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

## SMALL BUSINESS ADMINISTRATION

### 13 CFR Part 115

**RIN 3245–AG39**

### Surety Bond Guarantee Program—Quick Bond Application and Agreement

**AGENCY:** Small Business Administration.

**ACTION:** Final rule.

**SUMMARY:** The Small Business Administration (SBA) is issuing this final rule to amend its Surety Bond Guarantee (SBG) rules to implement a streamlined application process in the Prior Approval Program for contract amounts not exceeding $250,000. This rule also makes minor administrative changes to the SBG Program regulations to, among other things, clarify the procedures for submitting application forms and paying fees, and deletes an obsolete reference to a form.

**DATES:** This rule is effective August 15, 2012.

**FOR FURTHER INFORMATION CONTACT:** Ms. Barbara Brannan, Office of Surety Guarantees, U.S. Small Business Administration, 409 Third Street SW., Washington, DC 20416; 202–205–6545, email: *barbara.brannon@sba.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Background Information

Through the Surety Bond Guarantee (SBG) Program, SBA guarantees bid, payment, and performance bonds for contracts up to $2 million for small and emerging contractors who cannot obtain bonds through regular commercial surety channels. SBA's guarantee provides the incentive needed for sureties to bond these contractors, giving them greater access to contracting opportunities. The SBG Program consists of the Prior Approval Program and the Preferred Surety Bond (PSB) Program. In the Prior Approval Program, Sureties must apply to SBA for each bond guarantee and must receive SBA approval before issuing bonds. Sureties in the PSB Program can issue SBA guaranteed bonds without SBA's prior approval.

On February 6, 2012, SBA published a notice of proposed rulemaking with request for comments in the **Federal Register** to implement a streamlined application process in the Prior Approval Program for contract amounts not exceeding $250,000, and to make other minor administrative changes to the SBG Program regulations, including clarifying the procedures for submitting application forms and paying fees, and deleting an obsolete reference to a form. See 77 FR 5721. The comment period was open until April 6, 2012, and SBA received three comments, two from trade associations and one from a contract bond underwriter. All submitters expressed support for the proposed rule, observing that it is consistent with industry practice, and two commenters commended SBA for its efforts to reduce the paperwork burden on contractors and sureties. The trade associations believe that the streamlined process will reduce costs associated with the SBG Program, which may lead to greater participation. One submitter offered suggestions for program enhancements, including changes to the current fee structure and to the notice requirements related to changes in the contract amount. These suggestions are outside the scope of this rule; however, SBA will take them into consideration in the context of any future program review.

Under this new streamlined process involving contracts not exceeding $250,000, the Surety will use the new Quick Bond Guarantee Application and Agreement, SBA Form 990A, which consolidates two of the forms currently used in the SBG Program—SBA Form 990, Surety Bond Agreement and SBA Form 994, Application for Surety Bond Guarantee Assistance. The new process complements the existing industry practice of offering a streamlined bond application for smaller contract amounts. In addition, under this new process, SBA will not require the Principal to complete and submit two other forms for these small contract amounts, including SBA Form 994F; Schedule of Work in Process, and SBA Form 413; Personal Financial Statement. Instead, to mitigate any risk associated with these smaller contract amounts, the new SBA Form 990A requires the Principal to provide a list of the three largest contracts completed in the last 5 years. This final rule also sets forth the circumstances under which SBA Form 990A cannot be used.

This final rule also makes other changes to the existing SBG Program rules, including clarifying that SBA Form 990 or SBA Form 990A must be submitted to and approved by SBA prior to the Surety's execution of the bond (except for bonds issued under surety bonding lines). With respect to the rules regarding surety bonding lines, this final rule removes the reference to SBA Form 994C as this form is no longer used. In addition, with this final rule, SBA is making minor and technical modifications to clarify that Sureties and Principals may make fee payments through electronic means. The Department of Treasury has directed that payments be made by electronic funds transfer when cost-effective, practicable, and consistent with statutory authority. *See* 31 CFR 206.4. The final rule makes minor changes to the language in 13 CFR 115.32(b) and 115.32(d) to provide Sureties and Principals with the flexibility to make these payments electronically, conforming these provisions to the Department of Treasury's requirements.

## II. Section-by-Section Analysis

*Section 115.10.* This section amends the definition of the term ''Prior Approval Agreement'' to add the ''Quick Bond Guarantee Application and Agreement (SBA Form 990A)'' to the agreements into which a Prior Approval Surety may enter with SBA. No changes have been made to this provision as proposed.

*Section 115.30(d)(1).* SBA amends this paragraph to clarify that, where the Surety Bond Guarantee Agreement (SBA Form 990) is used, it must be approved before the Prior Approval Surety executes a Bid or a Final Bond, except in the case of a bonding line under § 115.33(d). This is consistent with 13 CFR 115.19(f), which provides that SBA may deny liability under its guarantee if the Surety executes the bond prior to the date of SBA's guarantee. SBA is also amending this paragraph to clarify that the applicable guarantee fees must be paid in accordance with 13 CFR 115.32.

No changes have been made to this provision as proposed.

*Section 115.30(d)(2).* This new provision implements a streamlined application process for bond guarantees for contracts that do not exceed $250,000. Under this new process, applicants use a new form, the ''Quick Bond Guarantee Application and Agreement (SBA Form 990A)'' in place of SBA Form 990 and SBA Form 994. This new provision requires that the Quick Bond Guarantee Application and Agreement (SBA Form 990A) be submitted to and approved by SBA before the Surety executes the Bid or Final Bond. This provision also requires that the guarantee fees be paid in accordance with 13 CFR 115.32. This provision also sets forth six circumstances under which this streamlined application process may not be used. No changes have been made to this provision as proposed.

*Section 115.32(b).* SBA amends the fourth sentence of this provision to add the requirement that the Principal's fee be remitted to SBA with the new SBA Form 990A, just as it is required to be submitted with SBA Form 990. In addition, SBA is making minor modifications to the rule as proposed to give the Sureties and the Principals the flexibility to pay the fee electronically through the Pay.gov Web site managed by the U.S. Department of Treasury's Financial Management Service. These modifications include deleting the word ''together'' in the sentence to avoid any suggestion that the payment must be made by a paper check that is attached to the SBA Form 990, and deleting the phrase ''by the Surety'' to clarify that the payment may be made by either the Surety or the Principal. By deleting the word ''together'', SBA does not intend to change the requirement that the Principal's fee be remitted before the guarantee application may be approved.

*Section 115.32(c).* SBA amends this paragraph to clarify that the requirements regarding the guarantee fee paid by the Surety apply to the new SBA Form 990A, just as they apply to the SBA Form 990. No changes have been made to this provision as proposed.

*Section 115.32(d)(1).* SBA is deleting the words ''Supplemental Form 990'' from this paragraph to make it clear that this provision applies to bond guarantees approved under the new SBA Form 990A in addition to SBA Form 990. SBA is also adding a sentence to provide that, in notifying SBA of any increase or decrease in the Contract or bond amount, the Surety must use the same form that it used in applying for the original bond guarantee. No changes have been made to this provision as proposed.

*Section 115.32(d)(2).* SBA is making minor modifications to the rule as proposed by revising this provision to give Principals and Sureties the flexibility to remit the required fees electronically through the Pay.gov Web site. The modifications include deleting the word ''check'' throughout the provision.

*Section 115.33(d).* SBA is eliminating references to the ''Surety Bond Guarantee Review Update (SBA Form 994C)'' throughout this provision because the form is no longer used. No changes have been made to this provision as proposed.

**Compliance With Executive Orders 12866, 12988, 13132, and 13563, the Paperwork Reduction Act (44 U.S.C. Ch. 35) and the Regulatory Flexibility Act (5 U.S.C. 601–612)**

*Executive Order 12866*

The Office of Management and Budget (OMB) has determined that this final rule does not constitute a significant regulatory action under Executive Order 12866. This final rule is also not a major rule under the Congressional Review Act.

*Executive Order 12988*

This action meets applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have retroactive or preemptive effect.

*Executive Order 13132*

For the purposes of Executive Order 13132, SBA has determined that this final rule will not have substantial, direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, for the purpose of Executive Order 13132, Federalism, SBA has determined that this final rule has no federalism implications warranting preparation of a federalism assessment.

*Executive Order 13563*

For the purposes of Executive Order 13563, SBA discussed implementing a streamlined application process with several surety industry associations and surety company representatives. The final application reflects the feedback received from these sources, particularly the incorporation of best practices used throughout the surety industry. SBA also solicited public comments as part of the standard rule making process. Those comments are described above.

*Paperwork Reduction Act, 44 U.S.C. Ch 35*

SBA has determined that this final rule imposes additional reporting and recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C. chapter 35. SBA included a request for comments on the Quick Bond Guarantee Application and Agreement (SBA Form 990A) in the proposed rule that was published in the **Federal Register** on February 6, 2012 at 77 FR 5721. The agency received three comments in response to this request during the 60-day comment period. All of the submitters expressed support for this streamlined bond guarantee application process, including the belief that it would reduce the burden on sureties and small business contractors. SBA has not modified this information collection; it is the same as described in the proposed rule. As required by law, SBA has submitted SBA Form 990A to the Office of Management and Budget (OMB) for review and approval. The information submitted to OMB for review is available at *http://www.reginfo.gov/public/jsp/PRA/praDashboard.jsp.*

A summary description of this information collection, the respondents, and the estimate of the annual hour burden resulting from this new process is provided below. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering the data needed, and completing and reviewing the responses.

*Title:* Quick Bond Surety Guarantee Application and Agreement (SBA Form 990A).

*Description:* The Quick Bond Surety Guarantee Application and Agreement is a combination application and bond guarantee agreement that would be used in the Prior Approval Program for contract amounts that do not exceed $250,000. It is a streamlined alternative to the existing surety bond application and agreement, the SBA Forms 990 and 994 (OMB Control Number 3245–0007). The information would be used to evaluate whether the applicant small business meets the program eligibility criteria and the likelihood that it will successfully complete performance on the contract.

*OMB Control Number:* New Collection.

*Description of and Estimated Number of Respondents.* This proposed new collection would be submitted by small businesses seeking to obtain a bond in order to bid or perform on a contract,

and by surety companies and their agents or representatives. Based on the current volume of bonds for contracts up to $250,000, SBA estimates that approximately 500 small businesses and 13 Prior Approval Sureties would submit this streamlined application and agreement form.

*Estimated Response Time:* It is estimated that each applicant would require approximately 5 minutes to complete the proposed new form.

*Estimated Number of Responses:* 4,450. This number is based on SBA's projection of program activity during Fiscal Year 2012.

*Total Estimated Annual Hour Burden:* 369 hours.

*Estimated Annual Cost Burden:* $18,941.

*Regulatory Flexibility Act, 5 U.S.C. 601–612*

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601, requires administrative agencies to consider the effect of their actions on small entities, small non-profit enterprises, and small local governments. Pursuant to RFA, when an agency issues a rulemaking, the agency must prepare a regulatory flexibility analysis which describes the impact of the rule on small entities. However, section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant impact on a substantial number of small entities. Within the meaning of RFA, SBA certifies that this final rule will not have a significant economic impact on a substantial number of small entities. There are 13 Sureties that currently participate in the SBA Prior Approval Program, and no part of this final rule would impose any significant additional cost or burden on them.

**List of Subjects in 13 CFR Part 115**

Claims, Reporting and recordkeeping requirements, Small businesses, Surety bonds.

For the reasons stated in the preamble, SBA amends 13 CFR part 115 as follows:

## PART 115—SURETY BOND GUARANTEE

■ 1. The authority citation for part 115 continues to read as follows:

**Authority:** 5 U.S.C. app. 3; 15 U.S.C. 687b, 687c, 694a, 694b note, Pub. L. 106–554; Pub. L. 108–447, Div K, Sec. 203; Pub. L. 110–246, Sec. 12079, 122 Stat. 1651; and Pub. L. 111–5, 123 Stat. 115.

### § 115.10 [Amended]

■ 2. In § 115.10 amend the definition of ''Prior Approval Agreement'' by adding ''or Quick Bond Guarantee Application and Agreement (SBA Form 990A)'' after ''(SBA Form 990)''.

■ 3. Amend § 115.30 by revising paragraph (d) to read as follows:

### § 115.30 Submission of Surety's guarantee application.

* * * * *

(d) *Prior Approval Agreement.* To apply for a bond guarantee, a Prior Approval Surety must submit one of the following forms:

(1) *Surety Bond Guarantee Agreement (SBA Form 990).* A Prior Approval Surety may complete and submit a Surety Bond Guarantee Agreement (SBA Form 990) to SBA for each Bid Bond or Final Bond, and this Form must be approved by SBA prior to the Surety's Execution of the bond, except in the case of a surety bonding line approved by SBA under § 115.33(d). The guarantee fees owed in connection with Final Bonds must be paid in accordance with § 115.32.

(2) *Quick Bond Guarantee Application and Agreement (SBA Form 990A)*—(i) *General procedures.* Except as provided in paragraph (d)(2)(ii) of this section, a Prior Approval Surety may complete and submit the Quick Bond Guarantee Application and Agreement (SBA Form 990A) to SBA for each Bid Bond or Final Bond, and this Form must be approved by SBA prior to the Surety's Execution of the bond. SBA Form 990A is a streamlined application form that may be used only for contract amounts that do not exceed $250,000 at the time of application. The guarantee fees owed in connection with Final Bonds must be paid in accordance with § 115.32.

(ii) *Exclusions.* SBA Form 990A may not be used under the following circumstances:

(A) The Principal has previously defaulted on any contract or has had any claims or complaints filed against it with any court or administrative agency;

(B) Work on the Contract commenced before a bond is Executed;

(C) The time for completion of the Contract or the warranty/maintenance period exceeds 12 months;

(D) The Contract includes a provision for liquidated damages that exceed $250 per day;

(E) The Contract involves asbestos abatement, hazardous waste removal, demolition, or timber sales; or

(F) The bond would be issued under a surety bonding line approved under § 115.33.

■ 4. Amend § 115.32 as follows:

■ a. Revise the fourth sentence of paragraph (b) to read as follows;

■ b. Revise the second sentence of paragraph (c) to read as follows;

■ c. Amend the second sentence of paragraph (d)(1) by removing the words ''(Supplemental Form 990)'' and add a new sentence at the end of paragraph (d)(1) to read as follows; and

■ d. Revise paragraph (d)(2) to read as follows.

### § 115.32 Fees and Premiums.

* * * * *

(b) * * * The Principal's fee is rounded to the nearest dollar, and is to be remitted to SBA with the form submitted under either § 115.30(d)(1) or (2).

(c) * * * Subject to § 115.18(a)(4), the Surety must pay SBA a guarantee fee on each guaranteed bond (other than a Bid Bond) within 60 calendar days after SBA's approval of the Prior Approval Agreement. * * *

(d) * * *

(1) * * * In notifying SBA of any increase or decrease in the Contract or bond amount, the Surety must use the same form (SBA Form 990 or SBA Form 990A) that it used in applying for the original bond guarantee.

(2) *Increases; fees.* The payment for the increase in the Principal's guarantee fee, which is computed on the increase in the Contract amount, is due upon notification of the increase in the Contract or bond amount under this paragraph (d). If the increase in the Principal's fee is less than $40, no payment is due until the total amount of increases in the Principal's fee equals or exceeds $40. The Surety's payment of the increase in the Surety's guarantee fee, computed on the increase in the bond Premium, must be submitted to SBA within 60 calendar days of SBA's approval of the Prior Approval Agreement, unless the amount of such increased guarantee fee is less than $40. When the total amount of increase in the guarantee fee equals or exceeds $40, the Surety must remit the fee within 60 calendar days.

* * * * *

■ 5. Amend § 115.33 by revising paragraphs (d)(1) and (d)(2) to read as follows:

### § 115.33 Surety bonding line.

* * * * *

(d) * * *

(1) *Bid Bonds.* Within 15 business days after the Execution of any Bid Bonds under a bonding line, the Surety must submit a ''Surety Bond Guarantee Underwriting Review'' (SBA Form 994B) to SBA for approval. If the Surety fails to submit the form within this time period, SBA's guarantee of the bond will be void from its inception unless SBA

determines otherwise upon a showing that a valid reason exists why the timely submission was not made.

(2) *Final Bonds.* Within 15 business days after the Execution of any Final Bonds under a bonding line, the Surety must submit a Surety Bond Guarantee Underwriting Review (SBA Form 994B) and a Surety Bond Guarantee Agreement (SBA Form 990) to SBA for approval. If the surety fails to submit these forms within the time period or the guarantee fees are not paid in accordance with § 115.32, SBA's guarantee of the bond will be void from its inception unless SBA determines otherwise upon a showing that the Contract is not in default and a valid reason exists why the timely submission was not made.

* * * * *

Dated: July 2, 2012.

**Karen G. Mills,**

*Administrator.*

[FR Doc. 2012–17104 Filed 7–13–12; 8:45 am]

**BILLING CODE 8025–01–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 97

**[Docket No. 30849; Amdt. No. 3485]**

## Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

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

**ACTION:** Final rule.

**SUMMARY:** This rule establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

**DATES:** This rule is effective July 16, 2012. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 16, 2012.

**ADDRESSES:** Availability of matter incorporated by reference in the amendment is as follows:

*For Examination*—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located;
3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or
4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

*Availability*—All SIAPs are available online free of charge. Visit *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

**FOR FURTHER INFORMATION CONTACT:** Richard A. Dunham III, Flight Procedure Standards Branch (AFS–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 rule amends Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (FDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of Title 14 of the Code of Federal Regulations.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAP and the corresponding effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

### The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP as modified by FDC/P–NOTAMs.

The SIAPs, as modified by FDC P–NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs 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 97**

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC on June 22, 2012.

**John Duncan,**

*Deputy Director, Flight Standards Service.*

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, part 97, 14 CFR part 97, is amended by amending Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

## PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

**§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 and 97.35 [Amended]**

■ 2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

** * * Effective Upon Publication*

| AIRAC Date | State | City | Airport | FDC No. | FDC Date | Subject |
|---|---|---|---|---|---|---|
| 26–Jul–12 | IA | Pocahontas | Pocahontas Muni | 2/1165 | 6/18/12 | RNAV (GPS) RWY 30, Orig |
| 26–Jul–12 | CT | Willimantic | Windham | 2/1389 | 6/18/12 | VOR A, Amdt 9 |
| 26–Jul–12 | RI | North Kingstown | Quonset State | 2/2175 | 6/18/12 | VOR A, Amdt 5A |
| 26–Jul–12 | RI | North Kingstown | Quonset State | 2/2176 | 6/18/12 | ILS OR LOC RWY 16, Amdt 10A |
| 26–Jul–12 | RI | North Kingstown | Quonset State | 2/2177 | 6/18/12 | RNAV (GPS) RWY 16, Orig |
| 26–Jul–12 | RI | North Kingstown | Quonset State | 2/2178 | 6/18/12 | VOR RWY 34, Amdt 2 |
| 26–Jul–12 | RI | North Kingstown | Quonset State | 2/2179 | 6/18/12 | RNAV (GPS) RWY 34, Orig |
| 26–Jul–12 | PA | Myerstown | Deck | 2/3324 | 6/18/12 | VOR/DME OR GPS A, Amdt 1B |
| 26–Jul–12 | CA | Los Angeles | Los Angeles Intl | 2/4270 | 6/18/12 | ILS OR LOC RWY 25L, Amdt 12, ILS RWY 25L (CAT II), Amdt 12, ILS RWY 25L (CAT III), Amdt 12 |
| 26–Jul–12 | CA | Los Angeles | Los Angeles Intl | 2/4271 | 6/18/12 | ILS OR LOC RWY 24R, Amdt 24, ILS RWY 24R (CAT II), Amdt 24, ILS RWY 24R (CAT III), Amdt 24 |
| 26–Jul–12 | IA | Des Moines | Des Moines Intl | 2/4311 | 6/18/12 | ILS OR LOC RWY 5, Orig-A |
| 26–Jul–12 | FL | Tampa | Tampa Intl | 2/5107 | 6/18/12 | RNAV (GPS) Z RWY 19L, Amdt 2A |
| 26–Jul–12 | FL | Tampa | Tampa Intl | 2/5111 | 6/18/12 | RNAV (GPS) RWY 1R, Amdt 2A |
| 26–Jul–12 | FL | Tampa | Tampa Intl | 2/5114 | 6/18/12 | RNAV (RNP) Y RWY 19L, Amdt 1B |
| 26–Jul–12 | FL | Tampa | Tampa Intl | 2/5119 | 6/18/12 | RNAV (GPS) RWY 1L, Amdt 2 |
| 26–Jul–12 | FL | Tampa | Tampa Intl | 2/5120 | 6/18/12 | RNAV (GPS) RWY 19R, Amdt 2 |
| 26–Jul-12 | FL | Tampa | Tampa Intl | 2/5121 | 6/18/12 | ILS OR LOC RWY 19L, Amdt 40A, ILS RWY 19L (SA CAT I), Amdt 40A ILS RWY 19L (CAT II), Amdt 40A |
| 26–Jul–12 | FL | Tampa | Tampa Intl | 2/5122 | 6/18/12 | ILS OR LOC RWY 1L, Amdt 16B, ILS RWY 1L (SA CAT I), Amdt 16B ILS RWY 1L (CAT II), Amdt 16B ILS RWY 1L (CAT III), Amdt 16B |
| 26–Jul–12 | FL | St Augustine | Northeast Florida Rgnl | 2/5277 | 6/18/12 | VOR RWY 13, Orig-B |
| 26–Jul–12 | FL | St Augustine | Northeast Florida Rgnl | 2/5278 | 6/18/12 | ILS RWY 31, Orig |
| 26–Jul–12 | FL | St Augustine | Northeast Florida Rgnl | 2/5281 | 6/18/12 | RNAV (GPS) RWY 13, Orig |
| 26–Jul–12 | FL | St Augustine | Northeast Florida Rgnl | 2/5283 | 6/18/12 | VOR RWY 31, Orig |
| 26–Jul–12 | FL | St Augustine | Northeast Florida Rgnl | 2/5284 | 6/18/12 | RNAV (GPS) RWY 31, Amdt 1 |

| AIRAC Date | State | City | Airport | FDC No. | FDC Date | Subject |
|---|---|---|---|---|---|---|
| 26–Jul–12 | AL | Montgomery | Montgomery Rgnl (Dannelly Field). | 2/5580 | 6/18/12 | RNAV (GPS) RWY 3, Amdt 1 |
| 26–Jul–12 | AL | Montgomery | Montgomery Rgnl (Dannelly Field). | 2/5582 | 6/18/12 | ILS OR LOC RWY 10, Amdt 23E |
| 26–Jul–12 | TX | El Paso | El Paso Intl | 2/5680 | 6/18/12 | RNAV (RNP) Y RWY 4, Orig |
| 26–Jul–12 | TX | El Paso | El Paso Intl | 2/5681 | 6/18/12 | RNAV (RNP) Z RWY 4, Orig |
| 26–Jul–12 | MI | Detroit | Detroit Metropolitan Wayne County. | 2/6947 | 6/18/12 | ILS OR LOC RWY 22L, Amdt 29 |
| 26–Jul–12 | MI | Detroit | Detroit Metropolitan Wayne County. | 2/6948 | 6/18/12 | ILS OR LOC RWY 21L, Amdt 10A |
| 26–Jul–12 | MI | Detroit | Detroit Metropolitan Wayne County. | 2/6949 | 6/18/12 | ILS OR LOC RWY 27R, Amdt 12 |
| 26–Jul–12 | MI | Detroit | Detroit Metropolitan Wayne County. | 2/6950 | 6/18/12 | ILS PRM RWY 21L (SIMULTANEOUS CLOSE PARALLEL), Orig-A |
| 26–Jul–12 | MI | Detroit | Detroit Metropolitan Wayne County. | 2/6952 | 6/18/12 | ILS Z OR LOC RWY 4L, Amdt 3A, ILS Z RWY 4L (CAT II), Amdt 3A, ILS Z RWY 4L (CAT III), Amdt 3A |
| 26–Jul–12 | MI | Detroit | Detroit Metropolitan Wayne County. | 2/6953 | 6/18/12 | ILS Y PRM RWY 4L (SIMULTANEOUS CLOSE PARALLEL), Orig |
| 26–Jul–12 | MI | Detroit | Detroit Metropolitan Wayne County. | 2/6955 | 6/18/12 | ILS Y RWY 4L, Orig |

[FR Doc. 2012–16431 Filed 7–13–12; 8:45 am]
**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 97

**[Docket No. 30848; Amdt. No. 3484]**

## Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

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

**ACTION:** Final rule.

**SUMMARY:** This rule establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

**DATES:** This rule is effective July 16, 2012. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 16, 2012.

**ADDRESSES:** Availability of matters incorporated by reference in the amendment is as follows:

*For Examination*—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

*Availability*—All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit *http://www.nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

**FOR FURTHER INFORMATION CONTACT:** Richard A. Dunham III, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Divisions, 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 rule amends Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), by establishing, amending, suspending, or revoking SIAPS, Takeoff Minimums and/or ODPS. The complete regulators description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20. The applicable FAA Forms are FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, and 8260–15B when required by an entry on 8260–15A.

The large number of SIAPs, Takeoff Minimums and ODPs, in addition to their complex nature and the need for a special format make publication in the **Federal Register** expensive and

impractical. Furthermore, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their depiction on charts printed by publishers of aeronautical materials. The advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA forms is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs and the effective dates of the, associated Takeoff Minimums and ODPs. This amendment also identifies the airport and its location, the procedure, and the amendment number.

## The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as contained in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPS and Takeoff Minimums and ODPS, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPS contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPS and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedures before adopting these SIAPS, Takeoff Minimums and ODPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs 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 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (air).

Issued in Washington, DC, on June 22, 2012.

**John Duncan,**

*Deputy Director, Flight Standards Service.*

## Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures and/or Takeoff Minimums and/or Obstacle Departure Procedures effective at 0902 UTC on the dates specified, as follows:

## PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

*Effective 26 JULY 2012*

Montgomery, AL, Montgomery Rgnl (Dannelly Field), Takeoff Minimums and Obstacle DP, Amdt 2
Camden, AR, Harrell Field, VOR/DME RWY 1, Amdt 10
Tucson, AZ, Tucson Intl, Takeoff Minimums and Obstacle DP, Amdt 5
Santa Ana, CA, John Wayne Airport-Orange County, LOC BC RWY 1L, Amdt 11
Dover/Cheswold, DE, Delaware Airpark, RNAV (GPS) RWY 9, Amdt 2
Dover/Cheswold, DE, Delaware Airpark, RNAV (GPS) RWY 27, Amdt 1
Dover/Cheswold, DE, Delaware Airpark, VOR RWY 27, Amdt 6B
Pensacola, FL, Pensacola Gulf Coast Rgnl, ILS OR LOC RWY 17, Amdt 14
Pensacola, FL, Pensacola Gulf Coast Rgnl, NDB RWY 35, Amdt 17
Pensacola, FL, Pensacola Gulf Coast Rgnl, RNAV (GPS) RWY 8, Amdt 2
Pensacola, FL, Pensacola Gulf Coast Rgnl, RNAV (GPS) RWY 17, Amdt 2
Pensacola, FL, Pensacola Gulf Coast Rgnl, RNAV (GPS) RWY 26, Amdt 2
Pensacola, FL, Pensacola Gulf Coast Rgnl, RNAV (GPS) RWY 35, Amdt 2
Pensacola, FL, Pensacola Gulf Coast Rgnl, Takeoff Minimums and Obstacle DP, Amdt 1
Pensacola, FL, Pensacola Gulf Coast Rgnl, VOR RWY 8, Amdt 4
Augusta, GA, Augusta Rgnl at Bush Field, ILS OR LOC RWY 17, Amdt 9
Augusta, GA, Augusta Rgnl at Bush Field, ILS OR LOC RWY 35, Amdt 28
Augusta, GA, Augusta Rgnl at Bush Field, RNAV (GPS) RWY 17, Amdt 2
Augusta, GA, Augusta Rgnl at Bush Field, RNAV (GPS) RWY 26, Amdt 1
Augusta, GA, Augusta Rgnl at Bush Field, RNAV (GPS) RWY 35, Amdt 2
Augusta, GA, Augusta Rgnl at Bush Field, RNAV (GPS) Y RWY 8, Amdt 1
Augusta, GA, Augusta Rgnl at Bush Field, RNAV (GPS) Z RWY 8, Orig
Augusta, GA, Augusta Rgnl at Bush Field, Takeoff Minimums and Obstacle DP, Amdt 14
Augusta, GA, Augusta Rgnl at Bush Field, VOR/DME RWY 17, Amdt 4
Griffin, GA, Griffin-Spalding County, GPS RWY 14, Orig-B, CANCELED
Griffin, GA, Griffin-Spalding County, GPS RWY 32, Orig-B, CANCELED
Griffin, GA, Griffin-Spalding County, NDB RWY 32, Orig-B, CANCELED
Griffin, GA, Griffin-Spalding County, RNAV (GPS) RWY 14, Orig
Griffin, GA, Griffin-Spalding County, RNAV (GPS) RWY 32, Orig
Griffin, GA, Griffin-Spalding County, Takeoff Minimums and Obstacle DP, Amdt 1
Swainsboro, GA, East Georgia Regional, ILS OR LOC/DME RWY 14, Amdt 1
Swainsboro, GA, East Georgia Regional, NDB RWY 14, Amdt 2
Swainsboro, GA, East Georgia Regional, RNAV (GPS) RWY 14, Amdt 1A
Swainsboro, GA, East Georgia Regional, RNAV (GPS) RWY 32, Amdt 2
Swainsboro, GA, East Georgia Regional, Takeoff Minimums and Obstacle DP, Amdt 2
Swainsboro, GA, Emanuel County, VOR/DME–A, Amdt 3, CANCELED
Tifton, GA, Henry Tift Myers, ILS OR LOC RWY 33, Amdt 1
Clinton, IA, Clinton Muni, RNAV (GPS) RWY 32, Amdt 1
Indianapolis, IN, Indianapolis Metropolitan, VOR RWY 33, Amdt 10
Louisville, KY, Louisville Intl-Standiford Field, RNAV (RNP) Z RWY 17L, Orig
Louisville, KY, Louisville Intl-Standiford Field, RNAV (RNP) Z RWY 17R, Orig
Louisville, KY, Louisville Intl-Standiford Field, RNAV (RNP) Z RWY 35L, Amdt 1
Louisville, KY, Louisville Intl-Standiford Field, RNAV (RNP) Z RWY 35R, Orig
Paducah, KY, Barkley Rgnl, ILS OR LOC RWY 4, Amdt 10
Benton Harbor, MI, Southwest Michigan Rgnl, ILS OR LOC RWY 28, Amdt 8
Benton Harbor, MI, Southwest Michigan Rgnl, RNAV (GPS) RWY 28, Amdt 2
Detroit, MI, Detroit Metropolitan Wayne County, ILS OR LOC RWY 3R, ILS RWY 3R (CAT II), ILS RWY 3R (CAT III), Amdt 15C
Detroit, MI, Detroit Metropolitan Wayne County, ILS OR LOC RWY 27L, Amdt 3A
Detroit, MI, Detroit Metropolitan Wayne County, ILS PRM RWY 3R, ILS PRM RWY

3R (CAT II), ILS PRM RWY 3R (CAT III), (Simultaneous Close Parallel), Orig-B
Detroit, MI, Detroit Metropolitan Wayne County, ILS Y RWY 22R, Orig-B
Detroit, MI, Detroit Metropolitan Wayne County, ILS Y PRM RWY 22R, Orig-C
Detroit, MI, Detroit Metropolitan Wayne County, ILS Z OR LOC RWY 22R, Amdt 2C
Detroit, MI, Detroit Metropolitan Wayne County, RNAV (GPS) RWY 21L, Amdt 2A
Mackinac Island, MI, Mackinac Island, GPS RWY 26, Orig, CANCELED
Mackinac Island, MI, Mackinac Island, RNAV (GPS) RWY 8, Orig
Mackinac Island, MI, Mackinac Island, RNAV (GPS) RWY 26, Orig
Mackinac Island, MI, Mackinac Island, VOR/DME–A, Amdt 9
Saginaw, MI, Saginaw County H.W. Browne, Takeoff Minimums and Obstacle DP, Amdt 8
Detroit Lakes, MN, Detroit Lakes-Wething Field, VOR RWY 13, Amdt 1
Detroit Lakes, MN, Detroit Lakes-Wething Field, VOR RWY 31, Amdt 1
Lexington, NC, Davidson County, GPS RWY 6, Orig-A, CANCELED
Lexington, NC, Davidson County, GPS RWY 24, Orig-A, CANCELED
Lexington, NC, Davidson County, ILS OR LOC/DME RWY 6, Amdt 1
Lexington, NC, Davidson County, RNAV (GPS) RWY 6, Orig
Lexington, NC, Davidson County, RNAV (GPS) RWY 24, Orig
Lexington, NC, Davidson County, Takeoff Minimums and Obstacle DP, Amdt 1
Washington, NC, Warren Field, VOR/DME RWY 5, Amdt 3
Atkinson, NE., Stuart-Atkinson Muni, RNAV (GPS) RWY 11, Amdt 1
Newark, NJ, Newark Liberty Intl, GLS RWY 4L, Orig-C
Newark, NJ, Newark Liberty Intl, ILS OR LOC RWY 4L, ILS RWY 4L (SA CAT I), ILS RWY 4L (SA CAT II), Amdt 14
Newark, NJ, Newark Liberty Intl, RNAV (GPS) RWY 4L, Amdt 2
Farmingdale, NY, Republic, RNAV (GPS) RWY 1, Amdt 2
Farmingdale, NY, Republic, RNAV (GPS) RWY 19, Amdt 2
Farmingdale, NY, Republic, RNAV (GPS) Y RWY 14, Amdt 2
New York, NY, La Guardia, RNAV (GPS) RWY 31, Amdt 1
Penn Yan, NY, Penn Yan, Takeoff Minimums and Obstacle DP, Amdt 4
Grants Pass, OR, Grants Pass, GPS–A, Amdt 1, CANCELED
Grants Pass, OR, Grants Pass, RNAV (GPS)–A, Orig
Grants Pass, OR, Grants Pass, Takeoff Minimums and Obstacle DP, Amdt 1
Charleston, SC, Charleston AFB/Intl, ILS OR LOC RWY 15, ILS RWY 15 (SA CAT I), ILS RWY 15 (CAT II), Amdt 24
Charleston, SC, Charleston AFB/Intl, RNAV (RNP) Z RWY 3, Orig
Charleston, SC, Charleston AFB/Intl, RNAV (RNP) Z RWY 15, Orig
Charleston, SC, Charleston AFB/Intl, RNAV (RNP) Z RWY 21, Orig
Charleston, SC, Charleston AFB/Intl, RNAV (RNP) Z RWY 33, Orig
Dillon, SC, Dillon County, Takeoff Minimums and Obstacle DP, Amdt 1
Aberdeen, SD, Aberdeen Regional, LOC/DME BC RWY 13, Amdt 10A, CANCELED
Dallas, TX, Collin County Rgnl at Mc Kinney, RNAV (GPS) RWY 18, Amdt 2
Dallas, TX, Collin County Rgnl at Mc Kinney, RNAV (GPS) RWY 36, Amdt 2
Dallas, TX, Collin County Rgnl at Mc Kinney, Takeoff Minimums and Obstacle DP, Amdt 2
Dallas, TX, Collin County Rgnl at Mc Kinney, VOR/DME–A, Amdt 2
Houston, TX, Ellington Field, RNAV (GPS) RWY 22, Amdt 2
Kountze/Silsbee, TX, Hawthorne Field, RNAV (GPS) RWY 13, Amdt 1
Longview, TX, East Texas Rgnl, RNAV (GPS) RWY 18, Amdt 2
Heber, UT, Heber City Muni-Russ McDonald Field, RNAV (GPS)-A, Amdt 2
Abingdon, VA, Virginia Highlands, LOC RWY 24, Amdt 4
Abingdon, VA, Virginia Highlands, RNAV (GPS) RWY 6, Amdt 1
Abingdon, VA, Virginia Highlands, RNAV (GPS) RWY 24, Amdt 1
Everett, WA, Snohomish County (Paine Fld), ILS OR LOC/DME Y RWY 16R, Amdt 22
Everett, WA, Snohomish County (Paine Fld), ILS OR LOC/DME Z RWY 16R, ILS Z RWY 16R (SA CAT II), Orig
Everett, WA, Snohomish County (Paine Fld), RNAV (GPS) RWY 34L, Amdt 1
Everett, WA, Snohomish County (Paine Fld), RNAV (GPS)Y RWY 16R, Amdt 1
Everett, WA, Snohomish County (Paine Fld), RNAV (GPS) Z RWY 16R, Orig
Madison, WI, Dane County Rgnl-Truax Field, RNAV (GPS) RWY 3, Orig
Madison, WI, Dane County Rgnl-Truax Field, RNAV (GPS) RWY 21, Amdt 2
Shawano, WI, Shawano Muni, GPS RWY 29, Orig-A CANCELED
Shawano, WI, Shawano Muni, RNAV (GPS) RWY 12, Orig
Shawano, WI, Shawano Muni, RNAV (GPS) RWY 30, Orig
Pinedale, WY, Ralph Wenz Field, RNAV (GPS) RWY 11, Amdt 2
Pinedale, WY, Ralph Wenz Field, RNAV (GPS) RWY 29, Amdt 2

[FR Doc. 2012–16491 Filed 7–13–12; 8:45 am]

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## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

### 15 CFR Part 772

### Definition of Terms

*CFR Correction*

In Title 15 of the Code of Federal Regulations, Parts 300 to 799, revised as of January 1, 2012, in § 772.1, make the following corrections:

1. On page 635, remove the term ''Ancillary cryptography'',

2. On page 642, add the term ''Explosives'',

3. On page 650, add the term ''Nuclear reactor'',

4. On page 652, remove the Note in the definition of ''Peak power'', and

5. On page 652, add the term ''Port of export''.

■ The text to be added—in alphabetical order—is set forth below:

**772.1 Definitions of terms as used in the Export Administration Regulations (EAR).**

* * * * *

*Explosives.* (Cat 1)—see Annex ''List of Explosives'' located at the end of Category 1 of Supplement No. 1 to Part 774 ''Commerce Control List''.

* * * * *

*Nuclear reactor.* (Cat 0 and 2) includes the items within or attached directly to the reactor vessel, the equipment which controls the level of power in the core, and the components which normally contain, come into direct contact with or control the primary coolant of the reactor core.

* * * * *

*Port of export.* The port where the cargo to be shipped abroad is laden aboard the exporting carrier. It includes, in the case of an export by mail, the place of mailing.

* * * * *

[FR Doc. 2012–17297 Filed 7–13–12; 8:45 am]

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## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

### 15 CFR Part 774

### The Commerce Control List

*CFR Correction*

In Title 15 of the Code of Federal Regulations, Parts 300 to 799, revised as of January 1, 2012, in supplement no. 1 to part 774, make the following corrections:

1. In Category 0:

A. On page 663, in 0A981, add ''N/A'' behind ''LVS:''.

B. On page 665, in 0A985, add the heading ''License Requirements'' above ''Reason for Control''.

C. On page 665, in 0A986, correct the table under ''License Requirements'' to read as set forth below.

D. On page 671, in 0B986, add '', North Korea,'' between ''Iraq'' and ''Rwanda'' in UN Reason for Control.

2. In Category 1:

A. On page 676, in 1A004, add ''(1)'' after the colon, at the beginning of ''Related Definitions''.

B. On page 682, in 1B001, remove ''Note: 1B001.c does not control textile machinery not modified for the above end-uses.''

C. On page 707, in 1C351, after ''Related Definitions;'' remove ''* * *''

and add paragraphs (1) and (2) as set forth below.

3. In Category 2:

A. On page 734, in 2B009, remove the text after ''Related Definitions'' and add ''N/A'' in its place.

B. On page 734, in 2B009, revise the Technical Note to read ''**TECHNICAL NOTE**: For the purpose of 2B009, machines combining the function of spin-forming and flow-forming are regarded as flow-forming machines.''

C. On page 757, in 2E003, in the Notes to Table on Deposition Techniques, in note 15, add the word ''are'' after ''Dielectric layers''.

D. On page 759, in 2E018, in the ''Reasons for Control'', remove ''CC, RS,'', and remove ''License Requirement Notes: See § 743.1 of the EAR for reporting requirements for exports under License Exceptions.''

E. On page 759, in 2E101, add ''(1)'' after the colon at the beginning of ''Related Controls''.

■ The text to be revised and added is set forth below:

**Supplement No. 1 to Part 774—The Commerce Control List**

* * * * *

**Category 0**

* * * * *

0A986 Shotgun shells, except buckshot shotgun shells, and parts.

* * * * *

| Control(s) | Country chart |
|---|---|
| AT applies to entire entry. A license is required for items controlled by this entry to North Korea for anti-terrorism reasons. The Commerce Country Chart is not designed to determine AT licensing requirements for this entry. See § 742.19 of the EAR for additional information. | |
| FC applies to entire entry | FC Column 1. |
| UN applies to entire entry | Iraq, North Korea, and Rwanda. |

* * * * *

**Category 1**

* * * * *

1C351 Human and zoonotic pathogens and ''toxins'', as follows (see List of Items Controlled).

* * * * *

*Related Definitions:* (1) For the purposes of this entry ''immunotoxin'' is defined as an antibody-toxin conjugate intended to destroy specific target cells (e.g., tumor cells) that bear antigens homologous to the antibody. (2) For the purposes of this entry ''subunit'' is defined as a portion of the ''toxin''.

* * * * *

[FR Doc. 2012–17302 Filed 7–13–12; 8:45 am]

BILLING CODE 1505–01–D

## SECURITIES AND EXCHANGE COMMISSION

## 17 CFR Part 240

**[Release No. 34–67405; File No. S7–30–11]**

**RIN 3235–AL19**

## Extension of Interim Final Temporary Rule on Retail Foreign Exchange Transactions

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Interim final temporary rule; extension.

**SUMMARY:** The Securities and Exchange Commission (''Commission'') is amending interim final temporary Rule 15b12–1T under the Securities Exchange Act of 1934 (''Exchange Act'') to extend the date on which the rule will expire from July 16, 2012 to July 16, 2013.

**DATES:** *Effective Date:* July 16, 2012. The expiration date of interim final temporary Rule 15b12–1T (17 CFR 240.15b12–1T) is extended to July 16, 2013.

**FOR FURTHER INFORMATION CONTACT:** Joanne Rutkowski, Branch Chief, Bonnie Gauch, Senior Special Counsel, and Leila Bham, Special Counsel, Division of Trading and Markets, at (202) 551–5550, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549.

**SUPPLEMENTARY INFORMATION:** The Commission is extending the expiration date for Rule 15b12–1T under the Exchange Act.

### I. Discussion

Section 742 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act'')[1] amended the Commodity Exchange Act (''CEA'') to provide that a person for which there is a Federal regulatory agency,[2] including a broker or dealer (''broker-dealer'') registered under section 15(b) (except pursuant to paragraph (11) thereof) or 15C of the Exchange Act,[3] shall not enter into, or offer to enter into, a foreign exchange (''forex'') transaction[4] with a person who is not an ''eligible contract participant''[5] (''ECP'') except pursuant to a rule or regulation of a Federal regulatory agency allowing the transaction under such terms and conditions as the Federal regulatory agency shall prescribe (''retail forex rule'').[6] A Federal regulatory agency's

[1] Public Law 111–203, 124 Stat. 1376 (2010).

[2] 7 U.S.C. 2(c)(2)(E)(i), as amended by § 742(c) of the Dodd-Frank Act, defines a ''Federal regulatory agency'' to mean the Commodity Futures Trading Commission (''CFTC''), the Securities and Exchange Commission, an appropriate Federal banking agency, the National Credit Union Association, and the Farm Credit Administration.

[3] 7 U.S.C. 2(c)(2)(B)(i)(II).

[4] 7 U.S.C. 2(c)(2)(B)(i)(I). Transactions described in CEA section 2(c)(2)(B)(i)(I) include ''an agreement, contract, or transaction in foreign currency that * * * is a contract of sale of a commodity for future delivery (or an option on such a contract) or an option (other than an option executed or traded on a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(a)).''

[5] Section 1a(18) of the CEA defines ''eligible contract participant'' generally to mean certain regulated persons; entities that meet a specified total asset test (*e.g.,* a corporation, partnership, proprietorship, organization, trust, or other entity with total assets exceeding $10 million) or an alternative monetary test coupled with a non-monetary component (*e.g.,* an entity with a net worth in excess of $1 million and engaging in business-related hedging; or certain employee benefit plans, the investment decisions of which are made by one of four enumerated types of regulated entities); and certain governmental entities and individuals that meet defined thresholds. 7 U.S.C. 2(c)(2)(E)(i). The CFTC has adopted rules further clarifying the definition of ''eligible contract participant'' in the CEA. *See* 17 CFR 1.3(m). *See also Further Definition of ''Swap Dealer,'' ''Security-Based Swap Dealer,'' ''Major Swap Participant,'' ''Major Security-Based Swap Participant'' and ''Eligible Contract Participant,''* Exchange Act Release No. 66868 (April 27, 2012), 77 FR 30596 (May 23, 2012). Because transactions that are the subject of this release are commonly referred to as ''retail forex transactions,'' this release uses the term ''retail customer'' to describe persons who are not ECPs.

[6] *See* 7 U.S.C. 2(c)(2)(B)(i)(II) and 7 U.S.C. 2(c)(2)(E)(ii)(I). On September 10, 2010, the CFTC adopted a retail forex rule for persons subject to its jurisdiction. *See Regulation of Off-Exchange Retail Foreign Exchange Transactions and Intermediaries,* 75 FR 55410 (September 10, 2010). The CFTC had proposed its rules regarding retail forex transactions prior to the enactment of the Dodd-Frank Act. *See Regulation of Off-Exchange Retail Foreign Exchange Transactions and Intermediaries,* 75 FR 3282 (January 20, 2010). The Federal Deposit Insurance Corporation (''FDIC'') and the Office of the Comptroller of the Currency (''OCC'') have adopted similar rules. *See Retail Foreign Exchange Transactions,* 76 FR 40779 (July 12, 2011); *Retail Foreign Exchange Transactions,* 76 FR 41375 (July 14, 2011). The Board of Governors of the Federal Reserve System (the ''Board'') has proposed rules for bank holding companies. *See Retail Foreign*

Continued

retail forex rule must treat all forex agreements, contracts, and transactions and their functional or economic equivalents, similarly.[7] Any retail forex rule also must prescribe appropriate requirements with respect to disclosure, recordkeeping, capital and margin, reporting, business conduct, and documentation, and may include such other standards or requirements as the Federal regulatory agency determines to be necessary.[8]

The prohibition in CEA section 2(c)(2)(B) took effect on July 16, 2011. Beginning on that date, broker-dealers, including broker-dealers also registered with the CFTC as futures commission merchants (''BD–FCMs''), for which the Commission is the ''Federal regulatory agency,'' were no longer able to engage in off-exchange retail forex futures and options transactions with a customer except pursuant to a retail forex rule issued by the Commission.[9] On July 13, 2011, the Commission adopted interim final temporary Rule 15b12–1T, which temporarily permits a broker-dealer to engage in a ''retail forex business,'' as defined in the rule, in compliance with the Exchange Act, the rules and regulations thereunder, and the rules of the self-regulatory organizations of which the broker-dealer is a member, insofar as they are applicable to retail forex transactions.[10] We explained at the time that our action was intended to preserve potentially beneficial market practices that, for example, may serve to minimize a retail customer's exposure to the risk of changes in foreign currency rates in connection with the customer's purchase or sale of a security. We also discussed in the Interim Release that there may be potentially abusive practices such as lack of disclosure about fees and forex pricing, and insufficient capital or margin requirements occurring in the retail forex market, and sought comment on these practices and steps we should take to seek to prevent them.[11] Rule 15b12–1T, by its terms and without further Commission action, would have expired on July 16, 2012.

The Commission received comments on the Interim Release, which are summarized below.[12]

- Nine commenters asked the Commission to preserve their ability to engage in retail forex transactions.[13]
- One commenter stated that the Commission should rescind the rule and allow the ban to take effect or, in the alternative, to limit the scope of the rule to a narrowly defined class of forex transactions, specifically hedging and the facilitation of settlement of foreign securities.[14] The commenter further stated that in adopting Rule 15b12–1T, the Commission did not provide notice of and opportunity for comment on the rule, and did not include a ''concrete assessment or quantification of the need'' for the relief granted by this rule.
- Another commenter provided data on the returns of retail forex accounts at futures commission merchants and retail foreign exchange dealers, and offered recommendations that the commenter believed would improve retail forex transactions and identified areas of retail forex that the commenter believed warrants further study.[15] This commenter also suggested that currency exchange-traded funds (''currency ETFs'') would provide an alternative means for effectively hedging against currency risk.[16]
- One commenter provided data from five large broker-dealers showing that the notional amount of foreign exchange conversion trades at those broker-dealers accounts for approximately 90% of those firms' foreign exchange transactions. The firms' data further indicated that 99% of customer accounts have entered into a conversion trade, though not all trades within an account may be conversion trades.[17]
- One group of commenters urged the Commission to adopt a final rule based on the approach followed in the interim final temporary rule, with certain modifications.[18] These commenters maintained that it is in the best interests of retail customers to have the opportunity to conduct forex activity as part of their broader investing activity, through their broker-dealers, with the assistance of personnel who have expertise in forex.

More recently, in April 2012, a group of commenters asked the CFTC, as well as other Federal regulatory agencies (including the Commission), to take the view that forex transactions that are solely incidental to, and that are initiated for the sole purpose of, permitting a customer to complete a transaction in a foreign security, so-called ''conversion trades,'' are not prohibited retail forex transactions for purposes of section 2 of the CEA.[19]

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*Exchange Transactions,* 76 FR 46652 (August 3, 2011).

[7] 7 U.S.C. 2(c)(2)(E)(iii)(II).

[8] 7 U.S.C. 2(c)(2)(E)(iii)(I).

[9] *See* 7 U.S.C. 2(c)(2)(B)(i)(II)(cc) (giving the CFTC jurisdiction over retail forex transactions with FCMs that, among other things, are not registered broker-dealers) and 7 U.S.C. 2(c)(2)(C)(i)(I)(aa). In addition, a commenter noted that the CFTC ''does not have jurisdiction over retail foreign exchange activities conducted by broker-dealers, including entities that are dually registered as broker-dealers with the SEC and as futures commission merchants ('FCMs') with the CFTC.'' SIFMA/ISDA Letter at 1.

[10] *See Retail Foreign Exchange Transactions,* Exchange Act Release No. 64874 (July 13, 2011), 76 FR 41676 (July 15, 2011) (adopting 17 CFR 240.15b12–1T) (''Interim Release'').

