, CFA, Director, Capital Markets Policy, and James Allen, CFA, Head, Capital Markets Policy, CFA Institute, dated March 21, 2012 (''CFA Letter II''); Ann Vlcek, Director and Associate General Counsel, Securities Industry and Financial Markets Association, dated March 23, 2012 (''SIFMA Letter II''); and Jim Toes, President and CEO, and Jennifer Green Setzenfand, Chairman, Security Traders Association, dated April 26, 2012.

[14] *See* Letter to the Commission from Janet McGinnis, Senior Vice President, Legal & Corporate Secretary, Legal & Government Affairs, NYSE Euronext, dated March 20, 2012 (''Exchanges' Response Letter II'').

[15] *See* Letter to the Commission from Janet McGinnis, Senior Vice President, Legal & Corporate Secretary, Legal & Government Affairs, NYSE Euronext, dated April 10, 2012 (''Exchanges' Response Letter III'').

[16] 15 U.S.C. 78s(b)(2).

[17] 15 U.S.C. 78s(b)(2).

[18] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66927; File No. SR–MSRB–2011–09]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Approving Proposed Rule Change, as Modified by Amendment No. 2, Consisting of Interpretive Notice Concerning the Application of MSRB Rule G–17 to Underwriters of Municipal Securities

May 4, 2012.

I. Introduction

On August 22, 2011, the Municipal Securities Rulemaking Board (''MSRB'' or ''Board'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change consisting of an interpretive notice concerning the application of MSRB Rule G–17 (Conduct of Municipal Securities and Municipal Advisory Activities) to underwriters of municipal securities (''Interpretive Notice''). The proposed rule change was published for comment in the **Federal Register** on September 9, 2011.[3] The Commission received five comment letters on the proposed rule change.[4] On October 11, 2011, the MSRB extended the time period for Commission action to December 7, 2011. On November 3, 2011, the MSRB filed Amendment No. 1 to the proposed rule change. On November 10, 2011, the MSRB withdrew Amendment No. 1, responded to comments,[5] and filed Amendment No. 2 to the proposed rule change. The proposed rule change, as modified by Amendment No. 2, was published for comment in the **Federal Register** on November 21, 2011.[6] The Commission received eight comment letters on the proposed rule change, as modified by Amendment No. 2, and a second response from the MSRB.[7] On December 6, 2011, the MSRB extended the time period for Commission action to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 65263 (September 6, 2011), 76 FR 55989 (''Original Notice of Filing'').

[4] *See* letters from Joy A. Howard, Principal, WM Financial Strategies, dated September 30, 2011 (''WM Letter I''); Mike Nicholas, Chief Executive Officer, Bond Dealers of America, dated September 30, 2010 (''BDA Letter I''); Colette J. Irwin-Knott, CIPFA, President, National Association of Independent Public Finance Advisors, dated September 30, 2011 (''NAIPFA Letter I''); Leslie M. Norwood, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, dated September 30, 2011 (''SIFMA Letter I''); and Susan Gaffney, Director, Federal Liaison Center, Government Finance Officers Association, dated October 3, 2011 (''GFOA Letter I'').

[5] *See* letter from Margaret C. Henry, General Counsel, Market Regulation, MSRB, dated November 10, 2011 (''Response Letter I'').

[6] *See* Securities Exchange Act Release No. 65749 (November 15, 2011), 76 FR 72013 (''Amended Notice of Filing'').

[7] *See* letters from Colette J. Irwin-Knott, CIPFA, President, National Association of Independent Public Finance Advisors, dated November 30, 2011 (''NAIPFA Letter II''); E. John White, Chief Executive Officer, Public Financial Management, Inc., dated November 30, 2011 (''PFM Letter I''); Leslie M. Norwood, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, dated November 30, 2011 (''SIFMA Letter II''); Joy A. Howard, Principal, WM Financial Strategies, dated November 30, 2011 (''WM Letter II''); Michael Nicholas, CEO, Bond Dealers of America, dated December 1, 2011 (''BDA Letter II''); Susan Gaffney, Director, Federal Liaison Center, Government Finance Officers Association, dated December 1, 2011 (''GFOA Letter II''); Robert Doty, AGFS, dated December 1, 2011 (''AGFS Letter''); and Peter C. Orr, CFA, President, Intuitive Analytics LLC, dated December 7, 2011 (''IA Letter''). *See* letter from Margaret C. Henry, General Counsel, Market Regulation, MSRB, dated December 7, 2011 (''Response Letter II'').

December 8, 2011. On December 8, 2011, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act to determine whether to approve or disapprove the proposed rule change.[8] The Commission received five comment letters and two additional responses from the MSRB.[9] On March 5, 2012, the MSRB extended the time period for Commission action to May 4, 2012. This order approves the proposed rule change, as modified by Amendment No. 2.

II. Description of the Proposal

The MSRB proposes to adopt an interpretive notice with respect to MSRB Rule G–17, which states that ''[i]n the conduct of its municipal securities or municipal advisory activities, each broker, dealer, municipal securities dealer, and municipal advisor shall deal fairly with all persons and shall not engage in any deceptive, dishonest, or unfair practice.''

The Interpretive Notice would apply to dealers acting as underwriters and their duty to municipal entity[10] issuers of municipal securities in negotiated underwritings (except where the Interpretive Notice indicates that it also applies to competitive underwritings), but would not apply to selling group members or when a dealer is serving as an advisor to a municipal entity. The Interpretive Notice would include the following sections: (1) Basic Fair Dealing Principle; (2) Role of the Underwriter/Conflicts of Interest; (3) Representations to Issuers; (4) Required Disclosures to Issuers; (5) Underwriter Duties in Connection with Issuer Disclosure Documents; (6) Underwriter Compensation and New Issue Pricing; (7) Conflicts of Interest; (8) Retail Order Periods; and (9) Dealer Payments to Issuer Personnel.

A. Basic Fair Dealing Principle

The Interpretive Notice would interpret Rule G–17's duty to deal fairly with all persons as providing that an underwriter must not misrepresent or omit the facts, risks, potential benefits, or other material information about municipal securities activities undertaken with a municipal entity issuer. The Interpretive Notice would also state that MSRB Rule G–17 establishes a general duty of a dealer to deal fairly with all persons (including, but not limited to, issuers of municipal securities), even in the absence of fraud.

B. Role of the Underwriter/Conflicts of Interest

The Interpretive Notice would state that MSRB Rule G–17's duty to deal fairly with all persons requires the underwriter to make certain disclosures to the issuer of municipal securities to clarify the underwriter's role in an issuance of municipal securities and the actual or potential material conflicts of interest with respect to such issuance, as described below.

1. Disclosures Concerning the Underwriter's Role

An underwriter must disclose the following information to an issuer: (A) MSRB Rule G–17 requires an underwriter to deal fairly at all times with both municipal issuers and investors; (B) the underwriter's primary role is to purchase securities with a view to distribution in an arm's-length commercial transaction with the issuer and it has financial and other interests that differ from those of the issuer; (C) unlike a municipal advisor, the underwriter does not have a fiduciary duty to the issuer under the federal securities laws and is not required by federal law to act in the best interest of the issuer without regard to the underwriter's own financial or other interests; (D) the underwriter has a duty to purchase securities from the issuer at a fair and reasonable price, but must balance that duty with its duty to sell municipal securities to investors at prices that are fair and reasonable; and (E) the underwriter will review the official statement for the issuer's securities in accordance with, and as part of, its responsibilities to investors under the federal securities laws, as applied to the facts and circumstances of the transaction. Moreover, the Interpretive Notice would state that the underwriter must not recommend that the issuer not retain a municipal advisor.

2. Disclosure Concerning the Underwriter's Compensation

An underwriter must disclose to an issuer whether its underwriting compensation will be contingent on the closing of a transaction. The underwriter must also disclose that compensation that is contingent on the closing of a transaction or the size of a transaction presents a conflict of interest, because it may cause the underwriter to recommend a transaction that is unnecessary or to recommend that the size of the transaction be larger than is necessary.

3. Other Conflicts Disclosures

An underwriter must disclose other potential or actual material conflicts of interest, including, but not limited to, the following: (A) Any payments described below in Section II (G)(1) ''Conflicts of Interest—Payments to or from Third Parties''; (B) any arrangements described below in Section II (G)(2) ''Conflicts of Interest—Profit-Sharing with Investors''; (C) the credit default swap disclosures described below in Section II (G)(3) ''Conflicts of Interest—Credit Default Swaps''; and (D) any incentives for the underwriter to recommend a complex municipal securities financing and other associated conflicts of interest described below in Section II (D) ''Required Disclosures to Issuers.''

Disclosures concerning the role of the underwriter and the underwriter's compensation could be made by a syndicate manager on behalf of other syndicate members. Other conflicts disclosures must be made by the particular underwriters subject to such conflicts.

4. Timing and Manner of Disclosures

All of the foregoing disclosures must be made in writing to an official of the issuer that the underwriter reasonably believes has the authority to bind the issuer by contract with the underwriter and that, to the knowledge of the underwriter, is not a party to a disclosed conflict. The Interpretive Notice would specify that the disclosures must be made in a manner designed to make clear to such official the subject matter of the disclosures and their implications for the issuer.

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[8] *See* Securities Exchange Act Release No. 65918 (December 8, 2011), 76 FR 77865 (December 14, 2011).

[9] *See* letters from Leslie M. Norwood, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, dated January 27, 2012 (''SIFMA Letter III''); Michael Nicholas, Chief Executive Officer, Bond Dealers of America, dated January 30, 2012 (''BDA Letter III''); Colette J. Irwin-Knott, CIPFA, President, National Association of Independent Public Finance Advisors, dated January 30, 2012 (''NAIPFA Letter III''); Susan Gaffney, Director, Federal Liaison Center, Government Finance Officers Association, dated January 30, 2012 (''GFOA Letter III''); and John H. Bonow, Chief Executive Officer, Public Financial Management, Inc., dated February 13, 2012 (''PFM Letter II''). *See* letters from Margaret C. Henry, General Counsel, Market Regulation, MSRB, dated January 30, 2012 (''Response Letter III'') and Margaret C. Henry, General Counsel, Market Regulation, MSRB, dated February 13, 2012 (''Response Letter IV'').

[10] The Interpretive Notice would define the term ''municipal entity'' as that term is defined by Section 15B(e)(8) of the Exchange Act: ''Any State, political subdivision of a State, or municipal corporate instrumentality of a State, including—(A) any agency, authority, or instrumentality of the State, political subdivision, or municipal corporate instrumentality; (B) any plan, program, or pool of assets sponsored or established by the State, political subdivision, or municipal corporate instrumentality or any agency, authority, or instrumentality thereof; and (C) any other issuer of municipal securities.'' *See* Interpretive Notice at endnote 1.

Disclosure concerning the arm's-length nature of the underwriter-issuer relationship must be made in the earliest stages of the underwriter's relationship with the issuer, for example, in a response to a request for proposals or in promotional materials provided to an issuer. Other disclosures concerning the role of the underwriter and the underwriter's compensation generally must be made when the underwriter is engaged to perform underwriting services, for example, in an engagement letter, not solely in a bond purchase agreement. Other conflicts disclosures must be made at the same time, except with regard to conflicts discovered or arising after the underwriter has been engaged. For example, a conflict may not be present until an underwriter has recommended a particular financing. In that case, the disclosure must be provided in sufficient time before the execution of a contract with the underwriter to allow the official to evaluate the recommendation, as described below in Section II (D) ''Required Disclosures to Issuers.''

5. Acknowledgement of Disclosures

An underwriter must attempt to receive written acknowledgement (other than by automatic email receipt) by the official of the issuer of receipt of the foregoing disclosures. If the official of the issuer agrees to proceed with the underwriting engagement after receipt of the disclosures but will not provide written acknowledgement of receipt, the underwriter may proceed with the engagement after documenting with specificity why it was unable to obtain such written acknowledgement.

C. Representations to Issuers

All representations made by underwriters to issuers of municipal securities in connection with municipal securities underwritings, whether written or oral, must be truthful and accurate and not misrepresent or omit material facts. Underwriters must have a reasonable basis for the representations and other material information contained in the documents they prepare and must refrain from including representations or other information they know or should know is inaccurate or misleading. For example, in connection with a certificate signed by the underwriter that will be relied upon by the issuer or other relevant parties to an underwriting (*e.g.,* an issue price certificate), the dealer must have a reasonable basis for the representations and other material information contained therein.

In addition, an underwriter's response to an issuer's request for proposals or qualifications must fairly and accurately describe the underwriter's capacity, resources, and knowledge to perform the proposed underwriting as of the time the proposal is submitted and must not contain any representations or other material information about such capacity, resources, or knowledge that the underwriter knows or should know to be inaccurate or misleading. Matters not within the personal knowledge of those preparing the response, for example, pending litigation, must be confirmed by those with knowledge of the subject matter. An underwriter must not represent that it has the requisite knowledge or expertise with respect to a particular financing if the personnel that it intends to work on the financing do not have the requisite knowledge or expertise.

D. Required Disclosures to Issuers

The Interpretive Notice would provide that while many municipal securities are issued using financing structures that are routine and well understood by the typical municipal market professional, including most issuer personnel that have the lead responsibilities in connection with the issuance of municipal securities, the underwriter must provide disclosures on the material aspects of structures that it recommends when the underwriter reasonably believes issuer personnel lacks knowledge or experience with such structures.

In cases where the issuer personnel responsible for the issuance of municipal securities would not be well positioned to fully understand or assess the implications of a financing in its totality, because the financing is structured in a unique, atypical, or otherwise complex manner, the underwriter in a negotiated offering that recommends such complex financing has an obligation to make more particularized disclosures than otherwise required in a routine financing.[11] Examples of complex financings include variable rate demand obligations and financings involving derivatives such as swaps. The underwriter must disclose the material financial characteristics of the complex financing, as well as the material financial risks of the financing that are known to the underwriter and reasonably foreseeable at the time of the disclosure.[12] The underwriter must also disclose any incentives to recommend the financing and other associated conflicts of interest.[13] These disclosures must be made in a fair and balanced manner based on principles of fair dealing and good faith.

The Interpretive Notice would provide that the level of required disclosure may vary according to the issuer's knowledge or experience with the proposed financing structure or similar structures, capability of evaluating the risks of the recommended financing, and financial ability to bear the risks of the recommended financing, in each case based on the reasonable

[11] The Interpretive Notice would state that if a complex municipal securities financing consists of an otherwise routine financing structure that incorporates a unique, atypical or complex element and the issuer personnel have knowledge or experience with respect to the routine elements of the financing, the disclosure of material risks and characteristics may be limited to those relating to such unique, atypical or complex element and any material impact such element may have on other features that would normally be viewed as routine. *See* Interpretive Notice at endnote 6.

[12] The Interpretive Notice would provide, as an example, that an underwriter that recommends variable rate demand obligations should inform the issuer of the risk of interest rate fluctuations and material risks of any associated credit or liquidity facilities (for example, the risk that the issuer might not be able to replace the facility upon its expiration and might be required to repay the facility provider over a short period of time). As an additional example, if the underwriter recommends that the issuer swap the floating rate interest payments on the variable rate demand obligations to fixed rate payments, the underwriter must disclose the material financial risks (including market, credit, operational, and liquidity risks) and material financial characteristics of the recommended swap (for example, the material economic terms of the swap, the material terms relating to the operation of the swap, and the material rights and obligations of the parties during the term of the swap), as well as the material financial risks associated with the variable rate demand obligations. Such disclosure should be sufficient to allow the issuer to assess the magnitude of its potential exposure as a result of the complex municipal securities financing. The underwriter must also inform the issuer that there may be accounting, legal, and other risks associated with the swap and that the issuer should consult with other professionals concerning such risks. If the underwriter's affiliated swap dealer is proposed to be the executing swap dealer, the underwriter may satisfy its disclosure obligation with respect to the swap if such disclosure has been provided to the issuer by the affiliated swap dealer or the issuer's swap or other financial advisor that is independent of the underwriter and the swap dealer, as long as the underwriter has a reasonable basis for belief in the truthfulness and completeness of such disclosure. If the issuer decides to enter into a swap with another dealer, the underwriter is not required to make disclosures with regard to that swap. Dealers that recommend swaps or security-based swaps to municipal entities may also be subject to rules of the Commodity Futures Trading Commission (''CFTC'') or those of the Commission. See Interpretive Notice at endnote 7.

[13] The Interpretive Notice would provide that, as an example, a conflict of interest may exist when the underwriter is also the provider of a swap used by an issuer to hedge a municipal securities offering or when the underwriter receives compensation from a swap provider for recommending the swap provider to the issuer. *See* Interpretive Notice at endnote 8.

belief of the underwriter.[14] In all events, the underwriter must disclose any incentives for the underwriter to recommend the complex municipal securities financing and other associated conflicts of interest.

The Interpretive Notice would provide that this disclosure must be made in writing to an official of the issuer whom the underwriter reasonably believes has the authority to bind the issuer by contract with the underwriter in (A) sufficient time before the execution of a contract with the underwriter to allow the official to evaluate the recommendation and (B) a manner designed to make clear to such official the subject matter of such disclosures and their implications for the issuer. The complex financing disclosures must address the specific elements of the financing and cannot be general in nature. Finally, the Interpretive Notice would provide that the underwriter must make additional efforts reasonably designed to inform the official of the issuer if the underwriter does not reasonably believe that the official is capable of independently evaluating the disclosures.

E. Underwriter Duties in Connection With Issuer Disclosure Documents

The Interpretive Notice would note that underwriters often play an important role in assisting issuers in the preparation of disclosure documents, such as preliminary official statements and official statements.[15] These documents are critical to the municipal securities transaction, in that investors rely on the representations contained in the documents in making their investment decisions. Investment professionals, such as municipal securities analysts and ratings services, rely on the representations in forming an opinion regarding the credit.

The Interpretive Notice would provide that a dealer's duty to have a reasonable basis for the representations it makes, and other material information it provides, to an issuer and to ensure that such representations and information are accurate and not misleading extends to representations and information provided by the underwriter in connection with the preparation by the issuer of its disclosure documents, for example, cash flows.

F. Underwriter Compensation and New Issue Pricing

1. Excessive Compensation

The Interpretive Notice would state that an underwriter's compensation for a new issue (including both direct compensation paid by the issuer and other separate payments, values, or credits received by the underwriter from the issuer or any other party in connection with the underwriting), in certain cases and depending upon the specific facts and circumstances of the offering, may be so disproportionate to the nature of the underwriting and related services performed as to constitute an unfair practice with regard to the issuer that it is a violation of MSRB Rule G–17. The Interpretive Notice would state that, among the factors relevant to whether an underwriter's compensation is disproportionate to the nature of the underwriting and related services performed, are the credit quality of the issue, the size of the issue, market conditions, the length of time spent structuring the issue, and whether the underwriter is paying the fee of the underwriter's counsel, or any other relevant costs related to the financing.

2. Fair Pricing

The Interpretive Notice would state that the duty of fair dealing under MSRB Rule G–17 includes an implied representation that the price an underwriter pays to an issuer is fair and reasonable, taking into consideration all relevant factors, including the best judgment of the underwriter as to the fair market value of the issue at the time it is priced.[16] In general, a dealer purchasing bonds in a competitive underwriting for which the issuer may reject any and all bids will be deemed to have satisfied its duty of fairness to the issuer with respect to the purchase price of the issue, as long as the dealer's bid is a bona fide bid as defined in MSRB Rule G–13 [17] that is based on the dealer's best judgment of the fair market value of the securities that are the subject of the bid.

In a negotiated underwriting, the underwriter has a duty under MSRB Rule G–17 to negotiate in good faith with the issuer. This duty would include the obligation of the dealer to ensure the accuracy of representations made during the course of such negotiations, including representations regarding the price negotiated and the nature of investor demand for the securities, for example, the status of the order period and the order book. If, for example, the dealer represents to the issuer that it is providing the ''best'' market price available on the new issue, or that it will exert its best efforts to obtain the ''most favorable'' pricing, the dealer may violate MSRB Rule G–17 if its actions are inconsistent with such representations.[18]

G. Conflicts of Interest

1. Payments to or From Third Parties

The Interpretive Notice would state that in certain cases, compensation received by the underwriter from third parties, such as the providers of derivatives and investments (including affiliates of the underwriters), may color the underwriter's judgment and cause it

[14] The Interpretive Notice would state that even a financing in which the interest rate is benchmarked to an index that is commonly used in the municipal marketplace, such as LIBOR or SIFMA, may be complex to an issuer that does not understand the components of that index or its possible interaction with other indexes. *See* Interpretive Notice at endnote 9.

[15] The Interpretive Notice would state that underwriters that assist issuers in preparing official statements must remain cognizant of the underwriters' duties under federal securities laws. The Interpretive Notice would state that, with respect to primary offerings of municipal securities, the Commission has noted that ''[b]y participating in an offering, an underwriter makes an implied recommendation about the securities'' and ''this recommendation itself implies that the underwriter has a reasonable basis for belief in the truthfulness and completeness of the key representations made in any disclosure documents used in the offerings.'' *See* Interpretive Notice at endnote 10 and Securities Exchange Act Release No. 26100 (September 22, 1988), 53 FR 37778, 37787 (September 28, 1988) (proposing Exchange Act Rule 15c2–12). Further, the Interpretive Notice would state that, pursuant to Exchange Act Rule 15c2–12(b)(5), an underwriter may not purchase or sell municipal securities in most primary offerings unless the underwriter has reasonably determined that the issuer or an obligated person has entered into a written undertaking to provide certain types of secondary market disclosure and has a reasonable basis for relying on the accuracy of the issuer's ongoing disclosure representations. *See* Interpretive Notice at endnote 10 and Securities Exchange Act Release No. 34961 (November 10, 1994), 59 FR 59590 (November 17, 1994) (adopting continuing disclosure provisions of Exchange Act Rule 15c2–12).

[16] The Interpretive Notice would state that the MSRB has previously observed that whether an underwriter has dealt fairly with an issuer for purposes of MSRB Rule G–17 is dependent upon all of the facts and circumstances of an underwriting and is not dependent solely on the price of the issue. The Notice would refer to MSRB Notice 2009–54 and MSRB Rule G–17 Interpretive Letter—Purchase of New Issue From Issuer, MSRB interpretation of December 1, 1997. *See* Interpretive Notice at endnote 11.

[17] The Interpretive Notice would refer to MSRB Rule G–13(b)(iii), which provides: ''For purposes of subparagraph (i), a quotation shall be deemed to represent a 'bona fide bid for, or offer of, municipal securities' if the broker, dealer or municipal securities dealer making the quotation is prepared to purchase or sell the security which is the subject of the quotation at the price stated in the quotation and under such conditions, if any, as are specified at the time the quotation is made.'' *See* Interpretive Notice at endnote 12.

[18] The Interpretive Notice would refer to MSRB Rule G–17 Interpretive Letter—Purchase of New Issue From Issuer, MSRB interpretation of December 1, 1997. *See* Interpretive Notice at endnote 13.

to recommend products, structures, and pricing levels to an issuer when it would not have done so absent such payments. The MSRB would view the failure of an underwriter to disclose to the issuer the existence of payments, values, or credits received by the underwriter in connection with its underwriting of the new issue from parties other than the issuer, and payments made by the underwriter in connection with such new issue to parties other than the issuer (in either case including payments, values, or credits that relate directly or indirectly to collateral transactions integrally related to the issue being underwritten), to be a violation of the underwriter's obligation to the issuer under MSRB Rule G–17.

For example, the MSRB would consider it to be a violation of MSRB Rule G–17 for an underwriter to compensate an undisclosed third party in order to secure municipal securities business. Similarly, the MSRB would consider it to be a violation of MSRB Rule G–17 for an underwriter to receive undisclosed compensation from a third party in exchange for recommending that third party's services or products to an issuer, including business related to municipal securities derivative transactions. The amount of such third party payments need not be disclosed.

In addition, the underwriter must disclose to the issuer whether the underwriter has entered into any third-party arrangements for the marketing of the issuer's securities.

2. Profit-Sharing With Investors

The Interpretive Notice would state that arrangements between the underwriter and an investor purchasing newly issued securities from the underwriter (including purchases that are contingent upon the delivery by the issuer to the underwriter of the securities) according to which profits realized from the resale by such investor of the securities are directly or indirectly split or otherwise shared with the underwriter would, depending on the facts and circumstances (including, in particular, if such resale occurs reasonably close in time to the original sale by the underwriter to the investor), constitute a violation of the underwriter's fair dealing obligation under MSRB Rule G–17. Such arrangements could also constitute a violation of MSRB Rule G–25(c), which precludes a dealer from sharing, directly or indirectly, in the profits or losses of a transaction in municipal securities with or for a customer.[19]

3. Credit Default Swaps

The Interpretive Notice would state that the issuance or purchase by a dealer of credit default swaps for which the reference is the issuer for which the dealer is serving as underwriter, or an obligation of that issuer, may pose a conflict of interest, because trading in such municipal credit default swaps has the potential to affect the pricing of the underlying reference obligations, as well as the pricing of other obligations brought to market by that issuer. As such, a dealer must disclose the fact that it engages in such activities to the issuers for which the dealer serves as underwriter.