[11] Our Office of Investor Education Advocacy has published an Investor Bulletin providing information about retail forex investing, including information about the risks involved in that trading. *See Investor Bulletin: Foreign Currency Exchange (Forex) Trading for Individual Investors* (July 2011), available at *http://www.sec.gov/investor/alerts/forextrading.pdf.* The CFTC and the North American Securities Administrators Association also have published an alert regarding risks of fraud in forex markets. *See Foreign Exchange Currency Fraud: CFTC/NASAA Investor Alert,* available at *http://www.cftc.gov/ConsumerProtection/FraudAwarenessPrevention/ForeignCurrencyTrading/cftcnasaaforexalert.* We recently brought an enforcement action against the CEO of a purported foreign currency trading firm alleging fraud by that person. *See SEC v. Jeffery A. Lowrance, et al.,* Case No. CV–11–3451, press release, complaint and litigation release, available at *http://www.sec.gov/news/press/2011/2011-147.htm.*

[12] The comments are available at *http://www.sec.gov/comments/s7-30-11/s73011.shtml.* In addition to other specific requests for comment, the Commission requested comment in the Interim Release as to whether Rule 15b12–1T should be extended, and if so for how long.

[13] *See* email comments from Raul Gonzalez, dated July 17, 2011, James Peck, dated July 17, 2011, Bob Flowers, dated July 17, 2011, James M. Beatty, dated July 17, 2011, Angela Li, dated July 17, 2011, Mark A. McDonnell, dated July 21, 2011, Mark Smith, dated July 23, 2011, John Baur, dated July 27, 2011, and Ronald Covington, dated October 23, 2011.

[14] *See* Letter from Dennis M. Kelleher, President and CEO, and Stephen W. Hall, Securities Specialist, Better Markets, Inc. to Ms. Elizabeth Murphy, Secretary, Commission, dated September 12, 2011 (''Better Markets Letter''). We understand the commenter's reference to transactions entered into to facilitate the settlement of foreign securities to mean the conversion trades discussed *infra,* in the text accompanying notes 19 and 20.

[15] Letter from Justin Hughes, CFA and Managing Member, Philadelphia Financial Management of San Francisco to Ms. Elizabeth Murphy, Secretary, Commission, dated August 2, 2011 (''Philadelphia Financial Letter''). *See also* letter from P. Georgia Bullitt, Michael A. Piracci and F. Mindy Lo, Morgan Lewis to Joseph Furey, Bonnie L. Gauch and Adam Yonce, Commission, dated July 28, 2011 (''Morgan Lewis Letter'').

[16] *See* Philadelphia Financial Letter. *See also* Better Markets Letter. While certain forex transactions, in particular portfolio hedges or currency transactions that are part of a diversified investment strategy, may have close substitutes in currency ETFs, currency conversions that facilitate securities transactions (discussed in more detail below) may not have such close substitutes.

[17] *See* Morgan Lewis Letter.

[18] *See* Letter from Kenneth E. Bentsen, Jr., Executive Vice President Public Policy and Advocacy, SIFMA and Robert Pickel, Executive Vice Chairman, ISDA, to Ms. Elizabeth Murphy, Secretary, Commission, dated October 17, 2011 (''SIFMA/ISDA Letter''). *See also* Memorandum from SIFMA and ISDA to Marc Menchel, Gary Goldsholle, Matthew Vitek, Rudy Verra, Glen Garofalo, FINRA, dated February 23, 2012.

[19] *See* Letter from Phoebe A. Papageorgiou, Senior Counsel, American Bankers Association, and James Kemp, Managing Director, Global Foreign Exchange Division, to Thomas J. Curry, Comptroller, OCC, Robert E. Feldman, Executive Secretary, FDIC, Jennifer J. Johnson, Secretary, the Board, David Stanwick, Secretary, CFTC, and Elizabeth Murphy, Secretary, Commission, dated April 18, 2012 (''ABA/GFMA Letter'').

These commenters maintain that Congress did not intend to include within the scope of the CEA section 2 prohibition currency transactions effected in connection with securities transactions, stating that ''[s]uch transactions do not involve speculation in the underlying currencies and, to the contrary, will result in an exchange of currencies to be used to settle the relevant securities transactions.'' [20] We anticipate that the interpretation will be addressed in the context of the CFTC's and SEC's joint rulemaking to further define terms such as ''swap'' and ''security-based swap'' under Title VII of the Dodd-Frank Act (''Products Definition Release'').[21] We further anticipate that the rulemaking will be finalized in the near future and the CFTC will provide at that time its views of whether conversion trades are excluded from the prohibition under CEA section 2.

The ABA/GFMA Letter and the CFTC response affect the scope, substance, and timing of our consideration of further rulemaking for retail forex transactions. If the CFTC were to adopt the interpretation put forth by the ABA/GFMA, conversion trades, which commenters have asserted comprise the overwhelming majority of retail forex transactions conducted through broker-dealers,[22] would not fall within the scope of the prohibition. The potential for such interpretation means that further rulemaking could well confront a very different set of transactions than contemplated in April 2012, one focused not on conversion trades, but rather on apparently less common and more diverse retail forex transactions identified by commenters, such as hedging transactions and direct investments.[23] It also means that further rulemaking would need to consider whether there are classes of conversion trades not excluded under any final interpretation that may be adopted by the CFTC that must be addressed separately. We expect to consider these types of transactions and an appropriate regulatory approach to them in considering whether and what permanent rules we should adopt in this area.

Extending the expiration of Rule 15b12–1T to July 16, 2013 will provide the Commission additional time to consider carefully these issues. The extension will help to ensure that we have sufficient time to take such action as we may determine appropriate in this area, particularly in light of the diverse classes of transactions—beyond the conversion trades that have been the focus of comments to date—that any further rulemaking may need to consider.[24] We recognize that commenters' views differed as to whether and to what extent we should permit broker-dealers to continue to engage in some or all retail forex transactions. As discussed above, some commenters urged us to permit the statutory prohibition simply to take effect, thereby preventing potential abuses of retail customers by broker-dealers and BD–FCMs. A number of retail customers asked us to permit them to have continued access to retail forex transactions through broker-dealers. Some commenters stated that we should make certain revisions to Rule 15b12–1T, while others favored the rule as written, stating that existing broker-dealer regulations adequately address retail forex activities.

In considering commenters' views, we believe, on balance, that we should extend the expiration date of the rule to permit further assessment by the Commission in this area, which would be informed by any potential CFTC interpretation regarding conversion trades. Our view is influenced by investors' views that we should permit them to conduct retail forex transactions with broker-dealers. We also are mindful that while futures commission merchants that are not also broker-dealers could continue to engage in retail forex transactions in compliance with CFTC rules, a futures commission merchant that is also a broker-dealer would be prohibited from engaging in retail forex transactions if we do not extend Rule 15b12–1T. For these reasons, we are extending the expiration date of Rule 15b12–1T to July 16, 2013 to prevent retail customers who transact retail forex transactions through a broker-dealer from being potentially disadvantaged by the prohibition for retail forex transactions taking effect.[25] Given the limited nature of this extension, the pending request for a CFTC interpretation regarding conversion trades, the need to further understand the implications of the CFTC's interpretation, and the scope of comments we are seeking before any further action is taken, we are not modifying the interim final temporary rule other than to extend the expiration date of Rule 15b12–1T to July 16, 2013. Absent further action by the Commission, Rule 15b12–1T as amended will expire on July 16, 2013 at 11:59 p.m. Eastern Time.

## II. Request for Comment

The Commission requests comment regarding all aspects of the interim final temporary rule and the current market practices involving retail forex transactions, as well as any investor protection or other concerns that commenters believe should be addressed by Commission rulemaking. The Commission particularly requests comment from broker-dealers, including BD–FCMs, that are currently engaged or plan to engage in a retail forex business, retail customers that engage in forex transactions, and ECPs. The Commission welcomes information from all affected parties about the current scope and nature of retail forex transactions. This information, together with input from market participants and other regulators, as well as comments received on the Interim Release, will help inform the Commission's consideration of the appropriate regulatory framework, if any, for retail forex transactions before or beyond the expiration of the interim final temporary rule.

The Commission seeks comment on the need for further Commission rulemaking, should the CFTC determine that certain conversion trades are not subject to the CEA prohibition with respect to retail forex transactions.[26] We specifically seek to better understand the other types of retail forex transactions in which broker-dealers may engage, such as forex transactions to hedge portfolio currency risk or to diversify a portfolio, that would not be excluded from the prohibition under section 2 of the CEA by the requested interpretation. We also request information about what mechanisms broker-dealers use currently to comply with existing disclosure, recordkeeping, capital and margin, reporting, business conduct and documentation rules with respect to each type of retail forex transaction in which they engage. What policies and procedures and supervisory controls, for example, have broker-

[20] *Id.* at 2.

[21] *See also Further Definition of ''Swap,'' ''Security-Based Swap,'' and ''Security-Based Swap Agreement''; Mixed Swaps; Security-Based Swap Agreement Recordkeeping,* Securities Act Release No. 9204 (April 29, 2011), 76 FR 29818 (May 23, 2011) (proposing release).

[22] *See* Morgan Lewis Letter.

[23] *See* SIFMA/ISDA Letter (Annex A, Part I).

[24] If the Commission adopts permanent rules for retail forex transactions by broker-dealers before July 16, 2013, the Commission will consider whether it is appropriate to terminate the effectiveness of Rule 15b12–1T as part of that rulemaking.

[25] While retail customers could of course open an account with a futures commission merchant (that is not also registered as a broker-dealer) to engage in retail forex transactions, as explained below, this could create certain inefficiencies and additional costs. *See* discussion in the Economic Analysis section below.

[26] *See* 7 U.S.C. 2(c)(2)(E)(ii)(I).

dealers implemented to address those transactions? We also seek comment on what mechanisms broker-dealers use currently to comply with other existing regulatory requirements with respect to retail forex transactions.

If commenters believe further rulemaking is needed, please explain why, and provide us with a discussion of the types of transactions for which rules are needed and the circumstances under which such transactions are entered into. If commenters believe further rulemaking is not needed, please explain why not. The Commission seeks comment on the extent to which broker-dealers' retail forex activities may be affected, and any impact on retail customers of broker-dealers, in the event the Commission does not adopt any further rules in this area.

The Commission also seeks comment on the retail forex activities of BD–FCMs, and whether the Commission should adopt tailored rules for these intermediaries. We seek comment on the nature of BD–FCM retail forex activities, including the type of transactions in which they engage, and which part of the dually registered entity may engage in these activities or transactions. We also request comment on the mechanisms BD–FCMs use currently to comply with existing disclosure, recordkeeping, capital and margin, reporting, business conduct and documentation rules with respect to each type of retail forex transaction in which they engage. In connection with this specific request for comment, please identify whether the relevant requirements are Exchange Act Rules, CEA Rules, or rules of a particular self-regulatory organization (''SRO'') of which the BD–FCM is a member. The Commission also seeks comment on the extent to which the retail forex activities of BD–FCMs may be affected, and any impact on retail customers of BD–FCMs, in the event the Commission does not adopt any further rules in this area.

Some commenters have suggested that if broker-dealers were prohibited from engaging in retail forex activities, currency ETFs would be a reasonable substitute for broker-dealer customers seeking to hedge their currency exposures.[27] The Commission requests comment on whether and how currency ETFs could meet the needs of retail customers in this regard. The Commission also requests information about how currency ETFs (and any other financial product or service that commenters believe could serve as a substitute for forex) could be used more generally to meet the risk mitigation and any other needs of retail customers that currently are addressed using retail forex transactions. Would currency ETFs (or other financial products) hedge currency risks in connection with foreign securities transactions in the same manner or differently than retail forex transactions? How would the transaction and other costs associated with currency ETFs and retail forex transactions compare? We further seek comment on what the associated benefits and costs would be of retail customers using currency ETFs or some other product or service, as a substitute for retail forex. We also seek comment on the liquidity of such alternative products or services, the ease or difficulty of accessing and using those products or services, and any additional risks involved in using those products or services.

The Commission also seeks comment on whether Rule 15b12–1T should be extended beyond July 16, 2013, and if so, why and for how long, or whether it should be adopted as a final rule.

## III. Economic Analysis

### *A. Introduction*

Section 3(f) of the Exchange Act requires the Commission, whenever it engages in rulemaking under the Exchange Act and is required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action would promote efficiency, competition and capital formation.[28] In addition, Section 23(a)(2) of the Exchange Act requires the Commission, when making rules under the Exchange Act, to consider the impact such rules would have on competition.[29] Section 23(a)(2) of the Exchange Act prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.[30]

We understand that under the current regulatory regime, retail customers typically enter into foreign exchange transactions with broker-dealers for a number of reasons. Industry participants have told us that the most common transaction is a foreign exchange conversion trade, in which a currency trade is made in connection with a foreign securities transaction.[31] Commenters have also told us that retail customers enter into forex transactions with broker-dealers as part of a hedging strategy. For instance, retail customers may engage in forex transactions through broker-dealers in order to hedge currency risk in securities or in a portfolio generally held in the customer's brokerage account; they may also engage in these transactions in order to obtain exposure to foreign markets as part of their investment strategy.[32]

Congress prohibited the retail forex transactions described in CEA section 2 except pursuant to rules adopted by the relevant Federal regulatory agencies allowing the transactions. As we noted in the Interim Release, some of these transactions, in particular hedging transactions and securities conversion trades, may be beneficial to investors.[33] At the same time, as discussed in the Interim Release, the Commission is aware of potentially abusive practices that may be occurring in the retail forex market. Such practices may include, for example, lack of disclosure about fees and forex pricing, and insufficient capital or margin requirements.[34]

As discussed above, on April 18, 2012, a group of commenters asked the CFTC, as well as other Federal regulatory agencies (including the Commission), to take the view that forex transactions that are solely incidental to, and are initiated for the sole purpose of, permitting a client to complete a transaction in a foreign security, through ''conversion trades,'' would not be subject to the retail forex prohibition under section 2 of the CEA.[35] An interpretation by the CFTC that conversion trades are not subject to the statutory prohibition could significantly affect the costs and benefits of any action by the Commission with regard to retail forex transactions going forward. Commenters have stated that conversion trades comprise the vast majority of retail forex transactions engaged in by broker-dealers,[36] but also note that there are other types of forex transactions in which broker-dealers engage with retail customers.[37] Because the request for the interpretation is still pending, however, the Commission will continue to consider conversion trades as retail forex transactions that would be

[27] *See* Philadelphia Financial Letter at 8, and Better Markets Letter at 3.

[28] *See* 15 U.S.C. 78c(f).

[29] *See* 15 U.S.C. 78w(a)(2).

[30] *See id.*

[31] Morgan Lewis Letter. As explained above, the ABA/GFMA Letter requests an interpretation that would exclude conversion trades from the prohibition under CEA section 2.

[32] SIFMA/ISDA Letter at 4, Annex A at 1–2.

[33] *See* Interim Release at 41684.

[34] *See id.*

[35] *See* ABA/GFMA Letter.

[36] *See* Morgan Lewis Letter.

[37] *See* SIFMA/ISDA Letter, Annex A.

prohibited but for Rule 15b12–1T, for purposes of our economic analysis.

Extending Rule 15b12–1T maintains the regulatory framework that currently exists for broker-dealers, and does not create any new regulatory obligations. Furthermore, the rule preserves the ability of broker-dealers to provide, among other services, hedging and conversion trades to retail customers while the Commission considers what further appropriate steps to take, if any.[38]

The Commission has previously considered and discussed in the Interim Release its economic analysis of Rule 15b12–1T.[39] The Commission solicited comment on its economic analysis in the Interim Release, and received one comment that addressed but did not support its economic analysis.[40] As stated in the Interim Release, we adopted Rule 15b12–1T as an interim final temporary rule to allow the existing regulatory framework for retail forex transactions to continue for a defined period, to avoid potentially unintended consequences from broker-dealers immediately discontinuing their retail forex business, and to provide the Commission sufficient time to determine the appropriate regulatory framework regarding retail forex transactions.[41] Furthermore, investors who commented on the rule asked the Commission to preserve their ability to engage in retail forex transaction through their broker-dealers. In addition, we included an economic analysis of the rule in the Interim Release.[42]

As mentioned above, based on data a commenter provided of five broker-dealers, in terms of notional amount, foreign exchange conversion trades would account for approximately 90% of foreign exchange transactions done through broker-dealers, and 99% of all broker-dealer customer accounts are involved in conversion trades, though not all trades within an account may be conversions.[43] Commenters have told us that certain forex transactions, particularly certain portfolio hedges, may have close substitutes in currency ETFs.[44] It does not appear that currency ETFs would necessarily function as effectively in mitigating the currency risk of particular securities transactions, because the precise timing and amount of a securities transaction may not be readily matched to a currency ETF, as conversion trades are customer-specific and typically designed to facilitate particular securities transactions, whereas currency ETFs generally are designed to provide broad exposure to exchange rate movements. The contracts used to complete forex conversions do have close substitutes in exchange-traded currency futures, as both involve the exchange of currency at a future date. However, as with currency ETFs, the precise timing and amount of a securities transaction may not be easily matched to exchange-traded futures contracts, which have standardized maturity dates and notional amounts. Off-exchange forwards, on the other hand, can be easily customized to match a particular transaction. Additionally, exchange-traded futures are not as effective at mitigating risks between the trade and settlement dates, since mark-to-market margin requirements expose the investor to additional cash flow risk.

The Commission understands that conversion trades can be replicated at futures commission merchants. However, as a practical matter, this would require the customer to maintain multiple accounts, which could increase transaction costs and reduce efficiency relative to conversion trades performed within a broker-dealer.

*B. Alternatives Considered*

The Commission considered certain alternatives to extending Rule 15b12–1T. One alternative would be to let Rule 15b12–1T expire on its original expiration date, and so preclude broker-dealers from engaging in certain types of retail forex business other than, potentially, conversion trades, at least until such time as the Commission were to adopt final rules in this area. The benefit of this alternative would be that the abuses Congress sought to address through Dodd-Frank Act Section 724 would be addressed through this complete prohibition. The cost of this alternative would be that an outright prohibition on retail forex activity would interfere with certain business activities engaged in by broker-dealers that are potentially beneficial for their customers, in particular the potential benefit to customers relating to conversion trades. We note in this alternative approach, retail customers of broker-dealers would be required to open an account with a futures commission merchant or other financial service provider merely to engage in currency transactions intended to mitigate risks in connection with brokerage transactions in foreign securities. While this shifting to services to another intermediary would impose additional costs, retail customers may, however, benefit from the protection of rules to which those intermediaries are subject.[45]

The Commission has not adopted this alternative at this time for the reasons discussed above, and in particular because of concerns that we not disrupt potentially beneficial market practices, such as conversion trades that may serve to minimize a retail customer's exposure to the risk of changes in foreign currency rates in connection with the customer's purchase or sale of a security. In addition, we have not adopted this alternative because the CFTC's interpretation regarding conversion trades is not yet settled.

The Commission also considered adopting Rule 15b12–1T as a final, permanent rule. While the direct costs and benefits of this alternative would be minimal (as it would simply continue the existing regulatory requirements for broker-dealers engaging in retail forex transactions), it nevertheless could have broader impacts on the markets given that other regulators have now adopted or proposed final rules with various specific requirements relating to retail forex that impose different requirements on market intermediaries than those the Commission imposes on broker-dealers under Rule 15b12–1T.[46] The lack of comparable rules across the various intermediaries engaging in a retail forex business could lead to regulatory arbitrage or regulatory gaps. The Commission is considering alternatives, including proposing rules pertaining to retail forex that are more tailored than Rule 15b12–1T and that would be more closely aligned with those of the other regulators but has deferred a determination pending the resolution by the CFTC of the pending request in the ABA/GFMA Letter concerning the treatment of conversion trades.

*C. Benefits*

Rule 15b12–1T was designed to preserve retail customers' access to the forex markets through broker-dealers and so promote efficiency by, for example, permitting retail customers to continue to enter into forex transactions in connection with trades in foreign

[38] To the extent that conversion trades are not excluded from the prohibition in CEA section 2, extension of the Rule 15b12–1T would also have the benefit of allowing customers to continue to engage in those transactions as part of their brokerage activities while the Commission considers any further action.

[39] For a detailed description of the costs and benefits of Rule 15b12–1T, *see also* Interim Release at 41684.

[40] Better Markets Letter. *But see* SIFMA/ISDA Letter.

[41] *See* Interim Release at 48683.

[42] *See id.* at 41684.

[43] Morgan Lewis Letter.

[44] *See* Philadelphia Financial Letter. *See also* Better Markets Letter.

[45] *See supra* note 6.

[46] *Id.*

securities, as part of their brokerage activities until such time as the Commission allows Rule 15b12–1T to expire or adopts final, permanent rules in this area. Without the Commission acting to extend Rule 15b12–1T, broker-dealers would be required to exit certain types of retail forex business, which could require retail customers to engage in forex transactions through a futures commission merchant or other service provider. This could be economically inefficient. In particular, to the extent that access to the foreign exchange markets through broker-dealers provides hedging and conversion opportunities for foreign investments, economic benefits may accrue to retail customers.[47] To the extent that the CFTC takes the view that some or all conversion trades remain subject to the retail forex prohibition, and as noted in the Interim Release, the benefits of these trades may not be as easily or efficiently replicated outside of the broker-dealer.[48] Furthermore, by continuing to preserve a channel for broker-dealers' retail customers to access forex transactions through broker-dealers, the extension of the interim final temporary rule will continue to prevent any loss of competition in the retail forex market that could result if broker-dealers were required to exit the business. Moreover, extending the term of the rule will likely, for the period of the extended term, maintain the status quo for broker-dealers with respect to other regulated intermediaries offering retail forex services, whose regulators have adopted (or have proposed to adopt) rules targeted to retail forex with which those intermediaries must comply.[49] Extending the term of the rule would not necessarily promote competition between broker-dealers and the other regulated intermediaries, as broker-dealers would continue to offer retail forex services under Rule 15b12–1T which, in general, imposes requirements that arguably could be viewed as less burdensome than those that have become (or are proposed to become) applicable to other regulated intermediaries. Competition among broker-dealers would most likely not be affected by extending the term of the rule.

Because the regulatory requirements for broker-dealers operating in the retail forex market will remain unchanged, extending the expiration date of Rule 15b12–1T will impose no new burden on competition. Similarly, since the rule preserves an existing regulatory structure, the Commission does not expect that extending the term of the rule would result in any potential impairment of the capital formation process.

*D. Costs*

Because Rule 15b12–1T preserves the regulatory regime that had been in place prior to the effective date of Section 742(c) of the Dodd-Frank Act, the extension of the rule imposes no new regulatory burdens beyond those that already existed for broker-dealers engaged in a retail forex business. The Commission recognizes that broker-dealers will face regulatory costs and requirements associated with operating in the retail forex market, but these costs and requirements are those they already shouldered from engaging in the business.[50] As discussed above and in the Interim Release, the Commission is aware of potentially abusive practices that may be occurring in the retail forex market. To the extent that such practices continue, customers may bear the costs associated with these abuses. We are monitoring potential fraud involved in forex within our jurisdiction,[52] and our staff has also alerted investors to the risks of retail forex trading.[53] The Commission believes, on balance, that the cost of market disruption that may occur if the Commission does not extend Rule 15b12–1T, particularly with respect to conversion transactions that may not be easily replicated outside of the broker-dealer,[54] justifies the cost of maintaining the current regulatory regime while the Commission considers proposing rules in light of additional developments, including the recent request for the CFTC's interpretation regarding conversion trades.[55]

*E. Conclusion*

Because the extension of Rule 15b12–1T will not affect the regulatory requirements for broker-dealers operating in the retail forex market, this extension will impose no new burden on competition. Similarly, because the rule's extension does not alter the existing regulatory structure, the Commission does not expect any potential impairment of the capital formation process. To the extent that potentially abusive practices continue in the retail forex market, the market will continue to bear the costs associated with any such abuses and the resultant inefficient provision of services across the market. Because extending Rule 15b12–1T does not alter the existing regulatory structure or regime, the Commission does not expect any potential impairment of the capital formation process, especially as the rule's extension allows retail customers to continue to have access through broker-dealers to hedging transactions, conversion trades, and other forex transactions, without the need to shift business and open new accounts at other market intermediaries.

## IV. Paperwork Reduction Act

Rule 15b12–1T does not impose any new ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA''),[56] or create any new filing, reporting, recordkeeping, or disclosure reporting requirements for broker-dealers that are or plan to be engaged in a retail forex business. In the Interim Release, the Commission requested comment on its conclusion that there are no collections of information.[57] The Commission received no comments relating to the PRA analysis. Accordingly, the Commission maintains its PRA analysis set forth in the Interim Release for purposes of this extension.

## V. Other Matters

*A. Administrative Procedure Act*

The Administrative Procedure Act generally requires an agency to publish notice of a proposed rulemaking in the **Federal Register**.[58] This requirement does not apply, however, if the agency ''for good cause finds * * * that notice and public procedure are impracticable, unnecessary, or contrary to the public interest.''[59] The Administrative Procedure Act also generally requires that an agency publish an adopted rule

[47] *See* Interim Release at 41684.

[48] *See id.*

[49] *See supra* note 6.

[50] As described in the Interim Release, these costs include costs related to disclosure, recordkeeping and documentation, capital and margin, reporting, and business conduct. A broker-dealer that currently engages in forex transactions with retail customers, for example, incurs costs associated with establishing, maintaining, and implementing policies and procedures to comply with regulatory requirements; preparing disclosure documents; establishing and maintaining forex-related business records; and preparing filings with the Commission, which may include legal and accounting fees. Interim Release at 41684.

[52] For instance, we recently brought an enforcement action against the CEO of a purported foreign currency trading firm, alleging fraud by that person. *See SEC* v. *Jeffery A. Lowrance, et al.,* Case No. CV–11–3451, press release, complaint and litigation release, available at *http://www.sec.gov/news/press/2011/2011-147.htm.*

[53] *See Investor Bulletin: Foreign Currency Exchange (Forex) Trading for Individual Investors* (July 2011), available at *http://www.sec.gov/investor/alerts/forextrading.pdf.*

[54] *See* Interim Release at 41684.

[55] *Id.*

[56] 44 U.S.C. 3501 *et seq.*

[57] *See* Interim Release at 41683–84.

[58] *See* 5 U.S.C. 553(b).

[59] *Id.*

in the **Federal Register** 30 days before it becomes effective.[60] This requirement, however, does not apply if the agency finds good cause for making the rule effective sooner.[61] The Commission finds that there is good cause to extend the expiration date of Rule 15b12–1T to July 16, 2013, without notice and comment and not to delay the effective date of the extension. The Commission further finds that notice and solicitation of comment on the extension is impracticable, unnecessary, or contrary to the public interest.[62]

As discussed above, on April 18, 2012, a group of commenters asked the CFTC, as well as other Federal regulatory agencies (including the Commission), to find that forex transactions that are solely incidental to, and are initiated for the sole purpose of, permitting a client to complete a transaction in a foreign security, so-called ''conversion trades,'' would not be subject to the retail forex prohibition under section 2 of the CEA.[63] We anticipate that the CFTC will address this request in the context of the Products Definition Release. An interpretation by the CFTC that conversion trades are not subject to the statutory prohibition could affect the need for, or the extent and reach of, any Commission rulemaking for retail forex transactions generally. Commenters have stated that conversion trades comprise the vast majority of retail forex transactions engaged in by broker-dealers,[64] and permitting conversion trades by broker-dealers was one of the reasons we adopted Rule 15b12–1T.[65] As we previously have noted, there are other types of forex transactions broker-dealers engage in which may be potentially beneficial for retail customers, such as using forex to hedge portfolio currency risk or to provide portfolio diversification.[66] The potential CFTC interpretation means that further rulemaking could well confront a very different set of transactions than contemplated in April 2012, one focused not on conversion trades, but rather on these other types of forex transactions. It also means that further rulemaking would need to consider whether there are classes of conversion trades not excluded under any final interpretation that may be adopted by the CFTC that must be addressed separately. Accordingly, if the CEA is interpreted so that certain conversion trades would not be prohibited, we would want to consider what, if anything, we believe is appropriate with respect to proposing and adopting a permanent rule in this area in light of the diverse classes of transactions—beyond the conversion trades that have been the focus of comments to date—that any such rule may need to consider. Accordingly, in view of these very recent developments, the Commission has determined that it would be impracticable to publish notice of the proposed extension.

In making this finding of good cause,[67] the Commission has decided to maintain the current regulatory regime in order to avoid disruption for investors engaging in retail forex transactions through broker-delaers, until such time as the Commission makes any final decision with regard to permanent rulemaking in this area, in light of any potential interpretation by the CFTC. In particular, the Commission considered that not extending the expiration date, or allowing the extension to be delayed, would cause disruption to the markets and potentially harm investors, as retail forex transactions, including conversion trades, would, as of July 16, 2012, the original expiration date of Rule 15b12–1T, be prohibited. For the same reasons, the Commission finds good cause not to delay the effective date of this extension for 30 days.

In the event that the Commission determines to propose a permanent rule to replace Rule 15b12–1T, the Commission will provide notice and solicit comment on that proposal.

*B. Regulatory Flexibility Act Certification*

In the Interim Release, the Commission certified that pursuant to 5 U.S.C. 605(b), Rule 15b12–1T would not have a significant economic impact on a substantial number of small entities. As explained in the Interim Release, although Rule 15b12–1T applies to broker-dealers that may engage in retail forex transactions, which may include small businesses, any costs or regulatory burdens incurred as a result of the rule are the same as those incurred by small broker-dealers prior to the effective date of Section 742 of the Dodd-Frank Act.[68] We also noted that the rule would impose no new regulatory obligations, costs, or burdens on such broker-dealers. Thus, there would not be a significant economic impact on a substantial number of small entities. In the Interim Release, we requested comment on our conclusion that Rule 15b12–1T should not have a significant economic impact on a substantial number of small entities. The Commission received no comments addressing this issue. In light of this, as well as the fact that we are making no change to Rule 15b12–1T apart from extending its expiration date, we hereby certify pursuant to 5 U.S.C. 605(b) that extending Rule 15b12–1T will not have a significant economic impact on a substantial number of small entities.

## VI. Statutory Authority and Text of Rule and Amendment

Pursuant to section 2(c)(2) of the Commodity Exchange Act, as well as the Exchange Act as amended, the Commission is amending Exchange Act Rule 15b12–1T.

### List of Subjects in 17 CFR Part 240

Brokers, Consumer protection, Currency, Reporting and recordkeeping requirements.

In accordance with the foregoing, the Securities and Exchange Commission is amending Title 17, chapter II, of the Code of Federal Regulations as follows:

### Text of the Rule and Amendment

## PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 1. The general authority citation for Part 240 continues to read as follows:

**Authority:** 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l,* 78m, 78n, 78n–1, 78o, 78o–4, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll,* 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et. seq.;* 18 U.S.C. 1350; 12 U.S.C. 5221(e)(3); and 7 U.S.C. 2(c)(2)(E), unless otherwise noted.

* * * * *

### § 240.15b12–1T [Amended]

■ 2. Revise paragraph (d) of § 240.15b12–1T to read as follows:

### § 240.15b12–1T Brokers or dealers engaged in a retail forex business.

* * * * *

(d) This section will expire and no longer be effective on July 16, 2013.

Dated: July 11, 2012.

[60] *See* 5 U.S.C. 553(d).

[61] *Id.*

[62] *See* 5 U.S.C. 553(b) and (d).

[63] *See* ABA/GFMA Letter.

[64] *See* Morgan Lewis Letter.

[65] *See* Interim Release at 41684.

[66] *See id. See also* SIFMA/ISDA Letter (Annex A, Part I).

[67] This finding also satisfies the requirements of 5 U.S.C. 808(2), allowing the rules to become effective notwithstanding the requirement of 5 U.S.C. 801 (if a federal agency finds that notice and public comment are ''impractical, unnecessary or contrary to the public interest,'' a rule ''shall take effect at such time as the federal agency promulgating the rule determines'').

[68] *See id.* at 41684–85.

By the Commission.

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. 2012–17261 Filed 7–13–12; 8:45 am]

**BILLING CODE 8011–01–P**

## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

### 29 CFR Part 2550

**RIN 1210–AB54**

### Amendment Relating to Reasonable Contract or Arrangement Under Section 408(b)(2)—Fee Disclosure/Web Page

**AGENCY:** Employee Benefits Security Administration, Labor.

**ACTION:** Direct final rule.

**SUMMARY:** This document revises the mailing address and web-based submission procedures for filing certain notices under the Department of Labor (Department) Employee Benefits Security Administration's fiduciary-level fee disclosure regulation under section 408(b)(2) of the Employee Retirement Income Security Act of 1974 (ERISA). Responsible plan fiduciaries of employee pension benefit plans must file these notices with the Department to obtain relief from ERISA's prohibited transaction provisions that otherwise may apply when a covered service provider to the plan fails to disclose information in accordance with the regulation's requirements.

**DATES:** This amendment to the 408(b)(2) regulation is effective September 14, 2012, without further action or notice, unless significant adverse comment is received by August 15, 2012. If significant adverse comment is received, the Department will publish a timely withdrawal of this amendment in the **Federal Register**.

**ADDRESSES:** Written comments may be submitted to the addresses specified below. All comments will be made available to the public. *Warning:* Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines. Comments may be submitted anonymously.

Comments, identified by RIN 1210–AB54, may be submitted by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: e-ORI@dol.gov.*
- *Mail or Hand Delivery:* Office of Regulations and Interpretations, Employee Benefits Security Administration, Room N–5655, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, Attention: RIN 1210–AB54; Class Exemption Notice—Web Submission.

Comments received by the Department of Labor may be posted without change to *http://www.regulations.gov* and *http://www.dol.gov/ebsa,* and will be made available for public inspection at the Public Disclosure Room, N–1513, Employee Benefits Security Administration, 200 Constitution Avenue NW., Washington, DC 20210.

**FOR FURTHER INFORMATION CONTACT:** Allison Wielobob, Office of Regulations and Interpretations, Employee Benefits Security Administration, (202) 693–8500. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:**

## A. Background

On February 3, 2012, the Department published a final regulation under ERISA section 408(b)(2) (the ''408(b)(2) regulation''), requiring that certain service providers to pension plans disclose information about the service providers' compensation and potential conflicts of interest.[1] These disclosure requirements were established to provide guidance for compliance with a statutory exemption from ERISA's prohibited transaction provisions. If the disclosure requirements of the 408(b)(2) regulation are not satisfied, a prohibited provision of services under ERISA section 406(a)(1)(C) will occur, with consequences for both the responsible plan fiduciary and the covered service provider. However, paragraph (c)(1)(ix) of the final regulation exempts a responsible plan fiduciary from the prohibited transaction restrictions, if the fiduciary takes certain specified steps upon discovery of a disclosure failure. Among other steps, the responsible plan fiduciary must make a written request to the covered service provider for the undisclosed information. If the covered service provider does not comply with this request within 90 days, the responsible plan fiduciary must so notify the Department.

The final 408(b)(2) regulation, in paragraph (c)(1)(ix)(F), provides two alternative methods for submitting such notices to the Department. Responsible plan fiduciaries may send notices to the following address: U.S. Department of Labor, Employee Benefits Security Administration, Office of Enforcement, 200 Constitution Ave. NW., Suite 600, Washington, DC 20210. Alternatively, notices may be sent electronically to *OE-DelinquentSPnotice@dol.gov.* The direct final rule published today, and described below, amends these submission procedures to reflect a new mailing address and to provide for electronic submission through the Department's Web site.

## B. Overview of Amendment to 408(b)(2) Regulation

The direct final rule being published today as part of this notice amends 29 CFR 2550.408b–2(c)(1)(ix)(F) to revise the mailing address and enhance the web-based submission procedure for responsible plan fiduciaries to file required notices under the regulation's fiduciary class exemption provision. Fiduciaries may continue to send paper notices to the Department; however, a dedicated post office box has been established to replace the original mailing address. The new mailing address is: U.S. Department of Labor, Employee Benefits Security Administration, Office of Enforcement, P.O. Box 75296, Washington, DC 20013. Further, effective September 14, 2012, the Department is eliminating the previously available email address (*OE-DelinquentSPnotice@dol.gov*). Instead, pursuant to instructions that will be separately provided by the Department, responsible plan fiduciaries who wish to submit notices electronically will be able to do so through a dedicated link on the Department's Web site, at *www.dol.gov/ebsa/regs/feedisclosurefailurenotice.html.* This Web page will include clear instructions for how to submit the required notification and will provide immediate confirmation to responsible plan fiduciaries that the notice has been received by the Department.

The Department believes that the new web submission procedure will benefit both responsible plan fiduciaries and the Department and, therefore, does not anticipate any significant adverse comment on this amendment. The submission process will be easier for responsible plan fiduciaries, because the Web page will include clear instructions and will assist responsible plan fiduciaries by ensuring that they include all of the information required by the regulation's notice provision. Plan fiduciaries, especially for small plans, will be more easily able to take advantage of the relief provided by the 408(b)(2) regulation's class exemption

[1] 77 FR 5632 (Feb. 3, 2012).

provision. Further, unlike submissions by email or paper mail, the web-based submission procedure will include immediate, electronic confirmation for responsible plan fiduciaries that their notice has been received. The online submission procedure also will benefit the Department by enabling its staff to more efficiently receive, process, and review class exemption notices under the 408(b)(2) regulation, which in turn will benefit responsible plan fiduciaries who wish to avail themselves of relief provided by the regulation's class exemption. The Department expects that responsible plan fiduciary errors will be fewer, due to the web-based procedures that will include clear instructions and better ensure that complete information is submitted, and that transcription and other errors by the Department will be fewer, due to the automated procedures that will occur when submissions are received electronically.

**C. Good Cause Finding That Proposed Rulemaking Unnecessary**

Rulemaking under section 553 of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) (APA) ordinarily involves publication of a notice of proposed rulemaking in the **Federal Register** and the public is given an opportunity to comment on the proposed rule. However, an agency may issue a rule without prior notice and comment procedures if it determines for good cause that public notice and comment procedures are impracticable, unnecessary, or contrary to the public interest for such rule, and incorporates a statement of the finding with the underlying reasons in the final rule issued. For the reasons mentioned in section B of this preamble, the Department finds that publishing a proposed rule and seeking public comment is unnecessary.

Notwithstanding the foregoing, in the ''Proposed Rules'' section of today's **Federal Register**, the Department is publishing a separate document that will serve as a notice of proposal to amend part 2550 as described in this direct final rule. If the Department receives significant adverse comment during the comment period, it will publish, in a timely manner, a document in the **Federal Register** withdrawing this direct final rule. The Department will then address public comments in a subsequent final rule based on the proposed rule. The Department will not institute a second comment period on this rule. Any parties interested in commenting must do so during this comment period.

**D. Regulatory Impact Analysis**

*1. Executive Orders 12866 and 13563*

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action that is likely to result in a rule (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Pursuant to the terms of the Executive Order, OMB has been determined that this action is not ''significant'' within the meaning of section 3(f)(4) of the Executive Order and therefore is not subject to review by OMB.

*2. Regulatory Flexibility Analysis*

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) imposes certain requirements with respect to Federal rules that are subject to the notice and comment requirements of section 553(b) of the APA (5 U.S.C. 551 *et seq.*) and that are likely to have a significant economic impact on a substantial number of small entities. Under Section 553(b) of the APA, a general notice of proposed rulemaking is not required when an agency, for good cause, finds that notice and public comment thereon are impracticable, unnecessary, or contrary to the public interest. This direct final regulation is exempt from the APA's notice and comment requirements because the Department made a good cause finding earlier in this preamble that a general notice of proposed rulemaking is not necessary. Therefore, the RFA does not apply and the Department is not required to either certify that this regulation would not have a significant economic impact on a substantial number of small entities or conduct a regulatory flexibility analysis.

Nevertheless, the Department carefully considered the likely impact of the rule on small entities. The direct final rule will enhance the web-based submission procedure for responsible plan fiduciaries, especially for small plans, to file required notices under the regulation's fiduciary class exemption provision. The Web page will include clear instructions and ensure that responsible plan fiduciaries include all of the required information and provide an immediate electronic confirmation that their notice has been received. No additional burden is imposed on such fiduciaries, because, as discussed earlier in this preamble, the direct final rule allows them to continue to send notices to a dedicated post office box that the Department has established to replace the original mailing address provided in the final rule. Based on the foregoing, the Department hereby certifies that the proposed rule is not likely to have a significant economic impact on a substantial number of small entities.

*3. Paperwork Reduction Act*

In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)), the Department submitted an information collection request (ICR) to OMB in accordance with 44 U.S.C. 3507(d) for the final regulation that was published on February 3, 2012. OMB approved the ICR on March 29, 2012, under control number 1210–0133, which is currently schedule to expire on March 31, 2015. A copy of the ICR may be obtained by contacting the PRA addressee shown below.

PRA Addressee: G. Christopher Cosby, Office of Policy and Research, U.S. Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW., Room N 5647, Washington, DC 20210. Telephone (202) 219–8410; Fax: (202) 219–4745. These are not toll free numbers.

OMB has determined that the direct final rule does not implement any substantive or material change to the information collection; therefore, no change is made to the ICR and no further review is requested of OMB at this time.

*4. Congressional Review Act*

This direct final rule is subject to the Congressional Review Act provisions of

the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and has been transmitted to Congress and the Comptroller General for review.

*5. Unfunded Mandates Reform Act*

For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), as well as Executive Order 12875, the direct final rule does not include any Federal mandate that may result in expenditures by State, local, or tribal governments in the aggregate of more than $100 million, adjusted for inflation, or increase expenditures by the private sector of more than $100 million, adjusted for inflation.

*6. Federalism Statement*

Executive Order 13132 (August 4, 1999) outlines fundamental principles of federalism, and requires the adherence to specific criteria by Federal agencies in the process of their formulation and implementation of policies that have substantial direct effects on the States, the relationship between the national government and States, or on the distribution of power and responsibilities among the various levels of government. The direct final rule does not have federalism implications because it has no substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Section 514 of ERISA provides, with certain exceptions specifically enumerated, that the provisions of Titles I and IV of ERISA supersede any and all laws of the States as they relate to any employee benefit plan covered under ERISA. The requirements implemented in the direct final rule do not alter the fundamental reporting and disclosure requirements of the statute with respect to employee benefit plans, and, as such, have no implications for the States or the relationship or distribution of power between the national government and the States.

**List of Subjects in 29 CFR Part 2550**

Employee benefit plans, Exemptions, Fiduciaries, Investments, Pensions, Prohibited transactions, Reporting and recordkeeping requirements, and Securities.

For the reasons set forth in the preamble, the Department amends chapter XXV, subchapter F, part 2550 of title 29 of the Code of Federal Regulations as follows:

**SUBCHAPTER F—FIDUCIARY RESPONSIBILITY UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974**

## PART 2550—RULES AND REGULATIONS FOR FIDUCIARY RESPONSIBILITY

■ 1. The authority citation for part 2550 continues to read as follows:

**Authority:** 29 U.S.C. 1135 and Secretary of Labor's Order No. 6–2009, 74 FR § 21524 (May 7, 2009). Sec. 2550.401c–1 also issued under 29 U.S.C. 1101. Sec. 2550.404a–1 also issued under sec. 657, Pub. L. 107–16, 115 Stat. 38. Sections 2550.404c–1 and 2550.404c–5 also issued under 29 U.S.C. 1104. Sec. 2550.408b–1 also issued under 29 U.S.C. 1108(b)(1) and sec. 102, Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1. Sec. 2550.408b–19 also issued under sec. 611, Pub. L. 109–280, 120 Stat. 780, 972, and sec. 102, Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1. Sec. 2550.412–1 also issued under 29 U.S.C. 1112.

■ 2. Section 2550.408b–2 is amended by revising paragraph (c)(1)(ix)(F) to read as follows:

**§ 2550.408b–2 General statutory exemption for services or office space.**

* * * * *

(c) * * *

(1) * * *

(ix) * * *

(F) The notice required by paragraph (c)(1)(ix)(C) of this section shall be furnished to the U.S. Department of Labor electronically in accordance with instructions published by the Department; or may be sent to the following address: U.S. Department of Labor, Employee Benefits Security Administration, Office of Enforcement, P.O. Box 75296, Washington, DC 20013; and

* * * * *

Signed at Washington, DC, this 2nd day of July 2012.

**Phyllis C. Borzi,**

*Assistant Secretary, Employee Benefits Security Administration, Department of Labor.*

[FR Doc. 2012–17013 Filed 7–13–12; 8:45 am]

BILLING CODE 4510–29–P

**DEPARTMENT OF THE INTERIOR**

**Office of Surface Mining Reclamation and Enforcement**

**30 CFR Part 914**

**[SATS No. IN–160–FOR; Docket ID: OSM–2011–0008]**

## Indiana Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Final rule; approval of amendment.

**SUMMARY:** We, the Office of Surface Mining Reclamation and Enforcement (OSM), are approving amendments to the Indiana regulatory program (Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Indiana proposed to revise its rules concerning ownership and control provisions, periods of liability, performance bond release, revegetation standards, underground mining explosives, and cessation orders, to be no less effective than the corresponding Federal regulations, to clarify ambiguities, and to improve operational efficiency.

**DATES:** *Effective Date:* July 16, 2012.

**FOR FURTHER INFORMATION CONTACT:** Andrew R. Gilmore, Chief, Alton Field Division. Telephone: (317) 226–6700.

**SUPPLEMENTARY INFORMATION:**

I. Background on the Indiana Program
II. Submission of the Amendment
III. OSM's Findings
IV. Summary and Disposition of Comments
V. OSM's Decision
VI. Procedural Determinations

### I. Background on the Indiana Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior (Secretary) conditionally approved the Indiana program effective July 29, 1982. You can find background information on the Indiana program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Indiana program in the July 26, 1982, **Federal Register** (47 FR

32071). You can also find later actions concerning the Indiana program and program amendments at 30 CFR 914.10, 914.15, 914.16, and 914.17.

## II. Submission of the Amendment

By letter dated May 25, 2011 (Administrative Record No. IND–1756), Indiana sent us an amendment to its Program under SMCRA (30 U.S.C. 1201 *et seq.*). Indiana sent the amendment in response to a September 30, 2009, letter (Administrative Record No. IN–1755) we sent to Indiana in accordance with 30 CFR 732.17(c) concerning multiple changes to ownership and control requirements. Indiana also made changes to other sections of its regulations at its own initiative. Indiana proposed revisions to its Indiana Surface Mining Regulations found in Article 25, Coal Mining and Reclamation Operations. The specific sections of Article 25 in Indiana's amendment are discussed in Part III OSM's Findings. Indiana intends to revise its program to be no less effective than the Federal regulations and to improve operational efficiency.

We announced receipt of the proposed amendment in the July 11, 2011, **Federal Register** (76 FR 40649). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. We did not hold a public hearing or meeting because no one requested one. The public comment period ended on August 10, 2011. We did not receive any public comments.

During our review of the amendment, we identified concerns in section 312 IAC 25–5–7(f) Period of liability. On August 29, 2011, we notified Indiana by phone (Administrative Record No. IND–1759) of an incorrect reference in subsection 25–5–7(f). On September 6, 2011, we held a conference call to address the discrepancy in this section (Administrative Record No. IND–1760). Indiana officials confirmed that this was an incorrect reference and that they would correct the discrepancy through an errata process. By letter dated September 8, 2011 (Administrative Record No. IND–1761), we received notice from Indiana stating that the errata process was completed and the citation had been corrected. We did not reopen the comment period following the errata process because the change Indiana made was a minor reference correction and was not substantive in nature.

Also during our review of the amendment, we identified concerns in section 312 IAC 25–5–16 Performance bond release; requirements. More specifically, we had concerns with a portion of subsection (j)(2) relating to the phrase ''an electronic or stenographic record shall be made unless waived by all parties.'' We notified Indiana of our concern by letter dated December 21, 2011 (Administrative Record No. IND–1762). Indiana responded by letter on January 5, 2012 (Administrative Record No. IND–1763), stating that they would not submit revisions to this subsection at this time and that we should proceed with processing the amendment. Therefore, we are proceeding with the final rule **Federal Register** document.

## III. OSM's Findings

The following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment with one exception as described below. Any revisions that we do not specifically discuss below concerning nonsubstantive wording or editorial changes can be found in the full text of the program amendment available at *www.regulations.gov.*

*A. Definitions: 312 IAC 25–1–10.5 Applicant/Violator System; 312 IAC 25–1–32.5 Control or Controller; 312 IAC 25–1–51.5 Federal Office of Surface Mining Applicant/Violator System Office; 312 IAC 25–1–75.1 Knowing or Knowingly; and 312 IAC 25–1–48 Excess Spoil*

Indiana proposed new definitions at sections 312 IAC 25–1–10.5, 312 IAC 25–1–32.5, 312 IAC 25–1–51.5, and 312 IAC 25–1–75.1; and revised its definition at section 312 IAC 25–1–48. We find that the new definitions at 25–1–10.5, 25–1–32.5, and 25–1–75.1, along with the revised definition at 25–1–48, are substantively the same as counterpart Federal regulations at 30 CFR 701.5. Additionally, we find that there is no Federal counterpart to the new definition proposed in section 25–1–51.5 for the Federal Office of Surface Mining Applicant/Violator System Office. This new definition accurately represents the organizational structure of OSM's Applicant/Violator System Office and makes Indiana's regulations no less effective than the Federal regulations. Therefore, we approve these changes.

*B. 312 IAC 25–4–18 Surface Mining Permit Applications, Compliance Information; and 312 IAC 25–4–59 Underground Mining Permit Applications, Compliance Information*

Indiana proposed to amend these sections to require a review of compliance history reports from the applicant/violator system for both surface and underground mining no more than (5) five days prior to permit issuance. The changes to both sections also specify that the Director will rely upon the violation information supplied by the applicant, a report from the applicant/violator system, and any other available information to review compliance history. Indiana's revisions are counterpart to the Federal regulations at 30 CFR 773.11, 773.12(c), and 778.14. We find that these revisions allow Indiana to meet the Federal requirement that a permit review includes a review of compliance history, thereby making Indiana's regulations no less effective than the counterpart Federal regulations. Therefore, we approve these changes.

*C. 312 IAC 25–4–23 Surface Mining Permit Applications, Identification of Other Safety and Environmental Licenses and Permits; and 312 IAC 25–4–64 Underground Mining Permit Application; Legal and Financial Information, Identification of Other Licenses and Permits*

Indiana is repealing sections 25–4–23 and 25–4–64 to match the repeals made to 30 CFR 778.19 and 782.19 on September 28, 1983, **Federal Register** (48 FR 44390). We find that since OSM repealed these Federal regulations, Indiana's deletion of these sections are not inconsistent with the requirements of SMCRA or the Federal regulations and Indiana's regulations will remain no less effective than the Federal regulations. Therefore, we are approving their removal.

*D. 312 IAC 25–4–115.1 Post Permit Issuance Information Requirements*

Indiana proposed a new subsection 25–4–115.1 requiring the permittee to notify and provide information to Indiana within 60 days of any changes regarding owners or controllers. We find that Indiana's new subsection 25–4–115.1 is substantively the same as the counterpart Federal regulations at 30 CFR 774.12(c). Therefore, we approve these changes.