The Interpretive Notice would provide that activities with regard to credit default swaps based on baskets or indexes of municipal issuers that include the issuer or its obligations need not be disclosed, unless the issuer or its obligations represents more than 2% of the total notional amount of the credit default swap or the underwriter otherwise caused the issuer or its obligations to be included in the basket or index.

H. Retail Order Periods

The Interpretive Notice would provide that an underwriter that has agreed to underwrite a transaction with a retail order period must honor such agreement.[20] The Interpretive Notice would provide that a dealer that wishes to allocate securities in a manner that is inconsistent with an issuer's requirements must obtain the issuer's consent.

The Interpretive Notice would state that an underwriter that has agreed to underwrite a transaction with a retail order period must take reasonable measures to ensure that retail clients are bona fide. An underwriter that knowingly accepts an order that has been framed as a retail order when it is not, for example, a number of small orders placed by an institutional investor that would otherwise not qualify as a retail customer would violate MSRB Rule G–17 if its actions are inconsistent with the issuer's expectations regarding retail orders. Moreover, a dealer that places an order that is framed as a qualifying retail order but in fact represents an order that does not meet the qualification requirements to be treated as a retail order, for example, an order by a retail dealer without ''going away'' orders[21] from retail customers when such orders are not within the issuer's definition of ''retail,'' would violate its MSRB Rule G–17 duty of fair dealing.

The Interpretive Notice would specify that the MSRB will continue to review activities relating to retail order periods to ensure that they are conducted in a fair and orderly manner consistent with the intent of the issuer and the MSRB's investor protection mandate.

I. Dealer Payments to Issuer Personnel

The Interpretive Notice would state that dealers are reminded of the application of MSRB Rule G–20 on gifts, gratuities, and non-cash compensation, and MSRB Rule G–17, in connection with certain payments made to, and expenses reimbursed for, issuer personnel during the municipal bond issuance process.[22] The Interpretive Notice would further state that the rules are designed to avoid conflicts of interest and to promote fair practices in the municipal securities market.

The Interpretive Notice would alert dealers to consider carefully whether payments they make in regard to expenses of issuer personnel in the course of the bond issuance process, including in particular, but not limited to, payments for which dealers seek reimbursement from bond proceeds or issuers, comport with the requirements of MSRB Rule G–20. For example, the Interpretive Notice would provide that a dealer acting as a financial advisor or underwriter may violate MSRB Rule G–20 by paying for excessive or lavish travel, meal, lodging and entertainment expenses in connection with an offering such as may be incurred for rating

[19] According to MSRB Rule D–9: ''Except as otherwise specifically provided by rule of the Board, the term 'Customer' shall mean any person other than a broker, dealer, or municipal securities dealer acting in its capacity as such or an issuer in transactions involving the sale by the issuer of a new issue of its securities.''

[20] The Interpretive Notice would refer to MSRB Interpretation on Priority of Orders for Securities in a Primary Offering under Rule G–17, MSRB interpretation of October 12, 2010, reprinted in the MSRB Rule Book. The Notice would remind underwriters of previous MSRB guidance on the pricing of securities sold to retail investors and refer to Guidance on Disclosure and Other Sales Practice Obligations to Individual and Other Retail Investors in Municipal Securities, MSRB Notice 2009–42 (July 14, 2009). *See* Interpretive Notice at endnote 15.

[21] The Interpretive Notice would state that a ''going away'' order is an order for newly issued securities for which a customer is already conditionally committed and cite Securities Exchange Act Release No. 62715 (August 13, 2010), 75 FR 51128 (August 18, 2010) (SR–MSRB–2009–17). *See* Interpretive Notice at endnote 16.

[22] The Interpretive Notice would cite to MSRB Rule G–20 Interpretation—Dealer Payments in Connection With the Municipal Securities Issuance Process, MSRB interpretation of January 29, 2007, reprinted in the MSRB Rule Book. *See* Interpretive Notice at endnote 17.

agency trips, bond closing dinners, and other functions, that inure to the personal benefit of issuer personnel and that exceed the limits or otherwise violate the requirements of the rule.[23]

III. Discussion and Commission Findings

The Commission has carefully considered the proposed rule change, as modified by Amendment No. 2, the comment letters received, and the MSRB's responses, and finds that the proposed rule change, as modified by Amendment No. 2, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB. Specifically, the Commission finds that the proposed rule change is consistent with the provisions of Section 15B(b)(2)(C) of the Act,[24] which requires, among other things, that the rules of the MSRB be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons facilitating transactions in municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest. The sections below include a detailed description of the comments received, the MSRB's responses to the comments, and the Commission's findings.

A. Basic Fair Dealing Principle

Commenters generally supported the principle of fair dealing in MSRB Rule G–17.[25] Some commenters expressed their belief that the principle of fair dealing should not be interpreted to impose a fiduciary duty on underwriters to issuers,[26] while other commenters expressed their belief that underwriters have such a duty if they engage in certain activities.[27] In Response Letter I, the MSRB stated that the Interpretive Notice does not impose a fiduciary duty on underwriters and that the duties imposed by the Interpretive Notice on underwriters are no different in many cases from the duties already imposed on them by MSRB rules with respect to other types of customers (*e.g.,* individual investors). Further, the MSRB stated that an underwriter is not required to act in the best interest of an issuer without regard to the underwriter's own financial and other interests and is not required to consider all reasonably feasible alternatives to the proposed financings. Rather, the MSRB stated that one purpose of the Interpretive Notice is to eliminate issuer confusion about the role of the underwriter.

The Commission finds that the proposed provision regarding the basic fair dealing principle of MSRB Rule G–17 is consistent with the Act because it will help to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors, municipal entities, and the public interest. For example, the Interpretive Notice specifies that MSRB Rule G–17 establishes a general duty to deal fairly with all persons, even in the absence of fraud. In addition, the Commission believes that the MSRB has adequately responded to the comments by, among other things, clarifying the level of the underwriter's duties toward an issuer.

B. Role of the Underwriter/Conflicts of Interest

1. Disclosures Concerning the Underwriter's Role

Some commenters stated that it is important that issuers understand the different roles that underwriters and financial advisors play in a transaction.[28] Other commenters suggested additional disclosures with respect to the role of underwriters.[29] For example, commenters suggested that the MSRB require an underwriter to state: (1) That the underwriter does not have a fiduciary duty to the issuer and is a counterparty at arm's length;[30] (2) that the issuer may choose to engage a financial advisor to represent its interests;[31] (3) that the underwriter is not acting as an advisor;[32] (4) that the underwriter has conflicts with issuers because the underwriter represents the interests of investors and other parties;[33] (5) that the underwriter seeks to maximize profitability;[34] and (6) that the underwriter has no continuing obligation to the issuer after the transaction.[35]

In Response Letter I, the MSRB noted that the Interpretive Notice, as modified by Amendment No. 2, incorporates many of the recommendations suggested by commenters, such as requiring underwriters to provide issuers with disclosure that underwriters do not have a fiduciary duty to issuers. In addition, the MSRB noted that the Interpretive Notice, as modified by Amendment No. 2, requires disclosure regarding the underwriter's role as compared to that of a municipal advisor, and prohibits an underwriter from recommending that the issuer not retain a municipal advisor.[36] The MSRB also stated that it

[23] The Interpretive Notice would cite to *In the Matter of RBC Capital Markets Corporation,* SEC Rel. No. 34–59439 (February 24, 2009) (settlement in connection with broker-dealer alleged to have violated MSRB Rules G–20 and G–17 for payment of lavish travel and entertainment expenses of city officials and their families associated with rating agency trips, which expenditures were subsequently reimbursed from bond proceeds as costs of issuance); *In the Matter of Merchant Capital, L.L.C.,* SEC Rel. No. 34–60043 (June 4, 2009) (settlement in connection with broker-dealer alleged to have violated MSRB rules for payment of travel and entertainment expenses of family and friends of senior officials of issuer and reimbursement of the expenses from issuers and from proceeds of bond offerings). *See* Interpretive Notice at endnote 18.

[24] 15 U.S.C. 78*o*–4(b)(2)(C).

[25] *See, e.g.,* SIFMA Letter I.

[26] *See* SIFMA Letter I; NAIPFA Letter I; and BDA Letter I. Two commenters noted that the appearance of the imposition of a fiduciary duty would confuse municipal issuers on the role of underwriters. *See* NAIPFA Letter I and BDA Letter I. One commenter opposed the appearance of the imposition of a fiduciary duty and noted that municipal issuers often do not understand the disclosures that they are provided and do not benefit from complex disclosures from firms that are not acting in a fiduciary capacity. *See* WM Letter I (stating its belief that the proposal will not improve transparency in the municipal market).

[27] *See, e.g.,* PFM Letter I. This commenter stated that advice given by brokers in their promotion of themselves to become underwriters makes them municipal advisors.

[28] *See, e.g.,* GFOA Letter I and NAIPFA Letter III (stating that ''[a]doption of the Rule is crucial to the prevention of confusion and harm from occurring to municipal issuers'').

[29] One commenter stated that it supports the proposal but believes that additional changes would be required to protect infrequent and/or small and unsophisticated issuers. *See* NAIPFA Letter I and NAIPFA Letter II.

[30] *See* GFOA Letter I; NAIPFA Letter I; GFOA Letter II; and GFOA Letter III. One commenter stated that a simple disclosure from an underwriter to the issuer that the underwriter is not acting as financial advisor and that the issuer should consult with a financial advisor would be sufficient. *See* WM Letter I. Another commenter stated that the requirement for an underwriter to compare its obligations with others, such as a municipal advisor, should be eliminated. *See* BDA Letter II.

[31] *See* GFOA Letter I; GFOA Letter II; GFOA Letter III; and NAIPFA Letter I (requesting a disclosure that an underwriter is no replacement for a municipal advisor and stating that when an issuer engages a municipal advisor, the underwriter disclosures should not overlap with areas covered by the role of municipal advisor).

[32] *See* NAIPFA Letter I.

[33] *See id.*

[34] *See id.*

[35] *See id.*

[36] In Response Letter IV, the MSRB stated that the proposed provision that an underwriter must not recommend that the issuer not retain a municipal advisor is a stronger protection to issuers than a disclosure that an issuer may choose to engage an advisor because the proposed provision ''affirmatively restrains an underwriter from taking action to discourage the use of an advisor rather than simply informing an issuer of a choice it already has and has no reason to believe it does not have.'' *See also* Response Letter II. One commenter agreed with the MSRB that an underwriter should not recommend that an issuer not retain a municipal advisor. *See* BDA Letter II.

does not believe that it is necessary for underwriters to disclose that they seek to maximize profitability and have no continuing obligation to the issuer after the transaction.

One commenter suggested that the MSRB require underwriters to disclose pending litigation that may affect the underwriter's municipal securities business, departure of experts that the issuer relied upon, and transactional risks, including a comparison of different forms of financings.[37] In Response Letter I, the MSRB disagreed that underwriters should disclose the different types of financings that may be applicable to an issuer's particular situation because that is under the domain of the municipal advisor. The MSRB also noted that pending litigation and expert departures that do not rise to the level of conflicts could be required by an issuer as the issuer deems appropriate.[38]

One commenter suggested that the MSRB develop and promote educational information for issuers and other market participants with respect to underwriting pricings and fees.[39] This commenter also suggested that the MSRB develop educational materials for issuers with respect to the information that underwriters must disclose and the appropriate questions that issuers should ask their underwriters regarding a transaction, as well as with respect to the ''fair and reasonable'' standard for the amount that underwriters pay issuers for bonds.[40] In Response Letter I, the MSRB noted that it is in the process of developing educational materials for issuers with respect to the duties owed them by their underwriters under MSRB rules, as suggested by the commenter.

One commenter stated that underwriters should not be required to provide generalized role and compensation disclosures or written risk disclosures to large and frequent issuers unless requested by such issuers.[41] Another commenter stated that the Commission and the MSRB would create confusion by imposing fiduciary-like duties on underwriters through Rule G–17, and that any disclosure requirements must be narrowly drawn to avoid conceptual and practical inconsistencies that would only confuse the parties as to their roles and responsibilities.[42] In Response Letter II, the MSRB noted its disagreement with the comments and stated that providing more information to issuers about the nature of the duties of the professionals they engage—regardless of the issuer's size, sophistication or frequency of accessing the market—can only serve to empower, rather than confuse, issuers. In Response Letter IV, the MSRB declined to modify the requirements for providing written disclosures to large and frequent issuers. The MSRB stated that such issuers may experience turnover in finance personnel, and that disclosures are required to be made to issuer representatives to inform them in their decision making.

The Commission finds that the proposed disclosures concerning the underwriter's role are consistent with the Act because they will help to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors, municipal entities, and the public interest. In providing municipal issuers with written information regarding such things as the arm's-length nature of the underwriter-issuer relationship and the role of the underwriter, municipal issuers should be better informed to evaluate, among other things, potential risks in engaging a particular underwriter. The disclosures should also help issuers to better understand the role of the underwriter, as compared to that of a municipal advisor. In addition, the required disclosures should benefit issuers, investors, and the public interest, and provide issuers and their advisors with valuable information with which to evaluate underwriter recommendations. Further, the Commission believes that, by providing that an underwriter must not recommend that the issuer not retain a municipal advisor, the Interpretive Notice will help further protect municipal issuers. The Commission agrees with the MSRB that the proposed provision that an underwriter must not recommend that the issuer not retain a municipal advisor is a stronger protection to issuers than a disclosure that an issuer may choose to engage an advisor.[43]

The Commission also believes that the MSRB has adequately addressed the comments regarding the disclosure requirements. Specifically, the Commission notes that, in response to commenters' requests for additional disclosures, the MSRB modified the Interpretive Notice, as originally proposed, by including specific information that an underwriter must disclose to the issuer. In addition, in response to comments, the MSRB stated that it is in the process of developing certain educational materials for issuers with respect to the duties owed them by their underwriters to help further the aim of the required disclosures.[44]

2. Disclosure Concerning the Underwriter's Compensation

One commenter requested additional conflicts of interest disclosures regarding underwriter compensation, such as the manner of such compensation and any associated conflicts of interest.[45] In Response Letter I, the MSRB stated that the Interpretive Notice, as modified by Amendment No. 2, incorporates many of the commenters' recommendations, such as disclosure regarding the conflicts of interest raised by contingent fee compensation.

Another commenter stated that the underwriter should be required to disclose to an issuer, and obtain its informed consent in writing, that the form of the underwriter's compensation creates a conflict of interest because the compensation is based primarily on the size and type of issuance.[46] This commenter also stated that the amount of compensation should be disclosed.[47] On the other hand, one commenter objected to the characterization of contingent fee arrangements as resulting in a conflict of interest with issuers.[48] The commenter stated that such arrangements do not necessarily result in a conflict, and recommended that the disclosure should state that such compensation ''may'' present a conflict or ''may have the potential'' for a conflict.[49]

In Response Letter II, the MSRB stated that it has accurately characterized contingent compensation arrangements as creating a conflict of interest. The MSRB stated that there may be other factors on which an underwriter and the issuer have a coincidence of interests that may outweigh the conflicting interests resulting from the contingent arrangement, but that does not change the fact that such arrangement itself represents a conflict. Further, the MSRB stated that, given the transaction-based

[37] *See* GFOA Letter I. *See also* GFOA Letter II.

[38] According to the Interpretive Notice, disclosures regarding pending litigation against the underwriter must be confirmed by those persons with knowledge of the subject matter.

[39] *See* GFOA Letter I.

[40] *See id.*

[41] *See* SIFMA Letter II. *See also* SIFMA Letter III.

[42] *See* BDA Letter I. *See also* SIFMA Letter I; NAIPFA Letter I; and NAIPFA Letter II.

[43] *See supra* note 36.

[44] *See* Response Letter I.

[45] *See* GFOA Letter I.

[46] *See* NAIPFA Letter I and NAIPFA Letter III.

[47] *See* NAIPFA Letter II. This commenter also suggested that disclosures regarding non-contingent fees may be necessary.

[48] *See* BDA Letter II.

[49] *See id.*

nature of the typical relationship between underwriters and issuers, the proposal's requirements regarding disclosure of compensation conflicts, together with the other conflicts disclosures included in the proposal, adequately address concerns that may arise in cases where potential conflicts may arise under less typical compensation scenarios.

The Commission finds that the proposed disclosure requirements for underwriter's compensation are consistent with the Act because they will help to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors, municipal entities, and the public interest. Specifically, written disclosures by underwriters regarding such things as whether the underwriter's compensation is contingent on the closing of the transaction, as well as other potential or actual conflicts of interest, should help ensure that municipal issuers are better informed in evaluating, among other things, potential risks of engaging a particular underwriter. Further, the Commission believes that the required disclosures should benefit issuers, investors, and the public interest, and provide issuers and their advisors with valuable information with which to evaluate underwriter recommendations.

In addition, the Commission believes that the MSRB has adequately addressed the comments regarding the compensation disclosure requirements. Specifically, the Commission notes that, in response to a commenter's request for additional conflicts of interest disclosures regarding underwriter compensation, the MSRB modified the Interpretive Notice, as originally proposed, by providing that the underwriter must disclose whether its compensation is contingent, and that contingent compensation presents a conflict of interest.

3. Other Conflicts Disclosures

One commenter stated that when there is a syndicate of underwriters, an underwriter whose participation level is below 10% should be exempted from the disclosure requirements.[50] Another commenter stated that, with respect to underwriter syndicates, underwriters who do not have a role in the development or implementation of the financing structure or other aspects of the issue should not be subject to the disclosure requirements.[51] In Response Letter II, the MSRB declined to adopt the suggested exemptions and stated that not all conflicts or other concerns that arise in the context of an underwriting are necessarily proportionate to the size of participation of an underwriter.[52] The MSRB noted, however, that with respect to disclosures about the material financial characteristics and risks of an underwriting transaction recommended by underwriters, where such recommendation is made by the syndicate manager on behalf of the underwriting syndicate, the Interpretive Notice does not prohibit syndicate members from delegating to the syndicate manager (through, for example, the agreement among underwriters) the task of delivering such disclosure in a full and timely manner on behalf of the syndicate members, although each syndicate member would remain responsible for providing disclosures with respect to conflicts specific to such member.

As discussed in further detail below in Sections III.D. and III.G., the Commission finds that disclosures concerning other conflicts of interest are consistent with the Act because they will help to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors, municipal entities, and the public interest. The Commission also believes that it is consistent with the Act to not provide the exemptions from the disclosure requirements suggested by commenters. As the MSRB noted, not all conflicts or other concerns that arise in the context of an underwriting are necessarily proportionate to the size of an underwriter's participation.[53]

4. Timing and Manner of Disclosures

With respect to the disclosure process, one commenter stated that underwriters should be subject to a process similar to the more rigorous process for municipal advisors under the municipal advisor portion of proposed MSRB Rules G–17 and G–36.[54] The commenter stated that providing disclosures is inadequate; rather, underwriters should be required to obtain informed consent from issuers. Moreover, the commenter stated that disclosures should be made to officials of the municipal entity with the power to bind the issuer, such as to the issuer's governing body.[55] Alternatively, the commenter stated that the Interpretive Notice should be amended to prohibit the giving of disclosures based on a reasonable belief standard and instead require underwriters to have actual knowledge of whether an official has the power to bind the issuer by contract.[56] On the other hand, one commenter suggested that disclosures should be made to an official that the underwriter reasonably believes ''has or will have'' the authority to bind the issuer by contract, instead of an official that the underwriter believes ''has'' the requisite authority.[57] The commenter stated that due to the nature of these transactions, at the time of disclosure, there may not be an official with such authority as the authority may not be granted until later.

In Response Letter I, the MSRB stated that it is not necessary for underwriters to obtain consent from the issuer's governing body when the issuer finance officials have been delegated the ability to contract with the underwriter. The MSRB stated that it is not necessary for a contract to have been executed in order for an underwriter to have a reasonable belief that an issuer official has the requisite power to bind the issuer. Further, in Response Letter II, the MSRB noted that an official, such as a finance director, who is expected to receive the delegation of authority from the governing body to bind the issuer, could reasonably be viewed as an acceptable recipient of disclosures provided such expectation remains reasonable.

One commenter stated that the Interpretive Notice should provide that the disclosure regarding the arm's-length nature of the underwriter-issuer relationship must be made in a response to a request for proposals or in promotional materials provided to an issuer, rather than ''at the earliest stages'' of the relationship as proposed, because the proposed standard is vague and ambiguous.[58] This commenter also requested clarification with respect to when ''other conflicts'' disclosures must be made. Another commenter requested

[50] *See* SIFMA Letter II. *See also* SIFMA Letter III.

[51] *See* BDA Letter II.

[52] *See also* Response Letter IV.

[53] *See* Response Letter II.

[54] *See* NAIPFA Letter I. The Commission notes that these proposals were subsequently withdrawn by the MSRB. *See* Securities Exchange Act Release Nos. 65397 (September 26, 2011), 76 FR 60955 (September 30, 2011) (SR–MSRB–2011–14) (withdrawing proposed MSRB Rule G–36 and interpretive guidance concerning MSRB Rule G–36); and 65398 (September 26, 2011), 76 FR 60958 (September 30, 2011) (SR–MSRB–2011–15) (withdrawing proposed interpretive notice concerning MSRB Rule G–17).

[55] *See* NAIPFA Letter I and NAIPFA Letter II. One commenter stated its disagreement with the commenters who would require underwriters to make disclosures to the issuer's governing body. *See* SIFMA Letter III.

[56] *See* NAIPFA Letter I and NAIPFA Letter II. *But see* SIFMA Letter III (stating that underwriters should not be required to have actual knowledge that the official receiving the disclosures has the power to bind the issuer by contract).

[57] *See* BDA Letter II.

[58] *See id.*

clarification regarding the meaning of ''execution of a contract'' with respect to the timing of the risk disclosures.[59] This commenter stated that execution of the bond purchase agreement should be the appropriate measurement. In Response Letter II, the MSRB clarified that, other than the disclosure with respect to the arm's-length nature of the relationship, the remaining disclosures regarding the underwriter's role, compensation and other conflicts of interest all must be provided when the underwriter is engaged to perform underwriting services (such as in an engagement letter), not solely in the bond purchase agreement. The MSRB also clarified that the ''contract'' with respect to the timing of the risk disclosures is the bond purchase agreement.[60]

One commenter suggested that the underwriter make its disclosures to the issuer in plain English to ensure that the issuer understands such disclosures.[61] In Response Letter II, the MSRB stated that it agrees that reasonable efforts must be made to make the disclosures understandable, that disclosures must be made in a fair and balanced manner and, if the underwriter does not reasonably believe that the official to whom the disclosures are addressed is capable of independently evaluating the disclosures, the underwriter must make additional efforts reasonably designed to inform the issuer or its employees or agent.[62]

The Commission finds that the proposed timing and manner of disclosure are consistent with the Act because they will help to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors, municipal entities, and the public interest. Specifically, the Commission believes that the proposed timing and manner of disclosure will help to ensure that municipal issuers are fully and timely informed of the underwriter's role and any potential or actual conflicts of interest. Further, as noted by the MSRB, such provisions would provide guidance as to conduct required to comply with the fair dealing component of Rule G–17.[63]

In addition, the Commission believes that the MSRB has adequately addressed the comments regarding the timing and manner of disclosure. The Commission notes that, in response to comments, the MSRB modified the Interpretive Notice, as originally proposed, by specifically setting forth near the beginning of the Interpretive Notice the appropriate timing and manner of disclosure. The MSRB also provided clarification with respect to the timing of disclosure and the party to whom the disclosure must be made. In addition, the Commission notes that the MSRB has committed to monitoring matters relating to the timing of disclosure in order to determine whether any further action with respect to timing is merited.[64]

5. Acknowledgement of Disclosures

One commenter stated that the requirement for issuer written acknowledgement of the receipt of disclosures would be helpful.[65] However, in situations where written acknowledgement is not received from the issuer, the commenter urged the MSRB to require underwriters to put forth some level of effort to obtain the written acknowledgement. Another commenter stated that it believes that an underwriter should not be required to document why an official of the issuer does not acknowledge in writing that disclosures were received.[66] Instead, the commenter recommended that the underwriter should only be required to document that disclosures were made and whether acknowledgement was received.

In Response Letter II, the MSRB clarified that if an issuer does not provide the underwriter with written acknowledgement of the receipt of disclosures, the failure to receive such acknowledgement must be documented, as well as what actions were taken to attempt to obtain the acknowledgement, in order for the underwriter to fulfill its obligation under MSRB Rule G–17 to deal fairly with the issuer.