*E. 312 IAC 25–4–122.1 Review of Director's Ownership or Control Listing or Finding; 312 IAC 25–4–122.2 Burden of Proof for Ownership or Control Challenges; and 312 IAC 25–4–122.3 Written Agency Decision on Challenges to Ownership or Control*

Indiana proposed new subsections 25–4–122.1, 25–4–122.2, and 25–4–122.3 to add provisions for challenging an ownership or control determination; outline evidence necessary for the

permittee to submit during ownership or control challenges; and outline duties of the department regarding written decisions as a result of an ownership or control challenge. Indiana's new subsection 25–4–122.1 provides measures regarding the challenge of ownership and control listing or findings that are comparable to the Federal regulations by providing the same opportunities and procedures for challenges. We find that these changes make Indiana's regulations no less effective than the counterpart Federal regulations at 30 CFR 773.25 and 773.26. We also find that Indiana's new subsections 25–4–122.2 and 25–4–122.3 are substantively the same as their counterpart Federal regulations at 30 CFR 773.27 and 773.28. Therefore, we approve Indiana's changes to these three subsections.

*F. 312 IAC 25–4–127 Permit Reviews, Revisions, Renewals, and Transfer, Sale, or Assignment of Rights Granted Under Permits, Permit Revisions*

Indiana proposed to revise section 25–4–127 to clarify various requirements for permit revisions including adding definitions and requirements for significant revisions, nonsignificant revisions, and minor field revisions. These changes allow Indiana's regulations to fully meet the requirements of the counterpart Federal regulations at 30 CFR 774.13 and 774.15 for permit renewals and revisions while adding clarity. We find that these changes make Indiana's regulations no less effective than the Federal regulations; therefore, we approve them.

*G. 312 IAC 25–5–7 Period of Liability*

Indiana proposed new paragraph 312 IAC 25–5–7(f) to clarify the bond liability period for alternative postmine land uses beyond the control of the permittee. We find that Indiana's paragraph 25–5–7(f), after correction through the errata process described in Part II Submission of the Amendment, is substantively the same as the counterpart Federal regulations at 30 CFR 800.13(d)(2). Therefore, we approve this new paragraph.

*H. 312 IAC 25–5–16 Performance Bond Release; Requirements*

1. Indiana previously submitted an amendment regarding section 312 IAC 25–5–16 on December 11, 2006. In a letter dated May 9, 2007 (Administrative Record No. IND–1748), we notified Indiana that paragraphs (d) through (j) contained deficiencies, inappropriate reference citations, and the removal and/or absence of required program provisions that made Indiana's rules less effective than the Federal regulations. In the **Federal Register** (72 FR 59005) we announced that we did not approve Indiana's proposed revisions at section 312 IAC 25–5–16 new paragraphs (d) through (j). This non-approval was inadvertently not codified in that **Federal Register** notice. As such, we are including this historical information and are codifying it in 30 CFR 914.17. Indiana has now submitted new changes to this section.

2. In this current amendment, Indiana proposed new language in paragraph (d) adding additional provisions clarifying that Indiana will notify interested parties of its decisions regarding performance bond releases within 60 days when no public hearing or informal conference is held, or within 30 days after a public hearing or informal conference is held. The counterpart Federal regulation at 30 CFR 800.40(b)(2) does not include a reference to informal conferences. The Federal regulations at 30 CFR 800.40(h) allow the regulatory authority to hold an informal conference to resolve written objections raised in § 800.40. Indiana's addition in 312 IAC 25–5–16(d) provides recognition that the time limitations apply regardless of whether a formal hearing or informal conference is held. We find that these additions make Indiana's regulations no less effective than the Federal regulations. Therefore, we approve the changes in this paragraph.

3. Indiana proposed new language in paragraph (i) that allows written objections or requests for public hearings to be resolved through an informal conference at the discretion of the Director and that informal conferences must be conducted within 30 days after the close of the comment period; allows for a waiver from the requirement for verbatim records of an informal conference if it is agreed upon by all parties involved in the conference; and requires that all parties involved in an informal conference be provided written findings of the conference stating the reasons for the findings. We find that Indiana's paragraph (i) contains all of the required portions of the counterpart Federal regulation at 30 CFR 800.40(h) and further clarifies the informal conference process. We also find that Indiana's changes make its regulations no less effective than the Federal regulations. Therefore, we approve the changes.

4. Indiana proposed to add a new paragraph (j) that contains five subparagraphs (j)(1)–(5). These require Indiana to hold a public hearing if written objections and requests for public hearings are not resolved through an informal conference or if an informal conference is not held. These also include provisions regarding public notification, who will conduct the hearing, what information may be accepted, record collection, hearing location, findings, timeframe to hold a hearing, and conditions in which hearings may be cancelled. We find that paragraphs (j)(1), (3), (4), and (5) include all the required provisions of the counterpart Federal regulations at 30 CFR 800.40(f); further clarify the public hearing process; and make Indiana's regulations no less effective than the Federal regulations. Therefore, we approve these portions of (j).

Indiana's proposed subparagraph 312 IAC 25–5–16(j)(2) contains an unapprovable provision that makes this portion of Indiana's rules less effective than the Federal regulations. By letter dated December 21, 2011 (Administrative Record No. IND–1762), we contacted Indiana regarding the phrase, ''an electronic or stenographic record shall be made unless waived by all parties.'' The addition of the phrase ''unless waived by all parties'' would make Indiana's regulations less effective than the counterpart Federal regulation at 30 CFR 800.40(g), which does not allow the waiver of any records in a public hearing. We suggested that Indiana remove this phrase to make this portion of its regulations no less effective than the Federal requirements. By letter dated January 5, 2012 (Administrative Record No. IND–1763), Indiana advised us that it would submit revisions to address these concerns at a later date and that we should proceed with processing the amendment. Therefore, we are approving subparagraph (j)(2) with the exception of the phrase ''unless waived by all parties'' related to public hearing records, which we are not approving.

5. Indiana proposed new paragraph (k) clarifying the department's authority in public hearings regarding bond releases and the requirement for a verbatim record of the hearing. We find that Indiana's new paragraph (k) is substantively the same as counterpart Federal regulations at 30 CFR 800.40(g). Therefore, we approve this paragraph.

6. Indiana proposed new paragraph (l) stating that the Director's decisions regarding bond releases are subject to administrative review under IC 4–21.5 and 312 IAC 3–1. We find that the new paragraph highlights and clarifies Indiana's existing review procedures and makes its regulations no less effective than the Federal regulations. Therefore, we are approving it.

*I. 312 IAC 25–6–59 Surface Mining, Revegetation, Standards for Success for Nonprime Farmland*

Indiana revised language in section 25–6–59 at paragraph (c)(4)(A) regarding alternative stocking rates and species for specific forest reclamation approaches. We find that Indiana's revised language allows more flexibility in its regulations regarding reforestation by allowing more site specific variations in species and stocking rates. We also find that these changes allow Indiana's regulations to meet the standards of, and be no less effective than, the counterpart Federal regulations at 30 CFR 816.116(b)(3) which require stocking and planting rates to be based on local and regional conditions. Therefore, we approve the changes.

*J. 312 IAC 25–6–93 Underground Mining, Explosives, General Requirements; 312 IAC 25–6–94 Underground Mining, Explosives, Preblasting Survey; and 312 IAC 25–6–95 Underground Mining, Explosives, Publication of Blasting Schedule*

Indiana added new language to 312 IAC 25–6–93 to clarify that this section's blasting regulations for slopes and shafts are not applicable for detonations at depths below 50 feet from the surface. This is counterpart to the Federal regulations at 30 CFR 817.61(a) that deal with surface blasting activities incident to underground coal mining. Indiana has clarified that 50 feet is the maximum depth below the surface in which surface blasting regulations would apply. Indiana also removed the requirement to submit a blast design for operations within 1,000 feet of a pipeline. The counterpart Federal regulation at 30 CFR 817.61(d)(1) does not contain this requirement. Indiana made some minor changes to 312 IAC 25–6–94 clarifying preblasting survey requirements and revised 312 IAC 25–6–95 regarding publication and distribution of blasting schedules. We find that Indiana's changes to these sections meet all the requirements of the counterpart Federal regulations at 30 CFR 817.61, 817.62, and 817.64 and make Indiana's regulations no less effective than the Federal regulations. Therefore, we approve these changes.

*K. 312 IAC 25–7–5 State Enforcement; Cessation Orders*

1. Indiana added new language in paragraph (k) clarifying that the timeframe for updating ownership and control listings following the issuance of a cessation order does not apply if a stay has been granted by an administrative law judge or a court of competent jurisdiction and it remains in effect. We find that this language meets the requirements of the counterpart Federal regulation at 30 CFR 774.12(b) and makes Indiana's program no less effective than the Federal regulations. Therefore, we are approving the new language.

2. Indiana added new paragraph (m) requiring that any determinations made regarding a cessation order be in writing and contain a right of appeal. We find that the new language meets the requirements of 30 CFR 774.11(f) and (h) regarding notification and appeal rights for the entry of ownership and control information into the AVS system. Therefore, we find the addition of this new paragraph makes Indiana's regulation no less effective than the Federal regulations and we are approving it.

## IV. Summary and Disposition of Comments

*Public Comments*

We asked for public comments on the amendment, but did not receive any.

*Federal Agency Comments*

By letter dated June 14, 2011, under 30 CFR 732.17 (h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Indiana's program (Administrative Record No. IN–1757). By letter dated July 13, 2011, we received a comment from the U.S. Fish and Wildlife Service (Administrative Record No. IN–1758), recommending that Indiana provide a definition or discussion regarding how the threshold of ''adverse impact'' is determined.

The Federal regulations require no such definition for ''adverse impact.'' The Federal regulations at 30 CFR 774.13(b)(2) require Indiana to establish guidelines related to the scale or extent of revisions for which certain permit application materials must be submitted. The Federal regulations at 30 CFR 773.15(j) require that the applicant demonstrate and the regulatory authority find in writing that the operation would not affect the continued existence of endangered or threatened species or result in destruction or adverse modification of their critical habitats, as determined under the Endangered Species Act of 1973.

By letter dated August 4, 2011, Indiana responded (Administrative Record No. IN–1761) to the U.S. Fish and Wildlife Service's comments, stating that Indiana has an embedded Wildlife Biologist employed by the Indiana Department of Natural Resources, Fish and Wildlife Division, whose sole duties include the review of all surface and underground coal mine submissions relating to fish and wildlife and related environmental value resources. Indiana also stated that the intent of this part of the rule is to disallow a request for a nonsignificant permit revision if a change is proposed to a mine permit that could adversely affect these values in a way not contemplated beneath the currently approved permit. Indiana concluded by stating that the methodology it will employ regarding this topic will be the same that has been used since the inception of its corresponding statue, Indiana Code 14–34–5–8–1, which was passed in 1998 and approved by OSM in 1999.

We find that although Indiana has not defined the term ''adverse impact'' as the Fish and Wildlife Service suggested for the purposes of determining if a permit revision is ''nonsignificant,'' Indiana considers ''adverse impact'' as something not previously contemplated in the currently approved permit that could have an adverse effect. Indiana's implementation of the rules and regulations relating to fish and wildlife will not be conducted any differently than it has been since 1998. Indiana's intent of this section is consistent with that of the Federal regulations.

*Environmental Protection Agency (EPA) Concurrence and Comments*

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Indiana proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment. However, by letter dated June 14, 2011, under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from the EPA (Administrative Record No. IN–1757). The EPA did not respond to our request.

*State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)*

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. By letter dated June 14, 2011, we requested comments on the

amendment (Administrative Record No. IN–1757); but neither responded to our request.

## V. OSM's Decision

Based on our discussions in the above OSM's Findings, we are approving significant parts of Indiana's amendment sent to us on May 25, 2011. We do not approve the phrase ''unless waived by all parties'' contained in Indiana's proposed amendment to 312 IAC 25–5–16(j)(2). For those rules we approve, Indiana must fully promulgate them in identical form to the rules submitted to, and reviewed by, OSM and the public.

To implement this decision, we are amending the Federal regulations at 30 CFR part 914, which codify decisions concerning the Indiana program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this rule effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

## VI. Procedural Determinations

*Executive Order 12630—Takings*

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

*Executive Order 12866—Regulatory Planning and Review*

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

*Executive Order 12988—Civil Justice Reform*

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10) decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

*Executive Order 13132—Federalism*

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

*Executive Order 13175—Consultation and Coordination With Indian Tribal Governments*

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. This determination is based on the fact that the Indiana program does not regulate coal exploration and surface coal mining and reclamation operations on Indian lands. Therefore, the Indiana program has no effect on Federally-recognized Indian tribes.

*Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy*

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

*National Environmental Policy Act*

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

*Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

*Regulatory Flexibility Act*

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

*Small Business Regulatory Enforcement Fairness Act*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

*Unfunded Mandates*

This rule will not impose an unfunded mandate on state, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the state submittal, which

is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

**List of Subjects in 30 CFR Part 914**

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 2, 2012.

**William L. Joseph,**

*Acting Regional Director, Mid-Continent Region.*

For the reasons set out in the preamble, 30 CFR part 914 is amended as set forth below:

## PART 914—INDIANA

■ 1. The authority citation for Part 914 continues to read as follows:

**Authority:** 30 U.S.C. 1201 *et seq.*

■ 2. Section 914.15 is amended in the table by adding a new entry in chronological order by ''Date of final publication'' to read as follows:

**§ 914.15 Approval of Indiana regulatory program amendments.**

* * * * *

| Original amendment submission date | Date of final publication | Citation/description |
|---|---|---|
| * | * | * * * * * |
| May 25, 2011 ..... | July 16, 2012 ..... | Sections: 312 IAC 25–1–10.5, 25–1–32.5, 25–1–48, 25–1–51.5, 25–1–75.1, 25–4–18, 25–4–23, 25–4–59, 25–4–64, 25–4–115.1, 25–4–122.1, 25–4–122.2, 25–4–122.3, 25–4–127, 25–5–7; 25–5–16, 25–6–59, 25–6–93, 25–6–94, 25–6–95, and 25–7–5. |

■ 3. Section 914.16 is amended by removing and reserving paragraph (ee), to read as follows:

**§ 914.16 Required program amendments.**

* * * * *

(a)–(ee) [Reserved]

■ 4. Section 914.17 is amended by adding paragraphs (d) and (e) to read as follows:

**§ 914.17 State regulatory program and proposed program amendment provisions not approved.**

* * * * *

(d) The amendment at 312 IAC 25–5–16 new subsections (d) through (j) submitted on December 6, 2006, concerning requirements for performance bond releases is not approved effective October 18, 2007.

(e) The phrase ''unless waived by all parties'' contained in paragraph 312 IAC 25–5–16(j)(2) submitted on May 25, 2011, concerning performance bond releases, is not approved effective July 16, 2012.

[FR Doc. 2012–17238 Filed 7–13–12; 8:45 am]

BILLING CODE 4310–05–P

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 117

**[Docket No. USCG–2012–0627]**

## Drawbridge Operation Regulation; Willamette River, Portland, OR

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of temporary deviation from regulations.

**SUMMARY:** The Coast Guard has issued a temporary deviation from the operating schedule that governs the Hawthorne Bridge across the Willamette River, mile 13.1, at Portland, OR. This deviation is necessary to accommodate Portland's Big Float event. This deviation allows the bridge to remain in the closed position to allow safe movement of event participants.

**DATES:** This deviation is effective from 12:30 p.m. on July 29, 2012 through 1:30 p.m. July 29, 2012.

**ADDRESSES:** Documents mentioned in this preamble as being available in the docket are part of docket USCG–2012–0627 and are available online by going to *http://www.regulations.gov,* inserting USCG–2012–0627 in the ''Keyword'' box and then clicking ''Search''. They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email the Bridge Administrator, Coast Guard Thirteenth District; telephone 206–220–7282 email *randall.d.overton@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:** Multnomah County has requested that the Hawthorne lift bridge remain closed to vessel traffic to facilitate safe, uninterrupted roadway passage of participants of the Big Float event. The Hawthorne Bridge crosses the Willamette River at mile 13.1 and provides 49 feet of vertical clearance above Columbia River Datum 0.0 while in the closed position. Vessels which do not require a bridge opening may continue to transit beneath the bridge during this closure period. Under normal conditions this bridge operates in accordance with 33 CFR 117.897 which allows for the bridge to remain closed between 7 a.m. and 9 a.m. and 4 p.m. and 6 p.m. Monday through Friday. This deviation period is from 12:30 p.m. on July 29, 2012 through 1:30 p.m. July 29, 2012. The deviation allows the Hawthorne Bridge across the Willamette River, mile 13.1, to remain in the closed position and need not open for maritime traffic from 12:30 p.m. through 1:30 p.m. July 29, 2012. The bridge shall operate in accordance to 33 CFR 117.897 at all other times. Waterway usage on this stretch of the Willamette River includes vessels ranging from commercial tug and barge to small pleasure craft. Mariners will be notified and kept informed of the bridge's operational status via the Coast Guard Notice to Mariners publication and Broadcast Notice to Mariners as appropriate. The draw span will be required to open, if needed, for vessels engaged in emergency response operations during this closure period.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: June 28, 2012.

**Randall D. Overton,**

*Bridge Administrator.*

[FR Doc. 2012–17222 Filed 7–13–12; 8:45 am]

BILLING CODE 9110–04–P

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

**[Docket No. USCG–2012–0501]**

**RIN 1625–AA00**

## Safety Zone; Sheffield Lake Fireworks, Lake Erie, Sheffield Lake, OH

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone on Lake Erie, Sheffield Lake, OH. This safety zone is intended to restrict vessels from a portion of Lake Erie during the Sheffield Lake Fireworks display. This temporary safety zone is necessary to protect spectators and vessels from the hazards associated with a fireworks display.

**DATES:** This rule will be effective between 9:30 p.m. until 11 p.m. on July 13, 2012.

**ADDRESSES:** Documents mentioned in this preamble are part of docket [USCG–2012–0501]. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box, and click ''Search.'' You may visit the Docket Management Facility, Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary rule, call or email LT Christopher Mercurio, Chief of Waterways Management, U.S. Coast Guard Sector Buffalo; telephone 716–843–9343, email *SectorBuffaloMarineSafety@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:**

### Table of Acronyms

DHS Department of Homeland Security
FR **Federal Register**
NPRM Notice of Proposed Rulemaking

### A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable and contrary to the public interest. The final details for this event were not known to the Coast Guard until there was insufficient time remaining before the event to publish an NPRM. Thus, delaying the effective date of this rule to wait for a comment period to run would be both impracticable and contrary to the public interest because it would inhibit the Coast Guard's ability to protect spectators and vessels from the hazards associated with a maritime fireworks display, which are discussed further below.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. For the same reasons discussed in the preceding paragraph, waiting for 30 day notice period run would be impracticable and contrary to the public interest.

### B. Basis and Purpose

Between 10 p.m. and 10:30 p.m. on July 13, 2012, a fireworks display will be held on Lake Erie near Sheffield Lake, OH. The Captain of the Port Buffalo has determined that fireworks launched proximate to a gathering of watercraft pose a significant risk to public safety and property. Such hazards include premature and accidental detonations, dangerous projectiles, and falling or burning debris.

### C. Discussion of Rule

With the aforementioned hazards in mind, the Captain of the Port Buffalo has determined that this temporary safety zone is necessary to ensure the safety of spectators and vessels during the Sheffield Lake Fireworks. This zone will be effective and enforced from 9:30 p.m. until 11 p.m. on July 13, 2012. This zone will encompass all waters of Lake Erie, Sheffield Lake, OH within a 700 foot radius of position 41°29′25″ N and 82°06′48″ W (NAD 83).

Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Buffalo or his designated on-scene representative. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

### D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 14 of these statutes or executive orders.

*1. Regulatory Planning and Review*

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS). We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone created by this rule will be relatively small and enforced for relatively short time. Also, the safety zone is designed to minimize its impact on navigable waters. Furthermore, the safety zone has been designed to allow vessels to transit around it. Thus, restrictions on vessel movement within that particular area are expected to be minimal. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the Captain of the Port.

*2. Impact on Small Entities*

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. 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 will affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in a portion of Lake Erie on the evening of July 13, 2012.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This safety zone

would be activated, and thus subject to enforcement, for only an hour and a half early in the day. Traffic may be allowed to pass through the zone with the permission of the Captain of the Port. The Captain of the Port can be reached via VHF channel 16. Before the activation of the zone, we would issue local Broadcast Notice to Mariners.

*3. 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 rule. 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 the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

*4. Collection of Information*

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

*5. Federalism*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

*6. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

*7. 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 rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

*8. Taking of Private Property*

This rule will 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.

*9. Civil Justice Reform*

This 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.

*10. Protection of Children*

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

*11. Indian Tribal Governments*

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does 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.

*12. Energy Effects*

This action is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

*13. Technical Standards*

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

*14. Environment*

We have analyzed this 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 determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a safety zone and, therefore it is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this 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 amends 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. Chapters 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.T09–0501 to read as follows:

**§ 165.T09–0501 Safety Zone; Sheffield Lake Fireworks, Lake Erie, Sheffield Lake, OH.**

*(a) Location.* The safety zone will encompass all waters of Lake Erie, Sheffield Lake, OH within a 700 foot radius of position 41°29′25″ N and 82°06′48″ W (NAD 83).

*(b) Effective and Enforcement Period.* This regulation is effective and will be enforced on July 13, 2012 from 9:30 p.m. until 11 p.m.

*(c) Regulations.*

(1) In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port

Buffalo or his designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Buffalo or his designated on-scene representative.

(3) The ''on-scene representative'' of the Captain of the Port Buffalo is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port Buffalo to act on his behalf.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Buffalo or his on-scene representative to obtain permission to do so. The Captain of the Port Buffalo or his on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Buffalo, or his on-scene representative.

Dated: July 3, 2012.

**S.M. Wischmann,**

*Captain, U.S. Coast Guard, Captain of the Port Buffalo.*

[FR Doc. 2012–17220 Filed 7–11–12; 11:15 am]

**BILLING CODE 9110–04–P**

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[Docket No. USCG–2011–0922]**

**RIN 1625–AA87**

## Security Zones; 2012 Republican National Convention, Captain of the Port St. Petersburg Zone, Tampa, FL

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing seven temporary security zones on the waters and adjacent land 20 feet shoreward of the mean high water marks of Garrison Channel, Hillsborough River, Seddon Channel, Sparkman Channel, the unnamed channel north of Davis Islands, Ybor Channel, and Ybor Turning Basin in the vicinity of Tampa, Florida during the 2012 Republican National Convention. The 2012 Republican National Convention will be held at the Tampa Bay Times Forum building and other venues from August 27, 2012 through August 31, 2012. The Department of Homeland Security has designated the 2012 Republican National Convention as a National Special Security Event. The security zones are necessary to protect convention delegates, official parties, dignitaries, the public, and surrounding waterways from terrorist acts, sabotage or other subversive acts, accidents, or other causes of a similar nature. Entering or remaining in any of the security zones is prohibited unless authorized by the Captain of the Port St. Petersburg or a designated representative.

**DATES:** This rule is effective from 12:01 p.m. on August 25, 2012 through 11:59 a.m. on August 31, 2012.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket USCG–2011–0922 and are available online by going to *http://www.regulations.gov*, inserting USCG–2011–0922 in the ''Keyword'' box, and then clicking ''Search.'' They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary final rule, call or email Marine Science Technician First Class Nolan L. Ammons, Sector St. Petersburg Prevention Department, Coast Guard; telephone (813) 228–2191, email *D07-SMB-Tampa-WWM@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

**SUPPLEMENTARY INFORMATION:**

### Regulatory Information

On April 3, 2012, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled Security Zone: 2012 Republican National Convention Captain of the Port St. Petersburg Zone, Tampa, FL in the **Federal Register** (77 FR 64). We received one comment on the proposed rule. Public meetings were held on February 1, 2012 and February 29, 2012.

### Basis and Purpose

The legal basis for the rule is the Coast Guard's authority to establish regulated navigation areas and other limited access areas: 33 U.S.C. 1226, 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, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

The purpose of this rule is to provide for the safety and security of convention delegates, official parties, dignitaries, and the public during the 2012 Republican National Convention.

### Discussion of Comments and Changes

The Coast Guard received one comment to the proposed rule from the Hillsborough County Sheriff's Office. The comment requested to extend the No Wake/Security Zone south to the R. E. Knight pier. The extension of the security zone would allow Law Enforcement officials to operate out of the HCSO Marine Unit boat ramp and would allow more time to react/respond to potential threats on the surrounding waters. The Coast Guard assessed the concerns of the Hillsborough County Sheriff's office and extended the security zone in Seddon Channel south to the Robert E. Knight pier, at the following location: Point 1 in position 27°55′02″ N, 82°26′46″ W; and Point 2 in position 27°55′07″ N, 82°26′39″ W.

The Coast Guard provided clarification regarding security protocols for commercial vessels intending to enter or transit three of the security zones. Such commercial vessels shall have an approved NOA submitted in accordance with 33 CFR part 160 that indicates a mooring at a facility located within the security zone or at a facility that requires transit of the zone.

### Discussion of Rule

From August 27, 2012 through August 30, 2012, the 2012 Republican National Convention will be held in Tampa, Florida. Primary venues for the 2012 Republican National Convention are the Tampa Bay Times Forum building and the Tampa Convention Center, both of which are located adjacent or proximate to Garrison Channel, Hillsborough River, Seddon Channel, Sparkman Channel, the unnamed channel north of Davis Islands, Ybor Channel, and Ybor Turning Basin in Tampa, Florida. Secondary venues and venues hosting convention-related activities include other locations throughout Tampa, Florida on or in close proximity to navigable waters.

The Secretary of the Department of Homeland Security has designated the 2012 Republican National Convention as a National Special Security Event. National Special Security Events are significant events, which, due to their political, economic, social, or religious significance, may render them particularly attractive targets of terrorism or other criminal activity. The Federal government provides support, assistance, and resources to state and local governments to ensure public

safety and security during National Special Security Events.

The Coast Guard has conducted threat, vulnerability, and risk analyses relating to the maritime transportation system and 2012 Republican National Convention activities. Threats confronting the 2012 Republican National Convention assume two primary forms: Homeland security threats and violent or disruptive public disorder. The 2012 Republican National Convention is expected to draw widespread protests by persons dissatisfied with national policy, foreign policy, and the Republican Party agenda. This politically-oriented event has the potential to attract anarchists and other persons intent on expressing their opposition through violence and criminal activity. The 2012 Republican National Convention also presents an attractive target for terrorist and extremist organizations.

Considerable law enforcement presence on land may render maritime approaches a viable alternative. The City of Tampa has critical infrastructure in its port area, which is proximate to the downtown area and the Convention's main venues. The Port of Tampa is an industrial-based port, with significant storage and shipment of hazardous materials.

The Department of Homeland Security Small Vessel Security Strategy sets forth several threat scenarios that must be mitigated in the maritime security planning for the 2012 Republican Convention. These threats include the potential use of a small vessel to: (1) Deliver a weapon of mass destruction; (2) launch a stand-off attack weapon; or (3) deliver an armed assault force. 2012 Republican National Convention maritime security planning anticipates these threats, while minimizing the public impact of security operations.

The security zones and accompanying security measures have been specifically developed to mitigate the threats and vulnerabilities identified in the analysis discussed above. Security measures have been limited to the minimum necessary to mitigate risks associated with the identified threats. The Coast Guard considered establishing a waterside demonstration area but due to the proximity of the main venue area, the geography of the area in question, the associated threats to the convention, and the potential to interfere with law enforcement and security operations; the Coast Guard determined that establishing such an area would not be feasible. The Coast Guard expects ample landside demonstration areas to be available.

The Coast Guard, on behalf of the 2012 Republican National Convention Public Safety Committee, has initiated an outreach program to inform maritime stakeholders within Tampa of potential disruptions to normal maritime activities during the convention. On January 27, 2012, outreach efforts to the local community began with a presentation to the Tampa Bay Harbor Safety and Security Committee. Additional meetings were held with businesses that operate in the vicinity of the main venue. On February 1, 2012 and February 29, 2012, public meetings were held. At each of these meetings, the Coast Guard presented: (1) General information on National Special Security Events; (2) an overview of the 2012 Republican National Convention; (3) a description of the organization of the public safety committee and subcommittees established for the convention; (4) a brief discussion of the proposed security zones, along with likely limitations on vessel movements and enhanced security measures; and (5) the threat, vulnerability and risk analysis of the convention from a maritime perspective.

Responses to information presented by the Coast Guard were generally positive and supportive. The majority of questions were requests for additional details, such as the exact periods the security zone would be in effect and what size vessels will be allowed to transit the zone or use the docks in the primary venue area. Several people asked for clarification regarding the proposed restrictions, such as whether boat owners would be able to access their vessels, or whether commercial traffic would be allowed to operate in Sparkman Channel. There were two questions concerning the sufficiency of planned security measures on the south and east sides of Harbour Island.

The Coast Guard responded to all inquiries by stating that the details of the security zones were still under development and were subject to change. At each meeting, the Coast Guard reminded attendees to review the notice of proposed rulemaking when it is published in the **Federal Register**, and encouraged attendees to submit comments to the docket if they had concerns or questions.

The rule will establish seven temporary security zones in the Captain of the Port St. Petersburg Zone during the 2012 Republican National Convention in Tampa, Florida. The security zones would be enforced from 12:01 p.m. on August 25, 2012 through 11:59 a.m. on August 31, 2012. The security zones are listed below. All coordinates are North American Datum 1983.

(1) *Garrison Channel.* All waters of Garrison Channel, including adjacent lands 20 feet shoreward of the mean high water mark of Garrison Channel. All persons and vessels are prohibited from entering or transiting the security zone unless authorized by the Captain of the Port St. Petersburg or a designated representative. Vessels with permanent moorings in the security zone will not be permitted to move during the enforcement period. Vessels remaining in the security zone during the enforcement period will be subject to inspection and examination by Coast Guard and other law enforcement officials. Persons desiring to access their vessels within the security zone will be subject to security screenings.

(2) *Hillsborough River.* All waters of Hillsborough River, including adjacent lands 20 feet shoreward of the mean high water mark of Hillsborough River, south of an imaginary line between the following points: Point 1 in position 27°56′44″ N, 82°27′37″ W; and Point 2 in position 27°56′44″ N, 82°27′33″ W. All persons and vessels are prohibited from entering or remaining within the security zone unless authorized by the Captain of the Port St. Petersburg or a designated representative.

(3) *Seddon Channel.* All waters of Seddon Channel, including adjacent lands 20 feet shoreward of the mean high water mark of Seddon Channel, north of an imaginary line between the following points: Point 1 in position 27°55′02″ N, 82°26′46″ W; and Point 2 in position 27°55′07″ N, 82°26′39″ W. All persons and vessels are prohibited from entering or remaining within the security zone unless authorized by the Captain of the Port St. Petersburg or a designated representative.

(4) *Sparkman Channel.* All waters of Sparkman Channel, including adjacent lands 20 feet shoreward of the mean high water mark of Sparkman Channel. Recreational vessels are prohibited from entering or remaining in Sparkman Channel unless authorized by the Captain of the Port St. Petersburg or a designated representative. Commercial vessels are authorized to enter or transit Sparkman Channel, but will be subject to compliance with security protocols established by the Captain of the Port St. Petersburg, including: (a) Have an approved NOA submitted in accordance with 33 CFR part 160 that indicates a mooring at a facility located within the security zone or at a facility that requires transit of the zone; (b) inspection and examination of all commercial vessels and persons requesting authorization to transit the

security zone (including positive identification checks); and (c) embarkation of law enforcement personnel during authorized security zone transits.

(5) *Unnamed Channel North of Davis Islands.* All waters of the unnamed channel north of Davis Islands, including adjacent lands 20 feet shoreward of the mean high water mark of the unnamed channel north of Davis Islands, east of an imaginary line between the following points: Point 1 in position 27°56′16″ N, 82°27′40″ W; and Point 2 in position 27°56′18″ N, 82°27′43″ W. All persons and vessels are prohibited from entering or remaining within the security zone unless authorized by the Captain of the Port St. Petersburg or a designated representative.

(6) *Ybor Channel.* All waters of Ybor Channel, including adjacent lands 20 feet shoreward of the mean high water mark of Ybor Channel. Recreational vessels are prohibited from entering or remaining in Ybor Channel unless authorized by the Captain of the Port St. Petersburg or a designated representative. Commercial vessels are authorized to enter or transit Ybor Channel, but will be subject to compliance with security protocols established by the Captain of the Port St. Petersburg, including: (a) Have an approved NOA submitted in accordance with 33 CFR part 160 that indicates a mooring at a facility located within the security zone or at a facility that requires transit of the zone; (b) inspection and examination of all commercial vessels and persons requesting authorization to transit the security zone (including positive identification checks); and (c) embarkation of law enforcement personnel during authorized security zone transits.

(7) *Ybor Turning Basin.* All waters of Ybor Turning Basin, including adjacent lands 20 feet shoreward of the mean high water mark of Ybor Turning Basin. Recreational vessels are prohibited from entering or remaining in Ybor Turning Basin unless authorized by the Captain of the Port St. Petersburg or a designated representative. Commercial vessels are authorized to enter or transit Ybor Turning Basin, but will be subject to compliance with security protocols established by the Captain of the Port St. Petersburg, including: (a) Have an approved NOA submitted in accordance with 33 CFR part 160 that indicates a mooring at a facility located within the security zone or at a facility that requires transit of the zone; (b) inspection and examination of all commercial vessels and persons requesting authorization to transit the security zone (including positive identification checks); and (c) embarkation of law enforcement personnel during authorized security zone transits.

All persons and vessels desiring to enter or remain within the regulated areas may contact the Captain of the Port St. Petersburg by telephone at (727) 824–7524, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter or remain within the regulated areas is granted by the Captain of the Port St. Petersburg or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port St. Petersburg or a designated representative. Recreational vessels authorized to enter or remain within the regulated areas may be subject to boarding and inspection of the vessel and persons onboard.

A Port Community Information Bulletin (PCIB) will be distributed by Coast Guard Sector St. Petersburg. The PCIB will be available on the Coast Guard internet web portal at *http://homeport.uscg.mil.* PCIBs are located under the Port Directory tab in the Safety and Security Alert links. The Coast Guard would provide notice of the security zones by Local Notice to Mariners, Broadcast Notice to Mariners, public outreach, and on-scene designated representatives.

**Regulatory Analyses**

We developed this 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**

Executive Orders 13563, Improving Regulation and Regulatory Review, and 12866, Regulatory Planning and Review, direct agencies to assess the 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 not been designated a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget has not reviewed this rule under Executive Order 12866.

The economic impact of this rule is not significant for the following reasons: (1) The security zones will be enforced for a total of 144 hours; (2) the security zones will be in a location where commercial vessel traffic is expected to be minimal; (3) commercial vessel traffic will be authorized to transit the security zones to the extent compatible with public safety and security; (4) persons and vessels will be able to operate in the surrounding area adjacent to the security zones during the enforcement period; (5) persons and vessels will be able to enter or remain within the security zones if authorized by the Captain of the Port St. Petersburg or a designated representative; and (6) the Coast Guard would provide advance notification of the security zones to the local community by Local Notice to Mariners, Broadcast Notice to Mariners, and public outreach.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule will 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 or operators of vessels intending to enter or remain within those portions of Garrison Channel, Hillsborough River, Seddon Channel, Sparkman Channel, unnamed channel north of Davis Islands, Ybor Channel, and Ybor Turning Basin encompassed within the security zones from 12:01 p.m. on August 25, 2012 through 11:59 a.m. on August 31, 2012. For the reasons discussed in the Regulatory Planning and Review section above, this rule will not have a significant economic impact on a substantial number of small entities.

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), in the NPRM the Coast Guard offered to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). 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 Marine Science Technician First Class Nolan L. Ammons, Sector St. Petersburg Prevention Department, Coast Guard; telephone (813) 228–2191, email *D07–SMB–Tampa-WWM@uscg.mil.* The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

**Collection of Information**

This rule calls 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 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 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

**Taking of Private Property**

This rule will not effect 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 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 rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that might disproportionately affect children.

**Indian Tribal Governments**

This rule does not have Tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does 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 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 rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

**Environment**

We have analyzed this 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 concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves establishing seven temporary security zones, as described in paragraph 34(g) of the Instruction that will be enforced for a total of 144 hours. An environmental analysis checklist and categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

**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 amends 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. 1226, 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, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add a temporary § 165.T07–0922 to read as follows:

### § 165.T07–0922 Security Zones; 2012 Republican National Convention, Captain of the Port St. Petersburg Zone, Tampa, FL

(a) *Regulated Areas.* The following regulated areas are security zones. All coordinates are North American Datum 1983.

(1) *Garrison Channel.* All waters of Garrison Channel, including adjacent lands 20 feet shoreward of the mean high water mark of Garrison Channel. All persons and vessels are prohibited from entering or transiting the regulated area unless authorized by the Captain of the Port St. Petersburg or a designated representative. Vessels with permanent moorings in the regulated area are not

permitted to move during the enforcement period. Vessels remaining in the regulated area during the enforcement period are subject to inspection and examination by Coast Guard and other law enforcement officials. Persons desiring to access their vessels within the regulated area are subject to security screenings.

(2) *Hillsborough River.* All waters of Hillsborough River, including adjacent lands 20 feet shoreward of the mean high water mark of Hillsborough River, south of an imaginary line between the following points: Point 1 in position 27°56′44″ N, 82°27′37″ W; and Point 2 in position 27°56′44″ N, 82°27′33″ W. All persons and vessels are prohibited from entering or remaining within the regulated area unless authorized by the Captain of the Port St. Petersburg or a designated representative.

(3) *Seddon Channel.* All waters of Seddon Channel, including adjacent lands 20 feet shoreward of the mean high water mark of Seddon Channel, north of an imaginary line between the following points: Point 1 in position 27°55′52″ N, 82°27′13″ W; and Point 2 in position 27°55′54″ N, 82°27′08″ W. All persons and vessels are prohibited from entering or remaining within the regulated area unless authorized by the Captain of the Port St. Petersburg or a designated representative.

(4) *Sparkman Channel.* All waters of Sparkman Channel, including adjacent lands 20 feet shoreward of the mean high water mark of Sparkman Channel. Recreational vessels are prohibited from entering or remaining in the regulated area unless authorized by the Captain of the Port St. Petersburg or a designated representative. Commercial vessels are authorized to enter or transit the regulated area, but will be subject to compliance with security protocols established by the Captain of the Port St. Petersburg, including:

(i) Have an approved NOA submitted in accordance with 33 CFR part 160 that indicates a mooring at a facility located within the security zone or at a facility that requires transit of the zone;

(ii) Inspection and examination of all commercial vessels and persons requesting authorization to transit the regulated area (including positive identification checks); and

(iii) Embarkation of law enforcement personnel during authorized regulated area transits.

(5) *Unnamed Channel North of Davis Islands.* All waters of the unnamed channel north of Davis Islands, including adjacent lands 20 feet shoreward of the mean high water mark of the unnamed channel north of Davis Islands, east of an imaginary line between the following points: Point 1 in position 27°56′16″ N, 82°27′40″ W; and Point 2 in position 27°56′18″ N, 82°27′43″ W. All persons and vessels are prohibited from entering or remaining within the regulated area unless authorized by the Captain of the Port St. Petersburg or a designated representative.

(6) *Ybor Channel.* All waters of Ybor Channel, including adjacent lands 20 feet shoreward of the mean high water mark of Ybor Channel. Recreational vessels are prohibited from entering or remaining in Ybor Channel unless authorized by the Captain of the Port St. Petersburg or a designated representative. Commercial vessels are authorized to enter or transit Ybor Channel, but will be subject to compliance with security protocols established by the Captain of the Port St. Petersburg, including:

(i) Have an approved NOA submitted in accordance with 33 CFR part 160 that indicates a mooring at a facility located within the security zone or at a facility that requires transit of the zone;

(ii) Inspection and examination of all commercial vessels and persons requesting authorization to transit the regulated area (including positive identification checks); and

(iii) Embarkation of law enforcement personnel during authorized regulated area transits.

(7) *Ybor Turning Basin.* All waters of Ybor Turning Basin, including adjacent lands 20 feet shoreward of the mean high water mark of Ybor Turning Basin. Recreational vessels are prohibited from entering or remaining in Ybor Turning Basin unless authorized by the Captain of the Port St. Petersburg or a designated representative. Commercial vessels are authorized to enter or transit Ybor Turning Basin, but will be subject to compliance with security protocols established by the Captain of the Port St. Petersburg, including:

(i) Have an approved NOA submitted in accordance with 33 CFR part 160 that indicates a mooring at a facility located within the security zone or at a facility that requires transit of the zone;

(ii) Inspection and examination of all commercial vessels and persons requesting authorization to transit the security zone (including positive identification checks); and

(iii) Embarkation of law enforcement personnel during authorized regulated area transits.

(b) *Definition.* The term ''designated representative'' means Coast Guard Patrol Commanders, including Coast Guard boat coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officials designated by or assisting the Captain of the Port St. Petersburg in the enforcement of the regulated areas.

(c) *Regulations.* (1) All persons and vessels desiring to enter or remain within the regulated areas may contact the Captain of the Port St. Petersburg by telephone at (727) 824–7524, or a designated representative via VHF radio on channel 16, to request authorization.

A Port Community Information Bulletin is available on the Coast Guard internet web portal at *http://homeport.uscg.mil.* Port Community Information Bulletins are located under the Port Directory tab in the Safety and Security Alert links.

(2) If authorization to enter or remain within the regulated areas is granted by the Captain of the Port St. Petersburg or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port St. Petersburg or a designated representative. Recreational vessels authorized to enter the regulated areas may be subject to boarding and inspection of the vessel and persons onboard.

(3) The Coast Guard will provide notice of the regulated areas by Local Notice to Mariners, Broadcast Notice to Mariners, public outreach, and on-scene designated representatives.

(d) *Effective Date.* This rule is effective from 12:01 p.m. on August 25, 2012 through 11:59 a.m. on August 31, 2012.

Dated: June 28, 2012.

**S.L. Dickinson,**

*Captain, U.S. Coast Guard, Captain of the Port.*

[FR Doc. 2012–17086 Filed 7–13–12; 8:45 am]

**BILLING CODE 9110–04–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 9 and 721

**[EPA–HQ–OPPT–2011–0633; FRL–9349–4]**

**RIN 2070–AB27**

## Significant New Use Rule for Phenol, 2,4- dimethyl-6-(1-methylpentadecyl)-

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

**ACTION:** Final rule.

**SUMMARY:** EPA is finalizing a significant new use rule (SNUR) under the Toxic Substances Control Act (TSCA) for the chemical substance identified as phenol, 2,4-dimethyl-6-(1-methylpentadecyl)- (PMN P–94–209; CAS No. 134701–20–5). This action requires persons who intend to

manufacture, import, or process the substance for an activity that is designated as a significant new use by this final rule to notify EPA at least 90 days before commencing that activity. The required notification would provide EPA with the opportunity to evaluate the intended use and, if necessary, to prohibit or limit that activity before it occurs.

**DATES:** This final rule is effective August 15, 2012.

**ADDRESSES:** EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPPT–2011–0633. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

**FOR FURTHER INFORMATION CONTACT:**

*For technical information contact:* Abeer Hashem, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–1117; email address: *hashem.abeer@epa.gov*.

*For general information contact:* The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

## I. Does this action apply to me?

You may be potentially affected by this action if you manufacture, import, process, or use the chemical substance contained in this final rule. Potentially affected entities may include, but are not limited to:

- Manufacturers, importers, or processors of the subject chemical substance (NAICS codes 325 and 324110), e.g., chemical manufacturing and petroleum refineries.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in § 721.5. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

This action may also affect certain entities through pre-existing import certification and export notification rules under TSCA. Chemical importers are subject to the TSCA section 13 (15 U.S.C. 2612) import certification requirements promulgated at 19 CFR 12.118 through 12.127; see also 19 CFR 127.28. Chemical importers must certify that the shipment of the chemical substance complies with all applicable rules and orders under TSCA. Importers of chemicals subject to a final SNUR must certify their compliance with the SNUR requirements. The EPA policy in support of import certification appears at 40 CFR part 707, subpart B. In addition, any persons who export or intend to export a chemical substance are subject to the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611(b)) (see § 721.20), and must comply with the export notification requirements in 40 CFR part 707, subpart D.

## II. Background

### *A. What action is the Agency taking?*

EPA is finalizing a SNUR for the chemical substance identified as phenol, 2,4-dimethyl-6-(1-methylpentadecyl)-, (PMN P–94–209; CAS No. 134701–20–5). This action requires persons who intend to manufacture, import, or process the subject chemical substance for an activity that is designated as a significant new use by this final rule to notify EPA at least 90 days before commencing that activity. This rule was proposed in the **Federal Register** of December 28, 2011 (76 FR 81437) (FRL–9325–9). In response to the proposed SNUR, EPA received two public comments. One commenter stated that ''phenol is not a safe product to use.'' As discussed in Units II. and IV. of the proposed rule, EPA did identify potential hazards for the PMN substance (which is a different chemical substance than ''phenol'') but did not find a potential unreasonable risk. EPA proposed this SNUR to require notification so that EPA could evaluate potential risks from any new uses. Another commenter stated that EPA should include an exemption for worker protection requirements when the PMN substance was present in a mixture at low concentrations, specifically at less than 1.0 percent. The commenter also stated that the SNUR should contain an exemption from the requirements of the rule including recordkeeping when it is incorporated into certain substrates. The commenter suggested these exemptions because the PMN substance is often used as an additive in thermoplastic polymer matrices and in mixtures at concentrations less than 1.0 percent. Because EPA does not expect significant risks from these activities, EPA will include these exemptions in the final rule. Therefore, the Agency is issuing a final SNUR that:

1. Adds protection in the workplace requirements under § 721.63 for dermal protection.
2. Includes an exemption from the requirements under § 721.63 when the substance is present in a mixture less than 1.0 percent.
3. Removes all release to water requirements under § 721.90.
4. Includes an exemption from all requirements of the rule including recordkeeping once the PMN substance has been incorporated into polymer matrices.
5. Revises the recordkeeping requirements under § 721.125 to reflect the modified significant new uses.

This final SNUR requires persons to notify EPA at least 90 days before commencing the manufacture, import, or processing of the chemical substance identified as phenol, 2,4-dimethyl-6-(1-methylpentadecyl)-, (PMN P–94–209, CAS No.134701–20–5), for any activity designated by this final SNUR as a significant new use. Receipt of such notices allows EPA to assess risks that may be presented by the intended uses and, if appropriate, to regulate the proposed use before it occurs.

*B. What is the Agency's authority for taking this action?*

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a ''significant new use.'' EPA must make this determination by rule after considering all relevant factors, including those listed in TSCA section 5(a)(2). Once EPA determines that a use of a chemical substance is a significant new use, TSCA section 5(a)(1)(B) requires persons to submit a significant new use notice (SNUN) to EPA at least 90 days before they manufacture, import, or process the chemical substance for that use. Persons who must report are described in § 721.5.

*C. Applicability of General Provisions*

General provisions for SNURs appear in 40 CFR part 721, subpart A. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the rule to uses occurring before the effective date of the final rule. Provisions relating to user fees appear at 40 CFR part 700. According to § 721.1(c), persons subject to this SNUR must comply with the same notice requirements and EPA regulatory procedures as submitters of PMNs under TSCA section 5(a)(1)(A). In particular, these requirements include the information submission requirements of TSCA section 5(b) and 5(d)(1), the exemptions authorized by TSCA section 5(h)(1), (h)(2), (h)(3), and (h)(5), and the regulations at 40 CFR part 720. Once EPA receives a SNUN, EPA may take regulatory action under TSCA section 5(e), 5(f), 6, or 7 to control the activities for which it has received the SNUN. If EPA does not take action, EPA is required under TSCA section 5(g) to explain in the **Federal Register** its reasons for not taking action.

Chemical importers are subject to the TSCA section 13 (15 U.S.C. 2612) import certification requirements promulgated in Customs and Border Patrol regulations at 19 CFR 12.118 through 12.127; see also 19 CFR 127.28. Chemical importers must certify that the shipment of the chemical substance complies with all applicable rules and orders under TSCA. For importers of the chemical substance subject to this final SNUR those requirements include the SNUR. The EPA policy in support of import certification appears at 40 CFR part 707, subpart B. In addition, any persons who export or intend to export the chemical substance are subject to the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611 (b)) (see § 721.20) and must comply with the export notification requirements in 40 CFR part 707, subpart D.

## III. Rationale and Objectives of the Final Rule

*A. Rationale*

During review of the PMN submitted for the chemical substance phenol, 2,4-dimethyl-6-(1-methylpentadecyl)-, EPA concluded that one or more of the criteria of concern established at § 721.170 were met, as discussed in Units II. and IV. of the proposed rule (76 FR 81437).

*B. Objectives*

EPA is issuing this final SNUR for a specific chemical substance which has undergone premanufacture review because the Agency wants to achieve the following objectives with regard to the significant new uses designated in this final rule:

- EPA will receive notice of any person's intent to manufacture, import, or process a listed chemical substance for the described significant new use before that activity begins.
- EPA will have an opportunity to review and evaluate data submitted in a SNUN before the notice submitter begins manufacturing, importing, or processing a listed chemical substance for the described significant new use.
- EPA will be able to regulate prospective manufacturers, importers, or processors of a listed chemical substance before the described significant new use of that chemical substance occurs, provided that regulation is warranted pursuant to TSCA sections 5(e), 5(f), 6, or 7.

Issuance of a SNUR for a chemical substance does not signify that the chemical substance is listed on the TSCA Inventory. Guidance on how to determine if a chemical substance is on the TSCA Inventory is available on the Internet at *http://www.epa.gov/opptintr/existingchemicals/pubs/tscainventory/index.html*.

## IV. Significant New Use Determination

Section 5(a)(2) of TSCA states that EPA's determination that a use of a chemical substance is a significant new use must be made after consideration of all relevant factors, including:

- The projected volume of manufacturing and processing of a chemical substance.
- The extent to which a use changes the type or form of exposure of human beings or the environment to a chemical substance.
- The extent to which a use increases the magnitude and duration of exposure of human beings or the environment to a chemical substance.
- The reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of a chemical substance.

In addition to these factors enumerated in TSCA section 5(a)(2), the statute authorized EPA to consider any other relevant factors.

To determine what would constitute a significant new use for the chemical substance that is the subject to this final SNUR, EPA considered relevant information about the toxicity of the chemical substance, likely human exposure and environmental releases associated with possible uses, taking into consideration the four bulleted TSCA section 5(a)(2) factors listed in this unit, and the regulations at § 721.170 for issuing a SNUR after receipt of a PMN.

## V. Applicability of Rule to Uses Occurring Before Effective Date of the Final Rule

As discussed in the **Federal Register** issue of April 24, 1990 (55 FR 17376), EPA has decided that the intent of TSCA section 5(a)(1)(B) is best served by designating a use as a significant new use as of the date of publication of the proposed rule rather than as of the effective date of the final rule. If uses begun after publication were considered ongoing rather than new, it would be difficult for EPA to establish SNUR notice requirements because a person could defeat the SNUR by initiating the significant new use before the rule became effective, and then argue that the use was ongoing before the effective date of the final rule.

Any person who began commercial manufacture, import, or processing of the chemical substance for any of the significant new uses designated in the proposed rule after the date of publication of the proposed rule must stop that activity before the effective date of this final rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including any extensions expires.

EPA has promulgated provisions to allow persons to comply with this SNUR before the effective date. If a person meets the conditions of advance compliance under § 721.45(h), the person is considered exempt from the requirements of the SNUR.

## VI. Test Data and Other Information

EPA recognizes that TSCA section 5 does not require developing any particular test data before submission of a SNUN. The two exceptions are:

1. Development of test data is required where the chemical substance subject to the SNUR is also subject to a test rule under TSCA section 4 (see TSCA section 5(b)(1)).

2. Development of test data may be necessary where the chemical substance has been listed under TSCA section 5(b)(4) (see TSCA section 5(b)(2)).

In the absence of a TSCA section 4 test rule or a TSCA section 5(b)(4) listing covering the chemical substance, persons are required only to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them (see § 720.50). However, upon review of PMNs and SNUNs, the Agency has the authority to require appropriate testing. Unit IV. of the proposed rule lists the testing recommended by EPA for the chemical substance phenol, 2,4 dimethyl-6-(1-methylpentadecyl)-. Specifically, EPA has determined that a dermal absorption study (Office of Pollution Prevention and Toxics (OPPTS) Test Guideline 870.3250) would help characterize the health effects of the PMN substance. Descriptions of tests are provided for informational purposes. EPA strongly encourages persons, before performing any testing, to consult with the Agency pertaining to protocol selection and test reporting. To access the harmonized test guidelines referenced in this document electronically, please go to *http://www.epa.gov/ocspp* and select ''Test Methods and Guidelines.''

The recommended tests may not be the only means of addressing the potential risks of the chemical substance. However, submitting a SNUN without any test data may increase the likelihood that EPA will take action under TSCA section 5(e), particularly if satisfactory test results have not been obtained from a prior PMN or SNUN submitter. EPA recommends that potential SNUN submitters contact EPA early enough so that they will be able to conduct the appropriate tests.

SNUN submitters should be aware that EPA will be better able to evaluate SNUNs which provide detailed information on the following:

- Human exposure and environmental release that may result from the significant new use of the chemical substances.
- Potential benefits of the chemical substances.
- Information on risks posed by the chemical substances compared to risks posed by potential substitutes.

## VII. SNUN Submissions

According to § 721.1(c), persons submitting a SNUN must comply with the same notice requirements and EPA regulatory procedures as persons submitting a PMN, including submission of test data on health and environmental effects as described in § 720.50. SNUNs must be submitted on EPA Form No. 7710–25, generated using e-PMN software, and submitted to the Agency in accordance with the procedures set forth in §§ 721.25 and 720.40. E–PMN software is available electronically at *http://www.epa.gov/opptintr/newchems.*

## VIII. Economic Analysis

EPA has evaluated the potential costs of establishing SNUN requirements for potential manufacturers, importers, and processors of the chemical substance subject to this final rule. EPA's complete economic analysis is available in the docket under docket ID number EPA–HQ–OPPT–2011–0633.

## IX. Statutory and Executive Order Reviews

### *A. Executive Order 12866*

This final rule establishes a SNUR for a chemical substance that was the subject of a PMN. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993).

### *B. 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 PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9, and included on the related collection instrument or form, if applicable. EPA is amending the table in 40 CFR part 9 to list the OMB approval number for the information collection requirements contained in this final rule. This listing of the OMB control numbers and their subsequent codification in the CFR satisfies the display requirements of PRA and OMB's implementing regulations at 5 CFR part 1320. This Information Collection Request (ICR) was previously subject to public notice and comment prior to OMB approval, and given the technical nature of the table, EPA finds that further notice and comment to amend it is unnecessary. As a result, EPA finds that there is ''good cause'' under section 553(b)(3)(B) of the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(B), to amend this table without further notice and comment.

The information collection requirements related to this action have already been approved by OMB pursuant to PRA under OMB control number 2070–0012 (EPA ICR No. 574). This action would not impose any burden requiring additional OMB approval. If an entity were to submit a SNUN to the Agency, the annual burden is estimated to average between 30 and 170 hours per response. This burden estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete, review, and submit the required SNUN.

Send any comments about the accuracy of the burden estimate, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, to the Director, Collection Strategies Division, Office of Environmental Information (2822T), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. Please remember to include the OMB control number in any correspondence, but do not submit any completed forms to this address.

### *C. Regulatory Flexibility Act*

On February 18, 2012, EPA certified pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), that promulgation of a SNUR does not have a significant economic impact on a substantial number of small entities where the following are true:

1. A significant number of SNUNs would not be submitted by small entities in response to the SNUR.

2. The SNUN submitted by any small entity would not cost significantly more than $8,300.

A copy of that certification is available in the docket for this rule.

This rule is within the scope of the February 18, 2012 certification. Based on the economic analysis discussed in Unit VIII. and EPA's experience promulgating SNURs (discussed in the certification), EPA believes that the following are true:

- A significant number of SNUNs would not be submitted by small entities in response to the SNUR.
- Submission of the SNUN would not cost any small entity significantly more than $8,300. Therefore, the promulgation of the SNUR would not have a significant economic impact on a substantial number of small entities.

*D. Unfunded Mandates Reform Act*

Based on EPA's experience with proposing and finalizing SNURs, State, local, and Tribal governments have not been impacted by these rulemakings, and EPA does not have any reasons to believe that any State, local, or Tribal government will be impacted by this final rule. As such, EPA has determined that this final rule does not impose any enforceable duty, contain any unfunded mandate, or otherwise have any effect on small governments subject to the requirements of sections 202, 203, 204, or 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4).

*E. Executive Order 13132*

This action will not have a substantial direct effect on 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, entitled *Federalism* (64 FR 43255, August 10, 1999).

*F. Executive Order 13175*

This final rule does not have Tribal implications because it is not expected to have substantial direct effects on Indian Tribes. This final rule does not significantly nor uniquely affect the communities of Indian Tribal governments, nor does it involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of Executive Order 13175, entitled *Consultation and Coordination With Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule.

*G. Executive Order 13045*

This action is not subject to Executive Order 13045, entitled *Protection of Children From Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined by Executive Order 12866, and this action does not address environmental health or safety risks disproportionately affecting children.

*H. Executive Order 13211*

This action is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001), because this action is not expected to affect energy supply, distribution, or use and because this action is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer and Advancement Act*

In addition, since this action does not involve any technical standards, 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), does not apply to this action.

*J. Executive Order 12898*

This action does not entail special considerations of environmental justice related issues as delineated by Executive Order 12898, entitled *Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

**X. Congressional Review Act**

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

**List of Subjects**

*40 CFR Part 9*

Environmental protection, Reporting and recordkeeping requirements.

*40 CFR Part 721*

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

Dated: June 30, 2012.

**Maria J. Doa,**

*Director, Chemical Control Division, Office of Pollution Prevention and Toxics.*

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

## PART 9—[AMENDED]

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

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

■ 2. The table in § 9.1 is amended by adding the following section in numerical order under the undesignated center heading ''Significant New Uses of Chemical Substances'' to read as follows:

**§ 9.1 OMB approvals under the Paperwork Reduction Act.**

* * * * *

| 40 CFR Citation | OMB Control No. |
|---|---|
| * * * * * | |
| **Significant New Uses of Chemical Substances** | |
| * * * * * | |
| 721.5725 ..... | 2070–0012 |
| * * * * * | |

* * * * *

## PART 721—[AMENDED]

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

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

■ 4. Add § 721.5725 to subpart E to read as follows:

**§ 721.5725 Phenol, 2,4-dimethyl-6-(1-methylpentadecyl)-.**

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as phenol, 2,4-dimethyl-6-(1-methylpentadecyl)- (PMN P–94–209; CAS No. 134701–20–5) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this rule do not apply to quantities of the PMN substance after it has been completely reacted (cured); embedded or incorporated into a polymer matrix that has been reacted (cured); or embedded, encapsulated, or incorporated into a permanent solid matrix (does not include slurries) that is not intended to undergo further processing, except for mechanical processing.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(2)(i), (a)(3), and (b) (concentration set at 1.0 percent).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125

(a), (b), (c), (d), and (e) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

[FR Doc. 2012–17276 Filed 7–13–12; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA–R06–OAR–2010–0846; FRL–9698–3]

## Stay of the Effectiveness of Requirements; Approval and Promulgation of Implementation Plans; New Mexico; Federal Implementation Plan for Interstate Transport of Pollution Affecting Visibility and Best Available Retrofit Technology Determination

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

**ACTION:** Final rule.

**SUMMARY:** The EPA is granting an administrative stay of the final rule titled ''Approval and Promulgation of Implementation Plans; New Mexico; Federal Implementation Plan for Interstate Transport of Pollution Affecting Visibility and Best Available Retrofit Technology Determination'' under the authority of the Administrative Procedure Act (APA) for 90 days. Today's action reflects this stay in the Code of Federal Regulations.

**DATES:** Effective July 16, 2012. 40 CFR 52.1628 is stayed until October 15, 2012.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2010–0846. All documents in the docket are listed in the Federal eRulemaking portal index at *http://www.regulations.gov* and are available either electronically at *http://www.regulations.gov* or in hard copy at EPA Region 6, 1445 Ross Ave., Dallas, TX, 75202–2733. To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section. A reasonable fee may be charged for copies.

**FOR FURTHER INFORMATION CONTACT:** Agustin Carbo-Lugo, EPA Region 6, (214) 665–8037, *Carbo-Lugo.Agustin@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Throughout this document wherever ''we,'' ''us,'' ''our,'' or ''the Agency'' is used, we mean the EPA. Unless otherwise specified, when we say the ''San Juan Generating Station,'' or ''SJGS,'' we mean units 1, 2, 3, and 4, inclusive.

### I. Background

On August 22, 2011, the EPA published a final rule disapproving a portion of the State Implementation Plan (SIP) revision received from the State of New Mexico on September 17, 2007, for the purpose of addressing the ''good neighbor'' requirements of section 110(a)(2)(D)(i) of the Clean Air Act (CAA or Act) for the 1997 8-hour ozone National Ambient Air Quality Standards (NAAQS or standards) and the 1997 fine particulate matter ($PM_{2.5}$) NAAQS (the ''NM FIP Rule'', 76 FR 52388). In that action, EPA disapproved the New Mexico Interstate Transport SIP provisions that address the requirement of section 110(a)(2)(D)(i)(II) that emissions from New Mexico sources do not interfere with measures required in the SIP of any other state under part C of the CAA to protect visibility. We found that New Mexico sources, except the San Juan Generating Station (SJGS), were sufficiently controlled to eliminate interference from those sources with the visibility programs of other states. EPA promulgated a Federal Implementation Plan (FIP) requiring the implementation of nitrogen oxides ($NO_X$) and sulfur dioxide ($SO_2$) emission limits necessary at the San Juan Generating Station to prevent such interference. This FIP also addresses the Regional Haze (RH) Best Available Retrofit Technology (BART) requirement for $NO_X$ for SJGS. In addition, EPA implemented sulfuric acid ($H_2SO_4$) hourly emission limits at the SJGS, to minimize the contribution of this compound to visibility impairment. Finally, we found that compliance with the $NO_X$, $SO_2$, and $H_2SO_4$ emission limits must be within 5 years of the effective date of our final rule consistent with the requirements of the regional haze regulations.

Petitions for judicial review of the final rule were subsequently filed in the United States Court of Appeals for the Tenth Circuit. The petitioners bringing those challenges are WildEarth Guardians, Public Service of New Mexico (PNM), and New Mexico Governor Susana Martinez with the New Mexico Environment Department.

By a letter to the EPA Administrator, dated April 26, 2012, the Governor of New Mexico requested ''a short term (90-day) stay'' of the federal implementation plan to evaluate the potential for alternatives to the rule requirements. She presents a stay as being necessary for ''meaningful, productive negotiations'' that may lead to an avoidance of litigation. By a letter to the acting Regional Administrator of EPA Region 6, dated May 8, 2012, PNM also requested ''an opportunity to engage in productive discussions as proposed by Governor Martinez.''

We support discussions of any alternatives to the federal implementation plan that would be consistent with regional haze rule requirements and the requirements of section 110(a)(2)(D)(i)(II) of the CAA. If such an alternative arises through discussions with the State of New Mexico, as well as other stakeholders, it may provide a basis for submittal by the state of a revised SIP, withdrawal of the FIP, and the resolution of pending litigation.

### II. Today's Final Rule

#### *A. Issuance of a Stay and Delay of the Effectiveness of the NM FIP Rule*

Pursuant to section 705 of the APA, the EPA hereby stays the effectiveness of the NM FIP Rule for a period of 90 days from the date of publication of this **Federal Register** notice. By this action, we are staying the effectiveness of the rule published in the **Federal Register** on August 22, 2011 (76 FR 52388). This stay of effectiveness will remain in place for 90 days from today. This action adds a note to 40 CFR 52.1628 that there is a 90 day stay of the effectiveness of the NM FIP Rule, but, in its substance, it does not alter any future compliance requirements. There are no compliance obligations under the terms of the NM FIP that arise during the 90 day period.

Under section 705 of the APA, ''an agency * * * may postpone the effective date of [an] action taken by it pending judicial review.'' This source of authority requires an Agency finding that ''justice requires'' a temporary stay of rule requirements. Accordingly, as groundwork for the mentioned discussions among the Agency, the State of New Mexico, and other stakeholders, EPA now finds that justice requires a 90-day stay of the rule's effectiveness. Our temporary stay of the effectiveness of the NM FIP Rule applies only to any requirements established in 40 CFR 52.1628 during the 90-day stay and does not extend the ultimate compliance timeframe set out in the rule, which is a statutory requirement under CAA section 169A(b)(2)(A). Nevertheless, EPA intends to undertake a future rulemaking to either: (1) Extend the compliance time for the NM FIP to accommodate the stay; or (2) account for an alternative proposal. If the

discussions of new alternatives lead to an additional regulatory proposal, the public would have the opportunity to evaluate and comment on such new proposal through EPA's rulemaking process.

*B. Basis for Making This Action Effective on the Date of Publication*

The EPA also believes that there is good cause to make today's action effective immediately, rather than effective within 30 days, within the meaning of 5 U.S.C. 553(d)(3). One purpose of the 30-day waiting period prescribed in 5 U.S.C. 553(d) is to give affected parties a reasonable time to adjust their behavior and prepare before the final action takes effect. Whereas here, the affected parties are anticipating this action and requesting the flexibility it provides, and any delay in its effectiveness will result in unnecessary delays for productive negotiations. Therefore, balancing the necessity for immediate implementation against principles of fundamental fairness, which require that all affected persons be afforded a reasonable amount of time to prepare for the effective date of this action, EPA has determined that it is unnecessary, impracticable and contrary to the public interest to delay this action. Additionally, since this action does not ''implement, interpret, or prescribe law or policy,'' within the meaning of 5 U.S.C. 551(4), nor makes changes to substantive requirements, EPA concludes that it does not constitute a substantive rulemaking. Therefore, it is not subject to notice and comment requirements.

## III. Statutory and Executive Order Reviews

*A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review 13563*

This action will stay the effectiveness of the NM FIP for 90 days and imposes no additional requirements. This type of action is exempt from review under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011).

*B. Paperwork Reduction Act*

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Under the Paperwork Reduction Act, a ''collection of information'' is defined as a requirement for ''answers to * * * identical reporting or recordkeeping requirements imposed on ten or more persons * * *'' 44 U.S.C. 3502(3)(A). Because the temporary stay is for the effectiveness of a rule that applies to a single facility, (SJGS), the Paperwork Reduction Act does not apply. See 5 CFR part 1320(c).

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 our regulations in 40 CFR are listed in 40 CFR part 9.

*C. Regulatory Flexibility Act*

This action is not subject to the Regulatory Flexibility Act (RFA), which generally requires an agency to prepare a regulatory flexibility analysis for any rule that will have a significant economic impact on a substantial number of small entities. The RFA applies only to rules subject to notice and comment rulemaking requirements under the APA or any other statute. This action is not subject to notice and comment requirements under the APA or any other statute because, although subject to the APA, this action does not ''implement, interpret, or prescribe law or policy,'' within the meaning of APA § 551(4).

*D. Unfunded Mandates Reform Act (UMRA)*

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or tribal governments or the private sector. EPA has determined that this temporary stay does not contain a Federal mandate that may result in expenditures that exceed the inflation-adjusted UMRA threshold of $100 million by State, local, or Tribal governments or the private sector in any 1-year. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA.

This action 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. This action stays the effectiveness of the NM FIP for 90 days and imposes no additional regulatory requirements.

*E. Executive Order 13132: Federalism*

This temporary stay 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. This action merely temporarily stays the effectiveness of a final rule. Thus, Executive Order 13132 does not apply to this action.

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

EPA will consult and coordinate with Tribes regarding BART alternatives during the stay, however, this temporary stay does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because it neither imposes substantial direct compliance costs on tribal governments, nor preempts tribal law. Furthermore, this action does not ''implement, interpret, or prescribe law or policy,'' within the meaning of 5 U.S.C. 551(4), and therefore, it does not constitute a substantive rulemaking. As such, this action only grants a 90-day stay of the effectiveness of the NM FIP Rule without altering any future established compliance requirements. Therefore, the requirements of section 5(b) and 5(c) of the Executive Order do not apply to this action.

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

This temporary stay is not subject to Executive Order 13045 because it is not a rule of general applicability, it is not economically significant as defined under Executive Order 12866, and does not have a disproportionate effect on children.

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

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.

*H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer and Advancement Act*

This temporary stay is not subject to the National Technology Transfer and Advancement Act of 1995 (''NTTAA''). Section 12(d) of the NTTAA, Public Law 104–113, 12(d) (15 U.S.C. 272 note), directs 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. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, 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*

This temporary stay is not subject to Executive Order 12898. Executive Order 12898 (59 FR 7629, February 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.

EPA has determined that this action will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not change the substance of 40 CFR 52.1628.

*K. Congressional Review Act*

This action is not subject to the Congressional Review Act (''CRA''). The CRA, 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 Section 804(3) of the CRA defines ''rule'' as having the same meaning given to such term in section 551 of the APA. *See* 5 U.S.C. 551(4). Since this action is not designed to implement, interpret, or prescribe law or policy, within the meaning of APA, this action is exempted from the reporting requirements of the CRA.

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

Environmental protection, Air pollution control, Best available control technology, Incorporation by reference, Intergovernmental relations, Interstate transport of pollution, Nitrogen dioxide, Ozone, Particulate matter, Regional haze, Reporting and recordkeeping requirements, Sulfur dioxide, Visibility.

Dated: July 2, 2012.

**Lisa P. Jackson,**

*Administrator.*

Title 40, chapter I, of the Code of Federal Regulations is amended as follows:

## PART 52—[AMENDED]

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

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

■ 2. Effective July 16, 2012, 40 CFR 52.1628 is stayed until October 15, 2012.

[FR Doc. 2012–16952 Filed 7–13–12; 8:45 am]

BILLING CODE 6560–50–P

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

### 49 CFR Part 375

**[Docket No. FMCSA–2011–0313]**

**RIN 2126–AB41**

## Transportation of Household Goods in Interstate Commerce; Consumer Protection Regulations: Household Goods Motor Carrier Record Retention Requirements

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

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

**SUMMARY:** FMCSA amends the regulations governing the period during which household goods (HHG) motor carriers must retain documentation of an individual shipper's waiver of receipt of printed copies of consumer protection materials. This change harmonizes the retention period with other document retention requirements applicable to HHG motor carriers. FMCSA also amends the regulations to clarify that a HHG motor carrier is not required to retain waiver documentation from any individual shippers for whom the carrier does not actually provide services. This rule responds to a petition filed by the American Moving and Storage Association (AMSA).

**DATES:** This final rule is effective November 13, 2012, unless an adverse comment, or notice of intent to submit an adverse comment, is either submitted to the above docket via *http://www.regulations.gov* on or before August 15, 2012 or reaches the Docket Management Facility by that date. If an adverse comment, or notice of intent to submit an adverse comment, is received by August 15, 2012, we will withdraw this direct final rule and publish a timely notice of withdrawal in the **Federal Register**.

**ADDRESSES:** You may submit comments identified by docket number FMCSA–2011–0313 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) West Building Ground Floor Room W12–140, U.S. Department of Transportation, 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., E.T., Monday through Friday,

except Federal holidays. The telephone number is 202–366–9329.

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

**FOR FURTHER INFORMATION CONTACT:** Mr. Brodie Mack, FMCSA Household Goods Enforcement and Compliance Team Leader, (202) 385–2400.

**SUPPLEMENTARY INFORMATION:**

## I. Public Participation and Comments

If you would like to participate in this rulemaking, you may submit 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.

### *A. Submitting Comments*

If you submit a comment, please include the docket number for this rulemaking (FMCSA–2011–0313), indicate the specific section of this direct final rule to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online, or by fax, mail or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an email address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission. As a reminder, FMCSA will only consider adverse comments as defined in 49 CFR 389.39(b) and explained below.

To submit your comment online, go to *http://www.regulations.gov,* click on the ''submit a comment'' box, which will then become highlighted in blue. In the ''Document Type'' drop down menu select ''Final Rule'' and insert ''FMCSA–2011–0313'' in the ''Keyword'' box. Click ''Search'' then click on the balloon shape in the ''Actions'' column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

### *B. 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,* click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''FMCSA–2011–0313'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. If you do not have access to the Internet, you may also view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

### *C. Privacy Act*

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

## II. Regulatory Information

FMCSA publishes this direct final rule under 49 CFR 389.39 because the Agency determined that the rule is a routine and non-controversial amendment to 49 CFR part 375. The rule reduces the record retention period in 49 CFR 375.213(e)(3) from three years to one year to harmonize it with the retention period required for other household goods shipping documents. It also clarifies that a household goods motor carrier is not required to retain waiver documentation from an individual shipper for whom the carrier does not transport household goods or provide related services. FMCSA does not expect any adverse comments to this rule because it merely makes this recordkeeping requirement consistent with others in 49 CFR part 375. If no adverse comments, or notices of intent to submit an adverse comment, are received by August 15, 2012, this rule will become effective as stated in the **DATES** section. In that case, approximately 30 days before the effective date, we will publish a document in the **Federal Register** stating that no adverse comments were received and confirming that this rule will become effective as scheduled. However, if we receive any adverse comments or notices of intent to submit an adverse comment, we will publish a document in the **Federal Register** announcing the withdrawal of all or part of this direct final rule. If we decide to proceed with a rulemaking following receipt of any adverse comments, we will publish a separate notice of proposed rulemaking (NPRM) and provide a new opportunity for comment.

A comment is considered ''adverse'' if the comment explains why this rule or a part of this rule would be inappropriate, including a challenge to its underlying premise or approach, or would be ineffective or unacceptable without a change.

## III. Legal Basis for the Rulemaking

The Secretary of Transportation's (Secretary) general jurisdiction to establish regulations over transportation of property by motor carrier is found at 49 U.S.C. 13501. Household goods motor carriers are a subset of all property motor carriers and are required by 49 U.S.C. 13902 to register with FMCSA as HHG motor carriers. The Secretary's authority to inspect, copy and set retention periods for HHG motor carriers' records is found at 49 U.S.C. 14122. This rulemaking only applies to HHG motor carriers that provide for-hire transportation in interstate or foreign commerce.

This rulemaking is based on the statutory provisions cited above and on the Household Goods Mover Oversight Enforcement and Reform Act of 2005, Title IV, Subtitle B of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59). Section 4205 of SAFETEA–LU, codified at 49 U.S.C. 14104(b)(2), requires HHG motor carriers to distribute the following two FMCSA consumer pamphlets to prospective shippers: ''Your Rights and Responsibilities When You Move,'' and ''Ready to Move?—Tips for a Successful Interstate Move.''

The Secretary has delegated these various authorities to the FMCSA Administrator (49 CFR 1.73(a)).

## IV. Background

On November 29, 2010, FMCSA published a final rule entitled ''Brokers of Household Goods Transportation by Motor Vehicle'' (73 FR 72987). That rule amended FMCSA's regulations to require HHG brokers to comply with certain consumer protection requirements. As a part of that rule, FMCSA also amended existing regulations to permit HHG motor carriers to provide FMCSA's consumer protection publications by Internet in place of paper copies (49 CFR 375.213(a) and (b)). In accordance with that rule, if an individual shipper elects to waive physical receipt of the consumer protection information and instead chooses to access the information via hyperlink on the Internet, HHG motor carriers must obtain a signed paper or electronic

receipt from the shipper documenting this waiver (49 CFR 375.213(e)(2)). Household goods motor carriers must keep this receipt on file for three years (49 CFR 375.213(e)(3)).

On January 11, 2011, the American Moving and Storage Association (AMSA) submitted a petition for rulemaking to amend 49 CFR 375.213(e). AMSA requested that FMCSA reduce the retention period for the waiver documentation from three years to one year to harmonize this requirement with other one-year document retention requirements in 49 CFR part 375. AMSA also requested that FMCSA amend § 375.213(e)(3) to clarify that household goods motor carriers are only required to retain receipts from those shippers for whom they actually provide moving services.

A copy of AMSA's current petition is in Docket FMCSA–2011–0313, as well as Docket FMCSA–2004–17008.

## V. Discussion of the Rule

FMCSA amends 49 CFR 375.213(e)(3) by reducing the retention period from three years to one year for signed receipts documenting an individual shipper's waiver of physical receipt of the consumer protection publications ''Your Rights and Responsibilities When You Move,'' and ''Ready to Move?—Tips for a Successful Interstate Move.'' This change would harmonize this requirement with other requirements in part 375 that require HHG motor carriers to retain shipping documents for only one year. See, for example, 49 CFR 375.403(c) (binding estimates); § 375.405(d) (non-binding estimates); and § 375.501(g) (orders for service). FMCSA does not believe that any valid consumer protection purpose would be served by requiring HHG motor carriers to retain the consumer protection waiver receipt documentation two years longer than the other documentation about a shipper's move. In any event, without the other documentation related to a shipper's move, FMCSA would be limited in its ability to use the waiver for enforcement purposes.

FMCSA also amends 49 CFR 375.213(e)(3) by clarifying that a HHG motor carrier that obtains a signed waiver from a shipper is required to comply with the retention requirements in § 375.213(e)(3) only if the carrier actually provides moving services to the shipper. FMCSA estimates that shippers solicit approximately three estimates from different household goods carriers before choosing one. The Agency does not believe there are any significant consumer protection benefits associated with requiring a HHG carrier to retain receipts for prospective shippers that ultimately do not use its services. As a result, § 375.213(e)(3) no longer requires HHG carriers to retain receipts from shippers who decide not to use that particular HHG motor carrier.

## VI. Regulatory Analyses

### *Executive Order (E.O.) (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures*

FMCSA has determined that this direct final rule is not a ''significant regulatory action'' within the meaning of Executive Order (E.O.) 12866, as supplemented by E.O. 13563 (76 FR 3821, January 21, 2011), or within the meaning of DOT regulatory policies and procedures. The estimated cost or benefit of the direct final rule is not expected to exceed the $100 million annual threshold for economic significance; therefore, any costs or benefits associated with the rule are expected to be minimal. Moreover, the Agency does not expect the direct final rule to generate substantial Congressional or public interest. Therefore, this rule has not been formally reviewed by the Office of Management and Budget. No expenditures are required of the affected population because this rule reduces a regulatory burden.

### *Regulatory Flexibility Act*

Under the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 857), FMCSA is not required to prepare a final regulatory flexibility analysis under 5 U.S.C. 604(a) for this final rule because the agency has not issued a notice of proposed rulemaking prior to this action.

### *Unfunded Mandates Reform Act*

FMCSA is not required to prepare an assessment under the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531, *et seq.,* evaluating a discretionary regulatory action because the Agency has not issued an NPRM prior to this action.

### *E.O. 13132 (Federalism)*

A rule has implications for Federalism under Section 1(a) of E.O. 13132 if it has ''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.'' FMCSA has determined that this rule would not have substantial direct effects on States, nor would it limit the policymaking discretion of States. Nothing in this document preempts any State law or regulation.

### *Paperwork Reduction Act*

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), a Federal agency must obtain approval from the Office of Management and Budget (OMB) for each collection of information it conducts, sponsors, or requires through regulations.

The FMCSA seeks approval of the collection of information requirements in this direct final rule to generate, maintain, retain, disclose, and provide information to, or for, the agency under 49 CFR part 375. The information collected will assist individual household goods shippers in their commercial dealings with interstate household goods carriers, thereby providing a desirable consumer protection service. The collection of information would be used by prospective household goods shippers to make informed decisions about contracts and services to be ordered, executed, and settled within the interstate household goods carrier industry.

FMCSA estimates there are approximately 6,000 active household goods carriers.[1] This direct final rule reducing the record retention time from 3 years to one year results in a smaller burden on the HHG motor carrier industry. However, necessary adjustments were made to baseline annual burden and cost estimates because the Agency previously failed to account for the paperwork burden/reduction the November 29, 2010, final rule ''Brokers of Household Goods Transportation by Motor Vehicle'' (73 FR 72987) would have on household goods carriers who provide consumers electronic access to the mandated consumer protection information. FMCSA has calculated a program adjustment decrease of 31,900 estimated annual burden hours [5,524,500 proposed estimated annual burden hours—5,556,400 currently-approved estimated annual burden hours = (31,900)] and a decrease of $5,328,000 in estimated annual costs to respondents [$4,516,000 proposed annual cost to respondents—$9,844,000 currently-approved annual cost to respondents = −$5,328,000].[2]

The Agency has updated its baseline for burden estimates and costs to respondents in regard to consumers

[1] Three year average for 2008—2010. See *http://www.fmcsa.dot.gov/documents/facts-research/CMV-Facts.pdf.*

[2] See *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201007-2126-002.*

(shippers) requesting either printed or electronic copies of Federal consumer protection information, specifically, Department of Transportation publications FMCSA–ESA–03–005 entitled ''Ready to Move?'' and FMCSA–ESA–03–006 ''Your Rights and Responsibilities When You Move.'' The Agency estimates that forty percent of consumers will request printed copies and the remaining sixty percent will request electronic copies. HHG motor carriers may provide a hyperlink directed to each of these documents from their Web sites, but are required to obtain a receipt that indicates verification of the shipper's agreement to access the Federal consumer protection information on the Internet. Although an increase in burden hours is associated with carriers providing hyperlinks, obtaining, and retaining receipts from shippers who elect to access these publications electronically, there is a substantial reduction in material costs from producing and storing documents. In addition to these adjustments, the Agency identified and corrected a calculation error regarding annual burden hours in the currently approved Information Collection Request (ICR).

Table 1 summarizes the revision to annual burden estimates for IC1: ''Required Information for Prospective Individual Shippers'' based on Agency errors found in the calculations done in 2010. A detailed analysis of the burden hours can be found in the Paperwork Reduction Act supporting statement that corresponds with this direct final rule. The supporting statement and its attachments are in the docket associated with this direct final rule (Docket No. FMCSA–2011–0313).

TABLE 1—SUMMARY OF REVISIONS TO ANNUAL HOURLY BURDEN ESTIMATES DUE TO AGENCY ERRORS

| Collection | Old burden | Revision due to error | Revision due to agency error (old—error) |
|---|---|---|---|
| IC1: | | | |
| ''Ready to Move?'' | 3,000 | 0 | 3,000 |
| ''Rights & Responsibilities'' | 68,000 | −34,000 | 34,000 |
| Complaint & Inquiry Program Summary | 1,000 | −500 | 500 |
| Arbitration Procedure Summary | 1,000 | −500 | 500 |
| Create Summaries | 2,400 | 0 | 2,400 |
| Website Hyperlink | 0 | 0 | 0 |
| Signed Receipts | | 0 | 0 |
| Total for IC1 | 75,400 | −35,000 | 40,400 |

Table 2 below summarizes the revisions to annual burden estimates based on the Household Goods Broker final rule of November 29, 2010. The direct final rule to reduce the record retention period for receipts from three years to one year does not affect the annual burden hour estimates, only the capital costs shown in Table 3.

TABLE 2—SUMMARY OF REVISIONS TO ANNUAL HOURLY BURDEN ESTIMATES BASED ON HHG BROKER FINAL RULE OF NOVEMBER 29, 2010

| Collection | Revision due to agency error | Revision due to HHG broker final rule | Total after HHG broker final rule (error—HHG broker final rule) |
|---|---|---|---|
| IC1: | | | |
| ''Ready to Move?'' | 3,000 | −1,500 | 1,500 |
| ''Rights & Responsibilities'' | 34,000 | −20,400 | 13,600 |
| Complaint & Inquiry Program Summary | 500 | 0 | 500 |
| Arbitration Procedure Summary | 500 | 0 | 500 |
| Create Summaries | 2,400 | 0 | 2,400 |
| Website Hyperlink | 0 | 1,000 | 1,000 |
| Signed Receipts | 0 | 24,000 | 24,000 |
| Total for IC1 | 40,400 | 3,100 | 43,500 |

Table 3 summarizes the revision to annual costs to respondents. Revisions are due to consumer requests for electronic pamphlets instead of printed ones. A detailed analysis of annual costs can be found in the Paperwork Reduction Act supporting statement that corresponds with this direct final rule. The supporting statement and its attachments are in the docket associated with this direct final rule (Docket No. FMCSA–2011–0313).

TABLE 3—SUMMARY OF REVISIONS OF ESTIMATES OF ANNUAL COSTS TO RESPONDENTS

| Collection | New cost | Old cost | Total cost reduction (new—old) |
|---|---|---|---|
| IC1: | | | |
| "Ready to Move?" | $288,000 | $720,000 | −$432,000 |
| "Rights & Responsibilities" | 3,264,000 | 8,160,000 | −4,896,000 |
| Complaint & Inquiry Program Summary | 120,000 | 120,000 | 0 |
| Arbitration Procedure Summary | 120,000 | 120,000 | 0 |
| Total Capital Costs for IC1 | 3,792,000 | 9,120,000 | −5,328,000 |

We particularly request your comments on whether the collection of information is necessary for the FMCSA to meet the goal of 49 CFR part 375 to protect consumers, including: (1) Whether the information is useful to this goal; (2) the accuracy of the estimate of the burden of the information collection; (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 respondents, including the use of automated collection techniques or other forms of information technology. You may submit comments on the information collection burden addressed by this direct final rule to the Office of Management and Budget (OMB). The OMB must receive your comments by September 14, 2012. You must mail or hand deliver your comments to: Attention: Desk Officer for the Department of Transportation, Docket Library, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, 725 17th Street NW., Washington, DC 20503. Please also provide a copy of your comments on the information collection burden addressed by this direct final rule to docket FMCSA–2011–0313 in *www.regulations.gov* by one of the four ways shown above under the **ADDRESSES** heading.

*National Environmental Policy Act and Clean Air Act*

FMCSA analyzed this rule in accordance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*). The Agency has determined under its environmental procedures Order 5610.1, published March 1, 2004 in the **Federal Register** (69 FR 9680), that this action is categorically excluded (CE) from further environmental documentation under Appendix 2, Paragraph 6(q) of the Order (69 FR 9703). This CE relates to regulations implementing record preservation procedures for household goods freight forwarders, brokers, and motor carriers, including record types and retention periods. In addition, the Agency believes this rule includes no extraordinary circumstances that will have any effect on the quality of the environment. Thus, the action does not require an environmental assessment or an environmental impact statement.

FMCSA also analyzed this rule under the Clean Air Act, as amended (CAA), section 176(c) (42 U.S.C. 7401 *et seq.*), and implementing regulations promulgated by the Environmental Protection Agency. Approval of this action is exempt from the CAA's general conformity requirement since it does not affect direct or indirect emissions of criteria pollutants.

*E.O. 13211 (Energy Effects)*

FMCSA has analyzed this direct final rule under E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The Agency has determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under E.O. 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, no Statement of Energy Effects is required.

*E.O. 13045 (Protection of Children)*

E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, Apr. 23, 1997), requires agencies issuing "economically significant" rules, if the regulation also concerns an environmental health or safety risk that an agency has reason to believe may disproportionately affect children, to include an evaluation of the regulation's environmental health and safety effects on children. As discussed previously, this direct final rule is not economically significant. Therefore, no analysis of the impacts on children is required. In any event, FMCSA does not anticipate that this regulatory action could in any respect present an environmental or safety risk that could disproportionately affect children.

*E.O. 12988 (Civil Justice Reform)*

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

*E.O. 12630 (Taking of Private Property)*

FMCSA reviewed this final rule in accordance with Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and has determined it will not affect a taking of private property or otherwise have taking implications.

*Privacy Impact Assessment*

FMCSA conducted a privacy impact assessment of this rule as required by section 522(a)(5) of the FY 2005 Omnibus Appropriations Act, Public Law 108–447, 118 Stat. 3268 (Dec. 8, 2004) [set out as a note to 5 U.S.C. 552a]. Section 522 of title I of division H of the Consolidated Appropriations Act, 2005, enacted December 8, 2004 (Pub. L. 108–447, 118 Stat. 2809, 3268, 5 U.S.C. 552a note) requires the Agency to conduct a privacy impact assessment (PIA) of a regulation that will affect the privacy of individuals. This rule does not require the collection of any personally identifiable information.

The Privacy Act (5 U.S.C. 552a) applies only to Federal agencies and any non-Federal agency which receives records contained in a system of records from a Federal agency for use in a matching program. FMCSA has determined this rule will not result in a new or revised Privacy Act System of Records for FMCSA.

*Executive Order 12372 (Intergovernmental Review)*

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

**List of Subjects in 49 CFR Part 375**

Advertising, Arbitration, Consumer protection, Freight, Highways and roads, Insurance, Motor carriers, Moving

of household goods, Reporting and recordkeeping requirements.

### VII. The Final Rule

For the reasons stated in the preamble, FMCSA amends 49 CFR part 375 in title 49, Code of Federal Regulations, chapter III, subchapter B, as follows:

## PART 375—TRANSPORTATION OF HOUSEHOLD GOODS IN INTERSTATE COMMERCE; CONSUMER PROTECTION REGULATIONS

■ 1. The authority citation for part 375 continues to read as follows:

**Authority:** 49 U.S.C. 13102, 13301, 13501, 13704, 13707, 13902, 14104, 14706, 14708; subtitle B, title IV of Pub. L. 109–59; and 49 CFR 1.73.

■ 2. Revise § 375.213, paragraph (e)(3), to read as follows:

**§ 375.213 What information must I provide to a prospective individual shipper?**

* * * * *

(e) * * *

(3) You must maintain the signed receipt required by paragraph (e)(2) of this section for one year from the date the individual shipper signs the receipt. You are not required to maintain the signed receipt when you do not actually transport household goods or perform related services for the individual shipper who signed the receipt.

Issued on: July 6, 2012.

**Anne S. Ferro,**

*Administrator.*

[FR Doc. 2012–17268 Filed 7–13–12; 8:45 am]

BILLING CODE 4910–EX–P

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 648

**[Docket No. 120109034–2171–01]**

**RIN 0648–XC077**

## Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Adjustment of Georges Bank Yellowtail Flounder Annual Catch Limits

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

**ACTION:** Temporary rule; inseason adjustment of annual catch limits.

**SUMMARY:** NMFS announces adjustments to the 2012 fishing year (FY) Georges Bank (GB) yellowtail flounder annual catch limits (ACLs) for the Atlantic scallop and Northeast (NE) multispecies fisheries. This action is based on new projections of the expected catch of GB yellowtail flounder by the scallop fishery and is consistent with a request for the ACL adjustments from the New England Fishery Management Council (Council). The intent is to provide additional harvest opportunity to the NE multispecies fishery while ensuring sufficient amounts of GB yellowtail flounder are available for the scallop fishery.

**DATES:** Effective July 13, 2012, through April 30, 2013.

**FOR FURTHER INFORMATION CONTACT:** Brett Alger, Fisheries Management Specialist, (978) 675–2153, fax (978) 281–9135.

**SUPPLEMENTARY INFORMATION:**

### Background

The GB yellowtail catch limit for U.S. fisheries, commonly called quotas, are set through an agreement process with Canada as part of the U.S./Canada Resource Sharing Understanding (Understanding). Scientists from both countries conduct a joint assessment of the transboundary stock and provide advice on catch level recommendations to a joint U.S. and Canadian committee called the Transboundary Management Guidance Committee (TMGC). The TMGC establishes an overall quota, called the Total Shared Total Allowable Catch (TAC), which is then subdivided to the two countries using an agreed-upon allocation formula. For FY 2012, the U.S. portion of this quota is 564 mt.

The Council makes recommendations to NMFS on further partitioning the U.S. GB yellowtail quota between the NE multispecies, scallop, and other fisheries. The allocation to the scallop fishery, known as the sub-ACL, is specified in regulations to be set at an amount equal to 90 percent of the projected need by that fishery, to maximize scallop catch. The groundfish sub-ACL is determined after deducting the sub-ACL allocated to the scallop fishery and the sub-ACLs allocated to the state-waters fisheries and non-groundfish fisheries. Framework Adjustment (FW) 44 to the NE Multispecies Fishery Management Plan (FMP), implemented May 1, 2010 (75 FR 18356), established the current sub-ACL allocation to the scallop fishery at 307.5 mt. FW 47 to the FMP, implemented May 2, 2012 (77 FR 26104), established the 2012 FY GB yellowtail flounder sub-ACL for the groundfish fishery at 217.7 mt.

Scallop fishing vessels, which catch GB yellowtail flounder while fishing for scallops, are required to retain all legal-sized yellowtail flounder they catch. All yellowtail flounder caught by scallop vessels, including those discarded at sea, are counted against the scallop fishery's sub-ACL. The majority of groundfish vessels catch GB yellowtail flounder in trawl nets, either as incidental catch while targeting other groundfish stocks, or while targeting GB yellowtail flounder.

Almost all of the GB yellowtail flounder caught by NE multispecies fishing vessels are caught by vessels participating in the sector program. Sectors receive an Annual Catch Entitlement (ACE) for each regulated groundfish species allocated, including GB yellowtail flounder in the GB broad stock area. The amount of ACE varies by sector. When a sector has caught its entire available ACE for a given stock, vessels in that sector can no longer fish within the applicable stock area for that fish stock. The amount of the sub-ACL allocated to groundfish vessels, therefore, can be constraining on sector vessels that are fishing for other groundfish species, or that are targeting GB yellowtail flounder.

During the April 25, 2012, Council meeting in Mystic, CT, members of the NE multispecies fishing industry expressed concern to the Council that the 2012 NE multispecies GB yellowtail flounder sub-ACL of 217.7 mt is too low. Given this concern and indications that the scallop fishery sub-ACL for GB yellowtail flounder may be higher than needed by the scallop fishery in light of more current catch information, the Council requested that NMFS create a GB yellowtail flounder working group to explore the possibilities of increasing the amount of GB yellowtail sub-ACL allocated to the groundfish fishery. The request suggested that the working group include members from the TMGC, Council Groundfish and Scallop Committees, and NMFS and Council staff. The Council requested that the working group review the possibility of revising the sub-ACLs for the scallop and groundfish fisheries based on new information suggesting that the projections of GB yellowtail flounder catch in the scallop fishery were much higher than needed, and to consider modification of the U.S. and Canadian shares of GB yellowtail flounder established through the Understanding.

In response to this request, NMFS formed a working group, which also included fishing industry and nongovernmental organization representatives. The working group held teleconferences on May 11, 2012, and

May 18, 2012, a 1-day workshop in New Bedford, MA, on May 23, 2012, and teleconferences on May 31, 2012, and June 15, 2012. During these five meetings, the working group discussed a range of short-term and long-term measures for GB yellowtail flounder management, in addition to the Council requests made at its April 2012 meeting. The working group recognized that the most effective short-term tool to address the Council's request was to utilize existing regulatory authority to revise sub-ACLs allocated to the scallop and groundfish fisheries for GB yellowtail flounder. To determine the feasibility and magnitude of potential revisions of the scallop and groundfish sub-ACLs, the working group asked for updated projections NMFS's Northeast Fisheries Science Center (NEFSC) of expected catch of GB yellowtail flounder in FY 2012 by the scallop fishery. As a complementary action to such revisions, the working group also discussed the possibility of eliminating or adjusting accountability measures (AMs) for the scallop fishery, should the sub-ACL for the scallop fishery be reduced substantially.

In addition to the working group meetings, a joint Groundfish Committee and Scallop Committee (Joint Committee) was convened on June 18, 2012 in Portland, ME, to discuss the Council's original requests and review the discussions from the working group. On that same date, the NEFSC provided revised projections of possible GB yellowtail flounder catch by the scallop fishery ranging from 47.6 mt to 174.3 mt, with a median projection of 105.2 mt. Using these new projections, the Joint Committee recommended to the Council that they request that NMFS use its current regulatory authority to reduce the scallop GB yellowtail flounder sub-ACL to 90 percent of 174.3 mt (156.9 mt), and increase the groundfish GB yellowtail flounder sub-ACL by the amount of this reduction (150.6 mt) to 368.3 mt. In addition, the Joint Committee requested emergency action to temporarily relieve the scallop fishery from any AM triggered by catch less than 307.5 mt that would otherwise be required, based on the reduced sub-ACL. In making this recommendation, the Joint Committee emphasized that, if the overall ACL for GB yellowtail flounder were exceeded, there would still be an AM in place, calling for a pound-for-pound reduction in the amount of the overage in the FY 2013 U.S./Canada TAC. At its June 21, 2012, meeting, the Council adopted the Joint Committee recommendations, requesting that NMFS revise the scallop and groundfish sub-ACLs for GB yellowtail flounder and requested an emergency action to temporarily relieve the scallop fishery from any AM that would have been triggered by catch of GB yellowtail flounder less than 307.5 mt.

**Adjustment of Georges Bank Yellowtail Flounder Sub-Annual Catch Limits**

The regulatory authority for revising the scallop and groundfish sub-ACLs for GB yellowtail is in 50 CFR part 648, subpart F. Because of uncertainty in the initial estimates of yellowtail flounder catch in the scallop fishery, FW 47 to the FMP implemented a mechanism (at § 648.90(a)(4)(iii)(C)) requiring NMFS to re-estimate the expected GB yellowtail flounder catch by the scallop fishery by January 15 of each fishing year. If the re-estimate of projected GB yellowtail flounder indicates that the scallop fishery will catch less than 90 percent of its sub-ACL, NMFS may reduce the scallop fishery sub-ACL to the amount expected to be caught, and increase the NE multispecies fishery sub-ACL for GB yellowtail flounder up to the difference between the original estimate and the revised estimate.

Based on the new projections of GB yellowtail flounder catch by the scallop fishery, and this authority, effective July 13, 2012, through April 30, 2013 (unless further revised through an additional inseason action), NMFS is reducing the scallop fishery sub-ACL of GB yellowtail flounder by 150.6 mt (307.5 mt—156.9 mt) and increasing the NE multispecies sub-ACL of GB yellowtail flounder by 150.6 mt to 368.3 mt (See Table 1). Revising the sub-ACL for the scallop fishery at the high end of the projected GB yellowtail flounder catch is intended to avoid an underestimation of such catch at a relatively early point in the scallop FY, while allowing a meaningful increase in the groundfish sub-ACL for this stock as soon as possible. This revised allocation of 368.3 mt GB yellowtail flounder to the NE multispecies fishery is allocated between the sector sub-ACL and the common pool sub-ACL in the same proportion as the original sub-ACL (See Tables 2 and 3). NMFS will continue to monitor both fisheries and, if necessary, make additional adjustments prior to January 15, 2013.

TABLE 1—GEORGES BANK YELLOWTAIL FLOUNDER SUB-ACLS

[In metric tons]

| | Groundfish | Scallop | Other; Not fishery specific | Total |
|---|---|---|---|---|
| Current Sub-ACL | 217.7 | 307.5 | 22.6 | 547.8 |
| Adjustment Amount | +150.6 | −150.6 | None | N/A |
| Revised Sub-ACL | 368.3 | 156.9 | 22.6 | 547.8 |

TABLE 2—SECTOR AND COMMON POOL SUB-ACLS

[In metric tons]

| | Sector | Common pool | Total |
|---|---|---|---|
| Current Sub-ACL | 215.2 | 2.5 | 217.7 |
| Adjustment Amount | +148.9 | +1.7 | N/A |
| Revised Sub-ACL | 364.1 | 4.2 | 368.3 |

TABLE 3—ALLOCATIONS FOR SECTORS AND THE COMMON POOL

[In metric tons]

| Sector name | Original | Revised |
|---|---|---|
| Fixed Gear Sector | 0.0 | 0.0 |
| Maine Permit Bank | 0.0 | 0.1 |
| New Hampshire Permit Bank | 0.0 | 0.0 |
| Northeast Coast Communities Sector | 1.8 | 3.1 |
| Northeast Fishery Sector II | 4.2 | 7.0 |
| Northeast Fishery Sector III | 0.0 | 0.0 |
| Northeast Fishery Sector IV | 4.7 | 8.0 |
| Northeast Fishery Sector V | 13.5 | 22.8 |
| Northeast Fishery Sector VI | 5.9 | 9.9 |
| Northeast Fishery Sector VII | 20.3 | 34.4 |
| Northeast Fishery Sector VIII | 23.8 | 40.3 |
| Northeast Fishery Sector IX | 60.8 | 102.8 |
| Northeast Fishery Sector X | 0.0 | 0.1 |
| Northeast Fishery Sector XI | 0.0 | 0.0 |
| Northeast Fishery Sector XII | 0.0 | 0.0 |
| Northeast Fishery Sector XIII | 36.2 | 61.3 |
| Port Clyde Community Groundfish Sector | 0.0 | 0.0 |
| Sustainable Harvest Sector 1 | 27.2 | 46.0 |
| Sustainable Harvest Sector 3 | 1.0 | 1.6 |
| Tri-State Sector | 15.8 | 26.7 |
| All Sectors Combined | 215.2 | 364.1 |
| Common Pool | 2.5 | 4.2 |

**Note:** All ACE values for sectors outlined in Table 3 assume that each sector permit is valid for FY 2012.

**Council Request To Exempt Scallop Fishery From Accountability Measures**

In addition to the request to adjust the GB yellowtail flounder sub-ACLs for the scallop and NE multispecies fisheries, the Council requested that NMFS use emergency authority granted to the Secretary of Commerce by section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act to partially exempt the scallop fishery from AMs based on the reduced scallop fishery sub-ACL. This request would exempt the scallop fishery from required AMs for any catch above the revised sub-ACL, but below the initially allocated sub-ACL of 307.5 mt. Under the Council's request, the scallop fishery would be subject to AMs for any catch above 307.5 mt, while the existing pound-for-pound payback at the overall fishery-level ACL, as specified in the Understanding, would remain in place. NMFS is announcing, through this notice, its intent to propose a separate rulemaking to exempt the scallop fishery from AMs for GB yellowtail flounder for catch below 307.5 mt, consistent with the Council's request. A separate rulemaking for the emergency measure is necessary because of the need to revise, as soon as possible, the sub-ACLs to increase the GB yellowtail flounder available to the groundfish fishery. Because the revisions being implemented through this action can be taken as an inseason adjustment, and are contemplated and required under current regulations, it can be done more quickly than the emergency action request. As soon as possible, NMFS will publish a proposed rule to revise the scallop fishery AM, as requested by the Council; the proposed rule will include an opportunity for public comment.