The Commission finds that the proposed provisions concerning the issuer's acknowledgement of the receipt of disclosures are consistent with the Act. The Commission believes that the proposed provisions will help to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors, municipal entities, and the public interest by helping to ensure that the issuer receives appropriate disclosures from the underwriter. For example, the Commission notes that, in response to comments, the MSRB modified the Interpretive Notice, as originally proposed, by specifically setting forth near the beginning of the Interpretive Notice the provisions with respect to the timing and acknowledgment of receipt of the disclosures, including the obligation to document the failure to receive such acknowledgement. In addition, in Response Letter II, the MSRB provided clarification with respect to the underwriter's obligation to document the failure to receive such acknowledgement.

C. Representations to Issuers

According to the Interpretive Notice, an underwriter must have a reasonable basis for the representations and material information contained in a certificate that will be relied upon by the municipal entity issuer or other relevant parties to an underwriting. One commenter stated that one example of such a certificate used by the MSRB in the Interpretive Notice (*i.e.,* an issue price certificate) is already regulated by tax laws and does not need additional regulation by the MSRB.[67] In Response Letter IV, the MSRB disagreed with the comment that evaluating the reasonableness of an issue price certificate should be left to the tax authorities, and stated that ''the reasonableness of an underwriter's representation in an issue price certificate may have a direct effect on a key representation that an issuer makes to potential investors—that interest on its securities is tax exempt.''

The Commission finds that the proposed provisions with respect to representations to issuers are consistent with the Act. The Commission believes that these provisions will help to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors, municipal entities, and the public interest by helping to ensure that all representations made by underwriters to issuers in connection with municipal securities underwritings are truthful and accurate. Also, as noted by the MSRB, such provisions would provide guidance as to conduct required to

[59] *See* SIFMA Letter II. This commenter also requested clarification with respect to how underwriters would satisfy the disclosure requirements in situations where the financing terms are determined in a short period of time, such as within a 24-hour window. *See* SIFMA Letter II and SIFMA Letter III. In Response Letter II, the MSRB stated that ''if an underwriter is asking an issuer to bind itself to the terms of a complex financing, it is unreasonable for the underwriter to expect the issuer to do so without having an opportunity to fully understand the nature of its commitment.'' *See also* Response Letter IV.

[60] *See also* Response Letter IV.

[61] *See* GFOA Letter II and GFOA Letter III.

[62] *See also* Response Letter IV.

[63] *See* Amended Notice of Filing, *supra* note 6 at 72015 (stating that ''[t]he sections of the Notice entitled 'Role of the Underwriter/Conflicts of Interest,' 'Required Disclosures to Issuers,' 'Fair Pricing,' and 'Credit Default Swaps' primarily would provide guidance as to conduct required to comply with the fair dealing component of the rule''). *See also* Response Letter III.

[64] *See* Response Letter II.

[65] *See* NAIPFA Letter II.

[66] *See* BDA Letter II.

[67] *See* SIFMA Letter I. *See also* SIFMA Letter III.

comply with the anti-fraud component of Rule G–17.[68] In addition, the Commission believes that the MSRB has adequately addressed the comment with respect to issue price certificates.

D. Required Disclosures to Issuers

One commenter stated that the disclosure requirements, especially for routine transactions, should only be imposed when the underwriter has reason to believe that the issuer does not have the knowledge or experience available to understand the transaction.[69] The commenter also noted that ''issuer personnel responsible for the issuance of municipal securities'' and ''an official of the issuer whom the underwriter reasonably believes has the authority to bind the issuer by contract with the underwriter'' are not the same.[70] Thus, the commenter stated that clarification should be provided that these regulatory requirements are imposed on the underwriter only if the underwriter has reason to believe that issuer personnel do not have the requisite knowledge or experience, regardless of whether the particular official who the underwriter reasonably believes to have the legal authority to contractually bind the issuer can be reasonably thought to have the requisite knowledge and experience. Another commenter stated that the Interpretive Notice should be amended to take into consideration the needs of unsophisticated municipal issuers, and underwriters should be required to assess the knowledge and understanding of municipal issuers on a case-by-case basis.[71] In Response Letter I, the MSRB stated that it does not consider it unduly burdensome to require an underwriter to evaluate the level of knowledge and sophistication of issuer personnel, particularly considering that under the Interpretive Notice, as modified by Amendment No. 2, the underwriter need only have a reasonable basis for its evaluation. In Response Letter IV, the MSRB also noted that in the Interpretive Notice, it provided guidance on the factors that are relevant in coming to the reasonable belief.[72]

One commenter stated that the underwriter should not be required to evaluate issuer personnel when the issuer has retained a municipal advisor.[73] This commenter also stated that the written risk disclosures imposed on underwriters related to the financings do not take into account the role of the issuer's municipal advisor, if any.[74] Other commenters stated that in a negotiated sale, when the issuer of municipal securities engages a registered municipal advisor, disclosures should be reduced or eliminated.[75] In Response Letter I, the MSRB stated that underwriters are in the best position to understand the material financial terms and risks associated with recommended financings, and the burden should not be solely on municipal advisors to ascertain such terms and risks.

One commenter stated that the written risk disclosures imposed on underwriters related to the financings (including complex financings) are too broad and vague.[76] This commenter noted that if written risk disclosures are to be required, then additional guidance and clarity is needed on the following: (1) References to ''atypical or complex'' financings; (2) references to ''all material risks and characteristics of the complex municipal securities financing;'' (3) which issuer personnel must have the requisite level of knowledge and sophistication; (4) if the issuer does not have a financial advisor or internal personnel acting in a similar role, then the issuer's finance staff's knowledge and experience should be assessed by underwriters; and (5) only material risks that are known to the underwriter and reasonably foreseeable at the time of the disclosure should be required.

In Response Letter I, the MSRB stated that it does not consider it appropriate to provide a more precise definition of ''complex municipal securities financing'' since the Interpretive Notice already provides the comparison to a fixed rate financing and examples of financings that are considered to be complex, such as those involving variable rate demand obligations and swaps.[77] In addition, the MSRB stated that if there is any doubt on the part of the underwriter as to whether a financing is complex, it should err on the side of concluding that the financing is complex and provide the requisite disclosures. On the other hand, the MSRB noted that the Interpretive Notice, as modified by Amendment No. 2, would limit disclosures of a complex municipal securities financing recommended by the underwriter to its material financial characteristics, and its material financial risks that are known to the underwriter and reasonably foreseeable at the time of disclosure (rather than all material risks and

[68] *See* Amended Notice of Filing, *supra* note 6 at 72015 (stating that ''[t]he sections of the Notice entitled 'Representations to Issuers,' 'Underwriter Duties in Connection with Issuer Disclosure Documents,' 'Excessive Compensation,' 'Payments to or from Third Parties,' 'Profit-Sharing with Investors,' 'Retail Order Periods,' and 'Dealer Payments to Issuer Personnel' primarily would provide guidance as to conduct required to comply with the anti-fraud component of the rule and, in some cases, conduct that would violate the anti-fraud component of the rule, depending on the facts and circumstances''). *See also* Response Letter III.

[69] *See* BDA Letter I. One commenter suggested factors to determine when disclosures would not be necessary for routine financings. *See* NAIPFA Letter I. In Response Letter I, the MSRB stated that while the factors are helpful, they do not address the particular issuer personnel's experience and knowledge, which are more relevant to the Interpretive Notice. Another commenter stated its belief that ''it can do no harm for the underwriter to provide information about routine financings to the issuer personnel who are charged by the government to execute the financing.'' *See* GFOA Letter II and GFOA Letter III. This commenter further stated that the amount of materials and explanations provided may need to be determined through conversations with the issuer personnel. Further, this commenter stated that it would not be unreasonable for the rule to state that the underwriter may be asked by issuer personnel to make disclosures about routine financings to others on the finance team or the members of a governing board who gave the authorization for the financing. In Response Letter II, the MSRB stated its belief that the provisions relating to risk disclosure are appropriate for the reasons described in Response Letter I and, therefore, no further modification is warranted.

[70] Another commenter noted that the issue of how the underwriter should identify the person to whom it must provide information deserves further discussion. *See* GFOA Letter II and GFOA Letter III. In Response Letter II, the MSRB noted that it would monitor disclosure practices and would engage in a dialogue with industry participants and the Commission to determine whether sufficient improvements have occurred in the flow of disclosures to decision-making personnel of issuers or whether additional steps should be taken.

[71] *See* NAIPFA Letter I and NAIPFA Letter II. The commenter also stated that the proposal requires additional changes in order to protect the infrequent and/or small, unsophisticated issuers of municipal bonds. *See* NAIPFA Letter II. Another commenter stated that there are many unsophisticated issuers who will benefit from the disclosures. *See* AGFS Letter.

[72] According to the Interpretive Notice, the level of disclosure required may vary according to the issuer's knowledge or experience with the proposed financing structure or similar structures, capability of evaluating the risks of the recommended financing, and financial ability to bear the risks of the recommended financing. *See* Interpretive Notice.

[73] *See* SIFMA Letter I and SIFMA Letter II.

[74] *See* SIFMA Letter I. *See also* SIFMA Letter II and SIFMA Letter III.

[75] *See, e.g.,* NAIPFA Letter II; SIFMA Letter II; WM Letter II; and BDA Letter I. One commenter stated that if the issuer has a financial advisor or internal personnel serving the same role, then no underwriter written risk disclosures should be required. *See* SIFMA Letter I. The commenter further recommended that underwriters may satisfy their disclosure requirements by communicating the disclosures to the financial advisor or issuer internal personnel. This commenter stated that the underwriter should be permitted to assume, without further inquiry, that the finance staff will use its expertise to communicate the disclosure in an appropriate manner to other decision makers. *See also* SIFMA Letter II and SIFMA Letter III. In Response Letter IV, the MSRB stated that ''it is essential for issuer representatives to be the recipients of the required disclosures as they are the ones that must decide whether to accept their underwriters' recommendations.''

[76] *See* SIFMA Letter I. *See also* SIFMA Letter III.

[77] *See also* Response Letter IV.

characteristics), and would provide examples of the types of disclosures in the case of swaps.

One commenter stated that if an issuer has no financial advisor or internal financial department, the written disclosure requirements should not be triggered unless the issuer informs the underwriter that it lacks knowledge or experience and specifically requests such written disclosure in writing.[78] In Response Letter I, the MSRB stated that it does not consider it appropriate to require an issuer to inform the underwriter that it lacks knowledge or experience with a financing as a condition of receiving disclosures from the underwriter because this would put the burden on the party least able to understand the transaction and its rights to disclosure.

One commenter stated that it would not be appropriate or practical to impose upon the underwriter the duty to assess the level of sophistication and experience of the issuer official to whom the disclosure is delivered, if the official is reasonably believed to have the authority to bind the issuer.[79] The commenter stated that the underwriter should be permitted to rely on a representation from such official that he or she is sufficiently sophisticated and experienced, and issuers should be responsible for ensuring that they authorize appropriate personnel to contract for them.[80] In Response Letter IV, the MSRB stated its expectation that if it were to provide the clarification that the commenter requested, issuers would be provided with boilerplate language requesting that they waive this disclosure requirement, and many of those that actually read the language ''would be loath to admit that they lacked sophistication or experience.''

One commenter disagreed with the MSRB that the level of disclosure may vary based on the issuer's financial ability to bear the risks of the recommended financing.[81] The commenter stated that a municipal entity with taxing power, who would be able to bear more risks of a financing, should not be ineligible for advice that is competent and unimpaired by the broker's own interests simply because the government can tax the citizens to restore any loss. In Response Letter II, the MSRB conceded that the financial ability to bear the risks of a recommended financing would not normally be a sufficient basis by itself for determining the level of disclosure. The MSRB noted, however, that the Interpretive Notice states three distinct factors that should be considered together in coming to this determination.

Other commenters noted that disclosure regarding derivatives is premature since there are pending rulemakings with the CFTC and the Commission that will apply to dealers recommending swaps or security-based swaps to municipal entities.[82] One commenter urged the MSRB to work together with the Commission and CFTC to ensure that one set of definitions and rules apply to the municipal securities market.[83]

In Response Letter I, the MSRB noted that it is aware of the ongoing rulemaking by the Commission and CFTC and has taken care to ensure that requirements of the Interpretive Notice are consistent with such rulemaking. In Response Letter IV, the MSRB also noted that most of the derivatives entered into by municipal securities issuers are interest rate swaps, which are within the jurisdiction of the CFTC. The MSRB noted that the provisions concerning the disclosure of material financial risks and characteristics of complex municipal securities financings have been drafted to be consistent with the CFTC's business conduct rule, which was finalized on January 11, 2012.[84]

The Commission finds that the proposed disclosures to issuers with respect to financings that the underwriter recommends are consistent with the Act because they will help to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors, municipal entities, and the public interest. Specifically, the Commission believes that, in providing municipal issuers with disclosures regarding the material financial characteristics and risks of certain recommended financing structures, municipal issuers should be better informed to evaluate, among other things, potential risks in selecting the financing structure most appropriate for their financing needs. The Commission also believes that issuers engaging in financings more appropriate to their needs will benefit municipal issuers, investors, and the public interest. Further, as noted by the MSRB, the required disclosures should provide issuers and their advisors with valuable information with which to evaluate underwriter recommendations and should benefit investors and the public interest.[85]

In addition, the Commission believes that it is consistent with the Act for underwriters to continue to have disclosure obligations even if the municipal issuer has retained a municipal advisor. Underwriters are in the best position to understand the material terms and risks associated with the financings that they recommend.

The Commission also believes that it is consistent with the Act to provide that underwriters must establish a reasonable belief with respect to the knowledge and experience of the issuer in determining the appropriate level of disclosures. The Commission believes that such an approach will result in disclosure more appropriately targeted to the level of the issuer's sophistication.[86] For example, to the extent that the disclosures are to a sophisticated issuer, the level of disclosure should be reduced. For a less sophisticated issuer, however, additional disclosures will help to ensure that the issuer does not proceed with a financing transaction that it otherwise would not undertake if it fully understood the material aspects of the transaction.

In addition, the Commission believes that the MSRB has adequately addressed comments regarding the disclosures for financing structures that the underwriter recommends to an issuer. Specifically, the Commission notes that in response to comments, the MSRB modified the Interpretive Notice, as originally proposed, to provide that an underwriter that recommends a complex municipal securities financing to an issuer must disclose the material financial characteristics of such complex municipal securities financing, as well as the material financial risks of such financing that are known to the underwriter and reasonably foreseeable at the time of the disclosure.[87] Also, with respect to routine financing structures, the MSRB modified the original Interpretive Notice by stating that the underwriter must provide disclosures only on the material aspects

[78] *See* SIFMA Letter I.

[79] *See id.*

[80] *See* SIFMA Letter I and SIFMA Letter III.

[81] *See* PFM Letter I.

[82] *See* SIFMA Letter I and BDA Letter I. *See also* SIFMA Letter III.

[83] *See* GFOA Letter I.

[84] In the Original Notice of Filing, the MSRB stated that it may undertake additional rulemaking as necessary to ensure consistency with Commission and CFTC rulemaking. *See* Original Notice of Filing, *supra* note 3 at 55994.

[85] *See* Response Letter III.

[86] *See* Response Letter II and Response Letter IV.

[87] According to the Interpretive Notice, as originally proposed, an underwriter that recommends a complex municipal securities financing to an issuer must disclose all material risks and characteristics of the complex municipal securities financing. The MSRB also modified the examples of the risk disclosures in the original Interpretive Notice to provide additional guidance regarding such disclosures.

of the structures that it recommends (rather than on all routine financing structures) and, only in the case of issuer personnel that the underwriter reasonably believes lack knowledge or experience with such structures.[88] Further, the Commission notes that the MSRB provided clarification with respect to the scope of the disclosure requirements and justifications for the timing of the disclosure requirements, as well as guidance regarding the types of disclosures that must be provided for complex municipal securities financings.

In addition, the Commission notes that the MSRB has committed to monitor disclosure practices by underwriters to municipal issuers and to engage in a dialogue with industry participants and the Commission to determine whether sufficient improvements have occurred in the flow of disclosures to decision-making personnel of issuers or whether additional steps should be taken to improve upon the information flow.[89]

E. Underwriter Duties in Connection With Issuer Disclosure Documents

Under the Interpretive Notice, the underwriter must have a reasonable basis for the representations and information provided to issuers in connection with the preparation by the issuer of its disclosure documents. One commenter stated its belief that the reasonable basis requirement is unreasonably broad.[90] The commenter stated that the Interpretive Notice should be revised to clarify that an underwriter may limit its responsibility for the information provided by disclosing to the issuer any limitations on the scope of its analysis and factual verification. The commenter further stated that such duty should extend only to material information. Another commenter stated its belief that when an underwriter intends to assist in the preparation of an official statement, a disclosure should be made to the issuer stating that the underwriter can only be held liable where it can be shown that it did not act with a reasonable belief that the information presented was truthful and complete.[91]

In Response Letter I, the MSRB reiterated that, in connection with materials prepared by an underwriter for use in an official statement, the underwriter must have ''a reasonable basis for the representations it makes, and other material information it provides, to an issuer'' and ''ensure that such representations and information are accurate and not misleading.'' The MSRB stated that the ''reasonable basis'' standard is based on the Commission's statement that ''[b]y participating in an offering, an underwriter makes an implied recommendation about the securities * * * this recommendation itself implies that the underwriter has a reasonable basis for belief in the truthfulness and completeness of the key representations made in any disclosure documents used in the offerings.'' [92]

The Commission finds that the dealer's duty to have a reasonable basis for the representations and material information it provides to an issuer in connection with the preparation by the issuer of its disclosure documents, and to ensure that such representations and information are accurate and not misleading, is consistent with the Act. The Commission believes that this provision will help to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors, municipal entities, and the public interest. The Commission also believes that the MSRB has adequately addressed the comments regarding the ''reasonable basis'' standard.

F. Underwriter Compensation and New Issue Pricing

With respect to the standard that the price an underwriter pays in a negotiated sale be fair and reasonable, one commenter stated that the standard should be altered so that the price the underwriter pays is ''not unreasonable.'' [93] In the alternative, the commenter recommended that the disclosure be changed to state that although the pricing provided is fair and reasonable, it is not necessarily the best or lowest rate available.[94] Another commenter objected to the required disclosure that an underwriter must balance a fair and reasonable price for issuers with a fair and reasonable price for investors.[95] The commenter stated that there exists a reasonable price for both issuers and investors, and recommended that the disclosure be modified to reflect that statement.

In Response Letter I, the MSRB stated that the underwriter's fair and reasonable pricing duty is no different than the duties already imposed on the underwriter by MSRB rules with respect to its customers. In Response Letter II, the MSRB disagreed that underwriters should be required to provide a disclosure that the price paid to the issuer may not be the best or lowest price available because, depending on the specific pricing of a new issue, this might not be an accurate disclosure. The MSRB also stated that it is appropriate to characterize the underwriter's duties of fair pricing as a balance between the interests of the issuer and investors. In Response Letter IV, the MSRB agreed that the ''fair and reasonable'' pricing standard should not create an expectation by the issuer that the underwriter is providing the ''best pricing'' in the market and stated its belief that the disclosures under the Interpretive Notice would sufficiently address this point.

One commenter urged that underwriters be required to expressly represent in writing to the issuer that the price paid for the issuer's debt is fair, and specify the facts that support the representation.[96] This commenter stated that according to the MSRB, the underwriter's own judgment as to what is fair is an independent component of ''fairness'' and that the MSRB hedged the protection of an issuer ''by adhering to its earlier, pre-Dodd-Frank expression of the principle that 'whether an underwriter has dealt fairly with an issuer'—the command of Rule G–17—depends on all 'the facts and circumstances' and is not dependent solely on the price of the issue.''

In Response Letter II, the MSRB stated that its long-standing view that whether an underwriter has dealt fairly with an issuer for purposes of Rule G–17 is dependent upon all of the facts and circumstances of an underwriting, and

[88] The Interpretive Notice, as originally proposed, stated that in the case of issuer personnel that lack knowledge or experience with routine financing structures, the underwriter must provide disclosures on the material aspects of such structures.

[89] *See* Response Letter II. *See also* Response Letter IV.

[90] *See* SIFMA Letter I.

[91] *See* NAIPFA Letter I.

[92] *See* Original Notice of Filing, 76 FR at 55992 (quoting Securities Exchange Act Release No. 26100 (September 22, 1988), 53 FR 37778, 37787 (September 28, 1988) (proposing Exchange Act Rule 15c2–12)). The MSRB stated that it would be a curious result for the underwriter not to be required under Rule G–17 to have a reasonable basis for its own representations set forth in the official statement, as well as a reasonable basis for the material information it provides to the issuer in connection with the preparation of the official statement. *See* Original Notice of Filing, 76 FR at 55992. *See also* Response Letter IV.

[93] *See* NAIPFA Letter I and NAIPFA Letter II.

[94] *See* NAIPFA Letter II. This commenter subsequently clarified this comment and stated its belief that the ''fair and reasonable'' standard should not create an expectation that the underwriter is providing the ''best pricing'' in the market. *See* NAIPFA Letter III. The commenter also stated that ''the determinate of 'best pricing' cannot be made by the underwriter whose conflicts of interest in this regard greatly outweigh any objectivity that an underwriter may have in regard to the pricing they have provided.'' *Id.*

[95] *See* BDA Letter II.

[96] *See* PFM Letter I.

not solely on the price of the issue, enhances issuer protection, and that the commenter had misunderstood its meaning. The MSRB further stated that even if an underwriter provides a fair price to an issuer for its new issue offering, its fair practice duties under Rule G–17 are not thereby discharged because, among other things, the many principles laid out in the Interpretive Notice also must be addressed. Conversely, an underwriter cannot justify under Rule G–17 an unfair price to an issuer by balancing that unfair price with the fact that it may otherwise have been fair to the issuer under the other fairness principles enunciated in the Interpretive Notice.

The Commission finds that the proposed standard with respect to new issue pricing is consistent with the Act because it will help to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors, municipal entities, and the public interest. Specifically, the Commission notes that the Interpretive Notice would provide that the duty of fair dealing under Rule G–17 includes an implied representation that the price an underwriter pays to an issuer is fair and reasonable. The Commission also believes that the MSRB has adequately addressed the comments on new issue pricing by clarifying the underwriter's duty and required disclosures with respect to such pricing.

In addition, the Commission finds that the proposed provision with respect to excessive compensation is consistent with the Act because it will help to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors, municipal entities, and the public interest. For example, the Interpretive Notice would remind underwriters that compensation for a new issue could be so disproportionate to the nature of the underwriting and related services performed as to constitute an unfair practice with respect to the issuer, and as such a violation of Rule G–17.

G. Conflicts of Interest

1. Payments To or From Third Parties

One commenter suggested that the disclosure requirement with respect to payments to or from third parties is too broad.[97] The commenter stated its belief that ''the intent of G–17 is that payments to those who carry some level of influence with an issuer and who have advocated on the underwriter's behalf in securing municipal securities business must be disclosed,'' but the proposed requirement ''may be interpreted to encompass a broad array of other professional services that happen in the standard course of municipal securities business.'' [98] In Response Letter II, the MSRB clarified that the third-party payments to which the disclosure requirement would apply are those that give rise to actual or potential conflicts of interest, and the disclosure requirement typically would not apply to third-party arrangements for products and services of the type that are routinely entered into in the normal course of business, so long as any specific routine arrangement does not give rise to an actual or potential conflict of interest.

One commenter stated that disclosures with respect to third-party arrangements for the marketing of the issuer's securities should be clarified as to the level of details.[99] Further, the commenter stated that payments to and from affiliates of the underwriters are not third-party payments since payments would not color a party's judgment when the parties are related to each other, unlike third parties. In Response Letter I, while the MSRB disagreed with the comment that payments from affiliates do not raise risks, the MSRB noted that the Interpretive Notice, as modified by Amendment No. 2, would not require disclosure of the amount of third-party payments. In addition, in Response Letter III, the MSRB stated its belief that ''it is essential that issuers and their advisors understand the conflicts of interest that might color underwriter recommendations.'' [100]

Another commenter stated that the payment amount is an important variable for the issuer to consider and that it would encourage its members to further question the underwriter about any relevant third-party relationships and payments, which would provide better transparency for the transaction.[101] In Response Letter II, the MSRB agreed that such further inquiries could be made. In Response Letter IV, the MSRB noted that the purpose of the third-party payment disclosure is to draw them to the issuer's attention, and the issuer may then request additional information about such payments as it considers appropriate.

The Commission finds that the proposed disclosure with respect to the existence of payments to or from third parties is consistent with the Act because the disclosure will notify the issuer of potential conflicts of interest, even though underwriters need not disclose the amount of such payments. As such, the Commission believes that the disclosure will help to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors, municipal entities, and the public interest.

In addition, the Commission believes that the MSRB has adequately addressed the comments regarding the disclosure of third-party payments by providing clarification with respect to the scope of the disclosure, the information required to be disclosed, and justifications for the disclosure. Specifically, the Commission notes that in response to comments, the MSRB modified the Interpretive Notice, as originally proposed, by stating that the underwriter is not required to disclose the amount of third-party payments, but rather only the existence of such payments. The MSRB also modified the original Interpretive Notice by providing that an underwriter must only disclose whether it has entered into any third-party arrangements for the marketing of the issuer's securities. Further, in response to comments, the MSRB deleted the statements in the original Interpretive Notice that the underwriter must disclose the purpose of the third-party payment, the name of the party making or receiving the payment, and details of third-party arrangements for the marketing of the issuer's securities. In addition, the MSRB stated that it will monitor whether the proposal has achieved the effect of providing issuers

[97] *See* IA Letter.