**Classification**

This action is authorized by 50 CFR part 648 and is exempt from review under Executive Order 12866.

The Deputy Administrator for Regulatory Programs, performing the functions of the Assistant Administrator for Fisheries, NOAA, finds good cause pursuant to 5 U.S.C. 553(b)(3)(B) to waive prior notice and the opportunity for public comment for this in season sub-ACL adjustment because notice and comment would be impracticable and contrary to the public interest. The regulations at § 648.90(a)(4)(iii)(C) grant the NMFS Northeast Regional Administrator authority to reduce the scallop fishery sub-ACL to the amount projected to be caught, and increase the groundfish fishery sub-ACL up to the amount reduced from the scallop fishery in order to maximize the GB yellowtail flounder yield. The updated projections of GB yellowtail flounder catch in the scallop fishery only recently became available on June 18, 2012. Given this fact, the time necessary to provide for prior notice and comment would prevent NMFS from implementing the necessary sub-ACL adjustments in a timely manner. A resulting delay in the sub-ACL adjustments could prevent in the short-term NE multispecies vessels from harvesting GB yellowtail flounder catch at higher rates and potentially prevent the full harvest of the sub-ACLs of other groundfish stocks that are caught coincidentally with GB yellowtail flounder. Given the significant decreases in catch limits for many groundfish stocks in FY 2012, even short-term reductions in such limits when no longer needed could have devastating and unnecessary negative economic consequences on fishermen. Giving effect to this rule as soon as possible will prevent these unnecessary impacts.

The Deputy Administrator for Regulatory Programs, performing the functions of the Assistant Administrator for Fisheries, NOAA, also finds good cause pursuant to 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness for this action for these same reasons. Further, there is no need to allow the industry additional time to adjust to this rule because it does not require immediate action on the part of individual scallop or groundfish fishermen.

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

Dated: July 11, 2012.

**Lindsay Fullenkamp,**

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

[FR Doc. 2012–17245 Filed 7–13–12; 8:45 am]

BILLING CODE 3510–22–P

# Proposed Rules

Federal Register
Vol. 77, No. 136
Monday, July 16, 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 AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 51

**[Doc. Number FV–11–0046]**

### United States Standards for Grades of Almonds in the Shell

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

**ACTION:** Proposed rule.

**SUMMARY:** The Agricultural Marketing Service (AMS), of the Department of Agriculture (USDA), is proposing to revise the United States Standards for Grades of Almonds in the Shell. AMS received written requests from the produce industry to amend the standards to align inspection procedures for incoming inspections (based on the marketing order) and outgoing inspections (based on the grade standards). Therefore, AMS is proposing to change the determination of internal defects from count to weight.

**DATES:** Comments must be received by August 15, 2012.

**ADDRESSES:** Interested persons are invited to submit written comments to the Standardization and Training Branch, Fresh Products Division, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, National Training and Development Center, Riverside Business Park, 100 Riverside Parkway, Suite 101, Fredericksburg, VA 22406: Fax (540) 361–1199, or on the Web at: *www.regulation.gov*. Comments should make reference to the dates and page number of this issue of the **Federal Register** and will be made available for public inspection in the above office during regular business hours. Comments can also be viewed on the *www.regulations.gov* Web site. The current United States Standards for Almonds in the Shell, along with the proposed changes, will be available either through the address cited above or by accessing the AMS, Fresh Products Division Web site at: *http://www.ams.usda.gov/freshinspection*.

**FOR FURTHER INFORMATION CONTACT:** Dr. Carl Newell, at the above address or call (540) 361–1120.

**SUPPLEMENTARY INFORMATION:**

### Executive Order 12866 Regulatory Flexibility Act

This proposed rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), AMS has considered the economic impact of the proposed action on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be unduly or disproportionately burdened. Accordingly, AMS has prepared this initial regulatory flexibility analysis. Interested parties are invited to submit information on the regulatory and informational impacts of these actions on small businesses.

This rule proposes to revise the United States Standards for Grades of Almonds in the Shell (standards) that were issued under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627). Standards issued under the 1946 Act are voluntary.

Small agricultural service firms, which include handlers, have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $7,000,000 and small agricultural producers have been defined as those having annual receipts of less than $750,000.

There are approximately 53 handlers of almonds that would potentially be affected by the changes set forth in this proposed rule and approximately 6,500 producers of almonds. Information provided by the Almond Board of California (ABC) indicates that approximately 36 percent of the handlers would be considered small agricultural service firms.

According to data reported by the National Agricultural Statistics Service (NASS), the two-year average crop value for 2008–09 and 2009–10 was $2.566 billion. Dividing that average by 6,500 producers yields average estimated producer revenues of $394,769, which suggests that the majority of almond producers would be considered small entities according to the SBA's definition.

The California almond bearing acreage increased approximately 9 percent between 2008 and 2010, from 680,000 to 740,000 acres. Approximately 1.643 billion pounds (shelled basis) of almonds were produced during the 2009–10 season. More than two thirds of California's almond crop is exported to approximately 90 countries worldwide, and comprises nearly 80 percent of the world's almond supply.

The changes proposed herein will have the effect of improving grading methods and accuracy without adding any additional financial burden to buyers or sellers of almonds in the shell. This rule changes one step in a multi-step grading procedure (7 CFR 51.2080) and changes the method of determining one of five tolerances used in determining grade (7 CFR 51.2075(b)(5)). The outgoing inspection procedure will become more closely aligned with incoming inspection by shifting the basis (from count to weight) in the standards for determining the percentage of internal defects in an inspection sample of almonds in the shell.

In addition to simplifying the grading process, the weight basis would yield a more accurate percentage of internal defects. With a count method, a defect such as shriveling would result in a particular kernel being counted as one of the 300 kernels in the sample with internal defects, even if the defect left only a small portion of the original kernel in the sample. Due to its lower weight relative to a fully formed kernel, a shriveled kernel has a smaller impact on the percentage of internal defects when the sample is weighed rather than counted.

The lower average percentage of internal defects using the weight method was confirmed by a review of shipping point inspection records, with 14 examples in which both the count and weight method were used on the same sample of inshell almonds. The average serious damage percentages of the count method and the weight method were 1.5 percent and 0.8 percent, respectively. Smaller percentages of defects in sampled lots using the weight method will mean

larger quantities of almonds meet a particular grade, which would positively affect the quality of the almonds, as it would yield more accurate percentages of defects, resulting in higher payments to growers.

Shifting the determination of internal (kernel) defects from a count basis to a weight basis in the standards is expected to contribute to efficiencies in the grading process. It would make the internal defects aspect of the outgoing inspection process consistent with that of the incoming inspection. Weighing rather than counting the kernels may result in slightly more time in the inspection process, but any potential effect on the cost of inspections is expected to be minor or nonexistent, and would be offset by the benefits.

There is no disproportionate impact on smaller entities; entities of all sizes will benefit.

This rule would not impose any additional reporting or recordkeeping requirements on either small or large almond producers, handlers or exporters and will be done at no cost to the industry.

The use of grading services and grading standards is voluntary unless required by a specific Act, Federal Marketing Order or Agreement, or other regulations governing domestic, import or export shipments.

USDA has not identified any Federal rules that duplicate, overlap, or conflict with this rule. However, there is a marketing program which regulates the handling of almonds under 7 CFR part 981. The revision being proposed in this action only affects the inspection procedures for internal defects in the standards. As such, the proposed action would not affect almonds in the shell under the marketing order.

Alternatives were considered for this action. One alternative would be to not issue a proposed rule. However, the need for revisions remains due to differing procedures for incoming and outgoing almond inspections, and the proposal is the result of a request by industry. Further, the purpose of these standards is to facilitate the marketing of agricultural commodities.

**Executive Order 12988**

The rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of the rule.

Section 203(c) of the Act directs and authorizes the Secretary of Agriculture ''to develop and improve standards of quality, condition, quantity, grade and packaging and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices.'' AMS is committed to carrying out this authority in a manner that facilitates the marketing of agricultural commodities and makes copies of official standards available upon request.

**Background**

On March 11, 2011, AMS received a letter from the Almond Board of California (Board) requesting that the procedure for measuring internal (kernel) defects in the United States Standards for Grades of Almonds in the Shell be changed from a count basis to a weight basis. The purpose of this change is to align incoming and outgoing inspection procedures.

Currently, almonds must undergo incoming inspections and may undergo outgoing inspections. The almond marketing order (part 981—Almonds Grown in California) mandates that the percentage of inedible kernels is determined during an incoming inspection. As required in the marketing order (7 CFR 981.42 and 981.442 (Quality Control)), Federally licensed state inspectors perform these inspections on 100% of the product moving from growers to handlers (packers). Inedible kernel is defined in section 981.8 and 981.408 of the marketing order and is based on internal (kernel) defects as defined in the standards, in sections 51.2087 (Decay), 51.2088 (Rancidity), 51.2089 (Damage) and 51.2090 (Serious Damage).

Federally licensed state inspectors also perform outgoing inspections, which are voluntary, on approximately 75% of all of the almonds going from the handlers to domestic and international markets, according to shipping point records maintained by Federal State Inspection.

The current procedures for determining the percentage of defective kernels in the two different inspections are not the same. For incoming inspections, the percentage of inedible kernels is determined on a weight basis. With outgoing inspections, however, determining the percentage of internal (kernel) defects, which is one step in a multi-step procedure specified in the standards for determining U.S. grade, is done through a combination of count and weight of the nuts in the sample. This proposed change would more closely align the procedures of the incoming and outgoing inspections.

A key reason for making this change is the increasing magnitude of exports of almonds in the shell. Between the 2006/07 and 2009/10 seasons, export shipments of almonds in the shell doubled, rising from 148 to 297 million pounds (inshell basis), according to trade data from the Foreign Agricultural Service of USDA. During this same time period, the number of handlers exporting almonds in the shell increased by 42%. Due to the substantial increase in the number of handlers and volume of shipments, the Board received numerous inquiries regarding the reasons for the different procedures for determining internal defects on incoming and outgoing inspections.

A number of handlers asked the Board's Food Quality and Safety Committee (committee) to look into how to change the standards to make outgoing inspections more consistent with the incoming inspection method. Determining the percentage of nuts with internal defects is the third of three required steps in section 51.2080 Determination of Grade. In addition, a 10 percent tolerance for internal (kernel) defects is one of five tolerances that are specified in section 51.2075(b)(5) for determining whether a lot of inshell almonds is graded as U.S. No. 1. Committee staff queried handlers that ship almonds in the shell about changing the determination of internal defects from a count basis to a weight basis, which would apply to both of these sections.

AMS is proposing to amend section 51.2075(b)(5) by changing the word ''count'' in the first line to ''weight.'' The other four tolerances specified in section 51.2075(b) remain unchanged. AMS is also proposing to amend section 51.2080 by changing the word ''count'' in the last line to ''weight.'' This would make the internal defects aspect of the outgoing inspection process consistent with that of the incoming inspection mandated by the marketing order.

The proposed rule provides for a 30-day comment period for interested parties to comment on the revisions to the standard.

**List of Subjects in 7 CFR Part 51**

Agricultural commodities, Food grades and standards, Fruits, Nuts, Reporting and recordkeeping requirements, Trees, Vegetables.

For reasons set forth in the preamble, 7 CFR part 51 is proposed to be amended as follows:

## PART 51—[AMENDED]

1. The authority citation for part 51 continues to read as follows:

**Authority:** 7 U.S.C. 1621–1627.

2. In § 51.2075, paragraph (b)(5) is revised to read as follows:

**§ 51.2075 U.S. No. 1.**

* * * * *

(b) * * *

(5) *For internal (kernel) defects.* 10 percent, by weight, for almonds with kernels failing to meet the requirements of this grade: Provided, that not more than one-half of this tolerance or 5 percent shall be allowed for kernels affected by decay or rancidity, damaged by insects or mold or seriously damaged by shriveling: And provided further, that no part of this tolerance shall be allowed for live insects inside the shell.

* * * * *

3. § 51.2080 is revised to read as follows:

**Determination of Grade**

**§ 51.2080 Determination of Grade.**

In grading the inspection sample, the percentage of loose hulls, pieces of shell, chaff and foreign material is determined on the basis of weight. Next, the percentages of nuts which are of dissimilar varieties, undersize or have adhering hulls or defective shells are determined by count, using an adequate portion of the total sample. Finally, the nuts in that portion of the sample are cracked and the percentage having internal defects is determined on the basis of weight.

Dated: July 11, 2012.

**David R. Shipman,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 2012–17229 Filed 7–13–12; 8:45 am]

BILLING CODE 3410–02–P

## DEPARTMENT OF AGRICULTURE

### Federal Crop Insurance Corporation

### 7 CFR Part 457

**[Docket No. FCIC–12–0006]**

**RIN 0563–AC39**

### Common Crop Insurance Regulations; Florida Citrus Fruit Crop Insurance Provisions

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

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

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) proposes to amend the Common Crop Insurance Regulations, Florida Citrus Fruit Crop Insurance Provisions. The intended effect of this action is to provide policy changes, to clarify existing policy provisions to better meet the needs of policyholders, and to reduce vulnerability to program fraud, waste, and abuse. The proposed changes will be effective for the 2014 and succeeding crop years.

**DATES:** Written comments and opinions on this proposed rule will be accepted until close of business August 15, 2012 and will be considered when the rule is to be made final.

**ADDRESSES:** FCIC prefers that comments be submitted electronically through the Federal eRulemaking Portal. You may submit comments, identified by Docket ID No. FCIC–12–0006, by any of the following methods:

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

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

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

**FOR FURTHER INFORMATION CONTACT:** Tim Hoffmann, Director, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, Beacon Facility, Stop 0812, Room 421, P.O. Box 419205, Kansas City, MO 64141–6205, telephone (816) 926–7730.

**SUPPLEMENTARY INFORMATION:**

**Executive Order 12866**

This rule has been determined to be non-significant for the purposes of Executive Order 12866 and, therefore, it has not been reviewed by the OMB.

**Paperwork Reduction Act of 1995**

Pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information in this rule have been approved by OMB under control number 0563–0053.

**E-Government Act Compliance**

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

**Unfunded Mandates Reform Act of 1995**

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

**Executive Order 13132**

It has been determined under section 1(a) of Executive Order 13132, Federalism, that this rule does not have sufficient implications to warrant consultation with the States. The provisions contained in this rule will not have a substantial direct effect on States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

**Executive Order 13175**

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

**Regulatory Flexibility Act**

FCIC certifies that this regulation will not have a significant economic impact on a substantial number of small

entities. Program requirements for the Federal crop insurance program are the same for all producers regardless of the size of their farming operation. For instance, all producers are required to submit an application and acreage report to establish their insurance guarantees and compute premium amounts, and all producers are required to submit a notice of loss and production information to determine the amount of an indemnity payment in the event of an insured cause of crop loss. Whether a producer has 10 acres or 1000 acres, there is no difference in the kind of information collected. To ensure crop insurance is available to small entities, the Federal Crop Insurance Act authorizes FCIC to waive collection of administrative fees from limited resource farmers. FCIC believes this waiver helps to ensure that small entities are given the same opportunities as large entities to manage their risks through the use of crop insurance. A Regulatory Flexibility Analysis has not been prepared since this regulation does not have an impact on small entities, and, therefore, this regulation is exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605).

**Federal Assistance Program**

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

**Executive Order 12372**

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

**Executive Order 12988**

This proposed rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. With respect to any direct action taken by FCIC or action by FCIC directing the insurance provider to take specific action under the terms of the crop insurance policy, the administrative appeal provisions published at 7 CFR part 11, or 7 CFR part 400, subpart J for determinations of good farming practices, as applicable, must be exhausted before any action against FCIC for judicial review may be brought.

**Environmental Evaluation**

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

**Background**

FCIC proposes to amend the Common Crop Insurance Regulations (7 CFR part 457) by revising § 457.107 Florida Citrus Fruit Crop Insurance Provisions, to be effective for the 2014 and succeeding crop years. Several requests have been made for changes to improve the insurance coverage offered, address program integrity issues, simplify program administration, and improve clarity of the policy provisions.

Some of the proposed changes are a result of the United States Department of Agriculture (USDA) Acreage Crop Reporting Streamlining Initiative, which has an objective of using common standardized data and terminology to consolidate and simplify reporting requirements for farmers. FCIC is proposing to change the term ''citrus fruit crop'' to ''citrus fruit commodity'' and to rename the ''citrus fruit commodities'' to be consistent with the terms developed under the Acreage Crop Reporting Streamlining Initiative. This change will allow more efficient sharing of data among agencies and will assist in the effort to reduce the burden of reporting the same information multiple times. Some of the proposed changes herein, such as the addition of the term ''citrus fruit group'' minimize the impact of changes to crop names. With the incorporation of the term ''citrus fruit group'' into the Florida Citrus Fruit Crop Provisions, FCIC will concurrently add a field in the actuarial documents breaking each ''citrus fruit commodity'' into ''citrus fruit groups.'' The ''citrus fruit groups'' will be the basis for determining coverage levels, basic units, and administrative fees. In most cases these proposed changes will result in no change from the current basis by which coverage levels are selected, basic units are established, and administrative fees are assessed.

To be consistent with the objectives of the Acreage Crop Reporting Streamlining Initiative, FCIC is planning to replace the category of ''type'' in the actuarial documents with four categories named ''commodity type,'' ''class,'' ''subclass,'' and ''intended use.'' FCIC is also planning to replace the category of ''practice'' in the actuarial documents with four categories named ''cropping practice,'' ''organic practice,'' ''irrigation practice,'' and ''interval.'' Proposed changes to the Florida Citrus Fruit Crop provisions, such as replacing references to the term ''fruit type'' with the terms ''commodity type'' and ''intended use'' where applicable, will provide an avenue for this transition.

Some of the other proposed changes are in response to an audit (05099–29–At) by the Office of the Inspector General (OIG). The report concluded the Florida Citrus Fruit policy contains a significant vulnerability because the policy does not adequately account for the salvage value of fruit insured as fresh that is sold for another use. FCIC agreed to revise the Florida Citrus Fruit Crop Provisions for the 2014 crop year to address this vulnerability.

The proposed changes are as follows:

1. Section 1—FCIC proposes to revise the definition of ''amount of insurance (per acre)'' to specify the Reference Maximum Dollar Amount used in the calculation will be based on the applicable ''commodity type'' and ''intended use'' in addition to the age of trees. This change is being proposed because the terms ''commodity type'' and ''intended use'' are the terms that will replace type in the actuarial documents that are applicable to determining the amount of insurance per acre.

FCIC proposes to revise the definition of ''citrus fruit crop'' by renaming it as ''citrus fruit commodity'' since insurable commodities are identified in the actuarial documents. FCIC proposes to replace the term ''citrus fruit crop'' with the term ''citrus fruit commodity'' where appropriate throughout the Florida Citrus Fruit Crop Provisions. However, in some places the term ''crop'' will be changed to ''insured crop'' which is defined in the Basic Provisions or the term ''crop'' may be retained if using the common meaning. FCIC proposes to revise the definition of the newly renamed term of ''citrus fruit commodity'' by removing the old names ''Citrus I–IX'' and renaming the ''citrus fruit commodities'' as ''oranges,'' ''grapefruit,'' ''tangelos,'' ''mandarins/tangerines,'' ''tangors,'' ''lemons,'' ''limes,'' and ''any other citrus fruit commodity designated in the actuarial documents.'' In some cases the new ''citrus fruit commodity'' names will result in several of the current ''citrus fruit crops'' being combined into a single ''citrus fruit commodity.'' For example, the current ''citrus fruit crops'' named ''Citrus I (Early and mid-season oranges), Citrus II (Late oranges juice), Citrus VII (Late oranges fresh), and Citrus VIII (Navel oranges)'' will all fall under the new ''citrus fruit commodity''

of ''oranges.'' In other cases the new ''citrus fruit commodity'' names will result in current ''citrus fruit crops'' being split apart into multiple ''citrus fruit commodities.'' For example, the current ''citrus fruit crop'' named ''Citrus VI (Lemons and Limes)'' will become two separate ''citrus fruit commodities'' named ''lemons'' and ''limes.'' This change is being proposed because of the Acreage Crop Reporting Streamlining Initiative. This proposed change in terminology does not change the varieties of citrus that are insurable.

FCIC proposes to remove the definition of ''citrus fruit type (fruit type)'' and add definitions of ''commodity type'' and ''intended use'' to be consistent with the Acreage Reporting and Streamlining Initiative. ''Commodity type'' and ''intended use'' are the categories that will replace type in the actuarial documents that are applicable to the Florida Citrus Fruit Crop Provisions.

FCIC proposes to add the definition of ''citrus fruit group.'' The term ''citrus fruit group'' refers to a method of grouping ''commodity types'' and ''intended uses'' within the ''citrus fruit commodity'' through the actuarial documents for the purposes of electing coverage levels, establishing basic units, and assessing administrative fees. This change is being proposed in order to make the insurance coverage as similar to that which was previously provided while still being consistent with the Acreage Crop Reporting Streamlining Initiative.

FCIC proposes to revise the definition of ''excess wind'' to allow the use of the Florida Automated Weather Network (FAWN) reporting stations and any other weather reporting stations identified in the Special Provisions in addition to the U.S. National Weather Service (NWS) reporting stations for determining wind speeds. Using the NWS reporting station, the FAWN weather reporting station, or any other weather reporting station identified in the Special Provisions operating nearest to the insured acreage at the time of damage will result in a more precise measurement of wind speeds due to the availability of additional data points. The use of FAWN data is currently allowed by the Special Provisions.

FCIC proposes to add the definition of ''unmarketable'' because it is currently undefined. FCIC proposes to define ''unmarketable'' as citrus fruit that cannot be processed into products for human consumption.

2. Section 2—FCIC proposes to revise section 2(a) by adding language to allow basic units by ''citrus fruit group'' designated within a ''citrus fruit commodity'' in the actuarial documents. For example, under the new ''citrus fruit commodity'' named ''grapefruit,'' all ''grapefruit'' with the intended use of fresh could be in one ''citrus fruit group'' and all ''grapefruit'' with the intended use of juice could be in another ''citrus fruit group'' identified in the actuarial documents. In this example, all ''grapefruit'' acreage with an intended use of fresh can be insured as one basic unit and all ''grapefruit'' acreage with an intended use of juice can be insured as another basic unit. This proposed change in terminology is intended to allow policyholders to keep their current unit structure to the maximum extent practicable. However, in some cases, such as with the ''citrus fruit crop'' named ''Citrus VI (Lemons and Limes),'' which will become separate ''citrus fruit commodities'' named ''lemons'' and ''limes,'' the policyholder will now be able to establish separate basic units for each of these ''citrus fruit commodities.''

3. Section 3—FCIC proposes to revise section 3(a) by adding language to allow the policyholder to select separate coverage levels by ''citrus fruit group'' designated within a ''citrus fruit commodity'' in the actuarial documents. For example, under the new ''citrus fruit commodity'' of ''oranges,'' all early and mid-season oranges will be grouped together as one ''citrus fruit group'' and the policyholder must select the same coverage level for all citrus fruit insured under this ''citrus fruit group.'' These revisions to terminology will allow policyholders to continue to elect coverage levels on the same basis they currently elect for most crops. However, in some cases, such as with the ''citrus fruit crop'' named ''Citrus VI (Lemons and Limes)'' which will become separate ''citrus fruit commodities'' named ''lemons'' and ''limes,'' the policyholder will now be able to select separate coverage levels for the ''citrus fruit groups'' within each of these ''citrus fruit commodities.''

FCIC proposes to revise section 3(c) to specify the reporting requirements for ''citrus fruit commodities'' insured under the Florida Citrus Fruit Crop Provisions. The proposed revision to section 3(c) includes four subparagraphs stating what the policyholder must report by the acreage reporting date contained in the actuarial documents. The reporting requirements include any event or action that could reduce the yield per acre of the insured ''citrus fruit commodity'' and the number of affected acres, the number of trees on insurable and uninsurable acreage, age of the trees, interplanted trees, planting pattern, and any other information the insurance provider requests in order to establish the amount of insurance. These requirements are being added because this information is necessary to establish the amount of insurance because it affects the potential production of the unit.

FCIC proposes to revise section 3(d) by clarifying the reasons FCIC will reduce insurable acreage or the amount of insurance, or both. The reasons given for a reduction are consistent with the reporting requirements contained in the proposed revision of section 3(c). Those reasons include interplanted trees, a decrease in plant stand, cultural practices that may reduce the productive capacity of the trees, disease, damage, and any other circumstance that may reduce the productive capacity of the trees or that may reduce the yield per acre from previous levels. FCIC proposes to remove the term ''fruit type'' and replace it with the term ''commodity type'' since this is the category in the actuarial documents that is relevant when determining the effect of interplanted trees.

FCIC proposes to designate the second sentence from section 3(d) as section 3(e) and revise it to state, ''If you fail to notify us of any circumstance that may reduce the productive capacity of the trees or that may reduce the yield per acre from previous levels, we will reduce the acreage or amount of insurance or both as necessary any time we become aware of the circumstance.'' The current provision states these same consequences, but is phrased differently. This change is being proposed to clarify ''circumstances that may reduce the productive capacity of the trees or that may reduce the yield per acre from previous levels'' are the reasons for reducing the acreage or amount of insurance.

FCIC proposes to redesignate section 3(e) as 3(f). FCIC proposes to remove the old provisions from section 3(f), which states that we will reduce your amount of insurance per acre for damage that occurred prior to the insurance period. This same information is contained in the revised section 3(d). Therefore, with the proposed revisions to section 3(d), section 3(f) becomes redundant and is no longer necessary.

4. Section 6—FCIC proposes to revise section 6(a) by adding language to allow the insured crop to be all acreage of each ''citrus fruit group,'' designated within a ''citrus fruit commodity'' in the actuarial documents. The ''citrus fruit groups'' within the ''citrus fruit commodity'' will be assessed separate administrative fees and the policyholder can elect to insure one ''citrus fruit group'' and not insure another within

the same ''citrus fruit commodity.'' For example, if the ''citrus fruit commodity'' of oranges has a ''citrus fruit group'' for all early and mid-season oranges and another ''citrus fruit group'' for all late oranges, the policyholder could elect to insure all of his or her early and mid-season oranges in the county, but not insure any late oranges. Since ''citrus fruit groups'' will provide the basis for assessing administrative fees, in most cases this change will result in no change from the basis by which administrative fees are currently assessed. However, in some cases, such as with the ''citrus fruit crop'' named ''Citrus VI (Lemons and Limes)'' which will become separate ''citrus fruit commodities'' named ''lemons'' and ''limes,'' separate administrative fees will be assessed for each of the ''citrus fruit groups'' within these ''citrus fruit commodities'' and the policyholder can elect to insure one and not the other.

FCIC proposes to revise section 6(b)(1) by removing the term ''fruit type'' and adding the term ''commodity type'' in its place since this is the category in the actuarial documents that is relevant when determining the normal maturity period.

FCIC proposes to revise section 6(b)(2) by changing the date of ''April 30'' to ''April 15.'' This date is proposed to be changed to coincide with the proposed new April 16 insurance attachment date to eliminate the current gap in coverage. This provision requires trees to have reached the fifth growing season after being set out to be insurable. The revision will require trees to have been set out by April 15 in order for the year of set out to be considered as a growing season.

FCIC proposes to revise section 6(b)(3) to include ''Ambersweet'' oranges in the list of uninsurable fruit. FCIC has determined ''Ambersweet'' orange trees to be unreliable producers of fruit. Furthermore, ''Ambersweet'' oranges are a poor quality fruit and consequently the trees are scarcely planted for commercial production. Excluding ''Ambersweet'' oranges from insurability will protect program integrity by eliminating the risk associated with insuring them.

FCIC proposes to revise section 6(b)(6) by removing the term ''fruit type'' and adding the term ''commodity type'' in its place since this is the category in the actuarial documents that is relevant when determining the insurability of citrus fruit. FCIC proposes to remove the phrase ''or within the definition of citrus fruit crop'' since the definition of ''citrus fruit crop'' is proposed to be revised.

FCIC proposes to add section 6(f) which will require policyholders who insure fresh fruit to provide management records upon request to verify good fresh citrus fruit production practices were followed from the beginning of bloom stage until harvest. The proposed provision also requires policyholders who insure fresh fruit to provide acceptable fresh fruit sales records upon request from at least one of the previous three crop years; or for fresh fruit acreage new to the operation or for acreage in the initial year of fresh fruit production, a current year fresh fruit marketing contract must be provided upon request. The proposed provision protects program integrity by safeguarding against policyholders purchasing fresh fruit insurance without the intention of producing fresh fruit and without providing the necessary inputs to produce fresh fruit. This requirement is currently implemented through the Special Provisions.

5. Section 7—FCIC proposes to revise section 7 by designating the undesignated introductory paragraph as section 7(a) and redesignating sections 7(a), (b), and (c) as sections 7(a)(1), (2), and (3) respectively. These paragraphs are proposed to be redesignated in order to add a new section 7(b). In redesignated paragraphs 7(a)(1) and (2) FCIC proposes to remove the term ''fruit type'' everywhere this term appears and add the term ''commodity type'' in its place since this is the category in the actuarial documents that will be used to determine the effect of interplanted trees.

FCIC proposes to add section 7(b) which will exclude from insurability any acreage that has been abandoned without undergoing remediation necessary to produce the amount and quality of production needed to achieve the applicable Reference Maximum Dollar Amount prior to insurance attaching. This provision is being added to address situations where citrus acreage has been abandoned prior to insurance attaching. While section 11 of the Basic Provisions states insurance ends upon abandonment of the crop, neither the Basic Provisions nor the Florida Citrus Fruit Crop Provisions address situations where acreage is abandoned prior to the insurance period. Abandoned orchards harbor disease and insects, which without proper control measures and remediation efforts result in poor quality fruit and diminished production. A similar requirement is currently implemented through the Special Provisions.

6. Section 8—FCIC proposes to revise section 8(a)(1) by changing the date insurance attaches from May 1 to April 16. FCIC is proposing this change to eliminate the gap between the sales closing date and the date insurance attaches. For the 2013 crop year the sales closing date was moved from April 1 to April 15 as part of the Acreage Crop Reporting Streamlining Initiative. This gap in coverage could adversely affect producers who want to transfer their property and transfer their coverage and right to an indemnity. Producers can only insure, and transfer, their share at the time insurance attached and this gap created a period in which the producer had no share that could be transferred. This change will eliminate this situation.

FCIC proposes to revise section 8(a)(1)(i) by removing the phrase ''for the fruit type'' from the parenthetical. FCIC also proposes to revise this section by removing the term ''grove'' and adding the term ''acreage'' in its place to be consistent with the terms used in this provision. The revised provision requires the policyholder to provide any information required to determine the condition of the acreage to be insured. This change is being proposed because it is the condition of the acreage that is important and there are other factors to consider besides just the information regarding the fruit type.

FCIC proposes to revise section 8(a)(2) by changing the end of insurance period date for early oranges from February 7 to February 28. This change is being proposed because February 28 coincides more closely to the time harvest is normally completed for early oranges. This change has already been implemented through the Special Provisions.

FCIC proposes to revise section 8(b)(1) to state acreage acquired after the acreage reporting date for the crop year is not insurable unless a transfer of coverage and right to indemnity is executed in accordance with section 28 of the Basic Provisions. The current provision in this section only addresses the insurability of acreage acquired after coverage begins, but on or before the acreage reporting date for the crop year. Since none of the crops insurable under the Florida Citrus Fruit Crop Provisions have an acreage reporting date that occurs after the date insurance attaches for the crop year, this provision is not applicable. Since the language is not applicable, it has been replaced with language that reflects the intent of the provision.

FCIC proposes to revise section 8(b)(2) to state if a policyholder relinquishes their insurable share on any insurable acreage of citrus before the acreage reporting date of the crop year;

insurance will not attach, no premium will be due, and no indemnity will be payable for such acreage for that crop year. The current provision contains a similar statement, but it also includes a provision that allows a transfer of coverage and right to indemnity if filed before the acreage reporting date. The current provision was written under the assumption that the acreage reporting date occurs after insurance attaches. However, the acreage reporting date established in the actuarial documents for all crops insured under the Florida Citrus Fruit Crop Provisions currently occurs before the insurance attachment date. Since, in accordance with section 28 of the Basic Provisions, a transfer of coverage and right to indemnity can only occur during the crop year, the exception is not applicable given the current dates or the dates contained in this proposed rule. Therefore, the language regarding a transfer of coverage and right to indemnity is proposed to be removed.

7. Section 9—FCIC proposes to revise section 9(a)(6) by removing the statement that only allows excess wind to be a covered cause of loss if the excess wind causes fruit insured as fresh to be unmarketable as fresh. Allowing excess wind to be a covered cause of loss for all crops expands coverage to citrus fruit insured as juice. Allowing this additional level of coverage provides more comprehensive coverage against natural perils. However, this additional coverage may affect premium rates.

8. Section 10—FCIC proposes to revise section 10(b)(1) by removing the phrase ''fruit type and multiplying that result by your share'' and adding the phrase ''applicable commodity type, intended use, and age of trees.'' The term ''fruit type'' is proposed to be replaced with the terms ''commodity type'' and ''intended use'' because these are the categories in the actuarial documents that will replace type that are applicable to determining the amount of insurance for the unit. The phrase ''age of trees'' is proposed to be added because the amount of insurance may also be different based on the age of the trees. The phrase ''multiplying that result by your share'' is proposed to be removed because it is redundant. The definition of ''amount of insurance (per acre)'' already includes instructions to calculate the dollar amount of insurance by multiplying by your share.

FCIC proposes to revise sections 10(b)(2), (5), and (6) by removing the term ''fruit type'' and adding the terms ''commodity type'' and ''intended use'' in its place since these are the categories in the actuarial documents that will replace type that are applicable to determining a loss. The phrase ''age of trees'' is proposed to be added because the amount of insurance may be different based on the age of the trees.

FCIC proposes to revise the example in section 10(b) by removing the phrase ''citrus crop, fruit type'' and adding the phrase ''commodity type, intended use'' in its place to be consistent with the proposed changes in this section.

FCIC proposes to remove section 10(c) which pertains specifically to fruit insured as fresh that is damaged by freeze and is not harvested or could not be marketed. Section 10(c) is proposed to be removed because assessing 50 percent damage for freeze damaged fruit when the amount of actual damage is less than 50 percent can result in over-payment of the claim. Furthermore, while section 10(c) attempts to address the salvage value of fruit by using the amount of juice loss to determine a final percent of damage, it does not reflect the actual salvage value of the fruit because it does not account for price differences between fresh fruit and juice fruit for different ''citrus fruit commodities.''

FCIC proposes to add a new section 10(c) that pertains to fruit insured either as fresh or juice. The proposed section 10(c)(1) will contain the information from section 10(f), but will be revised to clarify that individual citrus fruit damaged due to an insurable cause that is on the ground and unmarketable is 100 percent damaged. The proposed section 10(c)(2) will contain the information from section 10(g), but will be revised to clarify individual fruit that is unmarketable because it is immature, unwholesome, decomposed, adulterated, or otherwise unfit for human consumption due to an insured cause will be considered as 100 percent damaged. FCIC proposes to remove sections 10(f) and (g) because section 10(c) is proposed to contain the same information. This change will improve the readability of the provisions.

FCIC proposes to remove section 10(d), which pertains specifically to fruit insured as fresh that is mechanically separated using the specific gravity (floatation) method into undamaged and freeze damaged fruit. Section 10(d) allows freeze damaged fruit eliminated using the specific gravity method to be considered as damaged production not to exceed 50 percent damage. Section 10(d) is proposed to be removed because it is no longer relevant. The floatation method is rarely used and many packing houses do not keep track of the actual number of fruit eliminated solely due to freeze damage.

FCIC proposes to redesignate section 10(e) as section 10(d). FCIC proposes to revise the newly redesignated section 10(d) by removing references specific to freeze damage so the provision will apply to all insured causes of loss. References to juice crops are proposed to be removed so the provision will apply to ''citrus fruit commodities'' insured as fresh and juice. The provision is proposed to be revised to state that any fruit that can be processed into products for human consumption will be considered marketable. FCIC proposes to remove the default juice contents and state that these will be found in the Special Provisions. Placing the default juice contents in the Special Provisions gives FCIC flexibility to add new default juice contents if new types are made insurable or if the current default juice contents need to be revised. The current method of determining the percent of damage by relating the juice content of the damaged fruit to either the average juice content of the fruit produced on the unit for the three previous crop years or the default juice content provided by FCIC if three years of acceptable juice records are not provided will be retained. However, for fruit insured as fresh, an additional adjustment will be made to increase the percent of damage based on a Fresh Fruit Factor located in the Special Provisions. The Fresh Fruit Factor will represent the difference between historical fresh fruit and juice values. These values will be obtained from the National Agricultural Statistics Service. The Fresh Fruit Factor will be derived by dividing the five-year average of juice prices by the five-year average of fresh prices and subtracting the result from one. When determining the loss the Fresh Fruit Factor will be multiplied by the result obtained by subtracting the percent of damage determined by relating the juice content to the default juice content from 100. This result would then be added to the percent of damage determined by relating the juice content to the default juice content. This proposed provision works by adjusting the percent of undamaged fruit to an amount that represents the salvage value of the juice. This proposed change is in response to an Office of the Inspector General audit that requires FCIC to account for the salvage value of fruit insured as fresh.

FCIC proposes to redesignate section 10(h) as section 10(e). FCIC proposes to revise the newly redesignated section 10(e) to make it applicable to fruit insured as fresh that do not have a default juice content or a Fresh Fruit Factor provided in the Special

Provisions. FCIC proposes to revise the provision to apply to all insurable causes of loss rather than limiting it to hail and wind since the freeze damage method is proposed to be removed. This provision is intended to provide a method for determining losses for fruit insured as fresh in which a salvage market does not exist.

**List of Subjects in 7 CFR Part 457**

Crop insurance, Florida citrus fruit, Reporting and recordkeeping requirements.

**Proposed Rule**

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation proposes to amend 7 CFR part 457 effective for the 2014 and succeeding crop years as follows:

## PART 457—COMMON CROP INSURANCE REGULATIONS

1. The authority citation for 7 CFR part 457 continues to read as follows:

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

2. Amend § 457.107 as follows:

a. Amend the introductory text by removing ''2009'' and adding ''2014'' in its place;

b. Amend section 1 by:

i. Revising the definitions of ''amount of insurance (per acre),'' ''citrus fruit crop,'' and ''excess wind'';

ii. Adding the definitions of ''citrus fruit group,'' ''commodity type,'' ''intended use,'' and ''unmarketable''; and

iii. Removing the definition of ''citrus fruit type (fruit type)'';

c. Amend section 2(a) by removing the phrase ''crop designated in the Special Provisions'' and add the phrase ''group designated within a citrus fruit commodity in the actuarial documents;

d. Revise section 3;

e. Amend section 6 by:

i. Revising paragraph (a);

ii. Amending paragraph (b)(1) by removing the term ''fruit type'' and adding the term ''commodity type'' in its place;

iii. Amending paragraph (b)(2) by removing the number ''30'' and adding the number ''15'' in its place;

iv. Revising paragraph (b)(3);

v. Revising paragraph (b)(6); and

vi. Adding a new paragraph (f);

f. Amend section 7 by:

i. Designating the undesignated introductory paragraph as section 7(a);

ii. Redesignating paragraphs (a), (b), and (c) as (a)(1), (2), and (3) respectively;

iii. Revising the redesignated paragraph (a)(1);

iv. Revising the redesignated paragraph (a)(2); and

v. Adding a new section 7(b);

g. Amend section 8 by:

i. Amending paragraph (a)(1) by removing the date of ''May 1'' and adding the date of ''April 16'' in its place;

ii. Amending paragraph (a)(1)(i) by removing the phrase ''for the fruit type'' and by removing the term ''grove'' and adding the term acreage in its place;

iii. Amending paragraph (a)(2)(i) by removing the phrase ''early and'';

iv. Amending paragraph (a)(2)(ii) by adding the phrase ''early oranges and'' after the phrase ''February 28 for'';

v. Amending paragraph (a)(2)(iv) by removing the comma after the term ''lemons'' and adding the term ''and'' before the term ''limes''; and

vi. Revising paragraph (b);

h. Amend section 9(a)(6) by removing the phrase '', but only if it causes the individual citrus fruit from Citrus IV, V, VII, and VIII to be unmarketable as fresh fruit'';

i. Amend section 10 by:

i. Revising paragraph (b)(1);

ii. Amending paragraph (b)(2) by removing the term ''fruit type'' and adding the phrase ''commodity type, intended use, and age of trees'' in its place;

iii. Amending paragraph (b)(3) by removing the parenthesis around the number ''10'';

iv. Amending paragraph (b)(4) by removing the parenthesis around the number ''10'' in the first sentence;

v. Amending paragraph (b)(5) by removing the parenthesis around the number ''10'' and by removing the term ''fruit type'' and adding the phrase ''commodity type, intended use, and age of trees'' in its place;

vi. Amending paragraph (b)(6) by removing the parenthesis around the number ''10'' and by removing the term ''fruit types'' and adding the phrase ''applicable commodity types, intended uses, and ages of trees'' in its place;

vii. Amending the example in paragraph (b) by removing the opening parenthesis at the beginning of the example and by removing the phrase ''citrus crop, fruit type,'' and adding the phrase ''commodity type, intended use,'' in its place;

viii. Removing paragraphs (c) and (d);

ix. Adding a new paragraph (c);

x. Redesignating paragraph (e) as (d) and revising the newly redesignated paragraph (d);

xi. Removing paragraph (f) and (g); and

xii. Redesignating paragraph (h) as (e) and revising the newly redesignated paragraph (e).

The revised and added text reads as follows:

**§ 457.107 Florida citrus fruit crop insurance provisions.**

* * * * *

*1. Definitions*

*Amount of insurance (per acre).* The dollar amount determined by multiplying the Reference Maximum Dollar Amount shown on the actuarial documents for each applicable commodity type, intended use, and age of trees within a citrus fruit commodity, times the coverage level percent that you elect, times your share.

* * * * *

*Citrus fruit commodity.* Citrus fruit as follows:

(1) Oranges;

(2) Grapefruit;

(3) Tangelos;

(4) Mandarins/Tangerines;

(5) Tangors;

(6) Lemons;

(7) Limes; and

(8) Any other citrus fruit commodity designated in the actuarial documents.

*Citrus fruit group.* A designation in the actuarial documents used to identify commodity types and intended uses within a citrus fruit commodity that may be grouped together for the purposes of electing coverage levels, establishing basic units, and assessing administrative fees.

Commodity type. A specific subgroup of a commodity having a characteristic or set of characteristics distinguishable from other subgroups of the same commodity.

*Excess wind.* A natural movement of air that has sustained speeds exceeding 58 miles per hour (50 knots) recorded at the U.S. National Weather Service (NWS) reporting station (reported as MAX SUST (KT)), the Florida Automated Weather Network (FAWN) reporting station (reported as 10m Wind (mph)), or any other weather reporting station identified in the Special Provisions operating nearest to the insured acreage at the time of damage.

* * * * *

Intended use. The producer's expected end use or disposition of the commodity at the time the commodity is reported.

* * * * *

Unmarketable. Citrus fruit that cannot be processed into products for human consumption.

* * * * *

*3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities*

In addition to the requirements of section 3 of the Basic Provisions:

(a) You may select only one coverage level for each citrus fruit group designated within a citrus fruit

commodity in the actuarial documents that you elect to insure. If different amounts of insurance are available for commodity types within a citrus fruit group, you must select the same coverage level for each commodity type. For example, if you choose the 75 percent coverage level for one commodity type, you must also choose the 75 percent coverage level for all other commodity types within that citrus fruit group.

(b) The production reporting requirements contained in section 3 of the Basic Provisions are not applicable.

(c) You must report, by the acreage reporting date designated in the actuarial documents:

(1) Any event or action that could reduce the yield per acre of the insured citrus fruit commodity (including interplanted trees, removal of trees, any damage, change in practices, or any other circumstance that may reduce the productive capacity of the trees) and the number of affected acres;

(2) The number of trees on insurable and uninsurable acreage;

(3) The age of the trees and the planting pattern; and

(4) Any other information we request in order to establish your amount of insurance.

(d) We will reduce insurable acreage or the amount of insurance or both, as necessary:

(1) Based on our estimate of the effect of the interplanted trees on the insured commodity type;

(2) Following a decrease in plant stand;

(3) If cultural practices are performed that may reduce the productive capacity of the trees;

(4) If disease or damage occurs to the trees that may reduce the productive capacity of the trees; or

(5) Any other circumstance that may reduce the productive capacity of the trees or that may reduce the yield per acre from previous levels.

(e) If you fail to notify us of any circumstance that may reduce the productive capacity of the trees or that may reduce the yield per acre from previous levels, we will reduce the acreage or amount of insurance or both as necessary any time we become aware of the circumstance.

(f) For carryover policies:

(1) Any changes to your coverage must be requested on or before the sales closing date;

(2) Requested changes will take effect on April 16, the first day of the crop year, unless we reject the requested increase based on our inspection, or because a loss occurs on or before April 15 (Rejection can occur at any time we discover loss has occurred on or before April 15); and

(3) If the increase is rejected, coverage will remain at the same level as the previous crop year.

* * * * *

*6. Insured Crop.*

(a) In accordance with section 8 of the Basic Provisions, the insured crop will be all acreage of each citrus fruit group designated within a citrus fruit commodity in the actuarial documents that you elect to insure, in which you have a share, that is grown in the county shown on the application, and for which a premium rate is quoted in the actuarial documents.

(b) * * *

* * * * *

(3) Of ''Meyer Lemons'' and oranges commonly known as ''Sour Oranges,'' ''Clementines,'' or ''Ambersweet'';

* * * * *

(6) Of any commodity type not specified as insurable in the Special Provisions.

* * * * *

(f) For citrus fruit in which fresh fruit coverage is available as designated in the actuarial documents, management records must be available upon request to verify good fresh citrus fruit production practices were followed from the beginning of bloom stage until harvest. In addition, unless otherwise provided in the Special Provisions acceptable fresh fruit sales records must be provided upon request from at least one of the previous three crop years; or for fresh fruit acreage new to the operation or for acreage in the initial year of fresh fruit production, a current year fresh fruit marketing contract must be provided to us upon request.

*7. Insurable Acreage.*

(a) * * *

(1) Citrus fruit from trees interplanted with another commodity type or another commodity is insurable unless we inspect the acreage and determine it does not meet the requirements contained in your policy.

(2) If the citrus fruit is from trees interplanted with another commodity type or another commodity, acreage will be prorated according to the percentage of the acres occupied by each of the interplanted commodity types or commodities. For example, if grapefruit have been interplanted with oranges on 100 acres and the grapefruit trees are on 50 percent of the acreage, grapefruit will be considered planted on 50 acres and oranges will be considered planted on 50 acres.

* * * * *

(b) In addition to section 9 of the Basic Provisions, any acreage of citrus fruit that has been abandoned and has not subsequently undergone remediation necessary to produce the amount and quality of production needed to achieve the applicable Reference Maximum Dollar Amount prior to insurance attaching is not insurable.

8. Insurance Period.

* * * * *

(b) In addition to the provisions of section 11 of the Basic Provisions:

(1) Acreage acquired after the acreage reporting date for the crop year is not insurable unless a transfer of coverage and right to indemnity is executed in accordance with section 28 of the Basic Provisions.

(2) If you relinquish your insurable share on any insurable acreage of citrus fruit on or before the acreage reporting date of the crop year, insurance will not attach, no premium will be due, and no indemnity payable, for such acreage for that crop year.

* * * * *

10. Settlement of Claim.

* * * * *

(b) * * *

(1) Calculating the amount of insurance for the unit by multiplying the number of acres by the respective dollar amount of insurance per acre for each applicable commodity type, intended use, and age of trees in the unit.

* * * * *

(c) Any individual citrus fruit that, due to an insured cause of loss, is unmarketable because it is:

(1) On the ground will be considered 100 percent damaged; or

(2) Immature, unwholesome, decomposed, adulterated, or otherwise unfit for human consumption will be considered as 100 percent damaged.

(d) In addition to section 10(c), any citrus fruit that can be processed into products for human consumption will be considered marketable. The percent of damage for the marketable citrus fruit will be determined by:

(1) Relating the juice content of the damaged fruit to:

(i) The average juice content of the fruit produced on the unit for the three previous crop years based on your records, if they are acceptable to us; or

(ii) The default juice content provided in the Special Provisions, if at least three years of acceptable juice records are not furnished or the citrus fruit is insured as fresh;

(2) For citrus fruit insured as fresh, the final percent of damage for the marketable citrus fruit will be determined by:

(i) Subtracting the result of section 10(d)(1)(ii) from 100;

(ii) Multiplying the result of section 10(d)(2)(i) by the applicable Fresh Fruit Factor located in the Special Provisions; and

(iii) Adding the result of section 10(d)(2)(ii) to the result of section 10(d)(1)(ii).

(e) Notwithstanding section 10(d), for citrus fruit insured as fresh that do not have a default juice content or a Fresh Fruit Factor provided in the Special Provisions, any individual citrus fruit not meeting the United States standards for packing as fresh fruit due to an insured cause of loss, will be considered 100 percent damaged.

* * * * *

Signed in Washington, DC, on July 10, 2012.

**William J. Murphy,**

*Manager, Federal Crop Insurance Corporation.*

[FR Doc. 2012–17235 Filed 7–13–12; 8:45 am]

**BILLING CODE 3410–08–P**

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 9 CFR Parts 1 and 2

**[Docket No. APHIS–2011–0003]**

**RIN 0579–AC36**

### Animal Welfare; Retail Pet Stores and Licensing Exemptions

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Proposed rule; extension of comment period.

**SUMMARY:** We are extending the comment period for our proposed rule that would revise the definition of *retail pet store* and related regulations to bring more pet animals sold at retail under the protection of the Animal Welfare Act (AWA). We are also announcing the availability of a revised factsheet regarding our proposal. These actions will allow interested persons additional time to prepare and submit comments.

**DATES:** We will consider all comments that we receive on or before August 15, 2012.

**ADDRESSES:** You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2011-0003.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2011–0003, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0003* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

**FOR FURTHER INFORMATION CONTACT:** Dr. Gerald Rushin, Veterinary Medical Officer, Animal Care, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737–1231; (301) 851–3740.

**SUPPLEMENTARY INFORMATION:**

### Background

On May 16, 2012, we published in the **Federal Register** (77 FR 28799–28805, Docket No. APHIS–2011–0003) a proposal to revise the definition of *retail pet store* and related regulations to bring more pet animals sold at retail under the protection of the Animal Welfare Act (AWA).

''Retail pet stores'' are not required to obtain a license under the AWA or comply with the AWA regulations and standards. Currently, anyone selling, at retail, the following animals for use as pets are considered retail pet stores: Dogs, cats, rabbits, guinea pigs, hamsters, gerbils, rats, mice, gophers, chinchilla, domestic ferrets, domestic farm animals, birds, and cold-blooded species.

Under the proposed rule, ''retail pet store'' status would not apply to such retailers if buyers do not physically enter the seller's place of business or residence in order to personally observe the animals available for sale prior to purchase and/or to take custody of the animals after purchase. Unless otherwise exempt under the regulations, these entities would be required to obtain a license from APHIS and would become subject to the requirements of the AWA. The proposed rule would exempt from regulation anyone who sells or negotiates the sale or purchase of any animal, except wild or exotic animals, dogs, or cats, and who derives no more than $500 gross income from the sale of such animals. In addition, the proposed rule would increase from three to four the number of breeding female dogs, cats, and/or small exotic or wild mammals that a person may maintain on his or her premises and be exempt from licensing and inspection if he or she sells only the offspring of those animals born and raised on his or her premises for use as pets or exhibition, regardless of whether those animals are sold at retail or wholesale.

Comments on the proposed rule were required to be received on or before July 16, 2012. We are extending the comment period on Docket No. APHIS–2011–0003 for an additional 30 days. This action will allow interested persons additional time to prepare and submit comments.

We are also announcing the availability of a revised factsheet to clarify our proposed actions. The revised factsheet is available on the Web at *http://www.aphis.usda.gov/publications/animal_welfare/2012/retail_pets_faq.pdf.*

**Authority:** 7 U.S.C. 2131–2159; 7 CFR 2.22, 2.80, and 371.7.

Done in Washington, DC, this 11th day of July 2012.

**Edward Avalos,**

*Under Secretary for Marketing and Regulatory Programs.*

[FR Doc. 2012–17283 Filed 7–13–12; 8:45 am]

**BILLING CODE 3410–34–P**

## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

### 29 CFR Part 2550

**RIN 1210–AB54**

### Amendment Relating to Reasonable Contract or Arrangement Under Section 408(b)(2)—Fee Disclosure/Web Page

**AGENCY:** Employee Benefits Security Administration, Labor.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule is a companion to the Department of Labor (Department) Employee Benefits Security Administration's direct final rule (published today in the ''Rules and Regulations'' section of the **Federal Register**) amending the Department's fiduciary-level fee disclosure regulation under section 408(b)(2) of the Employee Retirement Income Security Act of 1974 (ERISA) to revise the mailing address and enhance the web-based submission procedure for notices filed under the regulation's fiduciary class exemption provision.

The Department is publishing this amendment as a direct final rule without prior proposal because the Department views this as highly technical and anticipates no significant adverse comment. The Department has explained its reasons in the preamble to

the direct final rule. If the Department receives no significant adverse comment during the comment period, no further action on this proposed rule will be taken. If, however, the Department receives significant adverse comment, the Department will withdraw the direct final rule and it will not take effect. In that case, the Department will address all public comments in a subsequent final rule based on this proposed rule. The Department will not institute a second comment period on this rule. Any parties interested in commenting must do so during this comment period.

**DATES:** Comments must be received on or before August 15, 2012.

**ADDRESSES:** Written comments may be submitted to the addresses specified below. All comments will be made available to the public. Warning: Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines. Comments may be submitted anonymously.

Comments, identified by RIN 1210–AB54, may be submitted by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: e-ORI@dol.gov.*
- *Mail or Hand Delivery:* Office of Regulations and Interpretations, Employee Benefits Security Administration, Room N–5655, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, Attention: RIN 1210–AB54; Class Exemption Notice—Web Submission.

Comments received by the Department of Labor may be posted without change to *http://www.regulations.gov* and *http://www.dol.gov/ebsa,* and will be made available for public inspection at the Public Disclosure Room, N–1513, Employee Benefits Security Administration, 200 Constitution Avenue NW., Washington, DC 20210.

**FOR FURTHER INFORMATION CONTACT:** Allison Wielobob, Office of Regulations and Interpretations, Employee Benefits Security Administration, (202) 693–8500. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** As noted above, in the ''Rules and Regulations'' section of today's **Federal Register**, the direct final rule being published makes technical changes to the Department's existing fiduciary-level fee disclosure regulation under ERISA section 408(b)(2) (the ''408(b)(2) regulation''). The 408(b)(2) regulation includes a class exemption provision (in paragraph (c)(1)(ix)) pursuant to which ''innocent'' responsible plan fiduciaries may obtain relief when they unknowingly receive incomplete or incorrect disclosures from a covered service provider. In certain circumstances, the responsible plan fiduciary, in order to obtain relief, must file a notice with the Department of Labor concerning the covered service provider's failure (paragraph (c)(1)(ix)(C)). The final rule provides that notices may be sent to a Departmental mailing address or submitted electronically to a specified email address (paragraph (c)(1)(ix)(F)). The direct final rule amends this paragraph of the 408(b)(2) regulation to provide that notices may be sent to a revised Departmental mailing address or, in lieu of the previously furnished email address, pursuant to separate instructions provided by the Department. Such instructions will enable submission through a dedicated link on the Department's Web site, at *www.dol.gov/ebsa/regs/feedisclosurefailurenotice.html.* The amendment proposed by this notice is the same as the amendment contained in the direct final rule. Please refer to the preamble and regulatory text of the direct final rule for further information and the actual text of the amendment. Additionally, all information regarding Statutory and Executive Orders for this proposed rule can be found in the **SUPPLEMENTARY INFORMATION** section of the direct final rule.

Signed at Washington, DC, this 2nd day of July 2012.

**Phyllis C. Borzi,**

*Assistant Secretary, Employee Benefits Security Administration, Department of Labor.*

[FR Doc. 2012–17012 Filed 7–13–12; 8:45 am]

BILLING CODE 4510–29–P

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[Docket No. USCG–2012–0394]**

**RIN 1625–AA11**

## Regulated Navigation Area; Original Waldo-Hancock Bridge Removal, Penobscot River, Bucksport, ME

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish a regulated navigation area (RNA) on the navigable waters of the Penobscot River near Bucksport, ME, under and surrounding the original Waldo-Hancock Bridge in order to facilitate the removal of the center span. This NPRM is necessary to provide for the safety of life on the navigable waters during bridge deconstruction operations that could pose an imminent hazard to vessels operating in the area. This rule would implement certain safety measures, including speed restrictions and the temporary suspension of vessel traffic during removal operations.

**DATES:** Comments and related material must be received by the Coast Guard on or before August 15, 2012. Requests for public meetings must be received by the Coast Guard on or before July 23, 2012.

**ADDRESSES:** You may submit comments identified by docket number USCG–2012–0394 using any one of the following methods:

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

(2) *Fax:* 202–493–2251.

(3) *Mail or Delivery:* 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. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202–366–9329.

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

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Ensign Elizabeth V. Morris, Waterways Management Division at Coast Guard Sector Northern New England, telephone 207–741–5440, email *Elizabeth.V.Morris@uscg.mil*; or Lieutenant Isaac M. Slavitt, Waterways Management at Coast Guard First District, telephone 617–223–8385, email *Isaac.M.Slavitt@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:**

### Table of Acronyms

ACOE Army Corps of Engineers
COTP Captain of the Port
DHS Department of Homeland Security
FR **Federal Register**
MEDOT Maine Department of Transportation
NPRM Notice of Proposed Rulemaking
RNA Regulated Navigation Area

**A. 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.

*1. Submitting Comments*

If you submit a comment, please include the docket number for this rulemaking (USCG–2012–0394), 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 at *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, 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–2012–0394) in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Submit a Comment'' on the line associated with this proposed 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.

*2. 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–2012–0394) 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.

*3. 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).

*4. Public Meeting*

We do not now plan to hold a public meeting. But you may submit a request for one, using one of the 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**.

**B. Regulatory History and Information**

On December 16, 2011 the Coast Guard conducted a meeting with the Maine Department of Transportation (MEDOT) to discuss future bridge projects throughout the State of Maine. During that meeting, the Coast Guard informed MEDOT that the deconstruction of the original Waldo-Hancock Bridge would require an RNA. Minutes from this meeting are available in the docket.

**C. Basis and Purpose**

Under the Ports and Waterways Safety Act, the Coast Guard has the authority to establish RNAs in defined water areas that are determined to have hazardous conditions and in which vessel traffic can be regulated in the interest of safety. See 33 U.S.C. 1231 and Department of Homeland Security Delegation No. 0170.1.

The purpose of this proposed rule is to ensure the safe transit of vessels in the area, and to protect all persons, vessels, and the marine environment during demolition operations of the original Waldo-Hancock Bridge.

**D. Discussion of Proposed Rule**

The removal of the original Waldo-Hancock Bridge involves large machinery and construction vessel operations above and in the navigable waters of the Penobscot River. The ongoing operations are, by their nature, hazardous and pose risks both to recreational and commercial traffic as well as to the construction crew. In order to mitigate the inherent risks involved with the removal of a bridge, it is necessary to control vessel movement through the area. The purpose of this proposed rule is to ensure the safety of waterway users, the public, and construction workers for the duration of the original Waldo-Hancock Bridge removal from September 1, 2012 through June 30, 2013. Heavy-lift operations are sensitive to water movement, and wake from passing vessels could pose significant risk of injury or death to construction workers.

In order to minimize such unexpected or uncontrolled movement of water, the proposed RNA will limit vessel speed and wake of all vessels operating in the vicinity of the bridge removal zone. This will be achieved by enforcing a five knot speed limit and ''NO WAKE'' zone in the vicinity of the original Waldo-Hancock Bridge removal as well as providing a means to suspend all vessel traffic for emergent situations that pose imminent threat to waterway users in the area. The RNA will also protect vessels desiring to transit the area by ensuring that vessels are only permitted to transit when it is safe to do so.

Under this proposed regulation, the Coast Guard may close the regulated area described in this rule to all vessel traffic during circumstances that pose an imminent threat to waterway users operating in the area. Complete waterway closures will be made with as much advanced notice as possible. The following anticipated closures dates will be enforced for the purpose of bridge removal: October 1, 2012; October 4–9, 2012; November 12–27, 2012; December 3–7, 2012; and January 7–11, 2013. In addition, the Army Corps of Engineers (ACOE) will perform a suspender cut test during the course of deconstruction. The Coast Guard anticipates a closure date of September 25, 2012, from 9 a.m. to 12 p.m. to facilitate the ACOE's test. Please note that specific closure dates and times will be noted in the final rulemaking.

The Captain of the Port (COTP) Sector Northern New England will cause notice of enforcement, suspension of enforcement, or closure of this RNA to be made by appropriate means to ensure the widest distribution among the affected segments of the public. Such means of notification may include, but are not limited to, Broadcast Notice to Mariners and Local Notice to Mariners. In addition, the COTP maintains a telephone line that is staffed 24 hours a day, seven days a week. The public can

obtain information concerning enforcement of the regulated navigation area by contacting Coast Guard Sector Northern New England Command Center at (207) 767–0303.

**E. Regulatory Analyses**

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

*1. 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, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

We expect the economic impact of this rule to be minimal because this regulated navigation area only requires vessels to reduce speed through a limited portion of the Penobscot River, therefore causing only a minimal delay to a vessel's transit. In addition, periods when the RNA is closed to all traffic are expected to be during seasons of low traffic volume, and we will give advance notice of such closures. Please note that specific closure dates and times will be noted in the final rulemaking.

*2. Impact on Small Entities*

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered the impact of this proposed rule on small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities.

This proposed rule would affect the following entities, some of which might be small entities: owners or operators of vessels intending to transit, fish, or anchor in the vicinity of the Original Waldo-Hancock Bridge.

The proposed rule would not have a significant economic impact on a substantial number of small entities for the following reasons: periods when the RNA is closed to all traffic are expected to be during seasons of low traffic volume, also, vessels will be required to reduce speed through a limited portion of the Penobscot River, and, therefore, will only be caused a minimal delay. Notifications will include, but are not limited to, the Local Notice to Mariners and Broadcast Notice to Mariners to inform the public before, during, and at the conclusion of any RNA enforcement period.

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.

*3. 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. 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 the person listed in the **FOR FURTHER INFORMATION CONTACT**, above. 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.

*4. Collection of Information*

This proposed rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

*5. Federalism*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and determined that this rule does not have implications for federalism.

*6. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the ''For Further Information Contact'' section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

*7. 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.

*8. 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.

*9. 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.

*10. Protection of Children From Environmental Health Risks*

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.

*11. 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.

*12. Energy Effects*

This proposed rule is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use 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.

*13. Technical Standards*

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

*14. 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.

This proposed rule involves the establishment of an RNA. This proposed rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under **ADDRESSES**.

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.T01–0394 to read as follows:

**§ 165.T01–0394 Regulated Navigation Area; Original Waldo-Hancock Bridge Removal, Penobscot River, Bucksport, ME.**

(a) *Location.* The following area is a Regulated Navigation Area (RNA): All navigable waters of Penobscot River between Bucksport, ME and Verona, ME, from surface to bottom, within a 300 yard radius of position 44°33′38″ N, 068°48′05″ W.

(b) *Regulations.*

(1) The general regulations contained in 33 CFR 165.10, 165.11, and 165.13 apply within the RNA.

(2) In accordance with the general regulations, entry into or movement within this zone, during periods of enforcement, is prohibited unless authorized by the Captain of the Port Sector Northern New England (COTP).

(3) Persons and vessels may request permission to enter the RNA during periods of enforcement by contacting the COTP or the COTP's on-scene representative on VHF–16 or via phone at 207–767–0303.

(4) During periods of enforcement, a speed limit of five knots will be in effect within the regulated area and all vessels must proceed through the area with caution and operate in such a manner as to produce no wake.

(5) During periods of enforcement, vessels must comply with all directions given to them by the COTP or the COTP's on-scene representative. The ''on-scene representative'' of the COTP is any Coast Guard commissioned, warrant or petty officer who has been designated by the COTP to act on the COTP's behalf. The on-scene representative may be on a Coast Guard vessel; Maine State Police, Maine Marine Patrol or other designated craft; or may be on shore and communicating with vessels via VHF–FM radio or loudhailer. Members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

(6) During periods of enforcement, upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light or other means, the operator of the vessel must proceed as directed.

(7) All other relevant regulations, including but not limited to the Rules of the Road (33 CFR part 84—subchapter E, Inland Navigational Rules) remain in effect within the regulated area and must be strictly followed at all times.

(c) *Enforcement Period.* This regulation is enforceable 24 hours a day from 5 a.m. on September 1, 2012 until 11:59 p.m. on June 30, 2013.

(1) Prior to commencing or suspending enforcement of this regulation, the COTP will give notice by appropriate means to inform the affected segments of the public, to include dates and times. Such means of notification will include, but are not limited to, Broadcast Notice to Mariners and Local Notice to Mariners.

(2) Violations of this RNA may be reported to the COTP at 207–767–0303 or on VHF–Channel 16.

Dated: June 29, 2012.

**D.B. Abel,**

*Rear Admiral, U.S. Coast Guard Commander, First Coast Guard District.*

[FR Doc. 2012–17221 Filed 7–13–12; 8:45 am]

**BILLING CODE 9110–04–P**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 261

**[EPA–R01–RCRA–2012–0447; FRL–9699–4]**

## Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusion

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

**ACTION:** Proposed rule and request for comment.

**SUMMARY:** The EPA (also, ''the Agency'' or ''we'' in this preamble) is proposing to grant a petition submitted by International Business Machines Corporation (IBM), in Essex Junction, Vermont to exclude (or ''delist'') up to 3,150 cubic yards per calendar year of F006 wastewater treatment sludge generated by IBM's Industrial Waste Treatment System from the list of hazardous wastes.

The Agency has tentatively decided to grant the petition based on an evaluation of waste-specific information provided by IBM. This proposed decision, if finalized, would conditionally exclude the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA).

This exclusion would be valid only when the wastewater treatment sludge is disposed of in a Subtitle D landfill which is permitted, licensed, or otherwise authorized by a State to manage industrial solid waste.

If finalized, EPA would conclude that IBM's petitioned waste is nonhazardous with respect to the original listing criteria and that there are no other factors which would cause the waste to be hazardous.

**DATES:** Comments must be received on or before August 15, 2012. EPA will stamp comments received after the close of the comment period as late. These late comments may not be considered in formulating a final decision. Any person may request a hearing on the proposed decision by filing a request to EPA by July 31, 2012. The request must contain the information prescribed in 40 CFR 260.20(d).

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R01–RCRA–2012–0447 by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: leitch.sharon@epa.gov.*
3. *Fax:* (617) 918–0647, to the attention of Sharon Leitch.
4. *Mail:* Sharon Leitch, RCRA Waste Management and UST Section, Office of Site Remediation and Restoration (OSRR07–1), US EPA Region 1, 5 Post Office Square, Suite 100, Boston, MA 02109–3912.
5. *Hand Delivery:* Sharon Leitch, RCRA Waste Management and UST Section, Office of Site Remediation and Restoration (OSRR07–1), U.S. EPA Region 1, 5 Post Office Square, 7th floor, Boston, MA 02109–3912. Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information. Please contact Sharon Leitch at (617) 918–1647.

*Instructions:* Direct your comments to Docket ID No. EPA–R01–RCRA–2012–0447. 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 through *www.regulations.gov* or email information that you consider to be CBI or otherwise protected. 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.

*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 form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the EPA Region 1 Library, 5 Post Office Square, 1st floor, Boston, MA 02109–3912; by appointment only; tel: (617) 918–1990.

**FOR FURTHER INFORMATION CONTACT:** Sharon Leitch, RCRA Waste Management and UST Section, Office of Site Remediation and Restoration, (Mail Code: OSRR07–1), EPA Region 1, 5 Post Office Square, Suite 100, Boston, MA 02109–3912; telephone number: (617) 918–1647; fax number (617) 918–0647; email address: *leitch.sharon@epa.gov.*

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## I. Overview Information

The EPA is proposing to grant a petition submitted by International Business Machines Corporation (IBM) located in Essex Junction, Vermont to exclude or delist an annual volume of 3,150 cubic yards of F006 wastewater treatment sludge from the lists of hazardous waste set forth in Title 40 of the Code of Federal Regulations (40 CFR) 261.31. IBM claims that the petitioned waste does not meet the criteria for which EPA listed it, and that there are no additional constituents or factors which could cause the waste to be hazardous.

Based on the EPA's evaluation described in section III, in which we reviewed the description of the process which generates the waste and the analytical data submitted by IBM, we agree with the petitioner that the waste is nonhazardous. We believe that the petitioned waste does not meet the criteria for which the waste was listed, and that there are no other factors which might cause the waste to be hazardous.

## II. Background

### *A. What is a listed waste?*

The EPA published an amended list of hazardous wastes from nonspecific and specific sources on January 16, 1981, as part of its final and interim final regulations implementing § 3001 of Resource Conservation and Recovery Act (RCRA). The EPA has amended this list several times and publishes it in 40 CFR 261.31 and 261.32.

We list these wastes as hazardous because: (1) They typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in subpart C of part 261 (that is, ignitability, corrosivity, reactivity, and toxicity) or (2) they meet the criteria for listing contained in § 261.11(a)(2) or (3).

### *B. What is a delisting petition?*

Individual waste streams may vary depending on raw materials, industrial processes, and other factors. Thus, while a waste described in the regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be.

The procedure to exclude or delist a waste in 40 CFR 260.20 and 260.22 allows a person, or a facility, to submit a petition to the EPA or to an authorized state demonstrating that a specific waste from a particular generating facility is not hazardous.

In a delisting petition, the petitioner must show that a waste does not meet any of the criteria for listed wastes in 40 CFR 261.11 and that the waste does not exhibit any of the hazardous waste characteristics of ignitability, reactivity, corrosivity, or toxicity. The petitioner must present sufficient information for the Agency to decide whether any factors in addition to those for which the waste was listed warrant retaining it as a hazardous waste. (See § 260.22, 42 United States Code—U.S.C.—6921(f) and the background documents for the listed wastes.)

If a delisting petition is granted, the generator remains obligated under RCRA to confirm that the waste remains nonhazardous.

*C. What factors must EPA consider in deciding whether to grant a delisting petition?*

In reviewing this petition, we considered the original listing criteria and the additional factors required by the Hazardous and Solid Waste Amendments of 1984 (HSWA). See § 222 of HSWA, 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(2)–(4). We evaluated the petitioned waste against the listing criteria and factors cited in § 261.11(a)(2) and (3).

Besides considering the criteria in 40 CFR 260.22(a), 261.11(a)(2) and (3), 42 U.S.C. 6921(f), and in the background documents for the listed wastes, EPA must consider any factors (including additional constituents), other than those for which we listed the waste, if these additional factors could cause the waste to be hazardous.

Our tentative decision to delist waste from IBM's facility is based on our evaluation of the waste for factors or criteria which could cause the waste to be hazardous. These factors included: (1) Whether the waste is considered acutely toxic; (2) the toxicity of the constituents; (3) the concentration of the constituents in the waste; (4) the tendency of the constituents to migrate and to bioaccumulate; (5) the persistence in the environment of any constituents once released from the waste; (6) plausible and specific types of management of the petitioned waste; (7) the quantity of waste produced; and (8) waste variability.

EPA must also consider as hazardous wastes, mixtures containing listed hazardous wastes and wastes derived from treating, storing, or disposing of listed hazardous waste. See 40 CFR 261.3(a)(2)(iv) and (c)(2)(i), called the ''mixture'' and ''derived-from'' rules, respectively. Mixture and derived-from wastes are also eligible for exclusion but remain hazardous until excluded.

## III. EPA's Evaluation of the Waste Information and Data

*A. What waste did IBM petition EPA to delist?*

On July 11, 2008, IBM petitioned EPA to exclude from the list of hazardous wastes contained in 40 CFR 261.31, F006 Industrial Waste Treatment Plant (IWTP) sludge generated from its facility located in Essex Junction, Vermont. F006 is defined in § 261.31 as ''Wastewater treatment sludges from electroplating operations * * *'' IBM claims that the petitioned waste does not meet the criteria for which F006 was listed (*i.e.,* cadmium, hexavalent chromium, nickel and complexed cyanide) and that there are no other factors which would cause the waste to be hazardous. Specifically, the petition request is for a standard exclusion for 3,150 cubic yards per calendar year of WWTP sludge.

*B. How does IBM generate the waste?*

The sludge IBM generates is from the combination of three separate wastewater treatment processes at the facility. Those processes include: the industrial waste treatment plant (IWTP) process; the biological wastewater treatment plant (BWTP) process; and the chemical mechanical polishing (CMP) microfiltration process. The sludge is primarily sludge from the IWTP, this waste stream receives discharges from chemical wafer and mask manufacturing cleaning, etching, and stripping, photolithography waste, chemical etching and mechanical polishing, air abatement scrubbers, effluent from the CMP and BWTP treatment systems, wafer rinse, and facility maintenance operations. The industrial wastewaters also include rinse waters from copper electroplating manufacturing operations and wastewaters from acid etching of a thin platinum film and the subsequent rinse step (the copper and platinum wastewaters total less the 0.1 percent of the overall wastewater treated). The biological waste streams include sanitary wastewaters, dilute organic waste (DOW) and concentrated waste (CW). The DOW waste stream receives discharges from chemical wafer cleaning and stripping, Deep Ultra-Violet photolithography waste, air abatement adsorber decant waters, and facility chilled water and boiler maintenance operations. The CW stream consists of waste from semiconductor and mask manufacturing photolithography develop steps, chemical wafer cleaning, etching, and stripping operations, and parts decontamination. The CMP microfiltration waste stream consists of wastewater from chemical/mechanical polishing tools used in semiconductor manufacturing. The CMP wastewaters also include copper sulfate plating bath solutions (totaling less than 0.1 percent of the wastewater treated through the CMP system). The sludges from these three processes are combined, thickened/conditioned, and pressed to generate the F006 waste stream.

*C. How did IBM sample and analyze the petitioned waste?*

To support its petition, IBM submitted: (1) Facility information on production processes and waste generation processes; (2) Historical sampling data of the IWTP sludge; (3) Analytical results from four samples for total concentrations for volatiles (SW–846 Method 8260B), semi volatiles (SW–846 Method 8270C) and metals (SW–846 Method 6010B except for mercury—SW–846 Method 7471A and selenium—SW–846 Method 7010), for compounds of concern (COCs); and (4) Analytical results from four samples for Toxicity Characteristic Leaching Procedure (TCLP) extract values for volatiles (SW–846 Method 8260B), semi volatiles (SW–846 Method 8270C) and metals (SW–846 Method 6010B except for mercury—SW–846 Method 7470 and selenium—SM 3113B) for COCs.

IBM generated the sampling data used in the Delisting Risk Assessment Software (DRAS) under a Quality Assurance Project Plan (QAPP) that was approved by EPA, Region 1 on January 27, 2011. Therefore, EPA believes that the sampling procedures used by IBM satisfy EPA's criteria for collecting representative samples of the F006 waste.

*D. What were the results of IBM's analysis of the waste?*

EPA believes that IBM's analytical characterization provides a reasonable basis to grant IBM's petition for an exclusion of the wastewater treatment sludge. Furthermore, EPA believes the data submitted in support of the petition show that the sludge is non-hazardous. Analytical data for the wastewater treatment sludge samples were used in the DRAS to develop delisting levels.

The data summaries for the total detected constituents are as follows: (mg/kg) Arsenic—7.5; Barium—39; Chromium—290; Lead—5.6; Mercury—0.067; and Nickel—49. The data summary for the TCLP detected constituents are as follows: (mg/l) Nickel—0.11 (all other constituents were non-detect). Note that the above levels represent the highest constituent concentration found in any one sample. All analytical data for the volatiles and semi-volatiles samples were non-detect.

*E. How did EPA evaluate the risk of delisting this waste?*

For this delisting determination, we assumed that the waste would be disposed in a Subtitle D landfill and we considered transport of waste constituents through groundwater, surface water and air. We evaluated

IBM's petitioned waste using the Agency's Delisting Risk Assessment Software (DRAS) described in 65 FR 58015 (September 27, 2000), 65 FR 75637 (December 4, 2000), and 73 FR 28768 (May 19, 2008) to predict the maximum allowable concentrations of hazardous constituents that may be released from the petitioned waste after disposal and determined the potential impact of the disposal of IBM's petitioned waste on human health and the environment. To predict the potential for release to groundwater from landfilled wastes and subsequent routes of exposure to a receptor, the DRAS uses dilution attenuation factors derived from EPA's Composite Model for Leachate Migration and Transformation Products (EPACMTP). From a release to groundwater, the DRAS considers routes of exposure to a human receptor of ingestion of contaminated groundwater, inhalation from groundwater while showering and dermal contact from groundwater while bathing.

From a release to surface water by erosion of waste from an open landfill into stormwater run-off, DRAS evaluates the exposure to a human receptor by fish ingestion and ingestion of drinking water. From a release of waste particles and volatile emissions to air from the surface of an open landfill, DRAS considers routes of exposure of inhalation of volatile constituents, inhalation of particles, and air deposition of particles on residential soil and subsequent ingestion of the contaminated soil by a child. The technical support document and the user's guide to DRAS are included in the docket.

At a target cancer risk of $1 \times 10^{-5}$ and a target hazard quotient of 1.0, the DRAS program determined maximum allowable concentrations for each constituent in both the waste and the leachate at an annual waste volume of 3,150 cubic yards.

We used the maximum estimated annual waste volume and the maximum reported total and TCLP leachate concentrations as inputs to estimate the constituent concentrations in the groundwater, soil, surface water or air. If, using an appropriate analytical method, a constituent was not detected in any sample, it was considered not to be present in the waste.

*F. What did EPA conclude about IBM's waste?*

The maximum reported concentrations of the hazardous constituents found in this waste are presented above in section D. The maximum allowable constituent concentrations as determined by the DRAS are as follows: (mg/l) Nickel—32.4. The maximum allowable constituent concentrations for the remaining constituents are based on the toxicity characteristic in 40 CFR 261 Subpart C: (mg/l) Arsenic—5.0; Barium—100.0; Cadmium—1.0; Chromium—5.0; Lead—5.0; and, Mercury—0.2. The concentrations of all constituents in both the waste and the leachate are below the allowable concentrations. We, therefore, conclude that IBM's wastewater treatment sludge is not a substantial or potential hazard to human health and the environment when disposed of in a Subtitle D landfill.

We, therefore, propose to grant an exclusion for this waste. If this exclusion is finalized, IBM must dispose of this waste in a Subtitle D landfill permitted, licensed or otherwise authorized by a state, and will remain obligated to verify that the waste meets the allowable concentrations set forth here. IBM must also continue to determine whether the waste is identified in subpart C of 40 CFR pursuant to § 261.11(c).

## IV. Conditions for Exclusion

*A. When would EPA finalize the proposed delisting exclusion?*

HSWA specifically requires the EPA to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, EPA will not make a final decision or grant an exclusion until it has addressed all timely public comments on today's proposal, including any at public hearings.

Since this rule would reduce the existing requirements for persons generating hazardous wastes, the regulated community does not need a six-month period to come into compliance in accordance with § 3010 of RCRA as amended by HSWA.

*B. How will IBM manage the waste if it is delisted?*

If the petitioned waste is delisted, IBM must dispose of it in a Subtitle D landfill which is permitted, licensed, or otherwise authorized by a state to manage industrial waste.

*C. With what conditions must the petitioner comply?*

The petitioner, IBM, must comply with the conditions which will be in 40 CFR part 261, Appendix IX, Table 1. The text below gives the rationale and details of those requirements.

(1) Delisting Levels:

This paragraph provides the levels of constituents for which IBM must test the WWTP sludge, below which these wastes would be considered non-hazardous. EPA selected the set of constituents specified in paragraph (1) of 40 CFR part 261, Appendix IX, Table 1, (the exclusion language) based on information in the petition. EPA compiled the constituents list from the composition of the waste, descriptions of IBM's treatment process, previous test data provided for the waste, and the respective health-based levels used in delisting decision-making. These delisting levels correspond to the allowable levels measured in the TCLP concentrations.

(2) Waste Holding and Handling:

The purpose of this paragraph is to ensure that IBM manages and disposes of any WWTP sludge that contains hazardous levels of inorganic and organic constituents according to Subtitle C of RCRA. Managing the WWTP sludge as a hazardous waste until initial verification testing is performed will protect against improper handling of hazardous material. Unless and until EPA concurs that the initial verification data collected under paragraph (3) supports the data provided in the petition, the exclusion will not cover the petitioned waste. The exclusion is effective upon publication in the **Federal Register** but the disposal as non-hazardous waste cannot begin until two quarters of verification sampling is completed and an approval is obtained from EPA.

(3) Verification Testing Requirements:

IBM must implement a verification testing program on the WWTP sludge to assure that the sludge does not exceed the maximum levels specified in paragraph (1) of the exclusion language. The first part of the verification testing program is the quarterly testing of representative samples of the WWTP sludge during the first year of waste generation (two quarters prior to obtaining written EPA approval and two additional quarters). The proposed testing would verify that IBM operates a treatment facility where the constituent concentrations of the WWTP sludge do not exhibit unacceptable temporal and spatial levels of toxic constituents. IBM would begin quarterly sampling 30 days after the final exclusion as described in paragraph (3)(A) of the exclusion language. Consequently this program will ensure that the sludge is evaluated in terms of variation in constituent concentrations in the waste over time. Following two consecutive quarters of sampling where the levels of constituents do not exceed the levels in paragraph (1), IBM can then manage and dispose of the sludge as non-hazardous in accordance with all

applicable solid waste regulations following EPA approval. If EPA determines that the data collected under this paragraph does not support the data provided in the petition, the exclusion will not cover the generated wastes. IBM must then prove through a new demonstration that its waste meets the conditions of the exclusion.

The second part of the verification testing program is the annual testing of representative samples of the WWTP sludge, per paragraph (3)(B) of the exclusion language. To confirm that the characteristics of the waste do not change significantly over time, IBM must continue to analyze a representative sample of the waste on an annual basis. Annual testing requires analyzing the full list of constituents in paragraph (1) of the exclusion language. If operating conditions change as described in paragraph (4) of the exclusion language, IBM must reinstate all testing in paragraph (1) of the exclusion language. IBM must then prove through a new demonstration that its waste meets the conditions of the exclusion. If the annual testing of the waste does not meet the delisting requirements in paragraph (1), IBM must notify EPA according to the requirements in paragraph (6) of the exclusion language. The facility must provide sampling results that support the rationale that the delisting exclusion should not be withdrawn.

(4) Changes in Operating Conditions:

Paragraph (4) of the exclusion language would allow IBM the flexibility of modifying its processes (for example, changes in equipment or operating conditions). However, if significant changes to the manufacturing or treatment process described in the petition, or the chemicals used in the manufacturing or treatment process are made, then IBM must prove that the modified process(es)/chemicals will not affect the composition or type of waste generated and must request approval from EPA. EPA will determine if these changes will result in additional COCs. IBM must manage wastes generated during the new process demonstration as hazardous waste until it has obtained written approval from EPA and paragraph (3) of the exclusion language is satisfied.

(5) Data Submittals and Recordkeeping:

To provide appropriate documentation that IBM's WWTP sludge is meeting the delisting levels, IBM must submit reports to EPA as specified in the conditions, and must compile, summarize, and keep delisting records on-site for a minimum of five years. It must keep all analytical data obtained through paragraph (3) of the exclusion language including quality control information for five years. Paragraph (5) of the exclusion language requires that IBM furnish the data upon request for inspection by any employee or representative of EPA or the State of Vermont.

If the proposed exclusion is made final, it will apply only to 3,150 cubic yards per calendar year of wastewater treatment sludge generated at IBM after successful verification testing.

EPA would require IBM to file a new delisting petition under the following circumstances:

(a) If it generates waste volumes greater than 3,150 cubic yards per calendar year of WWTP sludge. IBM must manage these greater volumes as hazardous unless and until EPA grants a new exclusion.

EPA may review and approve changes in writing or alternatively may require IBM to file a new delisting petition under any of the following circumstances:

(b) If it significantly alters the wastewater treatment process;

(c) If it significantly changes from the current manufacturing process(es) described in the International Business Machines petition; or

(d) If it makes any changes that could affect the composition or type of waste generated such that the changes would cause any of the constituents in paragraph (1) of the exclusion language to potentially be above the delisting levels or would introduce any new constituents into the waste.

(6) Reopener:

The purpose of paragraph (6) of the exclusion language is to require IBM to disclose new or different information related to a condition at the facility or disposal of the waste, if it is pertinent to the delisting. This provision will allow EPA to reevaluate the exclusion, if a source provides new or additional information to EPA. EPA will evaluate the information on which EPA based the decision to see if it is still correct, or if circumstances have changed so that the information is no longer correct or would cause EPA to deny the petition, if presented.

This provision expressly requires IBM to report differing site conditions or assumptions used in the petition in addition to failure to meet the annual testing conditions within 10 days of discovery. If EPA discovers such information itself or from a third party, it can act on it as appropriate. The language being proposed is similar to those provisions found in RCRA regulations governing no-migration petitions at § 268.6.

EPA believes it has the authority under RCRA and the Administrative Procedures Act (APA), 5 U.S.C. 551 (1978) *et seq.,* to reopen a delisting decision when it receives new information that calls into question the assumptions underlying the delisting. EPA believes a clear statement of its authority in delistings is merited in light of EPA's experience. *See* Reynolds Metals Company at 62 FR 37694 and 62 FR 63458 where the delisted waste leached at greater concentrations in the environment than the concentrations predicted when conducting the TCLP, thus leading EPA to repeal the delisting. If an immediate threat to human health and the environment presents itself, EPA will continue to address these situations on a case-by-case basis. Where necessary, EPA will make a good cause finding to justify emergency rulemaking. *See* APA section 553(b).

(7) Notification Requirements:

In order to adequately track wastes that have been delisted, EPA is requiring that IBM provide a one-time written notification to any state regulatory agency through which or to which the delisted waste is being transported. IBM must provide this notification 60 days before commencing this activity. In addition to providing this notification, IBM is advised to verify with each state the status of EPA's delisting decision under state law (see the discussion in Section V. for specifics).

*D. What happens if IBM violates the terms and conditions of the exclusion?*

If IBM violates the terms and conditions established in the exclusion, the wastes in question would not be exempt from Subtitle C since this is a conditional exclusion, and thus they would be subject to hazardous waste management requirements. EPA also could then initiate procedures to withdraw the exclusion. Where there is an immediate threat to human health and the environment, EPA will evaluate the need for enforcement activities on a case-by-case basis. EPA expects IBM to conduct the appropriate waste analysis and comply with the criteria explained above in paragraph (1) of the exclusion.

## V. How would this action affect the states?

EPA is issuing this exclusion under the Federal RCRA delisting program. Thus, upon the exclusion being finalized, the wastes covered will be removed from Subtitle C control under the Federal RCRA program. This will mean, first, that the wastes will be delisted in any State or territory where the EPA is directly administering the

RCRA program (*e.g.,* Iowa, Indian Country). However, whether the wastes will be delisted in States which have been authorized to administer the RCRA program will vary depending upon the authorization status of the States and the particular requirements regarding delisted wastes in the various States.

While Vermont has been authorized to generally administer the Federal RCRA program, it has not sought or obtained authorization to delist Federal listed wastes. See 58 FR 26243 (May 3, 1993). Instead, the Vermont Hazardous Waste Regulation section 7–217(c) specifies that ''the Administrator of EPA shall retain the authority to exclude such wastes.'' By letter dated April 12, 2012, the Vermont Department of Environmental Conservation has confirmed that Vermont interprets this regulation to mean that upon the EPA making a delisting determination (regarding a federally regulated waste), the delisting determination takes effect within that State. Thus, this delisting determination will apply within Vermont with no further action required by the State.

Like Vermont, some other generally authorized States have not received authorization for delisting. Thus, the EPA makes delisting determinations for such States. However, RCRA allows states to impose their own regulatory requirements that are more stringent than EPA's, under § 3009 of RCRA. These more stringent requirements may include a provision that prohibits a federally issued exclusion from taking effect in the state, or that requires a State concurrence before the Federal exclusion takes effect, or that allows the State to add conditions to any Federal exclusion. We urge the petitioner to contact the state regulatory authority in each State to or through which it may wish to ship its wastes to establish the status of its wastes under the state's laws.

EPA has also authorized some states to administer a delisting program in place of the Federal program, that is, to make state delisting decisions. In such states, the state delisting requirements operate in lieu of the Federal delisting requirements. Therefore, this exclusion does not apply in those authorized states unless the state makes the rule part of its authorized program. If IBM transports the federally excluded waste to or manages the waste in any state with delisting authorization, IBM must obtain a delisting authorization from that state before it can manage the waste as non-hazardous in that state.

## VI. Statutory and Executive Order Reviews

Under Executive Order 12866, ''Regulatory Planning and Review '' (58 FR 51735, October 4, 1993), this rule is not of general applicability and therefore, is not a regulatory action subject to review by the Office of Management and Budget (OMB). This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) because it applies to a particular facility only. Because this rule is of particular applicability relating to a particular facility, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to §§ 202, 204, and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Because this rule will affect only a particular facility, it will not significantly or uniquely affect small governments, as specified in § 203 of UMRA. Because this rule will affect only a particular facility, this proposed 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, ''Federalism'', (64 FR 43255, August 10, 1999). Thus, Executive Order 13132 does not apply to this rule.

Similarly, because this rule will affect only a particular facility, this proposed rule does not have tribal implications, as specified in Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000). Thus, Executive Order 13175 does not apply to this rule. This rule also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The basis for this belief is that the Agency used DRAS, which considers health and safety risks to children, to calculate the maximum allowable concentrations for this rule. This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866. This rule does not involve technical standards; thus, the requirements of § 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by § 3 of Executive Order 12988, ''Civil Justice Reform'', (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

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. Section 804 exempts from § 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties (5 U.S.C. 804(3)). EPA is not required to submit a rule report regarding today's action under § 801 because this is a rule of particular applicability. 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.

EPA has determined that this proposed 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. The Agency's risk assessment did not identify risks from management of this material in a Subtitle D landfill. Therefore, EPA believes that any populations in proximity of the landfills used by this facility should not be adversely affected by common waste management practices for this delisted waste.

**List of Subjects in 40 CFR Part 261**

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

**Authority:** § 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: June 20, 2012.

**H. Curtis Spalding,**

*Regional Administrator, EPA Region 1.*

For the reasons set out in the preamble, EPA proposes to amend 40 CFR part 261 as follows:

## PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

**Authority:** 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y) and 6938.

2. Amend Table 1 of Appendix IX to part 261 by adding the following waste stream in alphabetical order by facility ''IBM Corporation'' to read as follows:

**Appendix IX to Part 261—Wastes Excluded Under §§ 260.20 and 260.22**

TABLE 1—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

| Facility | Address | Waste description |
|---|---|---|
| * | * | * * * * * |
| IBM Corporation ..... | Essex Junction, VT ..... | Wastewater Treatment Sludge (Hazardous Waste No. F006) generated at a maximum annual rate of 3,150 cubic yards per calendar year and disposed of in a Subtitle D Landfill which is licensed, permitted, or otherwise authorized by a state to accept the delisted wastewater treatment sludge.<br>IBM must implement a testing program that meets the following conditions for the exclusion to be valid:<br>1. *Delisting Levels:* All leachable concentrations for the following constituents must not exceed the following levels (mg/L for TCLP): Arsenic—5.0; Barium—100.0; Cadmium—1.0; Chromium—5.0; Lead—5.0; Mercury 0.2; and, Nickel—32.4.<br>2. *Waste Handling and Holding:* (A)IBM must manage as hazardous all WWTP sludge generated until it has completed initial verification testing described in paragraph (3)(A) and valid analyses show that paragraph (1) is satisfied and written approval is received by EPA. (B) Levels of constituents measured in the samples of the WWTP sludge that do not exceed the levels set forth in paragraph (1) for two consecutive quarterly sampling events are non-hazardous. After approval is received from EPA, IBM can manage and dispose of the non-hazardous WWTP sludge according to all applicable solid waste regulations. (C) Not withstanding having received the initial approval from EPA, if constituent levels in a later sample exceed any of the Delisting Levels set in paragraph (1), from that point forward, IBM must treat all the waste covered by this exclusion as hazardous until it is demonstrated that the waste again meets the levels in paragraph (1). IBM must manage and dispose of the waste generated under Subtitle C of RCRA from the time that it becomes aware of any exceedance. |

TABLE 1—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

| Facility | Address | Waste description |
|---|---|---|
| | | 3. *Verification Testing Requirements:* IBM must perform sample collection and analyses in accordance with the approved Quality Assurance Project Plan dated January 27, 2011. All samples shall be representative composite samples according to appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW–846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. Methods must meet Performance Based Measurement System Criteria in which the Data Quality Objectives are to demonstrate that samples of the IBM sludge are representative for all constituents listed in paragraph (1). To verify that the waste does not exceed the specified delisting concentrations, for one year after the final exclusion is granted, IBM must perform quarterly analytical testing by sampling and analyzing the WWTP sludge as follows: (A) Quarterly Testing: (i) Collect two representative composite samples of the WWTP sludge at quarterly intervals after EPA grants the final exclusion. The first composite samples must be taken within 30 days after EPA grants the final approval. The second set of samples must be taken at least 30 days after the first set. (ii) Analyze the samples for all constituents listed in paragraph (1). Any waste regarding which a composite sample is taken that exceeds the delisting levels listed in paragraph (1) for the sludge must be disposed as hazardous waste in accordance with the applicable hazardous waste requirements from the time that IBM becomes aware of any exceedance. (iii) Within thirty (30) days after taking each quarterly sample, IBM will report its analytical test data to EPA. If levels of constituents measured in the samples of the sludge do not exceed the levels set forth in paragraph (1) of this exclusion for two consecutive quarters, and EPA concurs with those findings, IBM can manage and dispose the non-hazardous sludge according to all applicable solid waste regulations. (B) Annual Testing: (i) If IBM completes the quarterly testing specified in paragraph (3) above and no sample contains a constituent at a level which exceeds the limits set forth in paragraph (1), IBM may begin annual testing as follows: IBM must test two representative composite samples of the wastewater treatment sludge (following the same protocols as specified for quarterly sampling, above) for all constituents listed in paragraph (1) at least once per calendar year. (ii) The samples for the annual testing taken for the second and subsequent annual testing events shall be taken within the same calendar month as the first annual sample taken. (iii) IBM shall submit an annual testing report to EPA with its annual test results, within thirty (30) days after taking each annual sample. The annual testing report also shall include the total amount of waste in cubic yards disposed during the calendar year. |
| | | 4. *Changes in Operating Conditions:* If IBM significantly changes the manufacturing or treatment process described in the petition, or the chemicals used in the manufacturing or treatment process, it must notify the EPA in writing and may no longer handle the wastes generated from the new process as non-hazardous unless and until the wastes are shown to meet the delisting levels set in paragraph(1), IBM demonstrates that no new hazardous constituents listed in appendix VIII of part 261 have been introduced, and IBM has received written approval from EPA to manage the wastes from the new process under this exclusion. While the EPA may provide written approval of certain changes, if there are changes that the EPA determines are highly significant, the EPA may instead require IBM to file a new delisting petition. |
| | | 5. *Data Submittals and Recordkeeping:* IBM must submit the information described below. If IBM fails to submit the required data within the specified time or maintain the required records on-site for the specified time, EPA, at its discretion, will consider this sufficient basis to reopen the exclusion as described in paragraph (6). IBM must: (A) Submit the data obtained through paragraph (3) to the Chief, RCRA Waste Management & UST Section, U.S. EPA Region 1, (OSRR07–1), 5 Post Office Square, Suite 100, Boston, MA 02109–3912, within the time specified. All supporting data can be submitted on CD–ROM or some comparable electronic media; (B) Compile, summarize, and maintain on site for a minimum of five years and make available for inspection records of operating conditions, including monthly and annual volumes of WWTP sludge generated, analytical data, including quality control information and, copies of the notification(s) required in paragraph (7); (C) Submit with all data a signed copy of the certification statement in 40 CFR 260.22(i)(12). |

TABLE 1—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

| Facility | Address | Waste description |
|---|---|---|
| | | 6. *Reopener Language:* (A) If, anytime after disposal of the delisted waste, IBM possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or groundwater monitoring data) or any other relevant data to the delisted waste indicating that any constituent is at a concentration in the leachate higher than the specified delisting concentration, then IBM must report such data, in writing, to the Regional Administrator and to the Vermont Agency of Natural Resources Secretary within 10 days of first possessing or being made aware of that data. (B) Based on the information described in paragraph (A) and any other information received from any source, the Regional Administrator will make a preliminary determination as to whether the reported information requires Agency action to protect human health or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (C) If the Regional Administrator determines that the reported information does require Agency action, the Regional Administrator will notify IBM in writing of the actions the Regional Administrator believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing IBM with an opportunity to present information as to why the proposed Agency action is not necessary or to suggest an alternative action. IBM shall have 30 days from the date of the Regional Administrator's notice to present the information. (D) If after 30 days IBM presents no further information or after a review of any submitted information, the Regional Administrator will issue a final written determination describing the Agency actions that are necessary to protect human health or the environment. Any required action described in the Regional Administrator's determination shall become effective immediately, unless the Regional Administrator provides otherwise.<br>7. *Notification Requirements:* IBM must do the following before transporting the delisted waste: (A) Provide a one-time written notification to any state Regulatory Agency to which or through which it will transport the delisted waste described above for disposal, 60 days before beginning such activities. (B) Update the one-time written notification if it ships the delisted waste into a different disposal facility. Failure to provide this notification will result in a violation of the delisting petition and a possible revocation of the decision. |
| * | * | * * * * * |

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Chapters II, III, IV, V, and VI

**RIN 0648–XC012**

### Plan for Periodic Review of Regulations

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

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

**SUMMARY:** The Regulatory Flexibility Act (RFA) requires that the National Marine Fisheries Service (NMFS) periodically review existing regulations that have a significant economic impact on a substantial number of small entities, such as small businesses, small organizations, and small governmental jurisdictions. This plan describes how NMFS will perform this review and describes the regulations that are being proposed for review during the current review-cycle.

**DATES:** Written comments must be received by NMFS by August 15, 2012.

**ADDRESSES:** You may submit comments on this document, identified by 0648–XC012 by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal *www.regulations.gov.* To submit comments via the e-Rulemaking Portal, first click the ''submit a comment'' icon, then enter 0648–XC012. Locate the document you wish to comment on from the resulting list and click on the ''Submit a Comment'' icon on the right of that line.
- *Mail:* Submit written comments to Wendy Morrison, National Marine Fisheries Service, NOAA, Office of Sustainable Fisheries, 1315 East-West Highway, Silver Spring, MD 20910 (mark outside of envelope ''Comments on 610 review'').
- *Fax:* 301–713–1193; Attn: Wendy Morrison.

*Instructions:* Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

**FOR FURTHER INFORMATION CONTACT:** Wendy Morrison, (301) 427–8504, for questions on rules under **SUPPLEMENTARY INFORMATION** section listed in items 1 through 72; and Heather Coll, (301) 427–8455, for questions on rules under **SUPPLEMENTARY INFORMATION** section listed in items 73 through 76.

**SUPPLEMENTARY INFORMATION:**

### Background

The RFA, 5 U.S.C. 601, requires that Federal agencies take into account how their regulations affect ''small entities,'' including small businesses, small

Governmental jurisdictions and small organizations. For regulations proposed after January 1, 1981, the agency must either prepare a Regulatory Flexibility Analysis or certify that the regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. Section 602 requires that NMFS issue an Agenda of Regulations identifying rules the Agency is developing that are likely to have a significant economic impact on a substantial number of small entities.

Section 610 of the RFA requires Federal agencies to review existing regulations. It requires that NMFS publish a plan in the **Federal Register** explaining how it will review its existing regulations which have or will have a significant economic impact on a substantial number of small entities. Regulations that become effective after January 1, 1981, must be reviewed within 10 years of the publication date of the final rule. Section 610(c) requires that NMFS publish annually in the **Federal Register** a list of rules it will review during the succeeding 12 months. The list must describe the rule, explain the need for it, give the legal basis for it, and invite public comment.

**Criteria for Review of Existing Regulations**

The purpose of the review is to determine whether existing rules should be left unchanged, or whether they should be revised or rescinded in order to minimize significant economic impacts on a substantial number of small entities, consistent with the objectives of other applicable statutes. In deciding whether change is necessary, the RFA establishes five factors that NMFS will consider:

(1) Whether the rule is still needed;

(2) What type of complaints or comments were received concerning the rule from the public;

(3) The complexity of the rule;

(4) How much the rule overlaps, duplicates or conflicts with other Federal rules, and, to the extent feasible, with State and local governmental rules; and

(5) How long it has been since the rule has been evaluated or how much the technology, economic conditions, or other factors have changed in the area affected by the rule.