[98] *Id.*

[99] *See* SIFMA Letter I.

[100] Specifically, in Response Letter III, the MSRB stated that: ''Municipal securities offerings borne of self-interested advice or in the context of conflicting interests or undisclosed payments to third parties are much more likely to be the issues that later experience financial or legal stress or otherwise perform poorly as investments, resulting in significant harm to investors and issuers, including increased costs to taxpayers.'' The MSRB also noted that in recent years, a series of state and federal proceedings involving undisclosed third-party payments in connection with new issues of municipal securities or closely-related transactions have been instituted. According to the MSRB, in at least one case, such undisclosed third-party payments allegedly occurred in connection with activities that may have contributed to the bankruptcy in Jefferson County, Alabama. In addition, the MSRB noted that the U.S. Department of Justice, the Commission, and the attorneys general of a number of states have pursued criminal and civil cases involving allegedly fraudulent activities relating to municipal securities offerings and closely-related transactions in which undisclosed third-party payments have played an important role in carrying out the allegedly fraudulent activities.

[101] *See* GFOA Letter II. *See also* GFOA Letter III. In Response Letter IV, the MSRB stated that it would monitor whether disclosure of the amounts should be required.

with adequate information about actual or potential material conflicts of interest and whether the amount of third-party payments or other additional information should be required.[102]

2. Profit-Sharing With Investors

One commenter sought clarification that legitimate trading, such as when an underwriter sells a bond and later repurchases the bond from a purchaser, is not included in the disclosure requirement for profit sharing arrangements.[103] In Response Letter II, the MSRB stated that the language of the proposal appropriately reflects that the disclosure applies in cases where there exists an arrangement to split or share profits realized by an investor upon resale.

The Commission finds that the proposed provision with respect to profit-sharing arrangements with investors is consistent with the Act because it will help to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors, municipal entities, and the public interest. For example, the Interpretive Notice would clarify that such arrangements could constitute a violation of an underwriter's fair dealing obligation under Rule G–17, or a violation of Rule G–25(c), which precludes a dealer from sharing in the profits or losses of a transaction in municipal securities with or for a customer.

3. Credit Default Swaps

One commenter expressed support for the disclosure of an underwriter's credit default swap position as it relates to the issuer and the financing.[104] Another commenter stated its belief that the disclosure of underwriters' hedging and risk management activities could unduly deter the use of credit default swaps for risk management and could potentially compromise counterparty relationships.[105] The commenter noted that should these disclosures be required, generalized disclosures that put the issuer on notice of the possibility that the underwriter may, from time to time, engage in such dealings, should be sufficient. The commenter objected to any provision that would require underwriters to provide specific disclosures that could reveal counterparty information or the underwriters' hedging and risk management strategies. In Response Letter I, the MSRB stated that the disclosure requirement would not compromise counterparty relationships or deter the use of credit default swaps for legitimate risk management purposes. Specifically, the MSRB noted that the amended Interpretive Notice would only require a dealer that engages in the issuance or purchase of a credit default swap for which the underlying reference is an issuer for which the dealer is serving as underwriter, or an obligation of that issuer, to disclose the fact that it does so to the issuer, and not the terms of the particular trades.[106]

The Commission finds that the proposed disclosure requirements with respect to credit default swaps where the reference is the issuer for which the dealer is serving as underwriter, or an obligation of that issuer, are consistent with the Act. The Commission believes that the disclosures will help to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors, municipal entities, and the public interest by bringing to the issuer's attention a potential conflict of interest with the underwriter. As noted by the MSRB, the disclosure of potential or actual material conflicts of interest could help issuers and their advisors to understand the conflicts of interest that might color underwriter recommendations.[107] Further, the Commission does not believe that the disclosures will deter the use of credit default swaps for risk management purposes or compromise counterparty relationships because, while a dealer would be required to disclose that it engages in credit default swaps to the issuer for which it serves as an underwriter, it would not be required to disclose the details of such swaps.

In addition, the Commission believes that the MSRB has adequately addressed the comments regarding the disclosure of credit default swaps by providing clarification with respect to the scope of the disclosure. Specifically, the Commission notes that in response to comments, the MSRB modified the Interpretive Notice, as originally proposed, by clarifying that a dealer must only disclose the fact that it engages in such credit default swaps to the issuer for which it serves as underwriter.[108]

H. Retail Order Periods

One commenter recommended that the Interpretive Notice use a single standard of requiring that the underwriter not knowingly accept orders that do not meet the requirements of the retail order period.[109] In Response Letter II, the MSRB stated that it believes that the commenter misunderstood these provisions. According to the MSRB, the Interpretive Notice provides that an underwriter that knowingly accepts an order that has been framed as a retail order when it is not would violate MSRB Rule G–17 if its actions are inconsistent with the issuer's expectations regarding retail orders, but also provides that a dealer that places an order that is framed as a qualifying retail order but that in fact represents an order that does not meet the qualification requirements to be treated as a retail order, would violate its duty of fair dealing. In Response Letter II, the MSRB stated that these two provisions are entirely consistent and appropriate, since in the first provision an underwriter is receiving an order framed by a third party, whereas in the second provision, a dealer (not limited to an underwriter) is itself placing and framing the order. Therefore, the MSRB noted that it has not modified these provisions.

The Commission finds that the proposed provisions regarding retail order periods are consistent with the Act. The Commission believes that the provisions will help to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors, municipal entities, and the public interest by helping to ensure that the underwriter complies with its Rule G–17 duty of fair dealing in a transaction with a retail order

[102] *See* Response Letter IV.

[103] *See* BDA Letter II.

[104] *See* GFOA Letter II. *See also* GFOA Letter III.

[105] *See* SIFMA Letter I.

[106] One commenter stated that the Interpretive Notice provides that if a dealer issues or purchases credit default swaps for which the reference obligor is the issuer to which the dealer is serving as an underwriter, the underwriter must disclose that fact to the issuer. *See* SIFMA Letter II. This commenter stated that, in the case of a conduit issuer that issues bonds for multiple obligors or with respect to a specific project or revenue stream, any disclosure regarding credit default swaps needs to be made solely to the obligor or obligors that are obligated with respect to the securities transaction being underwritten by the underwriter. In Response Letter II, the MSRB stated that the proposal only requires that credit default swap disclosures be made to the issuers of the municipal securities and not to any conduit borrowers or other obligors. However, the MSRB stated that it would take under advisement the question of whether such disclosure should be extended to any applicable obligors other than the issuer.

[107] *See* Response Letter III.

[108] The original Interpretive Notice stated that Rule G–17 requires that a dealer who engages in such credit default swaps disclose that to the issuers for which it serves as underwriter. In its discussion of the exemption for credit default swaps on baskets or indexes of municipal issuers that include the issuer or its obligations, the MSRB replaced the words ''trades in credit default swaps'' with ''[a]ctivities with regard to credit default swaps.''

[109] *See* BDA Letter II.

period. For example, the Interpretive Notice would state that Rule G–17 requires an underwriter that has agreed to underwrite a transaction with a retail order period to honor such agreement and to take reasonable measures to ensure that retail clients are bona fide. In addition, the Commission believes that the MSRB has adequately addressed the comment regarding the requirements for retail order periods by providing clarification with respect to the activities that could be considered violations of Rule G–17.

I. Dealer Payments to Issuer Personnel

One commenter requested that, in the absence of disclosure and informed consent, underwriters be prohibited from seeking reimbursements from bond proceeds for expenditures made on behalf of the issuer for any expenses incurred by the underwriter.[110] The commenter also requested that underwriters provide disclosure to issuers that ''[e]xpenses made in connection with the issuance of securities were incurred by the underwriter on behalf of the issuer, but that the issuer is under no obligation to issue additional bonds to reimburse the underwriter for these expenditures.'' [111] In Response Letter I, the MSRB stated that it is unreasonable to require underwriters to disclose to issuers that they are under no obligation to reimburse the underwriter from bond proceeds for expenditures made on behalf of the issuer. The MSRB noted that Rule G–20 already precludes underwriters from seeking reimbursement for lavish expenditures, especially from bond proceeds, and that various state laws also address whether such reimbursements are permissible.

The Commission finds that the proposed provisions regarding dealer payments to issuer personnel are consistent with the Act. The Commission believes that the provisions will help to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors, municipal entities, and the public interest by reminding dealers of the application of MSRB Rules G–20 and G–17 in connection with certain payments made to, and expenses reimbursed for, issuer personnel during the municipal bond issuance process. The Commission also believes that the MSRB has adequately addressed the comments with respect to dealer payments to issuer personnel by clarifying the laws and rules that govern such payments.

J. Timing and Consistency

One commenter noted that underwriters that may also be municipal advisors will not be able to properly evaluate the Interpretive Notice until rules with respect to municipal advisors have been approved and adopted by the Commission and the MSRB.[112] The commenter stated that, given the withdrawal of the MSRB's rule proposals with respect to municipal advisors, the requirements that will be applicable to underwriters that are also municipal advisors are unknown.[113] The commenter suggested that underwriters may ultimately become subject to duplicative or inconsistent obligations for the same or similar activities. The commenter also stated that many interested parties are abstaining from commenting on the proposal due to this uncertainty. In Response Letter IV, the MSRB noted that two commenters supported the Commission's approval of the proposed rule change even though the Commission's rulemaking on the definition of ''municipal advisor'' remains pending.[114] The MSRB also noted that one commenter stated that it could ''find no rational correlation between a delay in the adoption of the [Interpretive Notice] and the adoption of a definition of 'municipal advisor'.'' [115]

One commenter stated that because the Interpretive Notice would obligate underwriters to comply with detailed and specific requirements to which they are not currently subject, the 90-day implementation period is too short and requested a period of no less than six months.[116] In Response Letter I, the MSRB stated that it believes that 90 days is an adequate time period for underwriters to develop the required disclosures, especially as noted by the commenter, ''underwriters who follow best practices in their dealings with municipal issuers already engage in an open dialogue with the issuers concerning the risks of the transactions being underwritten.'' [117]

The Commission finds that the timing of the proposed rule change is consistent with the Act. As discussed above, the Commission believes that the disclosures specified in the Interpretive Notice will benefit municipal issuers, including helping municipal issuers to better understand the role of the underwriter, and to better evaluate potential risks in engaging a particular underwriter and in selecting the financing structure most appropriate for their financing needs. Such disclosures should, in turn, benefit investors and the public interest. The MSRB also noted that the required disclosures should provide issuers and their advisors with valuable information with which to evaluate underwriter recommendations.[118] In addition, the Commission does not believe that approval of the proposed rule change should be delayed pending rulemaking with respect to municipal advisors because, as noted by one commenter, the provisions of the Interpretive Notice would govern the conduct of underwriters and not the conduct of municipal advisors.[119] With respect to commenters' concerns about potential duplication or inconsistency between the requirements applicable to underwriters and the requirements applicable to underwriters that are also municipal advisors, the Commission notes that any proposal by the MSRB interpreting the application of MSRB Rule G–17 to municipal advisors must be filed with, and considered by, the Commission pursuant to Section 19(b) of the Exchange Act [120] before the proposal can become effective.

The Commission also believes that the 90-day implementation period is consistent with the Act and notes that, as stated by one commenter, underwriters may already provide issuers with some of the required disclosures to the extent such underwriters are already following best practices in their dealings with issuers.[121]

K. Other Comments

One commenter requested clarification that the proposal is not intended to apply to private placement agents.[122] In Response Letter II, the MSRB stated that, given the nature of the proposed role disclosures and in light of the characteristics of a ''true private placement'' of municipal securities, those elements of the role disclosures that would not be applicable to a true private placement would not be

[110] *See* NAIPFA Letter I. *See also* NAIPFA Letter III. *But see* SIFMA Letter III.

[111] NAIPFA Letter I.

[112] *See* SIFMA Letter I; SIFMA Letter II; and SIFMA Letter III. *See also* BDA Letter III. Another commenter, however, stated that the proposal should not be dependent on the definition of municipal advisor and urged the Commission to approve the proposal. *See* NAIPFA Letter III. *See also* GFOA Letter III.

[113] *See* SIFMA Letter I.

[114] *See, e.g.,* GFOA Letter III and NAIPFA Letter III.

[115] NAIPFA Letter III.

[116] *See* SIFMA Letter I. *See also* SIFMA Letter III.

[117] SIFMA Letter I. *See also* Response Letter IV.

[118] *See* Response Letter III.

[119] *See* NAIPFA Letter III.

[120] 15 U.S.C. 78s(b).

[121] *See* SIFMA Letter I.

[122] *See* SIFMA Letter II.

required to be included in the disclosures made in connection with a dealer serving as placement agent for a new issue. The MSRB stated, however, that Rule G–17, and the remaining provisions of the Interpretive Notice, would continue to apply.[123] The Commission believes that the MSRB has adequately addressed the comment on the application of the Interpretive Notice to private placement agents by providing clarification with respect to the application of Rule G–17 and the Interpretive Notice to private placement agents.

One commenter urged further consideration of the costs of the disclosures and weighing of the costs against the potential benefits.[124] In Response Letter II, the MSRB noted its disagreement that it did not weigh the costs and benefits. The MSRB noted that the Interpretive Notice ''recognizes that there is significant variability of size, sophistication and frequency of accessing the market among issuers across the country, and many of the disclosures required under the Proposal can be tailored, and in some cases are not required at all, based on a number of relevant factors set out in the Proposal.'' Further, the MSRB stated that although it recognizes that some underwriters may bear up-front costs in creating basic frameworks for the required disclosures for the various types of products they may offer their issuer clients, the on-going burden should thereafter be considerably reduced and the preparation of written disclosures would become an inter-related component of the necessary documentation of the transaction.[125] In Response Letter II, the MSRB also noted that providing more information to issuers would empower and provide considerable benefits to issuers.

In addition, in Response Letter III, the MSRB noted that the disclosures with respect to the role of the underwriter and actual or potential conflicts of interest could consist of the language provided in the Interpretive Notice, which would lessen the potential costs associated with the disclosures. Moreover, the MSRB stated that disclosures with respect to the risks of a proposed financing would not burden underwriters greatly as generally only complex financings would require such disclosures. For routine financings, the MSRB stated that disclosures would only be required if the issuer personnel lacked knowledge or expertise.

In Response Letter III, the MSRB emphasized its belief regarding the benefits of the proposed disclosures. First, the MSRB stated that municipal securities offerings that result from self-interested advice, conflicting interest or undisclosed payments to third-parties are more likely to encounter issues at a later date, which could cause harm to investors and issuers. Thus, the MSRB believes that the proposed disclosures would help address such practices. Second, the MSRB stated that municipal issuers have entered into complex financings that later created serious risks to the municipalities and that the burden on underwriters of the required disclosures would be outweighed by the benefits to issuers in avoiding similar situations in the future.

The Commission believes that the MSRB has adequately addressed comments regarding the costs resulting from the Interpretive Notice.[126] The Commission appreciates that the proposed rule change will impose costs upon underwriters, but believes such costs are justified by the benefits that will result from the Interpretive Notice.[127] As noted above, the Commission believes that the required disclosures will benefit municipal issuers by providing them with valuable information with which to evaluate, among other things, the potential risks of engaging a particular underwriter and entering into a recommended financing structure. The Commission also believes that the disclosures would benefit investors and the public interest.

As noted by the MSRB in Response Letter III, there may be additional up-front costs in creating basic frameworks for the disclosures, but many of the disclosures could be standardized. The Commission believes that such standardization will help reduce the ongoing burden of preparing the written disclosures.[128] In addition, to help further reduce the potential costs associated with the proposed disclosures, the Commission notes that the Interpretive Notice contains language that underwriters may incorporate into their written disclosures, such as language in the Interpretive Notice regarding the underwriter's role and the conflict of interest caused by contingent fee compensation.

Further, as noted above, in response to comments, the MSRB made modifications to the Interpretive Notice, as originally proposed, which it believes will help reduce the cost of compliance.[129] For example, under the amended Interpretive Notice, an underwriter that recommends a complex municipal securities financing to an issuer must disclose the material financial characteristics of such complex municipal securities financing, as well as the material financial risks of such financing that are known to the underwriter and reasonably foreseeable at the time of the disclosure, as opposed to all material risks and characteristics of the financing.

IV. General Commission Findings

As noted above, the Commission has carefully considered the proposed rule change, as modified by Amendment No. 2, the comment letters received, and the MSRB's responses. For the reasons discussed above, the Commission finds that the proposed rule change, as modified by Amendment No. 2, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB. Specifically, the Commission finds that the proposed rule change is consistent with the provisions of Section 15B(b)(2)(C) of the Act.[130]

The Commission believes that, in general, the MSRB has adequately responded to the comments received on the proposed rule change. The Commission also notes that the MSRB has stated that it will monitor disclosure practices under the Interpretive Notice and will engage in a dialogue with industry participants and the Commission to determine whether sufficient improvements have occurred in the flow of the disclosures to decision-making personnel of issuers or whether additional steps should be

[123] In Response Letter II, the MSRB also reminded dealers to remain cognizant of the fact that the circumstances under which a true private placement may arise in the municipal market are quite constrained.

[124] *See* SIFMA Letter I; SIFMA Letter II; and SIFMA Letter III. Other commenters stated their belief that the proposed disclosures will not cause undue costs or burdens to underwriters. *See* PFM Letter II and GFOA Letter III.

[125] *See also* Response Letter III.

[126] In approving this proposed rule change, the Commission has also considered whether the proposed change will promote efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f). While none of the commenters specifically commented on efficiency, competition, and capital formation, some of the comments raised concerns about the burdens imposed by the proposed rule change and possible effects on certain transactions. As discussed above, the additional disclosures required by the proposed rule change are intended to deter fraud, inform issuers about potential conflicts of interest, and help to ensure that municipal entities engage in financings appropriate to their needs.

[127] *See* Response Letter III.

[128] The MSRB stated that standardized disclosures could be developed to describe common material financial risks and characteristics that would then only need to be modified in the event of variants in the structures proposed by the underwriter.

[129] *See* Response Letter III.

[130] 15 U.S.C. 78*o*–4(b)(2)(C).

taken.[131] The MSRB also stated that it will monitor matters relating to the timing of disclosures in order to determine whether any further action in this area is merited.[132] In addition, the MSRB stated that it will monitor whether the proposal has achieved the effect of providing issuers with adequate information about actual or potential material conflicts of interest and whether the amount of third-party payments or other additional information should be required.[133]

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[134] that the proposed rule change (SR–MSRB–2011–09), as modified by Amendment No. 2, be, and it hereby is, approved.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–11268 Filed 5–9–12; 8:45 am]

BILLING CODE 8011–01–P

[131] *See* Response Letter II and Response Letter IV.

[132] *See* Response Letter II.

[133] *See* Response Letter IV.

[134] 15 U.S.C. 78s(b)(2).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66926; File No. SR–Phlx–2012–56]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Phlx's Fee Schedule Governing Routing From Its NASDAQ OMX PSX Facility

May 4, 2012.

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 April 26, 2012, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify Phlx's fee schedule governing routing from its NASDAQ OMX PSX (''PSX'') facility. Phlx will implement the change on May 1, 2012. The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqtrader.com/micro.aspx?id=PHLXRulefilings,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

Phlx is making a minor modification to the schedule governing fees for use of the routing services of its PSX facility. Specifically, for PSCN [3] and PSTG [4] orders that execute at NASDAQ OMX BX (''BX''), Phlx currently charges $0.0027 per share executed. However, because BX currently pays a rebate with respect to orders that access liquidity, Phlx is proposing to replace the fee with a credit equal to the $0.0014 per share executed credit paid by BX. The change is intended to encourage greater use of the routing facilities of PSX.

2. Statutory Basis

Phlx believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[5] in general, and with Sections 6(b)(4) and (5) of the Act,[6] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which Phlx operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers. All similarly situated members are subject to the same fee structure, and access to Phlx is offered on fair and non-discriminatory terms. The change is reasonable because the proposed credit is equal to the credit paid by BX with respect to orders that it executes. The change is consistent with an equitable allocation of fees because it will bring the economic attributes of using the PSCN and PSTG routing strategies in line with the cost of executing orders at BX. Finally, the change is not unfairly discriminatory because it solely applies to members that opt to use the PSCN and PSTG routing strategies.

Finally, Phlx notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, Phlx must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Phlx believes that the proposed rule change reflects this competitive environment because it is designed to create pricing incentives for greater use of the PSX routing facility.

B. Self-Regulatory Organization's Statement on Burden on Competition

Phlx 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. Because the market for order execution is extremely competitive, members may readily opt to disfavor Phlx's execution services if they believe that alternatives offer them better value. The proposed change is designed to enhance competition by using pricing incentives to encourage greater use of the PSX routing facility.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] PSCN is a routing option under which orders check the System for available shares and then are sent to destinations on the System routing table. If shares remain unexecuted after routing, they are posted on the book. Once on the book, should the order subsequently be locked or crossed by another market center, the System will not route the order to the locking or crossing market center. PSKP is a form of PSCN in which the entering firm instructs the System to bypass any market centers included in the PSCN System routing table that are not posting Protected Quotations within the meaning of Regulation NMS.

[4] PSTG is a routing option under which orders check the System for available shares and then are sent to destinations on the System routing table. If shares remain unexecuted after routing, they are posted on the book. Once on the book, should the order subsequently be locked or crossed by another accessible market center, the System shall route the order to the locking or crossing market center. PSKN is a form of PSTG in which the entering firm instructs the System to bypass any market centers included in the PSTG System routing table that are not posting Protected Quotations within the meaning of Regulation NMS.

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(4) and (5).

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[7] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File No. SR–Phlx–2012–56 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–Phlx–2012–56. 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 10:00 a.m. and 3:00 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 No. SR–Phlx–2012–56 and should be submitted on or before May 31, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–11258 Filed 5–9–12; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66925; File No. SR–Phlx–2012–53]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange's Pricing Schedule

May 4, 2012.

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 April 25, 2012, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to increase the Remote Specialist Fee from $50 per option allocation per month to $200 per option allocation per month. While fee changes pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on May 1, 2012.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqtrader.com/micro.aspx?id=PHLXfilings,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Exchange's Pricing Schedule at Section VI. C (Membership Fees) to increase the Exchange's Remote Specialist Fee to better account for and recoup costs associated with maintaining a remote specialist post on the Exchange's trading floor.

Exchange Rule 501, Specialist Appointment, and Exchange Rule 1020, Registration and Functions of Options Specialists, allow qualified Exchange members to act as off-floor specialists in one or more options classes (''Remote Specialist'').[3] The Exchange staffs and administers a physical location or post on the trading floor to provide on-floor market participants with a physical location to trade in options classes allocated to a Remote Specialist. This physical location on the Exchange's trading floor requires Exchange operations and regulatory staff to be present at this post. The Exchange incurs operational and regulatory costs to maintain this post and defrays such

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 64591 (June 8, 2011), 76 FR 33383 (June 2, 2011) (SR–Phlx–2011–79). A Remote Specialist is an options specialist in one or more classes that may not have a physical presence on an Exchange floor and is approved by the Exchange pursuant to Rule 501.

costs by assessing a Remote Specialist Fee.

The Exchange currently assesses Remote Specialists a monthly fee of $50 per option allocation.[4] The Exchange caps the fee at $4,500 per month. The Exchange is now proposing to increase the Remote Specialist Fee monthly from $50 per option allocation to $200 per option allocation. The $4,500 cap would remain unchanged. The purpose of the increase is to enable the Exchange to better account for and defray the operational and regulatory costs of maintaining this post.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act[5] in general, and furthers the objectives of Section 6(b)(4) of the Act[6] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities.

The Exchange believes that the proposed increase in the Remote Specialist Fee is reasonable because it will enhance the Exchange's ability to recoup costs that are incurred by the Exchange for maintaining a defined physical location or post on the Exchange's trading floor to facilitate interaction amongst market participants located on the Exchange's physical trading floor. The Exchange also believes the proposal is reasonable because the Exchange proposes to maintain the existing cap on the Remote Specialist Fee at $4,500 per month.

The Exchange believes that the proposed Remote Specialist Fee is equitable because it would be uniformly applied to all Remote Specialists.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

[4] *See* Securities Exchange Act Release No. 64705 (June 20, 2011), 76 FR 37163 (June 24, 2011) (SR–Phlx–2011–83). Pursuant to Rule 507, Application for Approval as an SQT or RSQT and Assignment in Options, a Remote Specialist must meet certain requirements to be approved as an RSQT. Rule 507(b)(i) describes the process for the assignment of options. *See* Exchange Rule 507. An RSQT is defined in Exchange Rule 1014(b)(ii)(B) as an ROT that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically in options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[7] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File No. SR–Phlx–2012–53 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–Phlx–2012–53. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 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 No. SR–Phlx–2012–53 and should be submitted on or before May 31, 2012.

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–11257 Filed 5–9–12; 8:45 am]

BILLING CODE 8011–01–P

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66924; File No. SR–FINRA–2012–023]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change Relating to FINRA's Trading Activity Fee Rate for Transactions in Covered Equity Securities

May 4, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 2, 2012, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend Section 1 of Schedule A to the FINRA By-Laws to adjust the rate of FINRA's Trading Activity Fee (''TAF'') for transactions in covered equity securities.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

FINRA's primary member regulatory pricing structure consists of the following fees: the Personnel Assessment; the Gross Income Assessment; and the TAF. These fees are used to fund FINRA's regulatory activities, including examinations; financial monitoring; and FINRA's policymaking, rulemaking, and enforcement activities.[3] Because the proceeds from these fees are used to fund FINRA's regulatory mandate, Section 1 of Schedule A to FINRA's By-Laws notes that ''FINRA shall periodically review these revenues in conjunction with costs to determine the applicable rate.''[4]

FINRA initially adopted the TAF in 2002 as a replacement for an earlier regulatory fee based on trades reported to Nasdaq's Automated Confirmation Transaction system then in place.[5] Currently, the TAF is generally assessed on the sale of all exchange registered securities wherever executed (except debt securities that are not TRACE–Eligible Securities), over-the-counter equity securities, security futures, TRACE–Eligible Securities (provided that the transaction is a Reportable TRACE Transaction), and all municipal securities subject to Municipal Securities Rulemaking Board reporting requirements. The rules governing the TAF also include a list of transactions exempt from the TAF.[6]

The current TAF rate for covered equity securities is $0.000095 per share for each sale of a covered equity security, with a maximum charge of $4.75 per trade. This rate has been in place for trades occurring on or after March 1, 2012, and was based on estimated trading volumes.[7] If the execution price for a covered equity security is less than the TAF rate on a per share basis, then no TAF is assessed.

Because the TAF is based on trading volumes, FINRA's revenues derived from the TAF are subject to the volatility of trading in the securities markets and, in particular, the equity markets. Although the TAF is generally charged on transactions in equity securities, TRACE-reportable securities, options, and futures, over 95% of TAF revenue is generated by transactions in covered equity securities. Thus, FINRA's revenue from the TAF is substantially affected by changes in trading volume in the equities markets.

Share volume in the equity markets has been difficult to project given the volatility of the markets through 2011 and into the early months of 2012. Declining share volume during December 2011 and the first two months of 2012 indicate that share volumes are not holding to the level seen in 2011 as FINRA anticipated. Given this trend, FINRA's TAF projections for the year indicate a shortfall. Equity trading volume from December 2011 through February 2012 averaged approximately 6.7 billion shares per day; when setting the previous TAF rate, FINRA estimated average equity trading of approximately 7.7 billion shares per day. Recognizing these volume conditions remain weaker than anticipated, it is necessary for FINRA to adjust the TAF rate for the second half of 2012.

To stabilize revenue flows necessary to support FINRA's regulatory mission in light of the decreased volume of trading in the equity markets, FINRA is proposing an increase to the TAF rate for covered equity securities from $0.000095 per share to $0.000119 per share, with a corresponding increase to the per-transaction cap for covered equity securities from $4.75 to $5.95.[8] FINRA believes that increasing the TAF rate on these securities by $0.000024 per share is the minimum increase necessary to bring the revenue from the TAF to its needed levels to adequately fund FINRA's member regulatory obligations. As with the prior rate change to the TAF, the proposed increase to the TAF rate on transactions in covered equity securities seeks to remain revenue neutral to FINRA (i.e., as adjusted, FINRA would aim to receive a substantially similar amount in revenue from the TAF as the TAF has generated in prior years).

When FINRA proposed replacing the former NASD Regulatory Fee with the TAF in 2002, several commenters at the time expressed concern to the Commission that FINRA could raise the TAF rate at any time without notice and comment and Commission approval.[9] In approving the TAF, the Commission noted that it did not share the commenters' concern, that FINRA must file any proposed changes to the TAF with the SEC, and that FINRA agreed to file all future changes to the TAF for full notice and comment pursuant to Section 19(b)(2) of the Act.[10]

Consistent with the recent amendments by Congress to Section 19(b)(3)(A) of the Act[11] to clarify the authority of a self-regulatory organization (''SRO'') to file proposed rule changes establishing or changing a due, fee, or other charge imposed by the SRO for immediate effectiveness,[12] FINRA believes it is appropriate to file future amendments to the TAF rates under Section 19(b)(3)(A) of the Act[13] and Rule 19b–4 thereunder[14] rather than for full notice and comment under Section 19(b)(2) of the Act.[15] FINRA notes that it will continue to file all TAF rate changes with the Commission, and

[3] *See* FINRA By-Laws, Schedule A, § 1(a).

[4] *Id.*

[5] *See* Securities Exchange Act Release No. 46416 (August 23, 2002), 67 FR 55901 (August 30, 2002).

[6] *See* FINRA By-Laws, Schedule A, § 1(b)(2).

[7] *See Regulatory Notice* 12–06 (January 2012); *see also* Securities Exchange Act Release No. 66287 (February 1, 2012), 77 FR 6161 (February 7, 2012); Securities Exchange Act Release No. 66276 (January 30, 2012), 77 FR 5613 (February 3, 2012).

[8] Because, as noted above, transactions in covered equity securities account for over 95% of TAF revenues, FINRA is not proposing adjustments to the TAF rates for other types of securities.

[9] *See* Securities Exchange Act Release No. 47946 (May 30, 2003), 68 FR 34021 (June 6, 2003).

[10] *See id.* at 34024.

[11] 15 U.S.C. 78s–3(b)(3) [sic].

[12] Section 916 of the Dodd-Frank Wall Street Reform and Consumer Protection Act amended Section 19(b)(3)(A) of the Act to explicitly allow SROs to file proposed rule changes for immediate effectiveness if the proposed rule change establishes or changes a due, fee, or other charge imposed by the SRO on members or non-members.

[13] 15 U.S.C. 78s–3(b)(3)(A) [sic].

[14] 17 CFR 240.19b–4. Paragraph (f)(2) of Rule 19b–4 permits a proposed rule change filed by an SRO to take effect upon filing with the SEC if the SRO designates the proposed rule change as establishing or changing a due, fee, or other charge applicable only to a member. 17 CFR 240.19b–4(f)(2). The TAF is charged only to FINRA members.

[15] 15 U.S.C. 78s–3(b)(2) [sic].

the Commission summarily may temporarily suspend a proposed rule change changing a TAF rate filed pursuant to Section 19(b)(3)(A) of the Act within 60 days of filing ''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].'' [16] As noted above, FINRA anticipates filing proposed changes to TAF rates (either to increase or to decrease a rate) only when necessary to account for changes in trading volume with the goal of making the TAF revenue-neutral for FINRA (i.e., FINRA aims to receive a substantially similar amount in revenue from the TAF from year to year).

The effective date of the proposed rule change will be July 1, 2012. FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice.*

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,[17] which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls. Because of the recent decrease in trading volumes in the equity markets described above, FINRA believes that the proposed rate change to the TAF is now necessary to ensure that FINRA can continue to maintain a robust regulatory program and meet its regulatory obligations effectively while attempting to remain revenue neutral.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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–FINRA–2012–023 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2012–023. 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 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–FINRA–2012–023 and should be submitted on or before May 31, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–11246 Filed 5–9–12; 8:45 am]

BILLING CODE 8011–01–P

[16] 15 U.S.C. 78s–3(b)(3)(C) [sic].

[17] 15 U.S.C. 78*o*–3(b)(5).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66922; File No. SR–ICC–2012–05]

Self-Regulatory Organizations; ICE Clear Credit LLC; Order Granting Accelerated Approval of Proposed Rule Change to Membership Qualifications

May 4, 2012.

I. Introduction

On April 3, 2012, ICE Clear Credit LLC (''ICC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–ICC–2012–05 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder.[2] The proposed rule change was published for comment in the **Federal Register** on April 12, 2012.[3] The Commission received no comment letters regarding the proposal. For the reasons discussed below, the Commission is granting approval of the proposed rule change on an accelerated basis.

II. Description

The purpose of proposed rule change is to revise Rule 201(b)(ii) to incorporate the Commodity Futures Trading Commission (''CFTC'') mandated $50,000,000 minimum adjusted net capital requirement for all ICC Clearing Participants. For a Participant that is not a Futures Commission Merchant (''FCM'') or a Broker-Dealer, there is no standard equivalent to ''adjusted net capital'' which can be utilized across all

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 34–66766 (April 6, 2012), 77 FR 22019 (April 12, 2012). In its filing with the Commission, ICC included statements concerning the purpose of and basis for the proposed rule change. The text of these statements is incorporated into the discussion of the proposed rule change in Section II below.

types of Clearing Participant entities. Therefore, Rule 201(b)(ii)(C) places the burden on the Clearing Participant to demonstrate that its capital exceeds the capital requirement that would be applicable to it if it were an FCM, as determined pursuant to a methodology acceptable to ICC.

In addition, in order to promote compliance with the capital adequacy requirements, Rule 201(b)(i) is amended to provide that a Clearing Participant must be regulated for capital adequacy by a competent authority such as the CFTC, SEC, Federal Reserve Board, Office of the Comptroller of the Currency, U.K. Financial Services Authority, or any other regulatory body ICC designates from time to time for this purpose, or is an affiliate of an entity that satisfies the capital adequacy regulatory requirement and is subject to consolidated holding company group supervision.

Further, ICC is revising Rule 209 (Risk-Based Capital Requirement) to provide that if at any time and for so long as a Clearing Participant has a required contribution to the ICC General Guaranty Fund that exceeds 25% of its ''excess net capital,'' ICC may (in addition to imposing the trading activity limitations provided for in ICC Rule 203(b)) require such Clearing Participant to prepay and maintain with ICE Clear Credit an amount up to the Clearing Participant's assessment obligation. ICC Rule 102, the definitional section of the Rules, has been amended to define ''excess net capital'' as the amount reported on Form 1–FR–FCM or FOCUS Report or as otherwise reported to the CFTC under CFTC Rule 1.12. For a Participant that is not an FCM or a Broker-Dealer, there is no standard equivalent to ''excess net capital'' which can be utilized across all types of Clearing Participant entities. Therefore, Rule 102 places the burden on the Clearing Participant to demonstrate that its capital exceeds the capital requirement that would be applicable to it if it were an FCM, as determined pursuant to a methodology acceptable to ICC.

ICC believes that its membership qualification changes are in compliance with CFTC Regulations 39.12(a)(2)(ii) and 39.12(a)(2)(iii).

III. Discussion

Section 19(b)(2)(B) of the Act [4] directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. In particular, Section 17A(b)(3)(F) of the Act [5] requires that the rules of the clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions, and to the extent applicable, derivative agreements, contracts, and transactions.

The proposed change would allow ICC to expand the base of potential clearing members by lowering the net capital threshold for membership, thereby promoting the prompt and accurate clearance and settlement of securities transactions, and derivative agreements, contracts, and transactions.

Further, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[6] for approving the proposed rule change prior to the 30th day after the date of publication of notice in the **Federal Register** because as a registered DCO ICC is required to comply with the new CFTC regulations 39.12(a)(2)(ii) and 39.12(a)(2)(iii) by the time they become effective on May 7, 2012.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (SR–ICC–2012–05) is approved on an accelerated basis.[8]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–11244 Filed 5–9–12; 8:45 am]

BILLING CODE 8011–01–P

[4] 15 U.S.C. 78s(b)(2)(B).

[5] 15 U.S.C. 78q–1(b)(3)(F).

[6] 15 U.S.C. 78s(b)(2).

[7] 15 U.S.C. 78s(b)(2).

[8] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66914; File No. SR–CME–2012–16]

Self-Regulatory Organizations; Chicago Mercantile Exchange Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change To Amend Rules Regarding CDS Clearing Member Obligations and Qualifications

May 3, 2012.

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 April 23, 2012, Chicago Mercantile Exchange Inc. (''CME'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I and II, below, which items have been prepared substantially by CME. The Commission is publishing this Notice and Order to solicit comments on the proposed rule change from interested persons and to approve the proposed rule change on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CME proposes to amend certain of its rules to comply with pending revisions to the CFTC Regulations. The text of the proposed rule change is available at the CME's Web site at *http://www.cmegroup.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 and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization 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

CME is registered as a derivatives clearing organization with the Commodity Futures Trading Commission (''CFTC'') and operates a

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

substantial business clearing futures and swaps contracts subject to the jurisdiction of the CFTC. CME proposes to amend certain of its rules to comply with certain mandatory revisions that are related to recent changes in CFTC Regulations that will become effective on May 7, 2012. More specifically, CME proposes to adopt revisions to CME Rule 8H04 (CDS Clearing Member Obligations and Qualifications).

As described above, the CFTC adopted a number of new regulations designed to implement the core principles for derivatives clearing organizations (DCOs) in the Commodity Exchange Act, as amended by the Dodd-Frank Act. CFTC Regulation 39.12, which becomes effective on May 7, 2012, provides for participant and product eligibility requirements. CFTC Regulation 39.12(a)(iii) provides that a DCO ''shall not set minimum capital requirements of more than $50 million for any person that seeks to become a clearing member in order to clear swaps.'' CFTC Regulation 39.12(a)(2)(ii) provides that ''[c]apital requirements shall be scalable to the risks posed by clearing members.'' CFTC Regulation 39.12(a) provides that a DCO ''shall establish appropriate admission and continuing participation requirements for clearing members of the derivatives clearing organization that are objective, publicly disclosed, and risk-based.''

In order to comply with these Regulations, CME plans to amend CME Rule 8H04. Revised CME Rule 8H04.2 sets minimum capital for a CDS Clearing Member at $50 million and defines ''capital'' consistent with Regulation 39.12(a)(2)(i). In order to scale the capital requirements of CDS Clearing Members to the risks posed by such CDS Clearing Members, new CME Rule 8H04.3 requires CDS Clearing Members to maintain capital of at least 20% of the aggregate performance bond requirement for its proprietary and customer CDS Contracts. Revised CME Rule 8H04.9 requires CDS Clearing Members to provide nominations for certain members of the CDS Risk Committee and CDS Default Management Committee.

The text of the proposed rule change is available at the CME's Web site at *http://www.cmegroup.com.* CME also made a filing, CME Submission 12–124, with its primary regulator, the CFTC, with respect to the proposed rule changes.

CME believes the proposed changes are consistent with the requirements of the Exchange Act. First, CME, a derivatives clearing organization, is required to implement the proposed changes to comply with recent changes to CFTC regulations. CME notes that the policies of the Commodity Exchange Act (''CEA'') with respect to clearing are comparable to a number of the policies underlying the Exchange Act, such as promoting market transparency for derivatives markets, promoting the prompt and accurate clearance of transactions and protecting investors and the public interest. Second, CME believes the proposed changes are specifically designed to promote the prompt and accurate clearance and settlement of derivative agreements, contracts, and transactions, and assure the safeguarding of securities and funds which are in the custody or control of CME, and, in general, protect investors and the public interest, because the rules changes establish objective and risk-based admission and continuing participation requirements for clearing members in compliance with applicable law.

B. Self-Regulatory Organization's Statement on Burden on Competition

CME does not believe that the proposed rule change will have any impact, or impose any burden, on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

CME has not solicited, and does not intend to solicit, comments regarding this proposed rule change. CME has not received any unsolicited written comments from interested parties.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

- Electronic comments may be submitted by using the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*), or send an email to *rule-comments@sec.gov.* Please include File No. SR–CME–2012–16 on the subject line.
- Paper comments should be sent in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CME–2012–16. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of CME. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CME–2012–16 and should be submitted on or before May 31, 2012.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

Section 19(b) of the Act [3] directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization.[4] In particular, Section 17A(b)(3)(F) of the Act requires that the rules of the clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions, and to the extent applicable, derivative agreements, contracts, and transactions.[5]

The proposed change would allow CME to expand the base of potential clearing members by lowering the net capital threshold for membership, thereby promoting the prompt and accurate clearance and settlement of securities transactions, and derivative agreements, contracts, and transactions. It should also allow CME to comply with new CFTC regulatory requirements, thereby promoting the prompt and accurate clearance and settlement of derivative agreements, contracts, and transactions.

[3] 15 U.S.C. 78s(b).

[4] 15 U.S.C. 78s(b)(2)(B).

[5] 15 U.S.C. 78q–1(b)(3)(F).

In its filing, CME requested that the Commission approve this proposed rule change on an accelerated basis for good cause shown. CME cites as the reason for this request CME's operation as a DCO, which is subject to regulation by the CFTC under the CEA and, in particular, new CFTC regulations that become effective on May 7, 2012. Thus, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[6] for approving the proposed rule change prior to the 30th day after the date of publication of notice in the **Federal Register** because as a registered DCO, CME is required to comply with the new CFTC regulations by the time they become effective on May 7, 2012.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–CME–2012–16) is approved on an accelerated basis.[7]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–11242 Filed 5–9–12; 8:45 am]

BILLING CODE 8011–01–P

[6] 15 U.S.C. 78s(b)(2).

[7] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[8] 17 CFR 200.30–3(a)(12).

SPECIAL INSPECTOR GENERAL FOR AFGHANISTAN RECONSTRUCTION

No FEAR Act Notice

AGENCY: Special Inspector General for Afghanistan Reconstruction.

ACTION: Notice.

SUMMARY: This notice fulfills the Special Inspector General for Afghanistan Reconstruction's (SIGAR) ''No FEAR Act Notice'' **Federal Register** publication obligations, as required by the Section 202(a) of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR) Act and by the Office of Personnel Management implementing regulations at 5 CFR 724.202, to all current and former SIGAR employees and applicants for employment.

DATES: This notice is effective May 10, 2012.

ADDRESSES: SIGAR Office of General Counsel, Hugo Teufel, Special Inspector General for Afghanistan Reconstruction, 2530 Crystal Drive, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Call or email the Acting General Counsel Hugo Teufel: Telephone—703–545–5990; email—*hugo.teufel.civ@mail.mil.*

SUPPLEMENTARY INFORMATION: On January 28, 2008, the President signed into law the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181), which created the Special Inspector General for Afghanistan Reconstruction (SIGAR). SIGAR is responsible for coordinating and conducting audits and investigations to promote efficiency and effectiveness of reconstruction programs, and to detect and prevent waste, fraud, and abuse of taxpayers' dollars. SIGAR is publishing its initial No FEAR Act notice to inform all employees, former employees, and applicants for employment of their rights under antidiscrimination and whistleblower protection laws, and to advise that it will publish certain statistical data relating to Federal sector equal employment opportunity and other complaints filed with SIGAR.

Hugo Teufel,

Acting General Counsel, Special Inspector General for Afghanistan Reconstruction.

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List of Notices

No FEAR Act Notice

On May 15, 2002, Congress enacted the ''Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002,'' which is now known as the No FEAR Act. One purpose of the Act is to ''require that Federal agencies be accountable for violations of antidiscrimination and whistleblower protection laws.'' Public Law 107–174, Summary.

The law provides that Federal agencies must:

- Notify employees and applicants for employment about their rights under the discrimination and whistleblower laws
- Post statistical data relating to Federal sector equal employment opportunity complaints on its public Web site
- Ensure that their managers have adequate training in the management of a diverse workforce, early and alternative conflict resolution, and essential communications skills
- Conduct studies on the trends and causes of complaints of discrimination
- Implement new measures to improve the complaint process and the work environment
- Initiate timely and appropriate discipline against employees who engage in misconduct related to discrimination or reprisal
- Reimburse the Judgment Fund for any discrimination and whistleblower related settlements or judgments reached in Federal court
- Produce annual reports of status and progress to Congress, the Attorney General and the U.S. Equal Employment Commission.

Antidiscrimination Laws

A Federal agency cannot discriminate against an employee or applicant with respect to the terms, conditions or privileges of employment on the basis of race, color, religion, sex, national origin, age, disability, marital status or political affiliation. Discrimination on these bases is prohibited by one or more of the following statutes: 5 U.S.C. 2302(b)(1), 29 U.S.C. 206(d), 29 U.S.C. 631, 29 U.S.C. 633a, 29 U.S.C. 791 and 42 U.S.C. 2000e–16.

If you believe that you have been the victim of unlawful discrimination on the basis of race, color, religion, sex, national origin or disability, you must contact an Equal Employment Opportunity (EEO) counselor within 45 calendar days of the alleged discriminatory action, or, in the case of a personnel action, within 45 calendar days of the effective date of the action, before you can file a formal complaint of discrimination with your agency. See, e.g. 29 CFR 1614.

SIGAR employees, former employees, or applicants for employment who believe they may have been victims of unlawful discrimination may contact an EEO Counselor at the Department of the Army, Washington Headquarters Service, which serves as the support agent on EEO matters for SIGAR.

If you believe that you have been the victim of unlawful discrimination on the basis of age, you must either contact an EEO counselor as noted above or give notice of intent to sue to the Equal Employment Opportunity Commission (EEOC) within 180 calendar days of the alleged discriminatory action. If you are alleging discrimination based on marital status or political affiliation, you may file a written complaint with the U.S. Office of Special Counsel (OSC) (see contact information below). In the alternative (or in some cases, in addition), you may pursue a discrimination complaint by filing a grievance through your agency's administrative or negotiated grievance procedures, if such procedures apply and are available.

Whistleblower Protection Laws

A Federal employee with authority to take, direct others to take, recommend or approve any personnel action must not use that authority to take or fail to

take, or threaten to take or fail to take, a personnel action against an employee or applicant because of disclosure of information by that individual that is reasonably believed to evidence violations of law, rule or regulation; gross mismanagement; gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety, unless disclosure of such information is specifically prohibited by law and such information is specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs.

Retaliation against an employee or applicant for making a protected disclosure is prohibited by 5 U.S.C. 2302(b)(8). If you believe that you have been the victim of whistleblower retaliation, you may file a written complaint (Form OSC–11) with the U.S. Office of Special Counsel at 1730 M Street NW., Suite 218, Washington, DC 20036–4505 or online through the OSC Web site—*http://www.osc.gov.*

Retaliation for Engaging in Protected Activity

A Federal agency cannot retaliate against an employee or applicant because that individual exercises his or her rights under any of the Federal antidiscrimination or whistleblower protection laws listed above. If you believe that you are the victim of retaliation for engaging in protected activity, you must follow, as appropriate, the procedures described in the Antidiscrimination Laws and Whistleblower Protection Laws sections or, if applicable, the administrative or negotiated grievance procedures in order to pursue any legal remedy.

Disciplinary Actions

Under the existing laws, each agency retains the right, where appropriate, to discipline a Federal employee for conduct that is inconsistent with Federal Antidiscrimination and Whistleblower Protection Laws up to and including removal. If OSC has initiated an investigation under 5 U.S.C. 1214, however, according to 5 U.S.C. 1214(f), agencies must seek approval from the Special Counsel to discipline employees for, among other activities, engaging in prohibited retaliation. Nothing in the No FEAR Act alters existing laws or permits an agency to take unfounded disciplinary action against a Federal employee or to violate the procedural rights of a Federal employee who has been accused of discrimination.

Additional Information

For further information regarding the No FEAR Act regulations, refer to 5 CFR part 724, as well as the appropriate offices within SIGAR (e.g., human resources office or the Office of General Counsel) or Army (Washington Headquarters Service). Additional information regarding Federal antidiscrimination, whistleblower protection and retaliation laws can be found at the EEOC Web site—*http://www.eeoc.gov* and the OSC Web site—*http://www.osc.gov.*

Existing Rights Unchanged

Pursuant to section 205 of the No FEAR Act, neither the Act nor this notice creates, expands or reduces any rights otherwise available to any employee, former employee or applicant under the laws of the United States, including the provisions of law specified in 5 U.S.C. 2302(d).

[FR Doc. 2012–11300 Filed 5–9–12; 8:45 am]

BILLING CODE 3710–L9–P

DEPARTMENT OF STATE

[Public Notice 7877]

Culturally Significant Objects Imported for Exhibition Determinations: ''Ends of the Earth: Land Art to 1974''

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 ''Ends of the Earth: Land Art to 1974'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit objects at The Museum of Contemporary Art, Los Angeles, CA, from on or about May 27, 2012, until on or about September 3, 2012; and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact 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: May 7, 2012.

J. Adam Ereli,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2012–11314 Filed 5–9–12; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 7876]

Application for Presidential Permit To Construct, Operate and Maintain Pipeline Facilities on the Border of the United States

AGENCY: Department of State.

ACTION: Notice of Receipt of Application for a Presidential Permit to Construct, Operate and Maintain Pipeline Facilities on the Border of the United States.