**Plan for Periodic Review of Rules**

NMFS will conduct reviews in such a way as to ensure that all rules for which a Final Regulatory Flexibility Analysis was prepared are reviewed within 10 years of the year in which they were originally issued. By December 31, 2012, NMFS will review all such rules issued during 2003 and 2004:

1. Fisheries of the Exclusive Economic Zone off Alaska; Steller Sea Lion Protection Measures for the Groundfish Fisheries off Alaska. RIN 0648–AQ08 (68 FR 204, January 2, 2003). NMFS issued a final rule to implement Steller sea lion protection measures to avoid the likelihood that the groundfish fisheries off Alaska would jeopardize the continued existence of the western distinct population segment of Steller sea lions or adversely modify its critical habitat. These management measures dispersed fishing effort over time and area to provide protection from potential competition for important Steller sea lion prey species in waters adjacent to rookeries and important haulouts. The intended effect of this final rule was to protect the endangered western distinct population segment of Steller sea lions, as required under the Endangered Species Act, and to conserve and manage the groundfish resources in the Bering Sea/Aleutian Islands management area and the Gulf of Alaska in accordance with the Magnuson-Stevens Act.

2. Fisheries of the Exclusive Economic Zone off Alaska; Revisions to Observer Coverage Requirements for Vessels and Shoreside Processors in the North Pacific Groundfish Fisheries. RIN 0648–AM44 (68 FR 715, January 7, 2003). NMFS issued a final rule to amend regulations governing the North Pacific Groundfish Observer Program. This action was necessary to refine observer coverage requirements and improve support for observers. This action was intended to ensure continued collection of high-quality observer data to support the management objectives of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area and the Fishery Management Plan for Groundfish of the Gulf of Alaska, and was intended to promote the goals and objectives contained in those FMPs.

3. Fisheries of the Exclusive Economic Zone off Alaska; Amendment 69 to Revise American Fisheries Act Inshore Cooperative Requirements. RIN 0648–AP71 (68 FR 6833, February 11, 2003). NMFS issued a final rule to implement Amendment 69 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutians Area. This final rule allowed an American Fisheries Act inshore cooperative to contract with a non-member vessel to harvest a portion of the cooperative's pollock allocation. The North Pacific Fishery Management Council developed Amendment 69 to provide greater flexibility to inshore catcher vessel cooperatives to arrange for the harvest of their pollock allocation, and to address potential emergency situations, such as vessel breakdowns, that would prevent a cooperative from harvesting its entire allocation. This action was designed to be consistent with the environmental and socioeconomic objectives of the American Fisheries Act, the Magnuson-Stevens Act, the Fishery Management Plan, and other applicable laws.

4. Fisheries of the Exclusive Economic Zone off Alaska; Western Alaska Community Development Quota Program. RIN 0648–AL97 (68 FR 9902, March 3, 2003). NMFS issued a final rule to amend portions of the regulations governing the halibut fishery under the Western Alaska Community Development Quota (CDQ) Program. These changes increased the Regulatory Area (Area) 4E trip limit from 6,000 lb (2.72 metric tons (mt)) to 10,000 lb (4.54 mt) and modified the Area 4 Catch Sharing Plan to allow CDQ Program participants to harvest allocations of Area 4D halibut CDQ in Area 4E. This action was intended to enhance harvesting opportunities for halibut CDQ fishermen and to further the goals and objectives of the North Pacific Fishery Management Council with respect to the CDQ program and the Pacific halibut fishery, consistent with the regulations and resource management objectives of the International Pacific Halibut Commission.

5. Fisheries of the Exclusive Economic Zone off Alaska; Seasonal Area Closure to Trawl, Pot, and Hook-and-Line Fishing in Waters off Cape Sarichef. RIN 0648–AQ46 (68 FR 11004, March 7, 2003). NMFS issued a final rule to seasonally close a portion of the waters located near Cape Sarichef in the Bering Sea subarea to directed fishing for groundfish by vessels using trawl, pot, or hook-and-line gear. This action was necessary to support NMFS research on the effect of fishing on the localized abundance of Pacific cod. It was intended to further the goals and objectives of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area.

6. Fisheries of the Exclusive Economic Zone Off Alaska; Opening Waters to Pacific Cod Pot Fishing off Cape Barnabas and Caton Island. RIN 0648–AQ45 (68 FR 31629, May 28, 2003). NMFS issued a final rule to allow use of pot gear in waters around Cape Barnabas and Caton Island located in the Gulf of Alaska for directed fishing for Pacific cod. Prior to this regulation,

waters within 3 nautical miles of these sites were closed to Pacific cod fishing by vessels using pot gear and named on a Federal fisheries permit. This action was necessary to provide consistency between State and Federal fishing restrictions and to relieve a potential burden on the Pacific cod pot gear fishing sector. This final rule was intended to meet the objectives in the Magnuson-Stevens Act and to further the goals and objectives of the Fishery Management Plan for Groundfish of the Gulf of Alaska.

7. Individual Fishing Quota Program for Pacific Halibut and Sablefish; Amendment 72/64 to Revise Recordkeeping and Reporting Requirements. RIN 0648–AP92 (68 FR 44473, July 29, 2003). NMFS issued a final rule to implement Amendment 72 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area and Amendment 64 to the Fishery Management Plan for Groundfish of the Gulf of Alaska. This action revised certain recordkeeping and reporting requirements for the Individual Fishing Quota (IFQ) Program for fixed gear Pacific halibut and sablefish fisheries and the Western Alaska Community Development Quota Program for the Pacific halibut fishery. This action was necessary to improve IFQ fishing operations, while complying with IFQ Program requirements; to improve NMFS' ability to efficiently administer the program; and to improve the clarity and consistency of IFQ Program regulations. This action was intended to meet the conservation and management requirements of the Northern Pacific Halibut Act of 1982 with respect to halibut, and of the Magnuson-Stevens Act with respect to sablefish, and to further the goals and objectives of the groundfish Fishery Management Plans.

8. Fisheries off the Exclusive Economic Zone; Amendment of Eligibility Criteria for the Bering Sea and Aleutian Islands Management Area Pacific Cod Hook-and-Line and Pot Gear Fisheries. RIN 0648–AQ75 (68 FR 44666, July 30, 2003). NMFS issued a final rule to amend eligibility criteria for Pacific cod endorsements to groundfish licenses issued under the License Limitation Program. These endorsements are necessary to participate in the Bering Sea and Aleutian Islands Management Area (BSAI) Pacific cod hook-and-line or pot gear fisheries with vessels greater than or equal to 60 feet length overall. This action was necessary to allow additional participation in the BSAI Pacific cod hook-and-line or pot gear fisheries, as intended by the North Pacific Fishery Management Council. The intended effect of this action was to prevent unnecessary restriction on participation in the BSAI Pacific cod hook-and-line or pot gear fisheries and to conserve and manage the Pacific cod resources in the BSAI in accordance with the Magnuson-Stevens Act.

9. Fisheries of the Exclusive Economic Zone off Alaska; License Limitation Program. RIN 0648–AQ73 (68 FR 46117, August 5, 2003). NMFS issued a final rule to amend eligibility criteria for Bering Sea and Aleutian Islands (BSAI) crab species licenses issued under the License Limitation Program and required for participation in the BSAI crab fisheries. This action was necessary to allow participation in the BSAI crab fisheries in a manner intended by the North Pacific Fishery Management Council. The intended effect of this action was to allow vessels with recent participation in the BSAI crab fisheries to qualify for a License Limitation Program crab species license and to conserve and manage the crab resources in the BSAI in accordance with the Magnuson-Stevens Act.

10. Pacific Halibut Fisheries; Guideline Harvest Levels for the Guided Recreational Halibut Fishery. RIN 0648–AK17 (68 FR 47256, August 8, 2003). NMFS issued a final rule to implement a guideline harvest level for managing the harvest of Pacific halibut in the guided recreational fishery in International Pacific Halibut Commission areas 2C and 3A in and off of Alaska. The guideline harvest level established an amount of halibut that would be monitored annually in the guided recreational fishery. This action was necessary to allow NMFS to manage more comprehensively the Pacific halibut stocks in waters off Alaska. It was intended to further the management and conservation goals of the Northern Pacific Halibut Act of 1982.

11. Fisheries of the Exclusive Economic Zone off Alaska; Removal of Full Retention and Utilization Requirements for Rock Sole and Yellowfin Sole. RIN 0648–AQ78 (68 FR 52142, September 2, 2003). NMFS issued regulatory changes to implement the partial approval of Amendment 75 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area. As partially approved, this amendment eliminated all reference to the requirements for 100-percent retention and utilization of rock sole and yellowfin sole in the groundfish fisheries of the Bering Sea and Aleutian Islands Management Area. This action was necessary to amend regulations to maintain consistency with the the Magnuson-Stevens Fishery Management and Conservation Act, the Fishery Management Plan, and other applicable laws.

12. Fisheries of the Exclusive Economic Zone Off Alaska; Electronic Reporting Requirements. RIN 0648–AP66 (68 FR 58038, October 8, 2003). NMFS issued a final rule to amend regulations governing the North Pacific Groundfish Observer Program. This action was necessary to refine requirements for the facilitation of observer data transmission and improve support for observers. The final rule was necessary to improve the timely transmission of high-quality observer data for a sector of catcher vessels in these fisheries. It was intended to support the management objectives of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area and the Fishery Management Plan for Groundfish of the Gulf of Alaska.

13. Fisheries of the Exclusive Economic Zone off Alaska; Allocation of Pacific Cod Among Fixed Gear Sectors. RIN 0648–AR31 (68 FR 67086, December 1, 2003). NMFS issued a final rule to implement Amendment 77 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area. This action allocated the fixed gear portion of the Bering Sea and Aleutian Islands Management Area (BSAI) Pacific cod total allowable catch among the fixed gear sectors. In addition, this action further split the pot sector share of the total allowable catch between pot catcher/processors and pot catcher vessels; changed how the 2 percent annual BSAI Pacific cod allocation to jig gear was seasonally apportioned; and changed how unused portions were reallocated to other gear types. Amendment 77 and its implementing regulations were necessary to maintain the stability of the fixed gear Pacific cod fishery. This action was intended to promote the goals and objectives of the Magnuson-Stevens Act the Fishery Management Plan, and other applicable laws.

14. Fisheries of the Exclusive Economic Zone off Alaska; Revision to the Management of ''Other Species'' Community Development Quota. RIN 0648–AQ88 (68 FR 69974, December 16, 2003). NMFS issued a final rule that modified the management of the ''other species'' Community Development Quota (CDQ) reserve by eliminating specific allocations of ''other species'' CDQ to individual CDQ managing organizations. The action instead allowed NMFS to manage the ''other species'' CDQ reserve with the general limitations used to manage the catch of

non-CDQ groundfish in the Bering Sea and Aleutian Islands management area. This action also eliminated the CDQ non-specific reserve and made other changes to improve the clarity and consistency of CDQ Program regulations. This action was necessary to improve NMFS' ability to effectively administer the CDQ Program. It was intended to further the goals and objectives of the North Pacific Fishery Management Council with respect to this program.

15. Fisheries of the Exclusive Economic Zone off Alaska; Halibut Fisheries in U.S. Convention Waters Off Alaska; Management Measures to Reduce Seabird Incidental Take in the Hook-and-Line Halibut and Groundfish Fisheries. RIN 0648–AM30 (69 FR 1930, January 13, 2004). NMFS issued a final rule to revise regulations requiring seabird avoidance measures in the hook-and-line groundfish fisheries of the Bering Sea and Aleutian Islands management area and Gulf of Alaska, and in the Pacific halibut fishery in U.S. Convention waters off Alaska. This action was intended to improve the pre-existing requirements and further mitigate interactions with the shorttailed albatross (*Phoebastria albatrus*), an endangered species protected under the Endangered Species Act, and with other seabird species in hook-and-line fisheries in and off Alaska, and thus further the goals and objectives of the Magnuson-Stevens Act, the Northern Pacific Halibut Act of 1982, the Migratory Bird Treaty Act, and the Endangered Species Act.

16. Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish Observer Program. RIN 0648–AR32 (69 FR 1951, January 13, 2004). NMFS issued a final rule to amend regulations governing the North Pacific Groundfish Observer Program. This action was necessary to provide added flexibility in the deployment of observers in the Exclusive Economic Zone off the coast of Alaska. In addition, this action was intended to ensure continued collection of high-quality observer data. It was necessary to support the management objectives of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area and the Fishery Management Plan for Groundfish of the Gulf of Alaska, and to promote the goals and objectives contained in those Fishery Management Plans.

17. Fisheries of the Exclusive Economic Zone Off Alaska; Provisions of the American Fisheries Act (AFA). RIN 0648–AR13 (69 FR 6198, February 10, 2004). NMFS issued a final rule to remove the expiration date of regulations published in the **Federal Register** on December 30, 2002, implementing the AFA. The AFA final rule inadvertently specified a period of effectiveness that would expire December 31, 2007. This rule made the amendments to the AFA rule permanent, as originally intended. This action was necessary to implement the AFA consistent with statutory requirements, and was intended to do so in a manner consistent with the objectives of the Magnuson-Stevens Act and other applicable laws.

18. Fisheries of the Exclusive Economic Zone Off Alaska; Recordkeeping and Reporting. RIN 0648–AR08 (69 FR 21975, April 23, 2004). NMFS issued this final rule to revise the descriptions of Gulf of Alaska (GOA) reporting areas 620 and 630 in paragraph (b) of Figure 3 to 50 CFR part 679 to include the entire Alitak/Olga/Deadman's/Portage Bay complex of Kodiak Island within reporting area 620. This action was necessary to improve quota management and fishery enforcement in the GOA. This action was intended to meet the conservation and management requirements of the Magnuson-Stevens Act and to further the goals and objectives of the Fishery Management Plan for Groundfish of the Gulf of Alaska.

19. Fisheries of the Exclusive Economic Zone Off Alaska; Individual Fishing Quota Program; Community Purchase. RIN 0648–AQ98 (69 FR 23681, April 30, 2004). NMFS issued a final rule to implement Amendment 66 to the Fishery Management Plan for Groundfish of the Gulf of Alaska, and an amendment to the Pacific halibut commercial fishery regulations for waters in and off of Alaska. Amendment 66 to the Fishery Management Plan and the regulatory amendment modified the Individual Fishing Quota (IFQ) Program by revising the eligibility criteria to receive halibut and sablefish IFQ and quota share (QS) by transfer to allow eligible communities in the Gulf of Alaska to establish non-profit entities to purchase and hold QS for lease to, and use by, community residents as defined by specific elements of the proposed action. This action improved the effectiveness of the IFQ Program by providing additional opportunities for residents of fishery dependent communities and was necessary to promote the objectives of the Magnuson-Stevens Act and the Northern Pacific Halibut Act of 1982 with respect to the IFQ fisheries.

20. Fisheries of the Exclusive Economic Zone Off Alaska; Skates Management in the Groundfish Fisheries of the Gulf of Alaska. RIN 0648–AR73 (69 FR 26313, May 12, 2004). NMFS issued a final rule to implement Amendment 63 to the Fishery Management Plan for Groundfish of the Gulf of Alaska. Amendment 63 moved skates from the ''other species'' list to the ''target species'' list in the Fishery Management Plan. By listing skates as a target species, management of a directed fishery for skates in the Gulf of Alaska was improved. The final rule revised the definition of ''other species'' and revised the listings for skates and ''other species'' to allow for the management of incidental catch of skates in groundfish fisheries and for groundfish in the skates directed fishery. This action was necessary to reduce the potential for overfishing skates. This action was intended to promote the goals and objectives of the Magnuson-Stevens Act, the Fishery Management Plan, and other applicable laws.

21. Fisheries of the Exclusive Economic Zone Off Alaska; General Limitations. RIN 0648–AR41 (69 FR 32901, June 14, 2004). NMFS issued a final rule amending regulations establishing pollock Maximum Retainable Amounts (MRA). This action adjusted the MRA enforcement period for pollock harvested in the Bering Sea and Aleutian Islands management area from enforcement at anytime during a fishing trip to enforcement at the time of offload. This action was necessary to reduce regulatory discards of pollock caught incidentally in the directed fisheries for non-pollock groundfish species. The intended effect of this action was to better use incidentally caught pollock in accordance with the goals and objectives of the Magnuson-Stevens Act and the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area.

22. Fisheries of the Exclusive Economic Zone Off Alaska; Revisions to the Annual Harvest Specifications Process for the Groundfish Fisheries of the Gulf of Alaska and the Bering Sea and Aleutian Islands Management Area. RIN 0648–AR77 (69 FR 64683, November 8, 2004). NMFS issued a final rule that implemented Amendment 48 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA) and Amendment 48 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI) (Amendments 48/48). Amendments 48/48 revised the administrative process used to establish annual harvest specifications for the groundfish fisheries of the GOA and the BSAI, and updated the Fishery Management Plans by: Revising the

description of the groundfish fisheries and participants, revising the name of the BSAI Fishery Management Plan, revising text to simplify wording and correct typographical errors, and revising the description of the North Pacific Fishery Management Council Groundfish Plan Teams' responsibilities. The final rule revised regulations to implement the new harvest specifications process in Amendments 48/48 and revised the name of the BSAI Fishery Management Plan. This action was intended to promote the goals and objectives of the Magnuson-Stevens Act, the Fishery Management Plans, and other applicable laws.

23. Fisheries of the Exclusive Economic Zone Off Alaska; Full Retention of Demersal Shelf Rockfish in the Southeast Outside District of the Gulf of Alaska. RIN 0648–AP73 (69 FR 68095, November 23, 2004). NMFS issued a final rule that requires the operator of a federally permitted catcher vessel using hook-and-line or jig gear in the Southeast Outside District of the Gulf of Alaska to retain and land all demersal shelf rockfish caught while fishing for groundfish or for Pacific halibut under the Individual Fishing Quota program. This action was necessary to improve estimates of fishing mortality of demersal shelf rockfish. This final rule was intended to further the goals and objectives of the Magnuson-Stevens Act and the Fishery Management Plan for Groundfish of the Gulf of Alaska.

24. Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Framework Adjustment 15. RIN 0648–AQ28 (68 FR 9580, February 28, 2003). NMFS issued this final rule to implement Framework 15 to the Atlantic Sea Scallop Fishery Management Plan developed by the New England Fishery Management Council. This final rule implemented management measures for the 2003 fishing year, including a days-at-sea adjustment, and continuation of a Sea Scallop Area Access Program for 2003. The intent of this action was to achieve the goals and objectives of the Fishery Management Plan under the Magnuson-Stevens Act and to achieve optimum yield in the scallop fishery. In addition, this final rule included regulatory text that codifies an additional gear stowage provision for scallop dredge gear that was established by the Administrator, Northeast Region, NMFS in 2001.

25. Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan. RIN 0648–AN12 (68 FR 10181, March 4, 2003). NMFS issued this final rule to implement approved measures contained in Amendment 13 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan. Pursuant to the Magnuson-Stevens Act and the Fishery Management Plan, this final rule established an annual coastwide quota for black sea bass and allowed vessels to fish under a Southeast Region Snapper/Grouper permit and to retain their Northeast Region Black Sea Bass Permit during a Federal fishery closure. Finally, this final rule required that vessels issued a Federal moratorium permit for summer flounder, scup, and black sea bass be subject to the presumption that any fish of these species on board were harvested from the exclusive economic zone.

26. Atlantic Coastal Fisheries Cooperative Management Act Provisions; Fisheries of the Northeastern United States; American Lobster Fishery. RIN 0648–AP15 (68 FR14902, March 27, 2003). NMFS amended regulations to modify the management measures applicable to the American lobster fishery. This action responded to the following recommendations made by the Atlantic States Marine Fisheries Commission (Commission): To control fishing effort as determined by historical participation in the American lobster trap fisheries conducted in the offshore Lobster Conservation Management Area 3 (Area 3) and in the nearshore LCMAs of the Exclusive Economic Zone from New York through North Carolina (Areas 4 and 5); to implement a mechanism for conservation equivalency and associated trap limits for owners of vessels in possession of a Federal lobster permit fishing in New Hampshire state waters; and to clarify lobster management area boundaries in Massachusetts waters. NMFS included in this final rule a mechanism for Federal consideration of future Commission requests to implement conservation-equivalent measures and a technical amendment to the regulations clarifying that Federal lobster permit holders must attach federally approved lobster trap tags to all lobster traps fished in any portion of any management area (whether in state or Federal waters). This requirement was not new, but was not previously specified in the regulatory text. This announcement was intended to make the regulations easier to understand.

27. Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Framework Adjustment 37 to the Northeast Multispecies Fishery Management Plan. RIN 0648–AQ35 (68 FR 22333, April 28, 2003). NMFS issued this final rule to implement measures contained in Framework Adjustment 37 to the Northeast Multispecies Fishery Management Plan to eliminate the Year 4 default measure for whiting in both stock areas; reinstate the Cultivator Shoal whiting fishery season through October 31 each year; eliminate the 10-percent restriction on red hake incidental catch in the Cultivator Shoal whiting fishery; adjust the incidental catch allowances in Small Mesh Areas 1 and 2 so that they are consistent with those in the Cape Cod Bay raised footrope trawl fishery; clarify the transfer-at-sea provisions for small-mesh multispecies for use as bait; modify slightly the Cape Cod Bay raised footrope trawl fishery area; and retain the 30,000-lb (13.6 mt) trip limit for the Cultivator Shoal whiting fishery.

28. Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Monkfish Fishery; Framework Adjustment 2. RIN 0648–AQ29 (68 FR 22325, April 28, 2003). NMFS implemented measures contained in Framework Adjustment 2 to the Monkfish Fishery Management Plan. This final rule modified the monkfish overfishing definition reference points and optimum yield target control rule to be consistent with the best scientific information available and the provisions of the Magnuson-Stevens Act. This rule also implemented an expedited process for setting annual target total allowable catch levels (TACs); established a method for adjusting monkfish trip limits and days-at-sea allocations to achieve the annual target TACs; and established target TACs and corresponding trip limits for the 2003 fishing year. As a result, this rule eliminated the default measures adopted in the original Fishery Management Plan that would have resulted in the elimination of the directed monkfish fishery and reduced incidental catch limits. Finally, this final rule clarified the regulations pertaining to the monkfish area declaration requirements by specifying that vessels intending to fish under either a monkfish, Northeast multispecies, or scallop days-at-sea, under the less restrictive measures of the Northern Fishery Management Area (NFMA), declare their intent to fish in the NFMA for a minimum of 30 days.

29. Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Framework Adjustment 38 to the Northeast Multispecies Fishery Management Plan. RIN 0648–AQ76 (68

FR 40808, July 9, 2003). NMFS issued this final rule to implement measures contained in Framework Adjustment 38 to the Northeast (NE) Multispecies Fishery Management Plan to exempt a fishery from the Gulf of Maine Regulated Mesh Area mesh size regulations. Framework 38 established an exempted small mesh silver hake (*Merluccius bilinearis*) (whiting) fishery in the inshore Gulf of Maine. The exempted fishery was authorized from July 1 through November 30 each year; required the use of specific exempted grate-raised footrope trawl gear; established a maximum whiting possession limit of 7,500 lb (3,402 kg); and included incidental catch restrictions.

30. Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast Skate Complex Fisheries; Skate Fishery Management Plan. RIN 0648–AO10 (68 FR 49693, August 19, 2003). NMFS issued this final rule to implement approved measures contained in the Skate Fishery Management Plan. These regulations implemented the following measures: A possession limit for skate wings; a bait-only exemption to the wing possession limit restrictions; a procedure for the development, revision, and/or review of management measures on an annual, biennial, and interannual basis, including a framework adjustment process; open access permitting requirements for fishing vessels, operators, and dealers; new species-level reporting requirements for skate vessels and dealers; new discard reporting requirements for Federal vessels; and prohibitions on possessing smooth skates in the Gulf of Maine Regulated Mesh Area, and thorny skates and barndoor skates throughout the management unit. This final rule also implemented other measures for administration and enforcement. The intended effect of this final rule was to implement permanent management measures for the Northeast skate fisheries pursuant to the Magnuson-Stevens Act and the Fishery Management Plan, and to prevent overfishing of skate resources. Also, NMFS informed the public of the approval by the Office of Management and Budget of the collection-of-information requirements contained in this final rule and publishes the Office of Management and Budget control numbers for these collections.

31. Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; Framework Adjustment 3. RIN 0648–AR43 (68 FR 62250, November 3, 2003). NMFS issued this final rule to implement measures contained in Framework Adjustment 3 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan to allow the rollover of unused commercial scup quota from the Winter I period to the Winter II period, and to change the regulations regarding the scup commercial quota counting procedures. NMFS also adjusted the 2003 Winter II commercial scup quota and possession limit.

32. Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Atlantic Surfclam and Ocean Quahog Fishery; Amendment 13 to the Surfclam and Ocean Quahog Fishery Management Plan. RIN 0648–AP57 (68 FR 69970, December 16, 2003). NMFS implemented measures contained in Amendment 13 to the Fishery Management Plan. Amendment 13 established: A new surfclam overfishing definition; multi-year fishing quotas; a mandatory vessel monitoring system, when such a system was economically viable; the ability to suspend or adjust the surfclam minimum size limit through a framework adjustment; and an analysis of fishing gear impacts on essential fish habitat for surfclams and ocean quahogs. This final rule included technical corrections to the regulations implementing the Fishery Management Plan, which clarified the Mid-Atlantic Fishery Management Council's intent not to restrict allocation ownership to only those entities that also own a permitted vessel, and to eliminate the restriction on the transfer of allocation tags of amounts less than 160 bushels (bu) (i.e., 5 cage tags). The primary purpose of Amendment 13 was to rectify the disapproved surfclam overfishing definition and the essential fish habitat analysis and rationale contained in Amendment 12 in order to comply with the Magnuson-Stevens Act, and to simplify the regulatory requirements of the Fishery Management Plan.

33. Fisheries of the Northeastern United States; Recordkeeping and Reporting Requirements; Regulatory Amendment To Modify Seafood Dealer Reporting Requirements. RIN 0648–AR79 (69 FR 13482, March 23, 2004). NMFS issued this final rule to implement approved management measures contained in a regulatory amendment to modify the reporting and recordkeeping regulations for federally permitted seafood dealers participating in the summer flounder, scup, black sea bass, Atlantic sea scallop, Northeast (NE) multispecies, monkfish, Atlantic mackerel, squid, butterfish, Atlantic surfclam, ocean quahog, Atlantic herring, Atlantic deep-sea red crab, tilefish, Atlantic bluefish, skates, and/or spiny dogfish fisheries in the NE Region. The purpose of this action was to improve monitoring of commercial landings by collecting more timely and accurate data, enhance enforceability of the existing regulations, promote compliance with existing regulations, and ensure consistency in reporting requirements among fisheries.

34. Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; Framework Adjustment 4. RIN 0648–AR62 (69 FR 16175, March 29, 2004). NMFS issued a final rule implementing measures contained in Framework Adjustment 4 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan that allowed for the transfer at sea of scup between commercial fishing vessels, and clarified the circumstances under which a vessel must operate with the specified mesh. Regulations regarding the establishment and administration of research set-aside quota were also amended to clarify how unused research set-aside quota was to be returned to the fishery.

35. Fisheries of the Northeastern United States; Monkfish Fishery. RIN 0648–AR89 (69 FR 18291, April 7, 2004). NMFS implemented measures to establish target total allowable catch (TAC) levels for the monkfish fishery for the 2004 fishing year. The regulation also adjusted trip limits and days-at-sea for limited access monkfish vessels fishing in the Southern Fishery Management Area based upon the methods established in Framework Adjustment 2 to the Monkfish Fishery Management Plan. Based on these methods, this final rule established FY 2004 target TACs of 16,968 mt for the Northern Fishery Management Area, and 6,772 mt for the Southern Fishery Management Area; adjusted the trip limits for vessels fishing in the Southern Fishery Management Area to 550 lb (250 kg) tail weight per days-at-sea for limited access Category A and C vessels, and 450 lb (204 kg) tail weight per days-at-sea for limited access Category B and D vessels; and restricted the fishing year 2004 days-at-sea available for monkfish limited access vessels fishing in the Southern Fishery Management Area to 28 days-at-sea.

36. Fisheries of the Northeastern United States; Tilefish Fishery; Reinstatement of Permit Requirements for the Tilefish Fishery. RIN 0648–AR75 (69 FR 22454, April 26, 2004). NMFS reinstated the permit requirements for

commercial tilefish vessels. These permit requirements were set aside in a Federal Court Order on the grounds that the limited access program contained in the Tilefish Fishery Management Plan violated National Standard 2 of the Magnuson-Stevens Act. The Court found that there was insufficient support for the various limited access permit criteria in the administrative record for the Fishery Management Plan. NMFS reinstated these permit requirements based on additional information in the form of a supplemental administrative record to the Fishery Management Plan provided by the Mid-Atlantic Fishery Management Council that supported and explained the basis for the limited access permit criteria contained in the Fishery Management Plan. This action also allocated the remainder of the fishing year 2004 (November 1, 2003-October 31, 2004) tilefish total allowable landings to the various limited access permit categories according to the regulations, based upon a projection of tilefish landings through the effective date of this rule, and using dealer reports. This action enabled NMFS to manage the tilefish fishery in accordance with the provisions of the Magnuson-Stevens Act by preventing overfishing, and ensuring that the stock rebuilding objective of the Fishery Management Plan was achieved.

37. Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast (NE) Multispecies Fishery; Amendment 13. RIN 0648–AN17 (69 FR 22906, April 27, 2004). NMFS implemented approved measures contained in Amendment 13 to the NE Multispecies Fishery Management Plan. Amendment 13 was developed by the New England Fishery Management Council to end overfishing and rebuild NE multispecies (groundfish) stocks managed under the authority of the Magnuson-Stevens Act, and to make other changes in the management of the groundfish fishery. This rule implemented the following measures: Changes in the days-at-sea baseline for determining historical participation in the groundfish fishery; days-at-sea reductions from the baseline; creation of new categories of days-at-sea and criteria for their allocation and use in the fishery; changes in minimum fish size and possession limits for recreationally caught fish; a new limited access permit category for Handgear vessels; elimination of the northern shrimp fishery exemption line; access to groundfish closed areas for tuna purse seiners; an exemption program for southern New England scallop dredge vessels; modifications to Vessel Monitoring System requirements; changes to procedures for exempted fisheries; changes to the process for making periodic adjustments to management measures in the groundfish fishery; revisions to trip limits for cod and yellowtail flounder; changes in gear restrictions, including minimum mesh sizes and gillnet limits; a days-at-sea Transfer Program; a days-at-sea Leasing Program; implementing measures for the U.S./Canada Resource Sharing Understanding for cod, haddock, and yellowtail flounder on Georges Bank; a Special Access Program to allow increased targeting of Georges Bank yellowtail flounder; revisions to overfishing definitions and control rules; measures to protect essential fish habitat; new reporting requirements; sector allocation procedures; and a Georges Bank Cod Hook Gear Sector Allocation. The effort-reduction measures in Amendment 13 were intended to end overfishing on all stocks and constitute rebuilding programs for those groundfish stocks that require rebuilding. Other measures were intended to provide flexibility and business options for permit holders. Also, NMFS informed the public of the approval by the Office of Management and Budget of the collection-of information requirements contained in this final rule and publishes the Office of Management and Budget control numbers for these collections.

38. Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Amendment 10. RIN 0648–AN16 (69 FR 35194, June 23, 2004). NMFS implemented approved measures contained in Amendment 10 to the Atlantic Sea Scallop Fishery Management Plan, developed by the New England Fishery Management Council. Amendment 10 included a long-term, comprehensive program to manage the sea scallop fishery through an area rotation management program to maximize scallop yield. Areas were defined and would be closed and reopened to fishing on a rotational basis, depending on the condition and size of the scallop resource in the areas. This rule included measures to minimize the adverse effects of fishing on essential fish habitat to the extent practicable. Amendment 10 also included updated days-at-sea allocations, measures to minimize bycatch to the extent practicable, and other measures to make the management program more effective, efficient, and flexible. In addition, NMFS published the Office of Management and Budget control numbers for collection of-information requirements contained in this final rule.

39. Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; Framework Adjustment 5. RIN 0648–AR50 (69 FR 62818, October 28, 2004). NMFS issued this final rule to implement measures contained in Framework Adjustment 5 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan that allowed for specification of annual Total Allowable Landings for multiple years. The intent was to provide flexibility and efficiency to the management of the species. In addition, this final rule included several administrative modifications to the existing regulations for clarification purposes.

40. Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery and Northeast (NE) Multispecies Fishery; Framework 16 and Framework 39. RIN 0648–AR55 (69 FR 63460, November 2, 2004). NMFS implemented concurrently Framework 16 to the Atlantic Sea Scallop Fishery Management Plan and Framework 39 to the Northeast Multispecies Fishery Management Plan developed by the New England Fishery Management Council. The Joint Frameworks established Scallop Access Areas within Northeast multispecies Closed Area I, Closed Area II, and the Nantucket Lightship Closed Area. Prior to these regulations, the NE multispecies closed areas were closed year-round to all fishing that was capable of catching NE multispecies, including scallop fishing. The Joint Frameworks allowed the scallop fishery to access the scallop resource within portions of the NE multispecies closed areas during specified seasons, and ensured that NE multispecies catches by scallop vessels were consistent with the Multispecies Fishery Management Plan. The Joint Frameworks also revised the essential fish habitat closed areas implemented under Amendment 10 to the Scallop Fishery Management Plan in order to make the areas consistent with the essential fish habitat closures under the Multispecies Fishery Management Plan, as established by Amendment 13 to the Multispecies Fishery Management Plan.

41. Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast (NE) Multispecies Fishery; Framework Adjustment 40–A. RIN 0648–AS34 (69 FR 67780, November 19, 2004). NMFS implemented approved measures contained in Framework Adjustment

40–A to the NE Multispecies Fishery Management Plan. Framework Adjustment 40–A was developed by the New England Fishery Management Council to provide additional opportunities for vessels in the fishery to target healthy stocks of groundfish in order to mitigate the economic and social impacts resulting from the effort reductions required by Amendment 13 to the Fishery Management Plan, and to harvest groundfish stocks at levels that approach optimum yield. This rule implemented three programs to allow vessels to use Category B Days-at-Sea (both Regular and Reserve) to target healthy stocks: Regular B days-at-sea Pilot Program; Closed Area (CA) I Hook Gear Haddock Special Access Program for the Georges Bank Cod Hook Sector; and Eastern U.S./Canada Haddock Special Access Program Pilot Program. In addition, Framework Adjustment 40–A relieved an Amendment 13 restriction that prohibited vessels from fishing both in the Western U.S./Canada Area and outside that area on the same trip.

42. Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Amendment 17. RIN 0648–AQ68 (68 FR 52519, September 4, 2003). NMFS issued this final rule to implement Amendment 17 to the Pacific Coast Groundfish Fishery Management Plan. Amendment 17 changed the Pacific Fishery Management Council's (Council's) annual groundfish management process from an annual to a biennial process. Amendment 17 was intended to ensure that the specifications and management measures process comports with a Federal Court ruling, to make the Council's development process for specifications and management measures more efficient so that more time was available for other management activities, and to streamline the NMFS regulatory process for implementing the specifications and management measures.

43. Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Vessel Monitoring Systems and Incidental Catch Measures. RIN 0648–AQ58 (68 FR62374, November 4, 2003). NMFS issued a final rule to require vessels registered to Pacific Coast groundfish fishery limited entry permits to carry and use mobile vessel monitoring system transceiver units while fishing in state or Federal waters off the coasts of Washington, Oregon and California. This action was necessary to monitor compliance with large-scale depth-based conservation areas that restrict fishing across much of the continental shelf. This final rule also required the operators of any vessel registered to a limited entry permit and any open access or tribal vessel using trawl gear, including exempted gear used to take pink shrimp, spot and ridgeback prawns, California halibut and sea cucumber, to declare their intent to fish within a conservation area specific to their gear type, in a manner that was consistent with the conservation area requirements. This action was intended to further the conservation goals and objectives of the Pacific Coast Groundfish Fishery Management Plan by allowing fishing to continue in areas and with gears that can harvest healthy stocks while reducing the incidental catch of low-abundance species.

44. Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Amendment 16–1. RIN 0648–AR36 (69 FR8861, February 26, 2004). NMFS issued this final rule to implement Amendment 16–1 to the Pacific Coast Groundfish Fishery Management Plan. Amendment 16–1 set a process for and standards by which the Council would specify rebuilding plans for groundfish stocks declared overfished by the Secretary of Commerce. Amendment 16–1 was intended to ensure that Pacific Coast groundfish overfished species rebuilding plans meet the requirements of the Magnuson-Stevens Act, in particular national standard 1 on overfishing, which addresses rebuilding overfished fisheries. Amendment 16–1 was also intended to partially respond to a Court order in which NMFS was ordered to provide Pacific Coast groundfish rebuilding plans as Fishery Management Plans, amendments, or regulations, per the Magnuson-Stevens Act.

45. Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Amendment 16–2. RIN 0648–AR35 (69 FR19347, April 13, 2004). NMFS issued this final rule to implement Amendment 16–2 to the Pacific Coast Groundfish Fishery Management Plan. Amendment 16–2 amended the Fishery Management Plan to include overfished species rebuilding plans for lingcod, canary rockfish, darkblotched rockfish, and Pacific ocean perch within the Fishery Management Plan. This final rule added two rebuilding parameters to the Code of Federal Regulations for each overfished stock, the target year for rebuilding and the harvest control rule. Amendment 16–2 addressed the requirements of the Magnuson-Stevens Act to protect and rebuild overfished species managed under a Federal Fishery Management Plan. Amendment 16–2 also responded to a Court order, in which NMFS was ordered to provide Pacific Coast groundfish rebuilding plans as Fishery Management Plans, amendments, or regulations, per the Magnuson-Stevens Act.

46. Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Groundfish Observer Program. RIN 0648–AK26 (69 FR31751, June 7, 2004). NMFS published this interim final rule to amend the regulations implementing the Pacific Coast Groundfish Fishery Management Plan to provide for a mandatory, vessel-financed observer program on at-sea processing vessels. This action was necessary to satisfy the standardized bycatch reporting methodology requirements of the 1996 Sustainable Fisheries Act amendments to the Magnuson-Stevens Act.

47. Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Amendment 16–3; Corrections. RIN 0648–AS26 (69 FR57874, September 28, 2004). NMFS issued this final rule to implement Amendment 16–3 to the Pacific Coast Groundfish Fishery Management Plan. Amendment 16–3 amended the Fishery Management Plan to include overfished species rebuilding plans for bocaccio, cowcod, widow rockfish, and yelloweye rockfish within the Fishery Management Plan. This final rule added two rebuilding parameters to the Code of Federal Regulations for each overfished stock, the target year for rebuilding and the harvest control rule. Amendment 16–3 addressed the requirements of the Magnuson-Stevens Act to protect and rebuild overfished species managed under a Federal Fishery Management Plan. Amendment 16–3 also responded to a Court order in which NMFS was ordered to provide Pacific Coast groundfish rebuilding plans as Fishery Management Plans, amendments, or regulations, per the Magnuson-Stevens Act. This rule also updated the list of rockfish species defined in the Code of Federal Regulations to match those listed in the Fishery Management Plan and contained corrections to 50 CFR part 660, subpart G.

48. Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Fishery Management Plan for the Shrimp Fishery off the Southern Atlantic States; Amendment 5. RIN 0648–AP41 (68 FR 2188, January 16, 2003). NMFS issued this final rule to implement Amendment 5 to the Fishery Management Plan for the Shrimp Fishery off the Southern Atlantic States. This final rule established a limited access program for the rock shrimp fishery in the exclusive economic zone off Georgia and off the east coast of Florida (limited access

area), established a minimum mesh size for a rock shrimp trawl net in the limited access area, required the use of an approved vessel monitoring system by vessels allowed to fish for rock shrimp in the limited access program, and required an operator of a vessel in the rock shrimp fishery in the exclusive economic zone off the southern Atlantic states (North Carolina through the east coast of Florida) to have an operator permit. In addition, NMFS informed the public of the approval by the Office of Management and Budget of the collection-of-information requirements contained in this final rule and published the Office of Management and Budget control numbers for those collections. The intended effects of this final rule were to minimize additional increases in harvesting capacity in the rock shrimp fishery; reduce the bycatch of small, unmarketable rock shrimp; enhance compliance with fishery management regulations; improve protection of essential fish habitat, including an area that contains the last 20 acres (8 hectares) of intact Oculina coral remaining in the world; and ensure the long-term economic viability of the rock shrimp industry.

49. Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Revision of Charter Vessel and Headboat Permit Moratorium Eligibility Criterion. RIN 0648–AQ70 (68 FR 26230, May 15, 2003). NMFS issued this final rule to implement a corrected Amendment for the charter vessel/headboat permit moratorium established in Amendment 14 to the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic and in Amendment 20 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico. This final rule revised, consistent with the actions taken by the Gulf of Mexico Fishery Management Council (Council), one of the eligibility criteria for obtaining a charter vessel/headboat permit under the moratorium. This final rule also reopened the application process for obtaining Gulf charter vessel/headboat moratorium permits and extended the applicable deadlines; extended the expiration dates of valid or renewable open access permits for these fisheries; clarified, as requested by the Council, a constraint on issuance of historical captain permits under the moratorium; and extended the expiration date of the moratorium to account for the delay in implementation. In addition, NMFS informed the public of the approval by the Office of Management and Budget of the collection-of-information requirements contained in this final rule and published the Office of Management and Budget control numbers for those collections. The intended effect of this final rule was to implement the charter vessel/headboat moratorium in the Gulf of Mexico consistent with the actions taken by the Council.

50. Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Pelagic Sargassum Habitat of the South Atlantic Region. RIN 0648–AN87 (68 FR 57375, October 3, 2003). NMFS issued this final rule to implement the Fishery Management Plan for Pelagic Sargassum Habitat of the South Atlantic Region. This final rule limited the harvest or possession of pelagic sargassum in or from the exclusive economic zone off the southern Atlantic states to 5,000 lb (2,268 kg) annually; restricted fishing for pelagic sargassum in the South Atlantic exclusive economic zone to an area no less than 100 nautical miles offshore of North Carolina and to the months of November through June; required vessel owners or operators to accommodate NMFS-approved observers on all pelagic sargassum fishing trips; and restricted the mesh and frame sizes of nets used to harvest pelagic sargassum. The Fishery Management Plan also defined the management unit, maximum sustainable yield, optimum yield, and overfishing parameters. In addition, NMFS informed the public of the approval by the Office of Management and Budget of the collection-of-information requirements contained in this final rule and published the Office of Management and Budget control numbers for those collections. The intended effects were to conserve and manage pelagic sargassum and to protect essential fish habitat.

51. Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Shrimp Fishery of the Gulf of Mexico; Amendment 10. RIN 0648–AM23 (69 FR 1538, January 9, 2004). NMFS issued this final rule to implement the approved measures of Amendment 10 to the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico, as prepared and submitted by the Gulf of Mexico Fishery Management Council. This final rule required, with limited exceptions, the use of NMFS-certified bycatch reduction devices in shrimp trawls in the Gulf of Mexico exclusive economic zone (Gulf EEZ) east of 85°30′W longitude (approximately Cape San Blas, FL). In addition, this final rule identified the certified BRDs authorized for use in the Gulf EEZ east of 85°30′W longitude and modified the ''Gulf Of Mexico Bycatch Reduction Device Testing Protocol Manual'' to reflect the specific bycatch reduction criterion applicable for certification of bycatch reduction devices used in this area of the Gulf EEZ. The intended effect of this final rule was to reduce bycatch in the Gulf of Mexico shrimp fishery to the extent practicable.

52. Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery off the Southern Atlantic States; Amendment 13A. RIN 0648–AP03 (69 FR 15731, March 26, 2004). NMFS issued this final rule to implement Amendment 13A to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region. This final rule extended the previous prohibitions on fishing for South Atlantic snapper grouper in the experimental closed area and on retaining such species in or from the area. The experimental closed area included a portion of the Oculina Bank Habitat Area of Particular Concern, which is in the exclusive economic zone in the Atlantic Ocean off Ft. Pierce, FL. The intended effect was to continue the benefits of the closed area—in particular, enhanced stock stability and increased recruitment of South Atlantic snapper-grouper by providing an area where deepwater snapper-grouper species can grow and reproduce without being subjected to fishing mortality.

53. Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Extension of Marine Reserves. RIN 0648–AR66 (69 FR 24532, May 4, 2004). NMFS issued final regulations to implement Amendment 21 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico prepared by the Gulf of Mexico Fishery Management Council. These final regulations modified the fishing restrictions that apply within the Madison and Swanson sites and Steamboat Lumps marine reserves in the eastern Gulf of Mexico, and these final regulations extended the period of effectiveness of those restrictions through June 16, 2010. The intended effect of these final regulations was to protect the spawning aggregations of species within these areas, prevent overfishing, and aid in the evaluation of the effectiveness of marine reserves as a management.

54. Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Dolphin and Wahoo Fishery Off the Atlantic States. RIN 0648–AO63 (69 FR 30235, May 27, 2004). NMFS issued this final rule to implement the approved

measures of the Fishery Management Plan for the Dolphin and Wahoo Fishery off the Atlantic States. For the dolphin and wahoo fishery in the exclusive economic zone off the Atlantic states (Maine through the east coast of Florida), this final rule required vessel owners to obtain commercial vessel and charter vessel/headboat permits and, if selected, submit reports; required operators of commercial vessels, charter vessels, and headboats to obtain operator permits; required dealers to obtain permits and, if selected, submit reports; established bag limits and a minimum size limit (dolphin only); closed the longline fisheries in areas closed to the use of such gear for highly migratory pelagic species; prohibited sale without a commercial vessel permit; specified allowable gear; and established a framework procedure by which the South Atlantic Fishery Management Council could establish and modify certain management measures in a timely manner. The Fishery Management Plan also specified maximum sustainable yield, optimum yield, the determinants of overfishing (maximum fishing mortality threshold) and overfished (minimum stock size threshold), the management unit, the fishing year, and essential fish habitat and essential fish habitat habitat areas of particular concern. In addition, NMFS informed the public of the approval by the Office of Management and Budget of the collection-of-information requirements contained in this final rule and publishes the Office of Management and Budget control numbers for those collections. The intended effects were to conserve and manage dolphin and wahoo and to ensure that no new fisheries for dolphin and wahoo develop.

55. Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Red Grouper Rebuilding Plan. RIN 0648–AP95 (69 FR 33315, June 15, 2004). NMFS issued this final rule to implement Secretarial Amendment 1 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico. Secretarial Amendment 1 was prepared by the Secretary of Commerce and the Gulf of Mexico Fishery Management Council pursuant to the rebuilding requirements of the Magnuson-Stevens Act. This final rule established a quota for red grouper, provided for closure of the entire shallow-water grouper fishery when either the shallow-water grouper quota or the red grouper quota was reached, established a bag limit of two red grouper per person per day, reduced the shallow-water grouper quota, reduced the deep-water grouper quota, and established a quota for tilefishes. In addition, for red grouper in the Gulf of Mexico, Secretarial Amendment 1 established a 10-year stock rebuilding plan, biological reference points, and stock status determination criteria consistent with the requirements of the Magnuson-Stevens Act. This final rule was designed to end overfishing and rebuild the red grouper resource.

56. Fisheries off West Coast States and in the Western Pacific; Coastal Pelagic Species Fishery; Regulatory Amendment. RIN 0648–AQ94 (68 FR 52523, September 4, 2003). NMFS issued a final rule to implement a regulatory amendment to the Coastal Pelagic Species Fishery Management Plan that changed the management subareas and the allocation process for Pacific sardine. The purpose of this final rule was to establish a more effective and efficient allocation process for Pacific sardine and increase the possibility of achieving optimum yield.

57. Taking of Threatened or Endangered Species Incidental to Commercial Fishing Operations. RIN 0648–AR53 (69 FR 11540, March 11, 2004). NMFS issued a final rule to prohibit shallow longline sets of the type normally targeting swordfish on the high seas in the Pacific Ocean east of 150° W longitude by vessels managed under the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species. This action was intended to protect endangered and threatened sea turtles from the adverse impacts of shallow longline fishing by U.S. longline fishing vessels in the Pacific Ocean and operating out of the west coast. This rule supplemented the regulations that implemented the Fishery Management Plan that prohibited shallow longline sets on the high seas in the Pacific Ocean west of 150° W longitude by vessels managed under that Fishery Management Plan. The Fishery Management Plan was partially approved by NMFS on February 4, 2004. Together, these two regulations are expected to conserve leatherback and loggerhead sea turtles as required under the Endangered Species Act (ESA).

58. Fisheries Off West Coast States and in the Western Pacific; Highly Migratory Species Fisheries. RIN 0648–AP42. (69 FR 18444, April 7, 2004). NMFS published a final rule to implement the approved portions of the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species. The intended effect of this final rule was to establish Federal management of U.S. fisheries for Pacific tunas, sharks, billfish, swordfish, and other highly migratory fish in the surface hook and line, drift gillnet, harpoon, pelagic longline, purse seine, and recreational fisheries in the U.S. exclusive economic zone off the coasts of Washington, Oregon, and California and (for U.S. vessels) in adjacent high seas waters. This final rule was issued to prevent overfishing of the fish stocks to the extent practicable and achieve optimum yield for the U.S. fisheries involved while minimizing bycatch and protected species interactions consistent with the Magnuson-Stevens Act and other applicable law. The final rule implemented consistent management of these fisheries with respect to the states, other fishery management councils, and international agreements. The final rule was intended to promote the long-term economic health of the fisheries.

59. International Fisheries Regulations; Pacific Tuna Fisheries. RIN 0648–AQ22. (69 FR 31531, June 4, 2004). NMFS issued regulations to implement the 1981 Treaty Between the Government of the United States of America and the Government of Canada on Pacific Coast Albacore Tuna Vessels and Port Privileges (Treaty) as authorized by recently passed legislation. This final rule established vessel marking, recordkeeping, and reporting requirements for U.S. albacore tuna fishing vessel operators, as well as for vessel marking and reporting requirements for Canadian albacore tuna fishing vessel operators fishing under the Treaty. The intended effect of this final rule was to allow the United States to carry out its obligations under the Treaty by limiting fishing by both U.S. and Canadian vessels as provided for in the Treaty.

60. Fisheries Off West Coast States and in the Western Pacific; Coral Reef Ecosystems Fishery Management Plan for the Western Pacific. RIN 0648–AM97. (69 FR 8336, February 24, 2004). NMFS published this final rule to implement the Fishery Management Plan for Coral Reef Ecosystems of the Western Pacific Region. The rule established a coral reef ecosystem regulatory area, marine protected areas, permitting and reporting requirements, no-anchoring zone, gear restrictions, and a framework regulatory process. This rule also pertained to the other four western Pacific fishery management plans with respect to fishing activities in the U.S. exclusive economic zone of the western Pacific region and implemented Amendment 10 to the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region, Amendment 11 to the Fishery Management Plan for the Crustacean

Fisheries of the Western Pacific Region, Amendment 7 to the Fishery Management Plan for the Bottomfish and Seamount Groundfish Fisheries of the Western Pacific Region, and Amendment 5 to the Fishery Management Plan for the Precious Coral Fisheries of the Western Pacific Region.