SUMMARY: Notice is hereby given that the Department of State (DOS) has received an application to construct, operate and maintain pipeline facilities on the border of the United States from TransCanada Keystone Pipeline, L.P. TransCanada Keystone Pipeline, L.P. has applied for a Presidential Permit to construct and operate border crossing facilities at the U.S./Canadian border in Phillips County, near Morgan, Montana, in connection with a proposed pipeline that is designed to transport crude oil produced in the Western Canadian Sedimentary Basin (WCSB) and from other sources to a terminus in Steele City, Nebraska where it is designed to link with an existing pipeline continuing to oil storage facilities in Cushing, Oklahoma.

Under E.O. 13337, as amended, the Secretary of State is designated and empowered to receive all applications for Presidential permits for the construction, connection, operation, or maintenance at the borders of the United States, of facilities for the exportation or importation of petroleum, petroleum products, coal, or other fuels to or from a foreign country. As a part of the review of the application for Presidential Permits, the Secretary of State must determine whether or not the project would be in the national interest. The determination of national interest involves consideration of many factors, including energy security, health, environmental, cultural, and

economic concerns. Before making a decision on the proposed Project, DOS will consult with the eight federal agencies identified in Executive Order 13337: The Departments of Energy, Defense, Transportation, Homeland Security, Justice, Interior, and Commerce, and the Environmental Protection Agency.

The Department of State also intends to evaluate the potential environmental effects of the proposed project consistent with Section 102(C) of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(C)) and implementing regulations promulgated by the Council on Environmental Quality (40 CFR parts 1500–1508) and the Department of State (22 CFR part 161), including in particular 22 CFR 161.7(c)(1). In addition, the Department of State intends to conduct consultations on possible impacts to traditional or cultural properties with interested Native American tribes consistent with Section 106 of the National Historical Preservation Act (NHPA).

FOR FURTHER INFORMATION CONTACT: The DOS Project Web site (*www.keystonepipeline-xl.state.gov*) provides Project-related information for viewing and downloading.

Issued in Washington, DC, on May 4, 2012.

Dated: May 4, 2012.

Cynthia H. Akuetteh,

Acting Director, Office of Asia and Western Hemisphere, Bureau of Energy Resources, U.S. Department of State.

Dated: May 4, 2012.

George N. Sibley,

Director, Office of Environmental Policy, Bureau of Oceans and International Environmental and Scientific Affairs, U.S. Department of State.

[FR Doc. 2012–11298 Filed 5–9–12; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending April 28, 2012

The following Agreements were filed with the Department of Transportation under the Sections 412 and 414 of the Federal Aviation Act, as amended (49 U.S.C. 1382 and 1384) and procedures governing proceedings to enforce these provisions. Answers may be filed within 21 days after the filing of the application.

Docket Number: DOT–OST–2012–0063.

Date Filed: April 23, 2012.

Parties: Members of the International Air Transport Association.

Subject: Mail Vote 708TC3, Special Passenger Amending Resolution 010o, Special Passenger Amending Resolution between Myanmar and TC3 (except South West Pacific), e-Tariffs, 18–20 April 2012. Intended Effective Date: 25 April 2012.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 2012–11308 Filed 5–9–12; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary of Transportation

[Docket No. DOT–OST–2012–0044]

Department of Transportation Updated Environmental Justice Order 5610.2(a)

AGENCY: Office of the Secretary of Transportation, DOT.

ACTION: Final DOT Environmental Justice Order.

SUMMARY: The Department of Transportation (the Department or DOT) is issuing an update to Departmental Order 5610.2(a) (Actions to Address Environmental Justice in Minority Populations and Low-Income Populations). This Order updates the Department's original Environmental Justice Order, which was published April 15, 1997. The Order continues to be a key component of the Department's strategy to promote the principles of environmental justice in all Departmental programs, policies, and activities.

DOT Order 5610.2(a) sets forth the DOT policy to consider environmental justice principles in all (DOT) programs, policies, and activities. It describes how the objectives of environmental justice will be integrated into planning and programming, rulemaking, and policy formulation. The Order sets forth steps to prevent disproportionately high and adverse effects to minority or low-income populations through Title VI analyses and environmental justice analyses conducted as part of Federal transportation planning and NEPA provisions. It also describes the specific measures to be taken to address instances of disproportionately high and adverse effects and sets forth relevant definitions.

This updated Order reaffirms DOT's commitment to environmental justice and clarifies certain aspects of the original Order, including the definitions of ''minority'' populations in compliance with the Office of Management and Budget's (OMB) Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity of October 30, 1997. The revisions clarify the distinction between a Title VI analysis and an environmental justice analysis conducted as part of a NEPA review, and affirm the importance of considering environmental justice principles as part of early planning activities in order to avoid disproportionately high and adverse effects. The updated Order maintains the original Orders general framework and procedures and DOT's commitment to promoting the principles of environmental justice in all DOT programs, policies, and activities.

This Order is effective upon its date of issuance.

FOR FURTHER INFORMATION CONTACT: Beth Osborne, Deputy Assistant Secretary for Transportation Policy, telephone (202) 366–8979, or *EJ@dot.gov,* U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590.

Order 5610.2(a)

Subject: Department of Transportation Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

1. Purpose and Authority

a. This Order updates and clarifies environmental justice procedures for the Department in response to the Memorandum of Understanding on Environmental Justice signed by heads of Federal agencies on August 4, 2011, DOT's revised environmental justice strategy issued on March 2, 2012, and Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, dated February 11, 1994.

The Department's original Environmental Justice Order, issued April 15, 1997, was a key component of the Department's original strategy and established procedures to be used by DOT to comply with Executive Order 12898. This revised Order continues to be a key component of DOT's environmental justice strategy. It updates and clarifies certain aspects of the original Order while maintaining its general framework and procedures and DOT's commitment to promoting the principles of environmental justice in all DOT programs, policies, and activities. Relevant definitions are in the Appendix.

b. Executive Order 12898 requires each Federal agency, to the greatest

extent practicable and permitted by law, and consistent with the principles set forth in the report on the National Performance Review, to achieve environmental justice as part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects, including interrelated social and economic effects, of its programs, policies, and activities on minority populations and low-income populations in the United States. Compliance with this DOT Order is a key element in the environmental justice strategy adopted by DOT to implement the Executive Order, and can be achieved within the framework of existing laws, regulations, and guidance.

c. Consistent with paragraph 6–609 of Executive Order 12898, this Order is limited to improving the internal management of DOT and is not intended to, nor does it, create any rights, benefits, or trust responsibility, substantive or procedural, enforceable at law or equity, by a party against the Department, its Operating Administrations, its officers, or any person. Nor should this Order be construed to create any right to judicial review involving the compliance or noncompliance with this Order by the Department, its Operating Administrations, its officers or any other person.

2. Scope

This Order applies to the Office of the Secretary, DOT's Operating Administrations, and all other DOT components.

3. Effective Date

This Order is effective upon its date of issuance.

4. Policy

a. It is the policy of DOT to promote the principles of environmental justice (as embodied in the Executive Order) through the incorporation of those principles in all DOT programs, policies, and activities. This will be done by fully considering environmental justice principles throughout planning and decision-making processes in the development of programs, policies, and activities, using the principles of the National Environmental Policy Act of 1969 (NEPA), Title VI of the Civil Rights Act of 1964 (Title VI), the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (URA), the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (Pub. L. 109–59; SAFETEA–LU) and other DOT statutes, regulations and guidance that address or affect infrastructure planning and decision-making; social, economic, or environmental matters; public health; and public involvement.

b. In complying with this Order, DOT will rely upon existing authority to collect data and conduct research associated with environmental justice concerns. To the extent permitted by existing law, and whenever practical and appropriate to assure that disproportionately high and adverse effects on minority or low income populations are identified and addressed, DOT shall collect, maintain, and analyze information on the race, color, national origin, and income level of persons adversely affected by DOT programs, policies, and activities, and use such information in complying with this Order.

5. Integration With Existing Operations

a. The Office of the Secretary and each Operating Administration shall determine the most effective and efficient way of integrating the processes and objectives of this Order with their existing regulations and guidance.

b. In undertaking the integration with existing operations described in paragraph 5a, DOT shall observe the following principles:

(1) Environmental justice principles apply to planning and programming activities, and early planning activities are a critical means to avoid disproportionately high and adverse effects in future programs, policies, and activities. Planning and programming activities for policies, programs, and activities that have the potential to have a disproportionately high and adverse effect on human health or the environment shall include explicit consideration of the effects on minority populations and low-income populations. Procedures shall be established or expanded, as necessary, to provide meaningful opportunities for public involvement by members of minority populations and low-income populations during the planning and development of programs, policies, and activities (including the identification of potential effects, alternatives, and mitigation measures).

(2) Steps shall be taken to provide the public, including members of minority populations and low-income populations, access to public information concerning the human health or environmental impacts of programs, policies, and activities, including information that will address the concerns of minority and low-income populations regarding the health and environmental impacts of the proposed action.

c. Future rulemaking activities undertaken pursuant to DOT Order 2100.5 (which governs all DOT rulemaking), and the development of any future guidance or procedures for DOT programs, policies, or activities that affect human health or the environment, shall address compliance with Executive Order 12898 and this Order, as appropriate.

d. The formulation of future DOT policy statements and proposals for legislation that may affect human health or the environment will include consideration of the provisions of Executive Order 12898 and this Order.

6. Ongoing DOT Responsibility

Compliance with Executive Order 12898 is an ongoing DOT responsibility. DOT will continuously monitor its programs, policies, and activities to ensure that disproportionately high and adverse effects on minority populations and low-income populations are avoided, minimized or mitigated in a manner consistent with this Order and Executive Order 12898. This Order does not alter existing assignments or delegations of authority to the Operating Administrations or other DOT components.

7. Preventing Disproportionately High and Adverse Effects

Under Title VI, each Federal agency is required to ensure that no person, on the ground of race, color, or national origin, is excluded from participation in, denied the benefits of, or subjected to discrimination under any program or activity receiving Federal financial assistance. This statute affects every program area in DOT. Consequently, DOT managers and staff must administer their programs in a manner to assure that no person is excluded from participating in, denied the benefits of, or subjected to discrimination by any program or activity of DOT because of race, color, or national origin. While Title VI is a key tool for agencies to use to achieve environmental justice goals, it is important to recognize that Title VI imposes statutory and regulatory requirements that are broader in scope than environmental justice. There may be some overlap between environmental justice and Title VI analyses; however, engaging in environmental justice analysis under Federal transportation planning and NEPA provisions will not necessarily satisfy Title VI requirements. Similarly, a Title VI analysis would not necessarily satisfy environmental justice requirements,

since Title VI does not include low-income populations. Moreover, Title VI applies to all Federally-funded projects and activities, not solely those which may have adverse human health or environmental effects on communities.

b. It is DOT's policy to actively administer and monitor its operations and decision-making to assure that nondiscrimination and the prevention of disproportionately high and adverse effects are an integral part of its programs, policies, and activities. DOT currently administers policies, programs, and activities which are subject to the requirements of NEPA, Title VI, URA, SAFETEA–LU and other statutes that involve human health or environmental matters, or interrelated social and economic impacts. These requirements will be administered so as to identify, early in the development of the program, policy or activity, the risk of discrimination and disproportionately high and adverse effects so that positive corrective action can be taken. In implementing these requirements, the following information should be obtained where relevant, appropriate and practical:

—Population served and/or affected by race, color or national origin, and income level;
—Proposed steps to guard against disproportionately high and adverse effects on persons on the basis of race, color, or national origin, and income level;
—Present and proposed membership by race, color, or national origin, in any planning or advisory body that is part of the program, policy or activity.

c. Statutes governing DOT operations will be administered so as to identify and avoid discrimination and avoid disproportionately high and adverse effects on minority populations and low-income populations by:

(1) Identifying and evaluating environmental, public health, and interrelated social and economic effects of DOT programs, policies, and activities,

(2) Proposing measures to avoid, minimize and/or mitigate disproportionately high and adverse environmental and public health effects and interrelated social and economic effects, and providing offsetting benefits and opportunities to enhance communities, neighborhoods, and individuals affected by DOT programs, policies, and activities, where permitted by law and consistent with the Executive Order,

(3) Considering alternatives to proposed programs, policies, and activities, where such alternatives would result in avoiding and/or minimizing disproportionately high and adverse human health or environmental impacts, consistent with the Executive Order, and

(4) Eliciting public involvement opportunities and considering the results thereof, including soliciting input from affected minority and low-income populations in considering alternatives.

8. Actions To Address Disproportionately High and Adverse Effects

a. Following the guidance set forth in this Order and its Appendix, the head of each Operating Administration and the responsible officials for other DOT components shall determine whether programs, policies, or activities for which they are responsible will have an adverse human health or environmental effect on minority and low-income populations and whether that adverse effect will be disproportionately high.

b. In making determinations regarding disproportionately high and adverse effects on minority and low-income populations, mitigation and enhancements measures that will be implemented and all offsetting benefits to the affected minority and low-income populations may be taken into account, as well as the design, comparative impacts, and the relevant number of similar existing system elements in non-minority and non-low-income areas.

c. The Operating Administrators and other responsible DOT officials will ensure that any of their respective programs, policies or activities that will have a disproportionately high and adverse effect on minority populations or low-income populations will only be carried out if further mitigation measures or alternatives that would avoid or reduce the disproportionately high and adverse effect are not practicable. In determining whether a mitigation measure or an alternative is ''practicable,'' the social, economic (including costs) and environmental effects of avoiding or mitigating the adverse effects will be taken into account.

d. The Operating Administrations and other responsible DOT officials will also ensure that any of their respective programs, policies, or activities that will have a disproportionately high and adverse effect on populations protected by Title VI (''protected populations'') will only be carried if:

(1) A substantial need for the program, policy, or activity exists, based on the overall public interest; and

(2) Alternatives that would have less adverse effects on protected populations (and that still satisfy the need identified in subparagraph d(1) above), either

(a) Would have other adverse social, economic, environmental or human health impacts that are severe; or

(b) Would involve increased costs of extraordinary magnitude.

e. DOT's responsibilities under Title VI and related statutes and regulations are not limited by this paragraph, nor does this paragraph limit or preclude claims by individuals or groups of people with respect to any DOT programs, policies, or activities under these authorities. Nothing in this Order adds to or reduces existing Title VI due process mechanisms.

f. The findings, determinations, and/or demonstration made in accordance with this section must be appropriately documented, normally in the environmental impact statement or other NEPA document prepared for the program, policy, or activity, or in other appropriate planning or program documentation.

Appendix

1. Definitions

The following terms where used in this Order shall have the following meanings:

a. DOT means the Office of the Secretary, DOT Operating Administrations, and all other DOT components.

b. Low-Income means a person whose median household income is at or below the Department of Health and Human Services poverty guidelines.

c. Minority means a person who is:

(1) Black: A person having origins in any of the black racial groups of Africa;

(2) Hispanic or Latino: A person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race;

(3) Asian American: A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent;

(4) American Indian and Alaskan Native: A person having origins in any of the original people of North America, South America (including Central America), and who maintains cultural identification through tribal affiliation or community recognition; or

(5) Native Hawaiian and Other Pacific Islander: People having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

d. Low-Income Population means any readily identifiable group of low-income persons who live in geographic proximity, and, if circumstances warrant, geographically dispersed/transient persons (such as migrant workers or Native Americans) who will be similarly affected by a proposed DOT program, policy or activity.

e. Minority Population means any readily identifiable groups of minority persons who live in geographic proximity, and if circumstances warrant, geographically dispersed/transient persons (such as migrant workers or Native Americans) who will be

similarly affected by a proposed DOT program, policy or activity.

f. Adverse effects means the totality of significant individual or cumulative human health or environmental effects, including interrelated social and economic effects, which may include, but are not limited to: Bodily impairment, infirmity, illness or death; air, noise, and water pollution and soil contamination; destruction or disruption of man-made or natural resources; destruction or diminution of aesthetic values; destruction or disruption of community cohesion or a community's economic vitality; destruction or disruption of the availability of public and private facilities and services; vibration; adverse employment effects; displacement of persons, businesses, farms, or nonprofit organizations; increased traffic congestion, isolation, exclusion or separation of minority or low-income individuals within a given community or from the broader community; and the denial of, reduction in, or significant delay in the receipt of, benefits of DOT programs, policies, or activities.

g. Disproportionately high and adverse effect on minority and low-income populations means an adverse effect that:

(1) Is predominately borne by a minority population and/or a low-income population, or

(2) Will be suffered by the minority population and/or low-income population and is appreciably more severe or greater in magnitude than the adverse effect that will be suffered by the non-minority population and/or non-low-income population.

h. Programs, policies, and/or activities mean all projects, programs, policies, and activities that affect human health or the environment, and which are undertaken or approved by DOT. These include, but are not limited to, permits, licenses, and financial assistance provided by DOT. Interrelated projects within a system may be considered to be a single project, program, policy or activity for purposes of this Order.

i. Regulations and guidance means regulations, programs, policies, guidance, and procedures promulgated, issued, or approved by DOT.

Dated: May 2, 2012.

Ray LaHood,

Secretary of Transportation.

[FR Doc. 2012–11309 Filed 5–9–12; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In April 2012, there were two applications approved. This notice also includes information on one application, approved in March 2012, inadvertently left off the March 2012 notice. Additionally, two approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: Tri-Cities Airport Commission, Blountsville, Tennessee.

Application Number: 12–04–C–00–TRI.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $489,869.

Earliest Charge Effective Date: June 1, 2014.

Estimated Charge Expiration Date: January 1, 2015.

Class of Air Carriers Not Required to Collect PFC's: Nonscheduled/on-demand air carriers filing FAA Form 1800–31.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Tri-Cities Regional Airport.

Brief Description of Projects Approved for Collection and Use:

Taxiway R extension and road relocation—design.

Runway 5/23 pavement rehabilitation—design.

Property acquisition—parcel 40.

In-line baggage system.

Runway high speed snow removal broom.

Taxiway R extension and road relocation—construction.

PFC administrative costs.

Decision Date: March 27, 2012.

For Further Information Contact: Cynthia Wills, Memphis Airports District Office, (901) 322–8190.

Public Agency: Great Falls International Airport Authority, Great Falls, Montana.

Application Number: 12–04–C–00–GTF.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $4,040,904.

Earliest Charge Effective Date: November 1, 2016.

Estimated Charge Expiration Date: June 1, 2021.

Class of Air Carriers Not Required to Collect PFC'S: Air taxi/commercial operators filing FM Form 1800–31.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Great Falls International Airport.

Brief Description of Projects Approved for Collection and Use:

Correct runway 3/21 line of sight deficiency.

Install category III instrument landing system.

2005 purchase of airport power sweeper.

Terminal rehabilitation, phase I.

Purchase airport snow removal truck/plow.

Design and construct noise mitigation measures for residences.

Decision Date: April 12, 2012.

For Further Information Contact: Jason Garwood, Helena Airports District Office, (406) 449–5078.

Public Agency: Port of Pasco, Pasco, Washington.

Application Number: 12–08–C–00–PSC.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $3,865,000.

Earliest Charge Effective Date: May 1, 2015.

Estimated Charge Expiration Date: April 1, 2022.

Class of Air Carriers Not Required to Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use:

Terminal area plan.

Terminal building rehabilitation.

Runway sweeper acquisition.

PFC administration.

Decision Date: April 12, 2012.

For Further Information Contact: Trang Tran, Seattle Airports District Office, (425) 227–1662.

AMENDMENTS TO PFC APPROVALS

Amendment No. city, State	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
11–11–C–01–RNO Reno, NV	04/03/12	$25,491,376	$33,933,876	04/01/17	07/01/18
07–02–C–01–CLT	04/11/12	144,557,137	143,057,137	12/01/18	12/01/18

Issued in Washington, DC, on May 3, 2012.

Joe Hebert,

Manager, Financial Analysis and Passenger Facility Charge Branch.

[FR Doc. 2012–11231 Filed 5–9–12; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee—Continuing a Task

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of continuing a task assignment for the Aviation Rulemaking Advisory Committee (ARAC).

SUMMARY: The FAA assigned the Aviation Rulemaking Advisory Committee (ARAC) a continuing task to provide advice and recommendations to the FAA about implementing a process for prioritizing rulemaking projects. This task addresses, in part, one of the Department of Transportation's Future of Aviation Advisory Committee (FAAC) recommendations. This notice informs the public of a continuing ARAC activity and does not solicit membership for the existing Rulemaking Prioritization Working Group (RPWG).

FOR FURTHER INFORMATION CONTACT: Katherine Haley, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: 202–493–5708, facsimile: 202–267–5075; email: *Katherine.L.Haley@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA established ARAC to provide advice and recommendations to the FAA Administrator on the FAA's rulemaking activities. ARAC's objectives are to improve the development of the FAA's regulations by providing information, advice, and recommendations related to aviation issues.

In April 2011, the FAA tasked ARAC to provide advice and recommendations on developing a framework and methodologies to assist the FAA in assessing and sequencing potential rulemaking projects.[1] The FAA provided the RPWG with a set of issues to test the framework and methodologies. The RPWG conducted its task from June to December 2011 and submitted recommendations to ARAC on December 14, 2011. ARAC accepted the recommendations on December 16, 2011 and forwarded them to the FAA. The entire recommendation report can be found at: *http://www.faa.gov/regulations_policies/rulemaking/committees/arac/.*

The March 2012 ARAC Executive Committee meeting included a discussion of continuing the task to further test the RPWG's methodology. This notice advises the public that the FAA has assigned, and the ARAC Executive Committee has accepted, the task to test the methodology and to develop a report including recommendations explaining the results.

The Task

The FAA has tasked the RPWG to provide advice and recommendations to further test the recommended methodology.

The RPWG is expected to develop a report containing recommended changes to the methodology. This report should document both majority and minority positions on the findings and the rationale for each position. Any disagreements should be documented, including the rationale for each position and the reasons for the disagreement.

In developing its recommendations, the RPWG shall:

1. Review the RPWG Phase I Recommendation Report.
2. Test the methodology and the tools using a subset of completed rulemakings provided by the FAA.
3. Develop measurable scoring evaluation to evaluate projects against each other.
4. Evaluate the results of the test and refine the process and the tools accordingly.

Schedule: The recommendations must be forwarded to the ARAC Executive Committee for review and approval no later than September 2012. The RPWG may be asked to clarify the report between September and December 2012.

ARAC Acceptance of Task

The ARAC Executive Committee has accepted the continuing task using members of the existing RPWG. The RPWG serves as staff to ARAC and assists in the analysis of the assigned task. ARAC must review and approve the RPWG's recommendations. If ARAC accepts the working group's recommendations, it will send them to the FAA.

Working Group Activity

The RPWG must comply with the procedures adopted by ARAC. As part of the procedures, the RPWG must:

1. Recommend a work plan for completion of the task, including the rationale supporting such a plan, for consideration at the next ARAC Executive Committee meeting held following publication of this notice.
2. Provide a status report at each meeting of the ARAC Executive Committee.
3. Draft the recommendation report and required analyses and/or any other related materials or documents.
4. Present the final recommendations to the ARAC Executive Committee for review and approval.

Participation in the Working Group

The existing RPWG is comprised of technical experts having an interest in the assigned task. A working group member need not be a representative or a member of the full committee.

All existing RPWG members who choose to participate in this task must actively participate by attending all meetings, and providing written comments when requested to do so. Each member must devote the resources necessary to support the working group in meeting any assigned deadlines. Each member must keep their management chain, and those they may represent, advised of working group activities and decisions to ensure the proposed technical solutions do not conflict with their sponsoring organization's position when the subject is presented to ARAC for approval. Once the RPWG has begun deliberations, members will not be added or substituted without the

[1] FAA, Aviation Rulemaking Advisory Committee (ARAC)—New Task (76 FR 21936).

approval of the FAA and the Working Group Chair.

The Secretary of Transportation determined the formation and use of ARAC is necessary and in the public interest in connection with the performance of duties imposed on the FAA by law.

ARAC meetings are open to the public. However, RPWG meetings are not open to the public, except to the extent individuals with an interest and expertise are selected to participate. The FAA will make no public announcement of the RPWG meetings.

Issued in Washington, DC, on May 3, 2012.

Brenda D. Courtney,

Acting Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 2012–11302 Filed 5–9–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2012–0020]

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), this document provides the public notice that by a document dated March 8, 2012, the Union Pacific Railroad (UP) has petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR Part 234. FRA assigned the petition Docket Number FRA–2012–0020.

UP seeks a waiver from the portion of 49 CFR Section 234.223, Gate arm. Section 234.223 requires that ''each gate arm shall start its downward motion not less than three seconds after flashing lights begin to operate * * *.''

UP also requests that the normal position of the gate arm down and the flashing lights dark not be considered as an activation failure, partial activation, or a false activation under 49 CFR 234.5.

This waiver petition is related to the Illinois high-speed passenger rail project on the route between Chicago, IL, and St. Louis, MO; on UP's Joliet and Springfield Subdivisions. This route is owned and maintained by UP. High-speed passenger operation will be conducted by the National Railroad Passenger Corporation (Amtrak) or another operator designated by the Illinois Department of Transportation (IDOT).

At farm private crossings (also known as field access crossings), which are currently not protected by active warning devices, IDOT has requested UP install active warning devices that operate differently than standard active warning devices. Currently, there are 24 field access crossings proposed for the installation of the nonconventional crossing warning system.

At the field access crossings involved, the normal operation would require the gate arms to be in the lowered position with no flashing lights activated. Upon the train's approach, the flashing lights and bells would then activate. To allow for the landowner to bring vehicles or farm equipment across the crossing, it would be necessary to unlock a pushbutton box and operate the pushbutton. The gate would then return to the upright position and operate as a conventional active warning system for either 8 hours, or if ''reset,'' via pushbutton within the box. If not manually reset to the gate arm down condition, at the end of 8 hours the gate arms would then return to the down position.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received by June 25, 2012 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78), or online at *http://www.dot.gov/privacy.html.*

Issued in Washington, DC, on May 7, 2012.

Ron Hynes,

Acting Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2012–11337 Filed 5–9–12; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms, and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and the expected burden. The **Federal Register** Notice with a 60-day comment period was published on November 16, 2011 (76 FR 71122–71123).

DATES: Comments must be submitted on or before June 11, 2012.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention NHTSA Desk Officer.

FOR FURTHER INFORMATION CONTACT: Jessica Cicchino, Ph.D., Contracting Officer's Technical Representative, Office of Behavioral Safety Research (NTI–131), National Highway Traffic Safety Administration, 1200 New Jersey Ave. SE., W46–491, Washington, DC 20590. Dr. Cicchino's phone number is 202–366–2752 and her email address is *jessica.cicchino@dot.gov.*

SUPPLEMENTARY INFORMATION:

Title: Instrumented On-Road Study of Motorcycle Riders.

Type of Request: New information collection request.

Abstract: Motorcycle crashes and fatalities have become a rapidly escalating traffic safety problem on our Nation's roads. In 2010, 4,502 motorcyclists were killed in the United States, which is more than double the 2,106 motorcyclist fatalities that occurred when fatalities reached a low in 1997. Motorcycles made up 3% of the registered vehicles in the United States in 2010 but motorcyclists accounted for 14% of the total traffic fatalities.

Knowledge of both how riders successfully avoid crashes and of behaviors that correlate with and contribute to crash risk is crucial to developing effective countermeasures to reduce motorcycle crashes and fatalities. Data describing actual events are difficult to collect. Riders and law enforcement officers are not always aware of what caused a crash after the fact. It is even more difficult to identify behavioral factors associated with safe riding, and the actions of riders during evasive maneuvers that did not result in a police-reportable crash. Studies using instrumented vehicles to collect data on the real-world driving of passenger car and truck drivers have provided unprecedented information describing actual events occurring for drivers as they negotiate the roadway system. The goal of this study is to collect similar data from motorcycle operators using instrumented motorcycles.

The National Highway Traffic Safety Administration (NHTSA) will be conducting on-road instrumented vehicle data collection with a total of 160 motorcycle riders to examine motorcycle riders' behaviors as they typically ride. Volunteers will be recruited to have their motorcycles outfitted for one year with instrumentation such as cameras, GPS, and accelerometers that will capture data on normal riding behavior whenever their motorcycles are ridden.

Before participating in the on-road portion of the study, participating motorcycle riders will be asked to complete intake questionnaires that will ask about their demographics, riding history, self-reported behavior, and perceptions. After completing the on-road study, participants will be asked to complete a short debriefing questionnaire that will focus on their experiences riding with the instrumentation in the past year. This subjective data will be combined with the objective data from the instrumentation on actual riding behavior to help NHTSA develop a better understanding of if a rider's demographic characteristics, riding history, self-reported behavior, and perceptions are linked to his or her behavior on the road.

Affected Public: Participation in the study will be voluntary. Each of the 160 participants in the on-road instrumented motorcycle portion of the study will be asked to complete intake questionnaires, capturing demographic characteristics, riding history, self-reported behavior, and perceptions, during his or her instrumentation session and to complete a debriefing questionnaire as the instrumentation is being removed from his or her motorcycle one year later.

Estimated Total Burden: The intake questionnaires are estimated to take 75 minutes to complete, and the debriefing questionnaire is estimated to last 15 minutes. Intake questionnaires will be completed during the time when the respondent's motorcycle is being instrumented, and the debriefing questionnaire will be completed while the instrumentation is being removed from the respondent's motorcycle after the one-year period of on-road data collection. This results in an estimated burden of 200 hours of burden for the intake questionnaires (160 respondents × 75 minutes), and 40 hours of burden for the debriefing questionnaires (160 respondents × 15 minutes).

The total estimated information collection burden for this project is 240 hours over one year: 200 hours for the intake questionnaires and 40 hours for the debriefing interviews. The respondents will not incur any record-keeping burden or record-keeping cost from the information collection.

Comments are invited on the following: (i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (ii) the accuracy of the agency's estimate of the burden of the proposed information collection; (iii) ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is most effective if OMB receives it within 30 days of publication.

Authority: 44 U.S.C. 3506(c)(2)(A).

Issued on: May 7, 2012.

Jeff Michael,

Associate Administrator, Research and Program Development.

[FR Doc. 2012–11338 Filed 5–9–12; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Information Collection Activities

AGENCY: Surface Transportation Board, DOT.

ACTION: 30-Day notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* (PRA), the Surface Transportation Board (Board) gives notice that it is requesting from the Office of Management and Budget (OMB) reinstatement without change of the seven previously approved collections described below.

Comments are requested concerning each collection as to (1) whether the particular collection of information is necessary for the proper performance of the functions of the Board, including whether the collection has practical utility; (2) the accuracy of the Board's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) 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, when appropriate.

DATES: Written comments are due on June 11, 2012.

ADDRESSES: Written comments should be identified as ''Paperwork Reduction Act Comments, Surface Transportation Board,'' and should refer to the title of the specific collection(s) commented upon. These comments should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Patrick Fuchs, Surface Transportation Board Desk Officer, by fax at (202) 395–5167; by mail at Room 10235, 725 17th Street NW., Washington, DC 20500; or by email at *OIRA_SUBMISSION@OMB.EOP.GOV*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s) send your request to *accounting_and_reporting@stb.dot.gov* or call Paul Aguiar at (202) 245–0323. [Federal Information Relay Service

(FIRS) for the hearing impaired: (800) 877–8339.]

Subjects: In this notice the Board is requesting that comments be sent to OMB on the following information collections:

Collection Number 1

Title: Class I Railroad Annual Report.
OMB Control Number: 2140–0009.
Form Number: R1.
Type of Review: Reinstatement without change of previously approved collection.
Respondents: Class I railroads.
Number of Respondents: 7.
Estimated Time per Response: No more than 800 hours, based on information provided by the railroad industry during the 1990's. This estimate includes time spent reviewing instructions; searching existing data sources; gathering and maintaining the data needed; completing and reviewing the collection of information; and converting the data from the carrier's individual accounting system to the Board's Uniform System of Accounts (USOA), which ensures that the information will be presented in a consistent format across all reporting railroads, *see* 49 U.S.C. 11141–43, 11161–64, 49 CFR 1200–1201.
Frequency of Response: Annual.
Total Annual Hour Burden: No more than 5,600 hours.
Total Annual ''Non-Hour Burden'' Cost: No ''non-hour cost'' burdens associated with this collection have been identified.
Needs and Uses: Annual reports are required to be filed by Class I railroads under 49 U.S.C. 11145. The reports show operating expenses and operating statistics of the carriers. Operating expenses include costs for right-of-way and structures, equipment, train and yard operations, and general and administrative expenses. Operating statistics include such items as car-miles, revenue-ton-miles, and gross ton-miles. The reports are used by the Board, other Federal agencies, and industry groups to monitor and assess railroad industry growth, financial stability, traffic, and operations, and to identify industry changes that may affect national transportation policy. Information from this report is also entered into the Board's Uniform Rail Costing System (URCS), which is a cost measurement methodology. URCS, which was developed by the Board pursuant to 49 U.S.C. 11161, is used as a tool in rail rate proceedings, in accordance with 49 U.S.C. 10707(d), to calculate the variable costs associated with providing a particular service. The Board also uses this information to more effectively carry out other of its regulatory responsibilities, including: Acting on railroad requests for authority to engage in Board-regulated financial transactions such as mergers, acquisitions of control, and consolidations, *see* 49 U.S.C. 11323–11324; analyzing the information that the Board obtains through the annual railroad industry waybill sample, *see* 49 CFR 1244; measuring off-branch costs in railroad abandonment proceedings, in accordance with 49 CFR 1152.32(n); developing the ''rail cost adjustment factors,'' in accordance with 49 U.S.C. 10708; and conducting investigations and rulemakings.

Information from certain schedules contained in these reports is compiled and published on the Board's Web site, *http://www.stb.dot.gov.* Information in these reports is not available from any other source.

Collection Number 2

Title: Quarterly Report of Revenues, Expenses, and Income—Railroads (Form RE&I).
OMB Control Number: 2140–0013.
Form Number: None.
Type of Review: Reinstatement without change of previously approved collection.
Respondents: Class I railroads.
Number of Respondents: 7.
Estimated Time per Response: 6 hours.
Frequency of Response: Quarterly.
Total Annual Hour Burden: 168 hours.
Total Annual ''Non Hour Burden'' Cost: No ''non-hour cost'' burdens associated with this collection have been identified.
Needs and Uses: This collection is a report of railroad operating revenues, operating expenses and income items; it is a profit and loss statement, disclosing net railway operating income on a quarterly and year-to-date basis for the current and prior years. *See* 49 CFR 1243.1. The Board uses the information in this report to ensure competitive, efficient, and safe transportation through general oversight programs that monitor and forecast the financial and operating condition of railroads, and through regulation of railroad rate and service issues and rail restructuring proposals, including railroad mergers, consolidations, acquisitions of control, and abandonments. Information from these reports is used by the Board, other Federal agencies, and industry groups to monitor and assess industry growth and operations, detect changes in carrier financial stability, and identify trends that may affect the national transportation system. Some of the information from these reports is compiled by the Board in our quarterly Selected Earnings Data Report, which is published on the Board's Web site, *http://www.stb.dot.gov.* The information contained in these reports is not available from any other source.

Collection Number 3

Title: Quarterly Condensed Balance Sheet—Railroads (Form CBS).
OMB Control Number: 2140–0014.
Form Number: None.
Type of Review: Reinstatement without change of previously approved collection.
Respondents: Class I railroads.
Number of Respondents: 7.
Estimated Time per Response: 6 hours.
Frequency of Response: Quarterly.
Total Annual Hour Burden: 168 hours.
Total Annual ''Non-Hour Burden'' Cost: No ''non-hour cost'' burdens associated with this collection have been identified.
Needs and Uses: This collection shows the balance (quarterly and cumulative) for the current and prior year of the carrier's assets and liabilities, gross capital expenditures, and revenue tons carried. *See* 49 CFR 1243.2. The Board uses the information in this report to ensure competitive, efficient, and safe transportation through general oversight programs that monitor and forecast the financial and operating condition of railroads, and through specific regulation of railroad rate and service issues and rail restructuring proposals, including railroad mergers, consolidations, acquisitions of control, and abandonments. Information from these reports is used by the Board, other Federal agencies, and industry groups to assess industry growth and operations, detect changes in carrier financial stability, and identify trends that may affect the national transportation system. Revenue ton-miles, which are reported in these reports, are compiled and published by the Board in its quarterly Selected Earnings Data Report, which is published on the Board's Web site, *http://www.stb.dot.gov.* The information contained in these reports is not available from any other source.

Collection Number 4

OMB Control Number: 2140–0004.
Title: Report of Railroad Employees, Service and Compensation (Wage Forms A and B).
Form Number: None.
Type of Review: Reinstatement without change of previously approved collection.
Respondents: Class I railroads.

Number of Respondents: 7.

Estimated Time per Response: No more than 30 hours per quarterly report and 40 hours per annual summation.

Frequency of Response: Quarterly, with an annual summation.

Total Annual Hour Burden: No more than 1120 hours.

Total Annual ''Non-Hour Burden'' Cost: No ''non-hour cost'' burdens associated with this collection have been identified.

Needs and Uses: This collection shows the number of employees, service hours, and compensation, by employee group (e.g., executive, professional, maintenance-of-way and equipment, and transportation), of the reporting railroads. *See* 49 CFR 1245. The information is used by the Board to forecast labor costs and measure the efficiency of the reporting railroads. The information is also used by the Board to evaluate proposed regulated transactions that may impact rail employees, including mergers and consolidations, acquisitions of control, purchases, and abandonments. Other Federal agencies and industry groups, including the Railroad Retirement Board, Bureau of Labor Statistics, and Association of American Railroads, use the information contained in the reports to monitor railroad operations. Certain information from these reports is compiled and published on the Board's Web site, *http://www.stb.dot.gov.* The information contained in these reports is not available from any other source.

Collection Number 5

Title: Monthly Report of Number of Employees of Class I Railroads (Wage Form C).

OMB Control Number: 2140–0007.

Form Number: STB Form 350.

Type of Review: Reinstatement without change of previously approved collection.

Respondents: Class I railroads.

Number of Respondents: 7.

Estimated Time per Response: 1.25 hours.

Frequency of Response: Monthly.

Total Annual Hour Burden: 105 hours.

Total Annual ''Non-Hour Burden'' Cost: No ''non-hour cost'' burdens associated with this collection have been identified.

Needs and Uses: This collection shows, for each reporting carrier, the average number of employees at mid-month in the six job-classification groups that encompass all railroad employees. *See* 49 CFR 1246. The information is used by the Board to forecast labor costs and measure the efficiency of the reporting railroads. The information is also used by the Board to evaluate the impact on rail employees of proposed regulated transactions, including mergers and consolidations, acquisitions of control, purchases, and abandonments. Other Federal agencies and industry groups, including the Railroad Retirement Board, Bureau of Labor Statistics, and Association of American Railroads, use the information contained in these reports to monitor railroad operations. Certain information from these reports is compiled and published on the Board's Web site, *http://www.stb.dot.gov.* The information contained in these reports is not available from any other source.

Collection Number 6

Title: Annual Report of Cars Loaded and Cars Terminated.

OMB Control Number: 2140–0011.

Form Number: Form STB–54.

Type of Review: Reinstatement without change of previously approved collection.

Number of Respondents: 7.

Estimated Time per Response: 4 hours.

Frequency of Response: Annual.

Total Annual Hour Burden: 28 hours.

Total Annual ''Non Hour Burden'' Cost: No ''non-hour cost'' burdens associated with this collection have been identified.

Needs and Uses: This collection reports the number of cars loaded and cars terminated on the reporting carrier's line. *See* 49 CFR 1247. Information in this report is entered into the Board's URCS, the uses of which are explained under Collection Number 1. There is no other source for the information contained in this report.

Collection Number 7

OMB Control Number: 2140–0001.

Title: Quarterly Report of Freight Commodity Statistics (Form QCS).

Form Number: None.

Type of Review: Reinstatement without change of previously approved collection.

Respondents: Class I railroads.

Number of Respondents: 7.

Estimated Time per Response: 217 hours.

Frequency of Response: Quarterly, with an annual summation.

Total Annual Hour Burden: 6,076 hours annually.

Total Annual ''Non-Hour Burden'' Cost: No ''non-hour cost'' burdens associated with this collection have been identified.

Needs and Uses: This collection, which is based on information contained in carload waybills used by railroads in the ordinary course of business, reports car loadings and total revenues by commodity code for each commodity that moved on the railroad during the reporting period. *See* 49 CFR 1248. Information in this report is entered into the Board's URCS, the uses of which are explained under Collection Number 1. There is no other source for the information contained in this report.

SUPPLEMENTARY INFORMATION: Under the PRA, a Federal agency conducting or sponsoring a collection of information must display a currently valid OMB control number. A collection of information, which is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c), includes agency requirements that persons submit reports, keep records, or provide information to the agency, third parties, or the public. Under the PRA and 5 CFR 1320.8, 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. Section 3507(b) of the PRA requires, concurrent with an agency's submitting a collection to OMB for approval, a 30-day notice and comment period through publication in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information.

Dated: May 7, 2012.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2012–11272 Filed 5–9–12; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0701]

Agency Information Collection Activities (Bereaved Family Member Satisfaction Survey) Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and

includes the actual data collection instrument.

DATES: Comments must be submitted on or before June 11, 2012.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov;* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0701'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7479, fax (202) 632–7583 or email *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0701.''

SUPPLEMENTARY INFORMATION:

Title: Bereaved Family Member Satisfaction Survey, VA Form 10–21081(NR).

OMB Control Number: 2900–0701.

Type of Review: Extension of a currently approve collection.

Abstract: The data collected on VA Form 10–21081(NR) will be use to survey family members of deceased veterans on their satisfaction with the quality care provided to their love one prior to his or her death at a VA facility.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on February 28, 2012 at pages 12109–12110.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,833 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 11,00.

Dated: May 4, 2012.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2012–11213 Filed 5–9–12; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0113]

Proposed Information Collection (Application for Fee or Personnel Designation) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine applicants' qualifications as a fee appraiser or compliance inspector.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before July 9, 2012.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0113'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or Fax (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Application for Fee or Personnel Designation, VA Form 26–6681.

OMB Control Number: 2900–0113.

Type of Review: Extension of a currently approved collection.

Abstract: Applicants complete VA form 26–6681 to apply for a position as a designate fee appraiser or compliance inspector. VA will use the data collected to determine the applicant's experience in the real estate valuation field.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,000 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 2,000.

Dated: May 4, 2012.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2012–11215 Filed 5–9–12; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0674]

Agency Information Collection (Clarification of a Notice of Disagreement) Activities Under OMB Review

AGENCY: Board of Veterans' Appeals, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Board of Veterans' Appeals (BVA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before June 11, 2012.

ADDRESSES: Submit written comments on the collection of information through

www.Regulations.gov or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0674'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7479, FAX (202) 632–7634 or email *denise.mclamb@mail.va.gov*. Please refer to ''OMB Control No. 2900–0674.''

SUPPLEMENTARY INFORMATION:

Title: Clarification of Notice of Disagreement.

OMB Control Number: 2900–0674.

Type of Review: Extension of a currently approved collection.

Abstract: A Notice of Disagreement (NOD) is a written communication from a claimant or his or her representative to express disagreement or dissatisfaction with the result of an adjudicative determination by the agency of original jurisdiction (AOJ). The data collected will be used by the AOJ to reexamine the issues in dispute and to determine if additional review or development is warranted.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on February 28, 2012, at page 12109.

Affected Public: Individuals or households.

Estimated Total Annual Burden: 135,505.

Estimated Average Burden per Respondent: 1 hour.

Frequency of Response: On occasion.

Estimated Total Number of Respondents: 135,505.

Dated: May 4, 2012.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2012–11216 Filed 5–9–12; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 77 Thursday,
No. 91 May 10, 2012

Part II

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Chapter 1
Federal Acquisition Regulations; Final Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket FAR 2012–0080, Sequence 4]

Federal Acquisition Regulation; Federal Acquisition Circular 2005–59; Introduction

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of final and interim rules.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) in this Federal Acquisition Circular (FAC) 2005–59. A companion document, the *Small Entity Compliance Guide* (SECG), follows this FAC. The FAC, including the SECG, is available via the Internet at *http://www.regulations.gov.*

DATES: For effective dates and comment dates see separate documents, which follow.

FOR FURTHER INFORMATION CONTACT: The analyst whose name appears in the table below in relation to each FAR case. Please cite FAC 2005–59 and the specific FAR case numbers. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755.

LIST OF RULES IN FAC 2005–59

Item	Subject	FAR Case	Analyst
I	Prohibition on Contracting With Inverted Domestic Corporations	2012–013	Jackson.
II	Free Trade Agreement—Colombia	2012–012	Davis.
III	Revision of Cost Accounting Standards Threshold	2012–003	Chambers.

SUPPLEMENTARY INFORMATION: Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these FAR cases, refer to the specific item numbers and subject set forth in the documents following these item summaries. FAC 2005–59 amends the FAR as specified below:

Item I—Prohibition on Contracting With Inverted Domestic Corporations (FAR Case 2012–013) (Interim)

This interim rule implements section 738 of Division C of the Consolidated Appropriations Act, 2012 (Pub. L. 112–74), which prohibits the award of contracts using Fiscal Year 2012 appropriated funds to any foreign incorporated entity that is treated as an inverted domestic corporation or to any subsidiary of such an entity. This interim rule extends an existing prohibition that applied to use of Fiscal Years 2008 through 2010 funds. Contracting officers are prohibited from awarding contracts using appropriated funds to any foreign incorporated entity that is treated as an inverted domestic corporation or to any subsidiary of such entity, unless an exception applies. The exceptions are at FAR 9.108–2. This rule is not expected to have an effect on small business because this rule will only impact an offeror that is an inverted domestic corporation and wants to do business with the Government. Small business concerns are unlikely to have been incorporated in the United States and then reincorporated in a tax haven.

Item II—Free Trade Agreement—Colombia (FAR Case 2012–012)

This interim rule implements a new Free Trade Agreement with Colombia (see the United States—Colombia Trade Promotion Agreement Implementation Act (Pub. L. 112–42) (19 U.S.C. 3805 note)).

This Trade Promotion Agreement is a free trade agreement that provides for mutually non-discriminatory treatment of eligible products and services from Colombia. This interim rule is not expected to have a significant economic impact on a substantial number of small entities.

Item III—Revision of Cost Accounting Standards Threshold (FAR Case 2012–003)

This final rule revises the cost accounting standards (CAS) threshold in order to implement in the FAR a recent rule of the Cost Accounting Standards Board and statutory requirements. The threshold now equals the Truth in Negotiations Act (TINA) threshold, currently $700,000. There is no impact on small businesses as they are exempt from CAS pursuant to 48 CFR 9903.201–1(b).

Dated: May 3, 2012.

Laura Auletta,

Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

Federal Acquisition Circular (FAC) 2005–59 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005–59 is effective May 10, 2012, except for Item II which is effective May 15, 2012.

Dated: May 3, 2012.

Richard Ginman,

Director, Defense Procurement and Acquisition Policy.

Dated: May 2, 2012.

Joseph A. Neurauter,

Senior Procurement Executive/Deputy CAO, Office of Acquisition Policy, U.S. General Services Administration.

Dated: May 3, 2012.

William P. McNally,

Assistant Administrator for Procurement, National Aeronautics and Space Administration.

[FR Doc. 2012–11147 Filed 5–9–12; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 9 and 52

[FAC 2005–59; FAR Case 2012–013; Item I; Docket 2012–0013, Sequence 1]

RIN 9000–AM22

Federal Acquisition Regulation; Prohibition on Contracting With Inverted Domestic Corporations

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule.

SUMMARY: DoD, GSA, and NASA are issuing an interim rule amending the Federal Acquisition Regulation (FAR) to implement a section of the Consolidated Appropriations Act, 2012, that prohibits the award of contracts using appropriated funds to any foreign incorporated entity that is treated as an inverted domestic corporation or to any subsidiary of such entity.

DATES: *Effective Date:* May 10, 2012.

Comment Date: Interested parties should submit written comments to the Regulatory Secretariat on or before July 9, 2012 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2005–59, FAR Case 2012–013 by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching ''FAR Case 2012–013''. Select the link ''Submit a Comment'' that corresponds with ''FAR Case 2012–013''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''FAR Case 2012–013'' on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), ATTN: Hada Flowers, 1275 First Street NE., 7th floor, Washington, DC 20417.

Instructions: Please submit comments only and cite FAC 2005–59, FAR Case 2012–013, in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Michael O. Jackson, Procurement Analyst, at 202–208–4949, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite FAC 2005–59, FAR Case 2012–013.

SUPPLEMENTARY INFORMATION:

I. Background

This rule implements section 738 of Division C of the Consolidated Appropriations Act, 2012 (Pub. L. 112–74), which was signed on December 23, 2011. The same Governmentwide restrictions are already incorporated in the FAR for funds appropriated in Fiscal Years 2008 through 2010, under FAR Case 2008–009, which published as an interim rule in the **Federal Register** at 74 FR 31561 on July 1, 2009, and as a final rule which published in the **Federal Register** at 76 FR 31410 on May 31, 2011.

Section 738 of Division C extends to the use of Federal appropriated funds for Fiscal Year 2012, the prohibition against contracting with any inverted domestic corporation, as defined at section 835(b) of the Homeland Security Act of 2002 (Pub. L. 107–296, 6 U.S.C. 395(b)) or any subsidiary of such an entity.

An inverted domestic corporation is one that used to be incorporated in the United States, or used to be a partnership in the United States, but now is incorporated in a foreign country, or is a subsidiary whose parent corporation is incorporated in a foreign country. See the definition of inverted domestic corporation at FAR 9.108–1.

As in past consolidated appropriations acts that prohibited contracting with inverted domestic corporations, the prohibition does not apply when using Fiscal Year 2012 funds for a contract entered into before the date the funds were appropriated (December 23, 2011), or for any order issued pursuant to such contract. A paragraph has been added to FAR 52.209–10, Prohibition on Contracting with Inverted Domestic Corporations, to refer to the FAR 9.108–2 exceptions to the prohibition.

II. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

III. Regulatory Flexibility Act

The Department of Defense (DoD), the General Services Administration (GSA), and the National Aeronautics and Space Administration (NASA) do not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because this rule will only impact an offeror that is an inverted domestic corporation and wants to do business with the Government. It is expected that the number of entities impacted by this rule will be minimal. Small business concerns are unlikely to have been incorporated in the United States and then reincorporated in a tax haven; the major players in these transactions are reportedly the very large multinational corporations. No domestic entities will be impacted by this rule. For the definition of ''small business,'' the Regulatory Flexibility Act refers to the Small Business Act, which in turn allows the U.S. Small Business Administration (SBA) Administrator to specify detailed definitions or standards (5 U.S.C. 601(3) and 15 U.S.C. 632(a)). The SBA regulations at 13 CFR 121.105 discuss who is a small business: ''(a)(1) Except for small agricultural cooperatives, a business concern eligible for assistance from SBA as a small business is a business entity organized for profit, with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor.'' Therefore, an Initial Regulatory Flexibility Analysis has not been performed. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 610 (FAR Case 2012–013), in correspondence.

IV. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

V. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because it implements section 738 of Division C of Public Law 112–74, which went into effect on December 23, 2011. Contracting officers who violate this prohibition may be subject to prosecution for violation of the Anti-Deficiency Act. However, pursuant to 41 U.S.C. 1707 and FAR 1.501–3(b), DoD, GSA, and NASA will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 9 and 52

Government procurement.

Dated: May 3, 2012.

Laura Auletta,

Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 9 and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 9 and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 9—CONTRACTOR QUALIFICATIONS

■ 2. Amend section 9.108–2 by—

■ a. In paragraph (a), revising the first sentence; and removing from the second sentence ''2008 and 2009'' and adding ''2008 through 2010'' in its place; and

■ b. Adding paragraph (b)(4).

The revised and added text reads as follows:

9.108–2 Prohibition.

(a) Section 738 of Division C of the Consolidated Appropriations Act, 2012 (Pub. L. 112–74) prohibits the use of 2012 appropriated funds for contracting with any foreign incorporated entity that is treated as an inverted domestic corporation, or with a subsidiary of such a corporation. * * *

(b) * * *

(4) When using Fiscal Year 2012 funds for any contract entered into before December 23, 2011, or for any order issued pursuant to such contract.

9.108–3 [Amended]

■ 3. Amend section 9.108–3 by removing from paragraph (a) ''funds, an'' and adding ''funds or Fiscal Year 2012 funds, an'' in its place.

9.108–5 [Amended]

■ 4. Amend section 9.108–5 by removing from the introductory text ''2010, unless'' and adding ''2010 or in Fiscal Year 2012, unless'' in its place.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.204–8 [Amended]

■ 5. Amend section 52.204–8 by revising the date of the provision to read ''(MAY 2012)''; and removing from paragraph (c)(1)(v) ''2008, 2009 or 2010'' and adding ''2008, 2009, 2010, or 2012'' in its place.

■ 6. Amend section 52.209–10 by revising the date of the clause; and adding paragraph (c) to read as follows:

52.209–10 Prohibition on Contracting with Inverted Domestic Corporations.

* * * * *

Prohibition on Contracting with Inverted Domestic Corporations (MAY 2012)

* * * * *

(c) Exceptions to this prohibition are located at 9.108–2.

* * * * *

■ 7. Amend section 52.212–5 by revising the date of the clause, and paragraph (b)(8) to read as follows:

52.212–5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

* * * * *

Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items (MAY 2012)

* * * * *

(b) * * *

(8) *52.209–10,* Prohibition on Contracting with Inverted Domestic Corporations (MAY 2012) (section 738 of Division C of Pub. L. 112–74, section 740 of Division C of Pub. L. 111–117, section 743 of Division D of Pub. L. 111–8, and section 745 of Division D of Pub. L. 110–161).

* * * * *

[FR Doc. 2012–11148 Filed 5–9–12; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 25 and 52

[FAC 2005–59; FAR Case 2012–012; Item II; Docket 2012–0012, Sequence 1]

RIN 9000–AM24

Federal Acquisition Regulation; Free Trade Agreement—Colombia

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule.

SUMMARY: DoD, GSA, and NASA are issuing an interim rule amending the Federal Acquisition Regulation (FAR) to implement the United States-Colombia Trade Promotion Agreement. This Trade Promotion Agreement is a free trade agreement that provides for mutually non-discriminatory treatment of eligible products and services from Colombia.

DATES: *Effective Date:* May 15, 2012.

Comment Date: Interested parties should submit written comments to the Regulatory Secretariat on or before July 9, 2012 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2005–59, FAR Case 2012–012, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching ''FAR Case 2012–012''. Select the link ''Submit a Comment'' that corresponds with ''FAR Case 2012–012.'' Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''FAR Case 2012–012'' on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), ATTN: Hada Flowers, 1275 First Street NE., 7th Floor, Washington, DC 20417.

Instructions: Please submit comments only and cite FAC 2005–59, FAR Case 2012–012, in all correspondence related

to this case. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Cecelia L. Davis, Procurement Analyst, at 202–219–0202 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAC 2005–59, FAR Case 2012–012.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA are issuing an interim rule amending the Federal Acquisition Regulation (FAR), to amend FAR part 25 and the corresponding provisions and clauses in FAR part 52 to implement the United States-Colombia Trade Promotion Agreement Implementation Act (Pub. L. 112–42) (19 U.S.C. 3805 note).

This Trade Promotion Agreement is designated in the FAR as the Colombia Free Trade Agreement (FTA). The FTA provides for—

- Waiver of the applicability of the Buy American statute (41 U.S.C. chapter 83) for some foreign supplies and construction materials from Colombia; and
- Applicability of specified procurement procedures designed to ensure fairness in the acquisition of supplies and services (see FAR 25.408).

II. Discussion and Analysis

This interim rule adds Colombia to the definition of ''Free Trade Agreement country'' in multiple locations in the FAR.

The Colombia FTA covers acquisition of supplies and services equal to or exceeding $77,494. The threshold for the Colombia FTA is $7,777,000 for construction. The excluded services for the Colombia FTA are the same as for the Bahrain FTA, Dominican Republic-Central American FTA, Chile FTA, NAFTA, Oman FTA, and Peru FTA.

Because the Colombia FTA construction threshold of $7,777,000 is the same as the WTO GPA threshold, no new clause alternates are required for the Buy American Act—Construction Materials under Trade Agreements provision and clause (FAR 52.225–11 and 52.225–12) or the Recovery Act FAR clauses at 52.225–23 and 52.225–24.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

DoD, GSA, and NASA do not expect this interim rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* Although the rule now opens up Government procurement to the goods and services of Colombia, DoD, GSA, and NASA do not anticipate any significant economic impact on U.S. small businesses. The Department of Defense only applies the trade agreements to the non-defense items listed at Defense Federal Acquisition Regulation Supplement 225.401–70, and acquisitions that are set aside or provide other form of preference for small businesses are exempt. FAR 19.502–2 states that acquisitions of supplies or services with an anticipated dollar value between $3,000 and $150,000 (with some exceptions) are automatically reserved for small business concerns.

Therefore, an Initial Regulatory Flexibility Analysis has not been performed. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAC 2005–59, FAR Case 2012–012), in correspondence.

V. Paperwork Reduction Act

This rule affects the certification and information collection requirements in the provisions at FAR 52.212–3, 52.225–4, 52.225–6, and 52.225–11 currently approved under OMB Control Numbers 9000–0136, 9000–0130, 9000–0025, and 9000–0141, respectively, in accordance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The impact, however, is negligible because it is just a question of which category offered goods from Colombia would be listed under.

VI. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because the effective date of the Free Trade Agreement with Colombia is May 15, 2012. This is a reciprocal agreement, approved by Congress and the President of the United States. It is important for the United States Government to honor its new trade obligations to Colombia, as Colombia in turn honors its new trade obligations to the United States. However, pursuant to 41 U.S.C. 1707 and FAR 1.501–3(b), DoD, GSA, and NASA will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 25 and 52

Government procurement.

Dated: May 3, 2012.

Laura Auletta,

Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 25 and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 25 and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 25—FOREIGN ACQUISITION

25.003 [Amended]

■ 3. Amend section 25.003 by removing from paragraph (2) of the definition ''Designated country'', and the definition ''Free Trade Agreement country'' the words ''Chile, Costa Rica'' and adding the words ''Chile, Colombia, Costa Rica'' in their place.

■ 4. Amend section 25.400 by removing from paragraph (a)(2)(ix) ''; and'' and adding '';'' in its place; removing from paragraph (a)(2)(x) '';'' and adding ''; and'' in its place; and adding paragraph (a)(2)(xi) to read as follows:

25.400 Scope of subpart.

(a) * * *

(2) * * *

(xi) Colombia FTA (the United States-Colombia Trade Promotion Agreement Implementation Act (Pub. L. 112–42) (19 U.S.C. 3805 note));

* * * * *

25.401 [Amended]

■ 5. Amend section 25.401 in the table that follows paragraph (b) by removing from the table heading ''CAFTA–DR, Chile'' and adding ''CAFTA–DR, Colombia FTA, Chile'' in its place.

■ 6. Amend section 25.402 by revising the table that follows paragraph (b) to read as follows:

25.402 General.

* * * * *

(b) * * *

Trade agreement	Supply contract (equal to or exceeding)	Service contract (equal to or exceeding)	Construction contract (equal to or exceeding)
WTO GPA	$202,000	$202,000	$7,777,000
FTAs:			
Australia FTA	77,494	77,494	7,777,000
Bahrain FTA	202,000	202,000	10,074,262
CAFTA–DR (Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua)	77,494	77,494	7,777,000
Chile FTA	77,494	77,494	7,777,000
Colombia FTA	77,494	77,494	7,777,000
Korea FTA	100,000	100,000	7,777,000
Morocco FTA	202,000	202,000	7,777,000
NAFTA:			
—Canada	25,000	77,494	10,074,262
—Mexico	77,494	77,494	10,074,262
Oman FTA	202,000	202,000	10,074,262
Peru FTA	202,000	202,000	7,777,000
Singapore FTA	77,494	77,494	7,777,000
Israeli Trade Act	50,000	—	—

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 7. Amend section 52.212–5 by revising the date of the clause, and paragraphs (b)(40)(i) and (b)(41) to read as follows:

52.212–5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items.

* * * * *

Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items (MAY 2012)

* * * * *

(b) * * *

__ (40)(i) 52.225–3, Buy American Act—Free Trade Agreements—Israeli Trade Act (MAY 2012) (41 U.S.C. chapter 83, 19 U.S.C. 3301 note, 19 U.S.C. 2112 note, 19 U.S.C. 3805 note, 19 U.S.C. 4001 note, Pub. L. 103–182, 108–77, 108–78, 108–286, 108–302, 109–53, 109–169, 109–283, 110–138, 112–41, and 112–42).

* * * * *

__ (41) 52.225–5, Trade Agreements (MAY 2012) (19 U.S.C. 2501, *et seq.,* 19 U.S.C. 3301 note).

* * * * *

52.225–3 [Amended]

■ 8. Amend section 52.225–3 by revising the date of the clause to read ''(MAY 2012)''; and in paragraph (a) removing from the definition ''Free Trade Agreement country'' the words ''Chile, Costa Rica'' and adding the words ''Chile, Colombia, Costa Rica'' in their place.

52.225–5 [Amended]

■ 9. Amend section 52.225–5 by revising the date of the clause to read ''(MAY 2012)''; and in paragraph (a) removing from paragraph (2) of the definition ''Designated country'' the words ''Chile, Costa Rica'' and adding the words ''Chile, Colombia, Costa Rica'' in their place.

52.225–11 [Amended]

■ 10. Amend section 52.225–11 by revising the date of the clause to read ''(MAY 2012)''; and in paragraph (a) removing from paragraph (2) of the definition ''Designated country'' the words ''Chile, Costa Rica'' and adding the words ''Chile, Colombia, Costa Rica'' in their place.

52.225–23 [Amended]

■ 11. Amend section 52.225–23 by revising the date of the clause to read ''(MAY 2012)''; and in paragraph (a) removing from paragraph (2) of the definitions ''Designated country'' and ''Recovery Act designated country'' the words ''Chile, Costa Rica'' and adding the words ''Chile, Colombia, Costa Rica'' in their place.

[FR Doc. 2012–11149 Filed 5–9–12; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 30 and 52

[FAC 2005–59; FAR Case 2012–003; Item III; Docket 2012–0003, Sequence 1]

RIN 9000–AM25

Federal Acquisition Regulation; Revision of Cost Accounting Standards Threshold

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to revise the threshold for applicability of cost accounting standards in order to implement a recent rule of the Cost Accounting Standards Board and statutory requirements.

DATES: *Effective Date:* May 10, 2012.

FOR FURTHER INFORMATION CONTACT: Mr. Edward N. Chambers, Procurement Analyst, at 202–501–3221 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory

Secretariat at 202–501–4755. Please cite FAC 2005–59, FAR Case 2012–003.

SUPPLEMENTARY INFORMATION:

I. Background

The Cost Accounting Standards (CAS) Board published a final rule in the **Federal Register** at 76 FR 79545, on December 22, 2011, which revised the threshold for the application of CAS from ''$650,000'' to ''the Truth in Negotiations Act (TINA) threshold, as adjusted for inflation (41 U.S.C. 1908 and 41 U.S.C. 1502(b)(1)(B))'' in the CAS provisions and clauses at 48 CFR parts 9901 and 9903. The TINA threshold is adjusted every 5 years for inflation, as required by 41 U.S.C. 1908. Title 41 U.S.C. 1502(b)(1)(B) ties the CAS applicability threshold to the dollar value of the TINA threshold (currently $700,000). The FAR cites the TINA threshold at FAR 15.403–4(a)(1).

II. Discussion and Analysis

This final rule revises the CAS applicability threshold from $650,000 to $700,000 at FAR 30.201–4 and the CAS clauses in the FAR at 52.230–1 through 50.230–5. The FAR replaced ''$650,000'' with ''$700,000'' rather than the phrase ''the Truth in Negotiations Act (TINA) threshold, as adjusted for inflation (41 U.S.C. 1908 and 41 U.S.C. 1502(b)(1)(B))'' (the phrase used by the CAS Board in its rule) as applicable. The FAR made this change from the CAS Board's rule for improved clarity of FAR 30.201–4 and the CAS clauses in the FAR—stating the specific dollar value of the TINA threshold, rather than a reference to the TINA threshold as was done in the CAS Board's final rule. In so doing, no further action will be required by the CAS Board to implement further adjustments for inflation in the future as permitted by the CAS Board's rule; the CAS applicability thresholds in the FAR will be revised every 5 years in the future, whenever the TINA threshold is revised in the FAR as part of the statutory revision of the acquisition thresholds.

Publication of This Final Rule for Public Comment Is Not Required by Statute

''Publication of proposed regulations,'' 41 U.S.C. 1707, is the statute which applies to the publication of the FAR. Paragraph (a)(1) of the statute requires that a procurement policy, regulation, procedure or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because it recognizes actions taken by the Cost Accounting Standards Board that have already been published for public comment; the changes in this rule are made to conform the FAR to the CAS Board final rule published in the **Federal Register** at 76 FR 79545, on December 22, 2011.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because this final rule does not constitute a significant FAR revision within the meaning of FAR 1.501–1 and 41 U.S.C. 1707 and does not require publication for public comment.

V. Paperwork Reduction Act

This rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 30 and 52

Government procurement.

Dated: May 3, 2012.

Laura Auletta,

Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 30 and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 30 and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 30—COST ACCOUNTING STANDARDS ADMINISTRATION

30.201–4 [Amended]

■ 2. Amend section 30.201–4 by removing from paragraph (b)(1) ''$650,000'' and adding ''$700,000'' in its place.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.230–1 [Amended]

■ 3. Amend section 52.230–1 by revising the date of the provision to read ''(MAY 2012)''; and removing from paragraph (a) of the Disclosure Statement I ''$650,000'' and adding ''$700,000'' in its place.

52.230–2 [Amended]

■ 4. Amend section 52.230–2 by revising the date of the clause to read ''(MAY 2012)''; and removing from paragraph (d) ''$650,000'' and adding ''$700,000'' in its place.

52.230–3 [Amended]

■ 5. Amend section 52.230–3 by revising the date of the clause to read ''(MAY 2012)''; and removing from paragraph (d)(2) ''$650,000'' and adding ''$700,000'' in its place.

52.230–4 [Amended]

■ 6. Amend section 52.230–4 by revising the date of the clause to read ''(MAY 2012)''; and removing from paragraph (d)(2) ''$650,000'' and adding ''$700,000'' in its place.

52.230–5 [Amended]

■ 7. Amend section 52.230–5 by revising the date of the clause to read ''(MAY 2012)''; and removing from paragraph (d)(2) ''$650,000'' and adding ''$700,000'' in its place.

[FR Doc. 2012–11151 Filed 5–9–12; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket FAR 2012–0081, Sequence 4]

Federal Acquisition Regulation; Federal Acquisition Circular 2005–59; Small Entity Compliance Guide

AGENCY: Department of Defense (DoD), General Services Administration (GSA),

and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of DOD, GSA, and NASA. This *Small Entity Compliance Guide* has been prepared in accordance with section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of the rule appearing in Federal Acquisition Circular (FAC) 2005–59, which amends the Federal Acquisition Regulation (FAR). Interested parties may obtain further information regarding this rule by referring to FAC 2005–59, which precedes this document. These documents are also available via the Internet at *http://www.regulations.gov.*

DATES: May 10, 2012.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact the analyst whose name appears in the table below. Please cite FAC 2005–59 and the FAR case number. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755.

LIST OF RULES IN FAC 2005–59

Item	Subject	FAR Case	Analyst
I	Prohition on Contracting with Inverted Domestic Corporations	2012–013	Jackson.
II	Free Trade Agreement—Colombia	2012–012	Davis.
III	Revision of Cost Accounting Standards Threshold	2012–003	Chambers.

SUPPLEMENTARY INFORMATION: Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these FAR cases, refer to the specific item numbers and subject set forth in the documents following these item summaries. FAC 2005–59 amends the FAR as specified below:

Item I—Prohibition on Contracting With Inverted Domestic Corporations (FAR Case 2012–013) (Interim)

This interim rule implements section 738 of Division C of the Consolidated Appropriations Act, 2012 (Pub. L. 112–74), which prohibits the award of contracts using Fiscal Year 2012 appropriated funds to any foreign incorporated entity that is treated as an inverted domestic corporation or to any subsidiary of such an entity. This interim rule extends an existing prohibition that applied to use of Fiscal Years 2008 through 2010 funds. Contracting officers are prohibited from awarding contracts using appropriated funds to any foreign incorporated entity that is treated as an inverted domestic corporation or to any subsidiary of such entity, unless an exception applies. The exceptions are at FAR 9.108–2. This rule is not expected to have an effect on small business because this rule will only impact an offeror that is an inverted domestic corporation and wants to do business with the Government. Small business concerns are unlikely to have been incorporated in the United States and then reincorporated in a tax haven.

Item II—Free Trade Agreement—Colombia (FAR Case 2012–012)

This interim rule implements a new Free Trade Agreement with Colombia (see the United States-Colombia Trade Promotion Agreement Implementation Act (Pub. L. 112–42) (19 U.S.C. 3805 note)).

This Trade Promotion Agreement is a free trade agreement that provides for mutually non-discriminatory treatment of eligible products and services from Colombia. This interim rule is not expected to have a significant economic impact on a substantial number of small entities.

Item III—Revision of Cost Accounting Standards Threshold (FAR Case 2012–003)

This final rule revises the cost accounting standards (CAS) threshold in order to implement in the FAR a recent rule of the Cost Accounting Standards Board and statutory requirements. The threshold now equals the Truth in Negotiations Act (TINA) threshold, currently $700,000. There is no impact on small businesses as they are exempt from CAS pursuant to 48 CFR 9903.201–1(b).

Dated: May 3, 2012.

Laura Auletta,

Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2012–11152 Filed 5–9–12; 8:45 am]

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Part III

The President

Proclamation 8815—National Charter Schools Week, 2012

Federal Register
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Thursday, May 10, 2012

Presidential Documents

Title 3—

The President

Proclamation 8815 of May 7, 2012

National Charter Schools Week, 2012

By the President of the United States of America

A Proclamation

As a Nation, we share a responsibility to provide our children with a world-class education. By keeping our young people engaged in learning, we help them develop the skills and values that will not only guide them in life, but also prepare them to thrive in the global economy. For years, charter schools have brought new ideas to the work of educating our sons and daughters, and during National Charter Schools Week, we recognize their role in strengthening American education.

Whether created by parents and teachers or community and civic leaders, charter schools serve as incubators of innovation in neighborhoods across our country. These institutions give educators the freedom to cultivate new teaching models and develop creative methods to meet students' needs. This unique flexibility is matched by strong accountability and high standards, so underperforming charter schools can be closed, while those that consistently help students succeed can serve as models of reform for other public schools.

In an economy where knowledge is our most valuable asset, a good education is no longer just a pathway to opportunity—it is an imperative. Our children only get one chance at an education, and charter schools demonstrate what is possible when States, communities, teachers, parents, and students work together. This week, let us recommit to ensuring all our children receive a high-quality education that expands their horizons, inspires them to develop their talents, and instills in them a sense of possibility for their futures.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim May 6 through May 12, 2012, as National Charter Schools Week. I commend our Nation's charter schools, teachers, and administrators, and I call on States and communities to support charter schools and the students they serve.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of May, in the year of our Lord two thousand twelve, and of the Independence of the United States of America the two hundred and thirty-sixth.

[FR Doc. 2012–11544
Filed 5–9–12; 11:15 am]
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FEDERAL REGISTER

Vol. 77 Thursday,

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Part IV

The President

Notice of May 9, 2012—Continuation of the National Emergency With Respect to the Actions of the Government of Syria

Federal Register
Vol. 77, No. 91
Thursday, May 10, 2012

Presidential Documents

Title 3—

The President

Notice of May 9, 2012

Continuation of the National Emergency With Respect to the Actions of the Government of Syria

On May 11, 2004, pursuant to his authority under the International Emergency Economic Powers Act, 50 U.S.C. 1701–1706, and the Syria Accountability and Lebanese Sovereignty Restoration Act of 2003, Public Law 108–175, the President issued Executive Order 13338, in which he declared a national emergency with respect to the actions of the Government of Syria. To deal with this national emergency, Executive Order 13338 authorized the blocking of property of certain persons and prohibited the exportation or reexportation of certain goods to Syria. The national emergency was modified in scope and relied upon for additional steps taken in Executive Order 13399 of April 25, 2006, Executive Order 13460 of February 13, 2008, Executive Order 13572 of April 29, 2011, Executive Order 13573 of May 18, 2011, Executive Order 13582 of August 17, 2011, Executive Order 13606 of April 22, 2012, and Executive Order 13608 of May 1, 2012.

The President took these actions to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States constituted by the actions of the Government of Syria in supporting terrorism, maintaining its then-existing occupation of Lebanon, pursuing weapons of mass destruction and missile programs, and undermining U.S. and international efforts with respect to the stabilization and reconstruction of Iraq.

While the Syrian regime has reduced the number of foreign fighters bound for Iraq, the regime's own brutality and repression of its citizens who have been calling for freedom and a representative government endangers not only the Syrian people themselves, but could yield greater instability throughout the region. The Syrian regime's actions and policies, including obstructing the Lebanese government's ability to function effectively, pursuing chemical and biological weapons, and supporting terrorist organizations, continue to pose an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States. As a result, the national emergency declared on May 11, 2004, and the measures adopted on that date in Executive Order 13338; on April 25, 2006, in Executive Order 13399; on February 13, 2008, in Executive Order 13460; on April 29, 2011, in Executive Order 13572; on May 18, 2011, in Executive Order 13573; on August 17, 2011, in Executive Order 13582; on April 22, 2012, in Executive Order 13606; and on May 1, 2012, in Executive Order 13608, to deal with that emergency must continue in effect beyond May 11, 2012. Therefore, in accordance with section 202(d) of the National Emergencies Act, 50 U.S.C. 1622(d), I am continuing for 1 year the national emergency declared with respect to the actions of the Government of Syria.

In addition, the United States condemns the Asad regime's use of brutal violence and human rights abuses and calls on the Asad regime to step aside and immediately begin a transition in Syria to a political process that will forge a credible path to a future of greater freedom, democracy, opportunity, and justice. The United States will consider changes in the composition, policies, and actions of the Government of Syria in determining whether to continue or terminate this national emergency in the future. This notice shall be published in the *Federal Register* and transmitted to the Congress.

THE WHITE HOUSE,
May 9, 2012.

[FR Doc. 2012–11582
Filed 5–9–12; 2:00 pm]
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