61. Fisheries Off West Coast States and in the Western Pacific; Western Pacific Pelagic Fisheries; Pelagic Longline Fishing Restrictions, Seasonal Area Closure, Limit on Swordfish Fishing Effort, Gear Restrictions, and Other Sea Turtle Take Mitigation Measures. RIN 0648–AR84. (69 FR 17329, April 2, 2004). NMFS approved a regulatory amendment under the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region submitted by the Western Pacific Fishery Management Council and issued this final rule to establish a number of conservation and management measures for the fisheries managed under the Fishery Management Plan. This final rule was intended to achieve certain objectives of the Fishery Management Plan, including achieving optimum yield for managed species while avoiding the likelihood of jeopardizing the continued existence of any species listed as endangered or threatened under the Endangered Species Act. This final rule eliminated a seasonal closure for longline fishing in an area south of the Hawaiian Islands and reopened the swordfish-directed component of the Hawaii-based longline fishery. In order to minimize adverse impacts on sea turtles, the swordfish component of the Hawaii-based longline fishery was subjected to restrictions on the types of hooks and bait that may be used, annual fleet-wide limits on fishery interactions with leatherback and loggerhead sea turtles, an annual fleet-wide limit on fishing effort, and other mitigation measures.

62. Atlantic Highly Migratory Species; Incidental Catch Requirements of Bluefin Tuna. RIN 0648–AO75. (68 FR 32414, May 30, 2003). NMFS amended regulations under the framework provisions of the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks governing the Atlantic bluefin tuna fishery as they affected landing of Atlantic bluefin tuna in the Atlantic pelagic longline fishery. The intent of this action was to minimize dead discards of Atlantic bluefin tuna and improve management of the Atlantic pelagic longline fishery, while complying with the National Standards of the Magnuson-Stevens Act and allowing harvest consistent with recommendations of the International Commission for the Conservation of Atlantic Tunas.

63. Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Quota Specification, General Category Effort Controls, and Permit Revisions. RIN 0648–AQ38. (68 FR 56783, October 2, 2003). NMFS announced the final initial 2003 fishing year specifications for the Atlantic bluefin tuna fishery to set Atlantic bluefin tuna quotas for each of the established fishing categories; to set General category effort controls; to allocate 25 metric tons (mt) of Atlantic bluefin tuna to account for incidental catch of Atlantic bluefin tuna by pelagic longline vessels ''in the vicinity of the management boundary area;'' to define the management boundary area and applicable restrictions; and to revise permit requirements to allow General registered recreational Highly Migratory Species (HMS) fishing tournaments and to allow permit applicants a 10-calendar-day period to make permit category changes to correct potential errors. The final initial quota specifications, including the quota allocation to account for incidental catch of Atlantic bluefin tuna by pelagic longline vessels in the vicinity of the management boundary area and the General category effort controls, were necessary to implement recommendations of the International Commission for the Conservation of Atlantic Tunas, pursuant to the Atlantic Tunas Convention Act, and to achieve domestic management objectives under the Magnuson-Stevens Act. The definition of the management boundary area was to assist management, monitoring, and enforcement of the 25 mt allocated to the Longline category. The permit revisions to allow General category permitted vessels to participate in registered recreational HMS fishing tournaments and to allow a time period for permit category changes were intended to relieve restrictions and help achieve domestic management objectives.

64. Atlantic Highly Migratory Species; Atlantic Shark Management Measures. RIN 0648–AQ95. (68 FR 74746, December 24, 2003). This final rule was necessary to ensure that shark regulations were based on the results of the 2002 stock assessments for large coastal sharks (LCS) and small coastal sharks (SCS). The results of these stock assessments indicated that the LCS complex continued to be overfished, and overfishing was occurring; that sandbar sharks were not overfished, but overfishing was occurring; that blacktip sharks were rebuilt and healthy; that the SCS complex was healthy; and that finetooth sharks were not overfished, but overfishing was occurring. Based on these results, NMFS revised the rebuilding timeframe for LCS to 26 years from 2004; changed some of the commercial regulations; changed some of the recreational regulations; implemented measures to reduce bycatch and bycatch mortality, including a time/area closure; removed the deepwater/other sharks from the management unit; established criteria regarding adding or removing sharks from the prohibited species group; and established a display permit for fishermen who wish to harvest highly migratory species for public display. NMFS also updated essential fish habitat identifications for sandbar, blacktip, finetooth, dusky, and nurse sharks. NMFS also notified eligible participants of the opening and closing dates for the Atlantic large coastal, small coastal, and pelagic shark fishing seasons.

65. Atlantic Highly Migratory Species; Bluefin Tuna Season and Size Limit Adjustments. RIN 0648–AR12. (68 FR 74504, December 24, 2003). Under the framework provisions of the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks governing the Atlantic bluefin tuna fishery, NMFS amended the regulations regarding the opening date of the Purse seine category, closure dates of the Harpoon and General categories, and size tolerances of large-medium Atlantic bluefin tuna for the Purse seine and Harpoon categories. The intent of this final rule was to further achieve domestic management objectives under the HMS Fishery Management Plan and Magnuson-Stevens Act and to implement recommendations of the International Commission for the Conservation of Atlantic Tunas pursuant to the Atlantic Tunas Convention Act.

66. Atlantic Highly Migratory Species (HMS); Pelagic Longline Fishery. RIN 0648–AR80. (69 FR 40734, July 6, 2004). This final rule implemented new sea turtle bycatch and bycatch mortality mitigation measures for all Atlantic vessels that have pelagic longline (PLL) gear onboard and that have been issued, or are required to have, Federal HMS limited access permits, consistent with the requirements of the Endangered Species Act, the Magnuson-Stevens Act, and other domestic laws. These measures included mandatory circle hook and bait requirements, and mandatory possession and use of sea turtle release equipment to reduce bycatch mortality. This final rule also allowed vessels with pelagic longline gear onboard that have been issued, or are required to have, Federal HMS

limited access permits to fish in the Northeast Distant Closed Area, if they possess and/or use certain circle hooks and baits, sea turtle release equipment, and comply with specified sea turtle handling and release protocols.

67. International Fisheries; Atlantic Highly Migratory Species. RIN 0648–AQ37. (69 FR 67268, November 17, 2004). This final rule implemented international trade tracking recommendations of the International Commission for the Conservation of Atlantic Tunas and the Inter-American Tropical Tuna Commission for bluefin tuna, swordfish, and frozen bigeye tuna, regardless of ocean area of origin. Trade monitoring requirements for species covered under the recommendations and for southern bluefin tuna were established by this rule, including: A highly migratory species international trade permit; statistical documents and re-export certificates; and recordkeeping, reporting, and inspection requirements.

68. Atlantic Highly Migratory Species; Atlantic Commercial Shark Management Measures. RIN 0648–AS08. (69 FR 69537, November 30, 2004). This final rule adjusted the regional quotas and established new trimester season quotas for large coastal sharks and small coastal sharks based on updated landings information. This final rule included a framework mechanism for the annual adjustment of quotas, a method of accounting for over- or under harvests in the transition from semi-annual to trimester seasons, and a new process for notifying participants of season opening and closing dates and quotas. This final rule also announced the opening and closing dates for the large coastal sharks fishery based on adjustments to the regional and trimester quotas. This action was necessary to ensure that the landings quotas in the Atlantic commercial shark fishery represent the latest landings data and accurately reflected historic fishing effort.

69. Atlantic Highly Migratory Species; Atlantic Trade Restrictive Measures. RIN 0648–AR10. (69 FR 70396, December 6, 2004). NMFS adjusted the regulations governing the trade of species regulated by the International Commission for the Conservation of Atlantic Tunas (ICCAT) in the North and South Atlantic Ocean to implement recommendations adopted at the 2002 and 2003 meetings of ICCAT. This final rule lifted or implemented import prohibitions for bigeye tuna, bluefin tuna, and swordfish on Honduras, St. Vincent and the Grenadines, Belize, Sierra Leone, Bolivia, and Georgia. This rule also prohibited imports from vessels on the ICCAT illegal, unreported, and unregulated fishing list and from vessels that are not listed on ICCAT's record of vessels that are authorized to fish in the Convention Area. Additionally, this rule required issuance of a chartering permit before a vessel begins fishing under a chartering arrangement.

70. Atlantic Coastal Fisheries Cooperative Management Act Provisions; Weakfish Fishery. RIN 0648–AR11. (68 FR 56789, October 2, 2003). NMFS issued this final rule to increase the incidental catch allowance for weakfish caught in the exclusive economic zone from 150 lb (67 kg) to no more than 300 lb (135 kg) per day or trip, whichever was longer in duration; to remove Connecticut from the list of states where commercially caught weakfish from the exclusive economic zone can be landed; and to add to NMFS' regulations the Director, Office of Sustainable Fisheries, as an official who can grant Exempted Fishing Permits. The intent of this final rule was to modify regulations for the Atlantic coast stock of weakfish to promote the effectiveness of the Atlantic States Marine Fisheries Commission's Interstate Fishery Management Plan for weakfish.

71. Fishing Capacity Reduction Program for the Crab Species Covered by the Fishery Management Plan for the Bering Sea/Aleutian Islands King and Tanner Crabs. RIN 0648–AP25. (68 FR 69331, December 12, 2003). This final rule established a fishing capacity reduction program in the fishery for the crab species managed under the Bering Sea/Aleutian Islands King and Tanner Crabs Fishery Management Plan. The program reduced excess capacity and promoted economic efficiency in the crab fishery. It was authorized under both special legislation and existing NMFS regulations governing fishing capacity reduction programs. Its objectives included: Increasing harvesting productivity for crab fishermen who remain after capacity reduction, helping conserve and manage fishery resources, and encouraging harvesting effort rationalization. Program participation was voluntary. Under the program, NMFS paid participants for withdrawing vessels from fishing, relinquishing fishing licenses, and surrendering fishing histories. NMFS financed the program's $100 million cost with a 30-year loan to be repaid by post-reduction fishermen.

72. Antartic Marine Living Resources; CCAMLR Ecosystem Monitoring Permits; Vessel Monitoring System; Catch Documentation Scheme; Fishing Season; Registered Agent; and Disposition of Seized AMLR. RIN 0648–AP74. (68 FR 23224, May 1, 2003). NMFS issued this final rule to: Lengthen the duration of the permit required to enter a Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) Ecosystem Monitoring Program (CEMP) site from 1 year to up to 5 years; define the CCAMLR fishing season and require the use of an automated satellite-linked vessel monitoring system for U.S. vessels harvesting Antarctic marine living resources (AMLR) in the area of the Convention on the Conservation of Antarctic Marine Living Resources (Convention); require foreign entities to designate and maintain a registered agent within the United States; prohibit the import of *Dissostichus* species (toothfish) identified as originating from certain high seas areas outside the Convention Area; incorporate into the Code of Federal Regulations the prohibition on the import of toothfish issued a Specially Validated *Dissostichus* Catch Document; and institute a preapproval system for U.S. receivers and importers of *Dissostichus eleginoides* (Patagonian toothfish) and *Dissostichus mawsoni* (Antarctic toothfish). This final rule was intended to implement U.S. obligations as a Member of CCAMLR and to conserve Antarctic and Patagonian toothfish by preventing and discouraging unlawful harvest and trade in these species and streamlining the administration of the *Dissostichus* Catch Document scheme.

73. Endangered and Threatened Wildlife; Sea Turtle Conservation Requirements. RIN 0648–AN62. (68 FR 8456, February 21, 2003). NMFS amended the turtle excluder device (TED) regulations to enhance their effectiveness in reducing sea turtle mortality resulting from trawling in the southeastern United States. NMFS determined that: Some previously approved TED designs did not adequately exclude leatherback turtles and large, immature and sexually mature loggerhead and green turtles; several approved TED designs were structurally weak and did not function properly under normal fishing conditions; and modifications to the trynet and bait shrimp exemptions to the TED requirements were necessary to decrease lethal take of sea turtles. These amendments were necessary to protect endangered and threatened sea turtles in the Atlantic Area (all waters of the Atlantic Ocean south of the North Carolina/Virginia border and adjacent seas, other than the Gulf Area, and all waters shoreward thereof) and Gulf Area (all waters of the Gulf of Mexico west of

81° W longitude and all waters shoreward thereof).

74. Taking of Threatened or Endangered Species Incidental to Commercial Fishing Operations. RIN 0648–AQ13. (68 FR 69962, December 16, 2003). NMFS issued a final rule prohibiting fishing with drift gillnets in the California/Oregon (CA/OR) thresher shark/swordfish drift gillnet fishery in U.S. waters off southern California in waters east of the 120° W, for the months of June, July, and August, when the Assistant Administrator for Fisheries publishes a notice that El Nino conditions are forecasted or present off southern California. NMFS has determined that the incidental take of loggerhead sea turtles by this fishery correlates to the area and season being fished during these oceanographic conditions. The intent of this regulation was to reduce the take of loggerhead turtles by the fishery and reduce the likelihood of the CA/OR drift gillnet fishery jeopardizing the continued existence of the loggerhead turtle population.

75. Taking of Threatened or Endangered Species Incidental to Commercial Fishing Operations. RIN 0648–AR53. (69 FR 11540, March 11, 2004). NMFS issued a final rule to prohibit shallow longline sets of the type normally targeting swordfish on the high seas in the Pacific Ocean east of 150° W longitude by vessels managed under the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species (FMP). This action was intended to protect endangered and threatened sea turtles from the adverse impacts of shallow longline fishing by U.S. longline fishing vessels in the Pacific Ocean and operating out of the west coast. This rule supplemented the regulations that implemented the FMP that prohibit shallow longline sets on the high seas in the Pacific Ocean west of 150° W longitude by vessels managed under that FMP. The FMP was partially approved by NMFS on February 4, 2004. Together, these two regulations were expected to conserve leatherback and loggerhead sea turtles as required under the Endangered Species Act.

76. Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan Regulations. RIN 0648–AQ04. (68 FR 51195, August 26, 2003). NMFS issued this final rule to amend the regulations that implement the Atlantic Large Whale Take Reduction Plan to identify gear modifications that sufficiently reduce the risk of entanglement to western North Atlantic right whales under the dynamic area management program and, as such, allowed NMFS to utilize the option of allowing gear with certain modifications within a dynamic area management zone. Specifically, NMFS identified anchored gillnet and lobster trap/pot gear modifications that could be allowed within a dynamic area management zone. This final rule included a provision to correct and clarify the regulations implementing the seasonal area management program with respect to lobster trap gear in northern inshore state lobster waters and northern nearshore lobster waters that overlap with a seasonal area management area.

Dated: July 10, 2012.

**Alan D. Risenhoover,**

*Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

[FR Doc. 2012–17257 Filed 7–13–12; 8:45 am]

**BILLING CODE 3510–22–P**

# Notices

Federal Register

Vol. 77, No. 136

Monday, July 16, 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

July 10, 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.

**Economic Research Service**

*Title:* Survey on Rural Community Wealth and Health Care Provision.

*OMB Control Number:* 0536–NEW.

*Summary of Collection:* Health care services is one of the largest and most rapidly growing industries in rural America, and adequate provision of health care services is critical for achieving economic development and improved well-being of rural people. In many rural communities, the health care services sector is the largest employer, and rapid growth in this sector is occurring and likely will continue, especially as the Baby-Boom generation retires. Provision of adequate health care services may be a key factor attracting retirees and other migrants to rural areas, contributing to rural growth and prosperity. Despite recent growth and potential for continued growth in this sector, many rural communities suffer from poor access to health care services, especially because of the limited supply of health care professionals.

*Need and Use of the Information:* The Economic Research Service will collect information using a survey on the assets and investments of rural communities and their influence on recruitment and retention of rural health care providers, and on the effects of rural health care provision on economic development of rural communities. The survey will be collected by telephone from individuals, including rural health care providers and community leaders, in 150 rural communities. If the information is not collected, research and knowledge on the roles rural communities play in recruiting and retaining health care providers will remain limited.

*Description of Respondents:* Individuals or household; State, Local or Tribal Government.

*Number of Respondents:* 4,500.

*Frequency of Responses:* Reporting: On occasion.

*Total Burden Hours:* 1,865.

**Ruth Brown,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. 2012–17234 Filed 7–13–12; 8:45 am]

BILLING CODE 3410–18–P

## CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

### Sunshine Act Meeting

In connection with its continued analysis of effective safety performance indicators for major accident prevention and to release preliminary findings on the use of indicators offshore as part of the agency's investigation of the Macondo well blowout, explosion, and fire in the Gulf of Mexico, the U.S. Chemical Safety Board is holding a two day public hearing entitled ''Safety Performance Indicators,'' on Monday, July 23, 2012, and Tuesday, July 24, 2012, in Houston, Texas. The hearing will be held from 9 a.m.–5 p.m. both days at the Hyatt Regency Hotel located at 1200 Louisiana Street in the Imperial West Auditorium. The hearing is free and open to members of the public.

The hearing will bring together international regulators, union representatives and industry groups to discuss how companies and regulators use safety metrics to manage risks and drive continuous safety improvements.

The CSB's Board Members and Macondo investigation team will hear testimony from leading safety experts from high hazard industry sectors within the U.S. and internationally, including representatives from the United Kingdom, Australia, and Norway. Throughout the proceedings, CSB Board Members, staff and the public will have opportunities to ask questions of the panelists. The hearing will be available via webcast. All proceedings will be videotaped and subsequently transcribed.

The first day of the hearing will focus on the downstream refining and petrochemical sectors. It will feature a presentation by CSB staff on the Board's evaluation of the American Petroleum Institute's (API) Recommended Practice for Process Safety Performance Indicators for the Refining and Petrochemical Industries (ANSI/API RP 754). API RP 754 was developed in response to a CSB recommendation resulting from the agency's investigation into the BP Texas City refinery fire and explosion that killed 15 workers and injured 180 others. The CSB found that effective safety performance indicators for major accident prevention were not being used to drive safety improvements. The lessons learned from other high hazard industries with

advanced indicator programs will also be discussed during the first day of the hearing.

The second day will include a presentation by CSB staff on preliminary findings of the agency's Macondo incident investigation on the use of safety indicators and major accident prevention. Evidence will be presented on the way safety was managed at Macondo and the influence of the regulator in driving safety performance offshore.

All staff presentations are preliminary and are intended solely to allow the Board to consider in a public forum the issues and factors involved in this case. No factual analyses, conclusions or findings presented by staff should be considered final until approved by the Board.

Please notify CSB if a translator or interpreter is needed, at least 5 business days prior to the public meeting. For more information, please contact Hillary J. Cohen at *hillary.cohen@csb.gov* at the Chemical Safety and Hazard Investigation Board at (202)–261–7600, or visit our Web site at: *www.csb.gov*.

The CSB is an independent Federal agency charged with investigating industrial accidents that result in the release of extremely hazardous substances. The agency's board members are appointed by the President and confirmed by the Senate. CSB investigations look into all aspects of accidents, including physical causes such as equipment failure as well as inadequacies in regulations, industry standards, and safety management systems.

**Daniel Horowitz,**

*Managing Director.*

[FR Doc. 2012–17304 Filed 7–12–12; 11:15 am]

**BILLING CODE 6350–01–P**

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[Order No. 1838]**

### Reorganization and Expansion of Foreign-Trade Zone 202 Under Alternative Site Framework Los Angeles, CA

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

*Whereas,* the Board adopted the alternative site framework (ASF) (74 FR 1170, 01/12/2009; correction 74 FR 3987, 01/22/2009; 75 FR 71069–71070, 11/22/2010) as an option for the establishment or reorganization of general-purpose zones;

*Whereas,* the Board of Harbor Commissioners of the City of Los Angeles, grantee of Foreign-Trade Zone 202, submitted an application to the Board (FTZ Docket 9–2012, filed 02/09/2012) for authority to reorganize and expand under the ASF with a service area of Orange County and portions of Los Angeles and San Bernardino Counties, California, within and adjacent to the Los Angeles-Long Beach U.S. Customs and Border Protection port of entry, FTZ 202's Site 9 would be renumbered to create new Sites 30 and 31, Sites 1, 4, 7, 10–11, 14, 20 and 22 would be categorized as magnet sites, Sites 2, 5, 9, 12, 15, 19, 25, 27–28 and 30–31 would be categorized as usage driven sites, Sites 16, 24 and 26 would be removed from the zone project, and the grantee proposes one new usage-driven site (Site 29);

*Whereas,* notice inviting public comment was given in the **Federal Register** (77 FR 8804–8805, 02/15/2012) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

*Whereas,* the Board adopts the findings and recommendation of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to reorganize FTZ 202 under the alternative site framework is approved, subject to the FTZ Act and the Board's regulations, including Section 400.13, to the Board's standard 2,000-acre activation limit for the overall general-purpose zone project, to a five-year ASF sunset provision for magnet sites that would terminate authority for Sites 4, 7, 10–11, 14, 20 and 22 if not activated by July 31, 2017, and to a three-year ASF sunset provision for usage-driven sites that would terminate authority for Sites 2, 5, 9, 12, 15, 19, 25, 27–31 if no foreign-status merchandise is admitted for a *bona fide* customs purpose by July 31, 2015.

Signed at Washington, DC, this 5th day of July 2012.

**Paul Piquado,**

*Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.*

**Andrew McGilvray,**

*Executive Secretary.*

[FR Doc. 2012–17294 Filed 7–13–12; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

### In the Matter of: Humane Restraint, Inc., 912 Bethel Circle, Waunakee, WI 53597, Respondent; Order Relating To Humane Restraint, Inc

The Bureau of Industry and Security, U.S. Department of Commerce (''BIS''), has notified Humane Restraint, Inc. of Wanakee, WI (''HR''), of its intention to initiate an administrative proceeding against HR pursuant to Section 766.3 of the Export Administration Regulations (the ''Regulations''),[1] and Section 13(c) of the Export Administration Act of 1979, as amended (the ''Act''),[2] through the issuance of a Proposed Charging Letter to HR that alleged that HR committed 32 violations of the Regulations. Specifically, these charges are:

**Charges 1–27 15 CFR 764.2(a)—Engaging in Prohibited Conduct by Exporting Various Restraint Devices Without the Required Government Authorizations**

On 27 occasions between on or about April 10, 2006 and on or about August 8, 2008, HR engaged in conduct prohibited by the Regulations by exporting various restraint devices, including, but not limited to, strait jackets, bed restraints, and wrist and ankle restraints, items subject to the Regulations, classified under Export Control Classification Number (''ECCN'') 0A982, controlled for Crime Control reasons, and valued at approximately $14,697, from the United States to Germany, Greece, Hungary, Ireland, New Zealand, South Korea, Taiwan, and the United Kingdom without the Department of Commerce licenses required by Section 742.7(a) of the Regulations. In so doing, HR committed 27 violations of Section 764.2(a) of the Regulations.

[1] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR Parts 730–774 (2012). The charged violations occurred in 2006–2008. The Regulations governing the violations at issue are found in the 2006–2008 versions of the Code of Federal Regulations (15 CFR Parts 730–774 (2006–2008)). The 2012 Regulations set forth the procedures that apply to this matter.

[2] 50 U.S.C. app. §§ 2401–2420 (2000). Since August 21, 2001, the Act 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 (Aug. 16, 2011)), continues the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701, *et seq.*).

**Charge 28 15 CFR 764.2(c)—Attempting To Export a Strait Jacket Without the Required Government Authorization**

On or about November 28, 2007, HR attempted a violation of the Regulations. Specifically, HR attempted to export a strait jacket, an item subject to the Regulations, classified under ECCN 0A982, controlled for Crime Control reasons, and valued at approximately $112, from the United States to the United Kingdom without the Department of Commerce license required by Section 742.7(a) of the Regulations. The item was seized by U.S. Customs and Border Patrol (''CBP'') prior to leaving the United States. In so doing, HR committed one violation of Section 764.2(c) of the Regulations.

**Charges 29–32 15 CFR 764.2(e)—Acting With Knowledge of a Violation**

On four occasions between on or about January 2, 2008 and on or about August 7, 2008, HR sold items exported or to be exported from the United States with knowledge that a violation of the Regulations was about to occur or was intended to occur in connection with the items. Specifically, on four occasions HR sold strait jackets and an ambulatory restraint kit, items classified under ECCN 0A982, controlled for Crime Control reasons, and valued at approximately $1,818. These items were exported or to be exported from the United States to Australia, Germany, and Taiwan. HR knew or should have known that a Department of Commerce export license was required to export these items because, *inter alia,* on or about December 10, 2007, before these violations occurred, HR was informed of licensing requirements by CBP, which had stopped and later seized HR's November 28, 2007 attempted unlicensed export, described in Charge 28, above. In so doing, HR committed four violations of Section 764.2(e) of the Regulations.

*Whereas,* BIS and HR have entered into a Settlement Agreement pursuant to Section 766.18(a) of the Regulations, whereby they agreed to settle this matter in accordance with the terms and conditions set forth therein; and

*Whereas,* I have approved of the terms of such Settlement Agreement;

*It is therefore ordered:*

*First,* HR shall be assessed a civil penalty in the amount of $465,000. HR shall pay the U.S. Department of Commerce in four installments of: $12,500 not later than August 1, 2012; $12,500 not later than February 1, 2013; $12,500 not later than August 1, 2013; and $12,500 not later than February 1, 2014. If any of the four installment payments is not fully and timely made, any remaining scheduled installment payments and any suspended penalty shall become due and owing immediately. Payment of the remaining $415,000 shall be suspended for a period of two years from the date of issuance of the Order, and thereafter shall be waived, provided that during this two-year payment probationary period under the Order, HR has committed no violation of the Act, or any regulation, order, or license issued thereunder and has made full and timely payment of $50,000 as set forth above.

*Second,* that, pursuant to the Debt Collection Act of 1982, as amended (31 U.S.C. 3701–3720E (2000)), the civil penalty owed under this Order accrues interest as more fully described in the attached Notice, and if payment is not made in by the due date specified herein, HR will be assessed, in addition to the full amount of the civil penalty and interest, a penalty charge and an administrative charge, as more fully described in the attached Notice.

*Third,* that the full and timely payment of the civil penalty in accordance with the payment schedule set forth above is hereby made a condition to the granting, restoration, or continuing validity of any export license, license exception, permission, or privilege granted, or to be granted, to HR. Accordingly, if HR should fail to pay the civil penalty in a full and timely manner, the undersigned may issue an Order denying all of HR's export privileges under the Regulations for a period of one year from the date of failure to make such payment.

*Fourth,* that, except as provided in paragraph SIXTH of this Order, for a period of two (2) years from the date of issuance of the Order, Humane Restraint, Inc., with a last known address of 912 Bethel Circle, Waunakee, WI 53597, and when acting for or on its behalf, its successors, assigns, directors, officers, employees, representatives, or agents (hereinafter collectively referred to as ''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'') exported or to be exported from the United States to any destination other than Canada that is subject to the Regulations, or in any other activity subject to the Regulations that involves a destination other than Canada, including, but not limited to:

A. Applying for or obtaining any license, or License Exception that involves an export to any destination other than Canada;

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 to any destination other than Canada that is subject to the Regulations, or in any other activity subject to the Regulations that involves a destination other than Canada; or

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

*Fifth,* that, except as provided in paragraph SEVENTH of this Order, 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 to any destination other than Canada;

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 to any destination other than Canada, 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 to any destination other than Canada;

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 to any destination other than Canada; 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 to any destination other than Canada 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 to any destination other than Canada. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

*Sixth,* that this Order does not prohibit HR from exporting items from the United States under a previously approved U.S. Department of Commerce export license that is valid as of the date of this Order. Any exports made under this provision shall be subject to all terms, conditions and expiration dates contained in the underlying export license.

*Seventh,* that this Order does not prohibit freight forwarders, carriers, consignees or end users from participating in export transactions authorized by a previously approved U.S. Department of Commerce export license issued to HR that is valid as of the date of this Order. Any actions taken under this provision shall be subject to all terms and conditions of the underlying export license.

*Eighth,* that, after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to the Denied Person by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of the Order.

*Ninth,* that the Proposed Charging Letter, the Settlement Agreement, and this Order shall be made available to the public.

*Tenth,* that this Order shall be served on HR, and shall be published in the **Federal Register**.

This Order, which constitutes the final agency action in this matter, is effective immediately.

Issued this 9th day of July, 2012.

**David W. Mills,**

*Assistant Secretary of Commerce for Export Enforcement.*

[FR Doc. 2012–17236 Filed 7–13–12; 8:45 am]

**BILLING CODE P**

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–891]**

### Hand Trucks and Certain Parts Thereof From the People's Republic of China: Final Results of Antidumping Duty Administrative Review

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

**DATES:** *Effective Date:* July 16, 2012.

**SUMMARY:** On January 10, 2012, the Department of Commerce (the Department) published in the **Federal Register** the preliminary results of administrative review of the antidumping duty order on hand trucks and certain parts thereof from the People's Republic of China (PRC).[1] Based upon our analysis of the comments, we made changes to the margin calculations for the final results.

**FOR FURTHER INFORMATION CONTACT:** Scott Hoefke or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4947 or (202) 482–0649, respectively.

**SUPPLEMENTARY INFORMATION**

#### Background

On January 10, 2012, the Department published the preliminary results of administrative review of the antidumping duty order on hand trucks and certain parts thereof from the PRC. On February 3, 2012, Gleason Industrial Products, Inc., and Precision Products, Inc. (petitioners) submitted additional surrogate value (SV) information. On February 28, 2012, New-Tec submitted factual information to rebut, clarify, or correct the factual information submitted by the petitioners on February 17, 2012.

In the preliminary results, the Department invited interested parties to submit case briefs within 30 days of publication of the preliminary results and rebuttal briefs within five days after the due date for filing case briefs. *See Preliminary Results* at 1469. We received a case brief from petitioners and a joint case brief from two interested parties, Welcom Products, Inc. (Welcom) and Yangjiang Shunhe Industrial Co., Ltd. (Shunhe) on February 22, 2012, and rebuttal briefs from New-Tec and Cosco Home and Office Products, a U.S. importer, on March 1, 2012.

On February 8, 2012, petitioners requested the Department hold a public hearing to discuss the preliminary results. The Department held a public hearing on March 28, 2012.

#### Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this review are addressed in the memorandum entitled, ''Issues and Decision Memorandum for the Final Results in the Administrative Review of Hand Trucks and Certain Parts Thereof from the People's Republic of China,'' which is dated concurrently with and adopted by this notice (Decision Memorandum). A list of the issues which parties raised, and to which we respond in the Decision Memorandum is attached to this notice as an Appendix. The Decision Memorandum is a public document, and is on file in the Central Records Unit (CRU), Main Commerce Building, Room 7046, and is accessible on the Department's web site at *http://www.trade.gov/ia.* The paper copy and electronic version of the memorandum are identical in content.

#### Period of Review

The period of review (POR) is December 31, 2009, through November 30, 2010.

#### Scope of the Order

The merchandise subject to this antidumping duty order consists of hand trucks manufactured from any material, whether assembled or unassembled, complete or incomplete, suitable for any use, and certain parts thereof, namely the vertical frame, the handling area and the projecting edges or toe plate, and any combination thereof. A complete or fully assembled hand truck is a hand-propelled barrow consisting of a vertically disposed frame having a handle or more than one handle at or near the upper section of the vertical frame; at least two wheels at or near the lower section of the vertical frame; and a horizontal projecting edge or edges, or toe plate, perpendicular or angled to the vertical frame, at or near the lower section of the vertical frame. The projecting edge or edges, or toe plate, slides under a load for purposes of lifting and/or moving the load.

That the vertical frame can be converted from a vertical setting to a horizontal setting, then operated in that horizontal setting as a platform, is not a basis for exclusion of the hand truck from the scope of this petition. That the vertical frame, handling area, wheels, projecting edges or other parts of the hand truck can be collapsed or folded is not a basis for exclusion of the hand truck from the scope of the petition. That other wheels may be connected to the vertical frame, handling area, projecting edges, or other parts of the hand truck, in addition to the two or more wheels located at or near the lower section of the vertical frame, is not a basis for exclusion of the hand truck from the scope of the petition. Finally, that the hand truck may exhibit physical

[1] *See Hand Trucks and Certain Parts Thereof from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review,* 77 FR 1464 (January 10, 2012) (*Preliminary Results*).

characteristics in addition to the vertical frame, the handling area, the projecting edges or toe plate, and the two wheels at or near the lower section of the vertical frame, is not a basis for exclusion of the hand truck from the scope of the petition.

Examples of names commonly used to reference hand trucks are hand truck, convertible hand truck, appliance hand truck, cylinder hand truck, bag truck, dolly, or hand trolley. They are typically imported under heading 8716.80.50.10 of the Harmonized Tariff Schedule of the United States (HTSUS), although they may also be imported under heading 8716.80.50.90. Specific parts of a hand truck, namely the vertical frame, the handling area and the projecting edges or toe plate, or any combination thereof, are typically imported under heading 8716.90.50.60 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the scope is dispositive.

Excluded from the scope are small two-wheel or four-wheel utility carts specifically designed for carrying loads like personal bags or luggage in which the frame is made from telescoping tubular materials measuring less than 5/8 inch in diameter; hand trucks that use motorized operations either to move the hand truck from one location to the next or to assist in the lifting of items placed on the hand truck; vertical carriers designed specifically to transport golf bags; and wheels and tires used in the manufacture of hand trucks.

## Changes Since the Preliminary Results

Based on a review of the record and comments received from parties regarding our *Preliminary Results,* we have made revisions to certain SVs and the margin calculation for New-Tec in these final results. We made the following changes:

- We used the 2009–10 financial statements of Office Thai Online Co., Ltd., and Jenbunjerd Co. Ltd. for calculating financial ratios; and
- We revised the surrogate values for hot rolled steel coil, cold-rolled steel, polypropylene resin, slide bar, and primary aluminum ingots. *See* Decision Memorandum.

## Separate Rates Determination

In our *Preliminary Results,* we determined that New-Tec met the criteria for separate rate status. We have not received any information since issuance of the preliminary results that provides a basis for reconsidering this preliminary determination. Therefore, the Department continues to find that New-Tec meets the criteria for a separate rate.

## Final Results of the Review

The Department has determined that the following margin exists for the period December 1, 2009, through November 30, 2010:

| Exporter | Weighted-average margin (percent) |
|---|---|
| New-Tec Integration (Xiamen) Co., Ltd. ..... | 41.49 |

## Assessment Rates

Consistent with these final results, and pursuant to section 751(a)(2)(B) of the Act and 19 CFR 351.212(b)(1), the Department will direct CBP to assess antidumping duties on all appropriate entries. The Department will issue appropriate assessment instructions to CBP 15 days after the date of publication of the final results of this review. Pursuant to 19 CFR 351.212(b)(1), we calculated importer-specific per unit duty assessment rates based on the ratio of the total amount of the dumping margins calculated for the examined sales to the total entered value of those same sales. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this review is above *de minimis.*

## Cash Deposit Requirements

The following cash deposit requirements, when imposed, will be effective upon publication of the final results of this review for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) The cash-deposit rate for each of the reviewed companies that received a separate rate in this review will be the rate listed in the final results of this review (except that if the rate for a particular company is *de minimis, i.e.,* less than 0.5 percent, no cash deposit will be required for that company); (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period of review; (3) if the exporter is a firm not covered in this review, a prior review, or the original less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the subject merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will be the PRC-wide rate of 383.60 percent. These cash deposit requirements, when imposed, shall remain in effect until further notice.

## Notification to Importers

This notice 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 Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

## Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this administrative review and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: July 9, 2012.

**Ronald K. Lorentzen,**

*Acting Assistant Secretary for Import Administration.*

## Appendix

Comment 1: Whether to Value Certain Inputs Using Purchases from Market-Economy Suppliers

Comment 2: Selection of Surrogate Financial Statements

Comment 3: Rejecting Certain Separate Rate Applications

[FR Doc. 2012–17311 Filed 7–13–12; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–898]**

### Chlorinated Isocyanurates From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review

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

**SUMMARY:** In response to requests from interested parties, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty (AD) order on chlorinated isocyanurates (chlorinated isos) from the People's Republic of China (PRC). The period of review (POR) for this administrative review is June 1, 2010, through May 31, 2011. This administrative review covers four producers/exporters of the subject merchandise: Hebei Jiheng Chemical Co., Ltd. (Hebei Jiheng) and Hebei Jiheng Baikang Chemical Industry Co., Ltd. (Baikang) (collectively, Jiheng); Juancheng Kangtai Chemical Co., Ltd. (Juancheng Kangtai) and Juancheng Ouya Chemical Co., Ltd. (Ouya) (collectively, Kangtai); Nanning Chemical Industry Co., Ltd. (Nanning); and Zhucheng Taisheng Chemical Co., Ltd. (Zhucheng). Jiheng and Kangtai are the two producers/exporters being individually examined as mandatory respondents. We preliminarily determine that Jiheng made sales in the United States at prices below normal value (NV) and that Kangtai did not make sales in the United States at prices below NV. With respect to the two remaining respondents in this administrative review, we preliminarily determine that Nanning and Zhucheng have demonstrated that they are eligible for a separate rate, and the rate assigned to these companies is discussed below, in the ''Margin for Separate-Rate Companies'' section. If these preliminary results are adopted in our final results of review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on entries of subject merchandise during the POR for which the importer-specific assessment rates are above *de minimis*. We invite interested parties to comment on these preliminary results.

**DATES:** *Effective Date:* July 16, 2012.

**FOR FURTHER INFORMATION CONTACT:** Emily Halle or Andrew Huston, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0176 or (202) 482–4261.

**SUPPLEMENTARY INFORMATION:**

### Background

On July 28, 2011, the Department initiated the administrative review of the antidumping duty order on chlorinated isos from the PRC covering the period June 1, 2010, through May 31, 2011.[1] Between September 26 and October 3, 2011, Jiheng, Kangtai, Nanning, and Zhucheng each submitted either a separate rate application or certification, as appropriate. Due to the large number of requests received, the Department limited the number of mandatory respondents selected for this review to the two largest exporters/producers, based on export volume as reported to CBP, for which a review was requested—Jiheng and Kangtai.[2]

On October 6, 2011, the Department issued its AD questionnaire to the two mandatory respondents, Jiheng and Kangtai, to which both respondents responded in a timely manner. On November 3, 2011, Clearon Corporation and Occidental Chemical Corporation (Petitioners) requested that the Department conduct a verification of Jiheng and Kangtai. On December 16, 2011, Petitioners submitted deficiency comments regarding Kangtai's section A questionnaire response, and on January 9, 2012, submitted deficiency comments regarding Kangtai's section C and D questionnaire responses and Jiheng's section A, C and D questionnaire responses.

On February 1, 2012, the Department published a notice in the **Federal Register** extending the time limit for the preliminary results of review from March 1, 2012, until June 29, 2012.[3] The Department issued supplemental questionnaires to Jiheng and Kangtai on February 24, 2012, and February 28, 2012, respectively, and both respondents submitted responses in a timely manner. On May 3, 2012, and May 11, 2012, the Department issued an additional supplemental questionnaire to Jiheng and Kangtai, respectively, to which both companies responded in a timely manner.

### Scope of the Order

The products covered by the order are chlorinated isocyanurates, which are derivatives of cyanuric acid, described as chlorinated s-triazine triones. There are three primary chemical compositions of chlorinated isos: (1) Trichloroisocyanuric acid ($Cl_3(NCO)_3$), (2) sodium dichloroisocyanurate (dihydrate) ($NaCl_2(NCO)_3(2H_2O)$, and (3) sodium dichloroisocyanurate (anhydrous) ($NaCl_2(NCO)_3$). Chlorinated isos are available in powder, granular, and tableted forms. The order covers all chlorinated isos. Chlorinated isos are currently classifiable under subheadings 2933.69.6015, 2933.69.6021, 2933.69.6050, 3808.40.50, 3808.50.40 and 3808.94.50.00 of the Harmonized Tariff Schedule of the United States (HTSUS). The tariff classification 2933.69.6015 covers sodium dichloroisocyanurates (anhydrous and dihydrate forms) and trichloroisocyanuric acid. The tariff classifications 2933.69.6021 and 2933.69.6050 represent basket categories that include chlorinated isos and other compounds including an unfused triazine ring. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

### Respondent Selection

In accordance with section 777A(c)(2) of the Tariff Act of 1930, as amended (the Act), the Department selected the two largest exporters (by quantity) of chlorinated isos from the PRC (*i.e.,* Jiheng and Kangtai) based on the CBP data for entries of subject merchandise during the POR as the mandatory respondents in this review.[4]

### Affiliation and Single Entity Treatment

The Department is preliminarily determining that Hebei Jiheng and Baikang are affiliated parties, and Juancheng Kangtai and Ouya are affiliated parties within the meaning of section 771(33) of the Act. The evidence placed on the record of this review by Jiheng demonstrates that Hebei Jiheng owns five percent or more of the voting shares in Baikang, and that these parties are therefore affiliated under section 771(33)(E) of the Act.[5] The Department

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews, Requests for Revocations in Part and Deferral of Administrative Reviews,* 76 FR 45227 (July 28, 2011) (*Initiation Notice*).

[2] *See* Memorandum titled ''Administrative Review of the Antidumping Duty Order on Chlorinated Isocyanurates from the People's Republic of China: Respondent Selection,'' dated October 6, 2011 (Respondent Selection Memorandum).

[3] *See Chlorinated Isocyanurates From the People's Republic of China: Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review,* 77 FR 4992 (February 1, 2012).

[4] *See* Respondent Selection Memorandum.

[5] *See* Memorandum titled ''2010–2011 Administrative Review of the Antidumping Duty Order on Chlorinated Isocyanurates from the People's Republic of China: Affiliation of Hebei Jiheng Chemical Company, Ltd. (Jiheng) and Hebei

has previously determined that Juancheng Kangtai and Ouya are affiliated because their owners are members of a family (siblings) and are affiliated under section 771(33)(A) of the Act.[6] Based on our examination of the evidence presented in Kangtai's questionnaire responses in this instant review, we have determined that the underlying facts of this case have not changed since the Department last reviewed Kangtai.

The Department preliminarily determines that Hebei Jiheng and Baikang should be treated as a single entity (*i.e.,* Jiheng) for purposes of calculating an AD margin pursuant to 19 CFR 351.401(f).[7] Hebei Jiheng and Baikang produce identical merchandise and have similar production facilities used to produce the subject merchandise.[8] Additionally, the level of affiliation between Hebei Jiheng and Baikang (*i.e.,* Baikang is wholly-owned by Hebei Jiheng) demonstrates that there is a significant potential for manipulation of price or production.[9] During the POR, all of the subject merchandise under review produced by Baikang was sold to Hebei Jiheng for re-sale in the home market, U.S. market and third country markets.

The Department previously determined that Juancheng Kangtai and Ouya should be treated as a single entity.[10] After examining the evidence placed on the record of this review by Kangtai, the Department determines that this instant review has the same fact pattern as the record of Kangtai's previous review. Specifically, the Department continues to find that both companies produce subject merchandise and therefore have similar production facilities that would not require substantial retooling in order to restructure manufacturing priorities.[11] Additionally, as noted above, all owners of Juancheng Kangtai and Ouya continue to be affiliated, and, as owners and holders of managerial positions of both companies, have complete control and are in a position to exercise restraint or direction over Juancheng Kangtai and Ouya.[12] Therefore, the Department preliminarily determines that Juancheng Kangtai and Ouya should be treated as a single entity (*i.e.,* Kangtai) for purposes of calculating an AD margin pursuant to 19 CFR 351.401(f).

**Non-Market Economy Country**

In every case conducted by the Department involving the PRC, the PRC has been treated as a non-market economy (NME) country.[13] Moreover, the Department's most recent examination of the PRC's NME status determined that such status should continue.[14] In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. The Department has not revoked the PRC's status as an NME country, and thus we have treated the PRC as an NME in these preliminary results and calculated NV in accordance with section 773(c) of the Act, which applies to NME countries.

**Surrogate Country**

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs it, in most instances, to base NV on the NME producer's factors of production (FOPs). The Act further instructs that valuation of the FOPs shall be based on the best available information in the surrogate market economy (ME) country or countries considered to be appropriate by the Department.[15] When valuing the FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more ME countries that are: (1) At a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise.[16] The sources of the surrogate factor values are discussed under the ''Normal Value'' section, below, and in the Preliminary Surrogate Value Memorandum,[17] 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, main Commerce Building, Room 7046.

In examining which country to select as its primary surrogate for this proceeding, the Department determined that Colombia, Indonesia, the Philippines, South Africa, Thailand and Ukraine are countries comparable to the PRC in terms of economic development.[18] Once we have identified the countries that are economically comparable to the PRC, we select an appropriate surrogate country by determining whether an economically comparable country is a significant producer of comparable merchandise and whether the data for valuing FOPs are both available and reliable.

Petitioners, in their December 19, 2011 comments on surrogate country selection, recommended that the Department select South Africa as the primary surrogate country, as South Africa is economically comparable to the PRC, is a significant producer of calcium hypochlorite, a comparable product identified in previous segments, and is likely to have reliable surrogate value data for most or all of the key FOPs. Petitioners also noted that Thailand may be a significant producer of other hypochlorites. Arch Chemicals, Inc., an interested party in this review, in its December 19, 2011 comments on surrogate country selection, states the Department should expand its definition of comparable merchandise to include sodium hypochlorite as there are financial statements for a sodium hypochlorite producer in the Philippines, and there are likely to be financial statements from sodium hypochlorite producers in Thailand as well. Also on December 19, 2011, Kangtai suggested using either the

Jiheng Baikang Chemical Industry Co., Ltd. (Baikang),'' dated June 29, 2012 (Jiheng Affiliation Memorandum).

[6] *See Chlorinated Isocyanurates From the People's Republic of China: Final Results of June 2008 Through November 2008 Semi-Annual New Shipper Review,* 74 FR 68575 (December 28, 2009) (*Kangtai Final Results*).

[7] *See* Memorandum titled ''2010–2011 Administrative Review of the Antidumping Duty Order on Chlorinated Isocyanurates from the People's Republic of China: Affiliation of Hebei Jiheng Chemical Company, Ltd. (Jiheng) and Hebei Jiheng Baikang Chemical Industry Co., Ltd. (Baikang)'' dated June 29, 2012.

[8] *See* Jiheng's November 29, 2011 section D response at D–6.

[9] *See* Jiheng's May 11, 2012 supplemental questionnaire response; *see also* Jiheng Affiliation Memorandum.

[10] *See Kangtai Final Results* and accompanying Issues and Decision Memorandum at Comment 3.

[11] *See* Kangtai's November 10, 2011 section A submission at 11.

[12] *See* Kangtai's November 10, 2011 section A submission at exhibit A–6.

[13] *See, e.g., Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 74 FR 9591, 9593 (March 5, 2009), unchanged in *Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 74 FR 36656 (July 24, 2009).

[14] *See* Memorandum titled ''Antidumping Duty Investigation of Certain Lined Paper Products from the People's Republic of China (China): China's Status as a Non-Market Economy (''NME''),'' dated August 30, 2006 (on file in the Department's Central Records Unit on the record of case number A–570–901).

[15] *See* section 773(c)(1) of the Act.

[16] *See* section 773(c)(4) of the Act.

[17] *See* Memorandum titled ''2010–2011 Administrative Review of the Antidumping Duty Order on Chlorinated Isocyanurates from the People's Republic of China: Preliminary Results Surrogate Value Memorandum,'' dated June 29, 2012 (Preliminary Surrogate Value Memorandum).

[18] *See* Memorandum titled ''Request for a List of Surrogate Countries for an Administrative Review of the Antidumping Duty Order on Chlorinated Isocyanurates (''CLI'') from the People's Republic of China (''China''),'' dated September 9, 2011 (Surrogate Country Memorandum).

Philippines or Thailand as a surrogate country, since chloro alkali industries appear to be active in either country. Additionally, Petitioners, Jiheng and Kangtai each put data on the record of this proceeding to value FOPs from South Africa, the Philippines and Thailand on January 9, 2012, and provided rebuttal surrogate country comments on January 17, 2012.

*Economic Comparability*

As explained in the Surrogate Country Memorandum, the Department considers Colombia, Indonesia, the Philippines, South Africa, Thailand and Ukraine equally comparable to the PRC in terms of economic development. Therefore, we consider all six countries as having satisfied this prong of the surrogate country selection criteria. Accordingly, unless we find that all of the countries determined to be equally economically comparable are not significant producers of comparable merchandise, do not provide a reliable source of publicly available surrogate data or are unsuitable for other reasons, we rely on data from one of these countries.

*Significant Producers of Identical or Comparable Merchandise*

Section 773(c)(4)(B) of the Act requires the Department to value FOPs in a surrogate country that is a significant producer of comparable merchandise. Neither the statute nor the Department's regulations provide further guidance on what may be considered comparable merchandise. Given the absence of any definition in the statute or regulations, the Department looks to other sources such as Policy Bulletin 04.1 for guidance on defining comparable merchandise.[19] Policy Bulletin 04.1 states that ''the terms 'comparable level of economic development,' 'comparable merchandise,' and 'significant producer' are not defined in the statute.'' [20] Policy Bulletin 04.1 further states that ''in all cases, if identical merchandise is produced, the country qualifies as a producer of comparable merchandise.'' [21] Conversely, if identical merchandise is not produced, then a country producing comparable merchandise is sufficient in selecting a surrogate country.[22] Further, when selecting a surrogate country, the statute requires the Department to consider the comparability of the merchandise, not the comparability of the industry.[23] ''In cases where the identical merchandise is not produced, the Department must determine if other merchandise that is comparable is produced.'' [24]

Further, the statute grants the Department discretion to examine various data sources for determining the best available information.[25] The legislative history also states that ''the term ''significant producer'' includes any country that is a significant net exporter and, if appropriate, Commerce may use a significant, net exporting country in valuing factors,'' [26] and it does not preclude reliance on additional or alternative metrics. The record developed to date for these preliminary results of review does not contain information with respect to production volumes of identical or comparable merchandise in the potential surrogate countries. Therefore, in evaluating which countries on the list may be significant producers of identical or comparable merchandise, the Department examined data for the POR from the Global Trade Atlas (GTA) for HTSUS 2933.69, the primary HTSUS number included in the scope of the order. An evaluation of the GTA data indicates that none of the countries listed in the Surrogate Country Memorandum were likely producers of identical merchandise.[27] Next, the Department examined whether the surrogate countries on the list were significant producers of comparable merchandise as provided by section 773(c)(4)(B) of the Act. In the investigation of chlorinated isos, the Department found that calcium hypochlorite was comparable to the subject merchandise because it has ''similar physical characteristics, end uses, and production processes.'' [28] Because, as mentioned above, the record contains no production data for calcium hypochlorite in any of the possible surrogate countries, the Department turned to the GTA export data under HTS 2828.10, for calcium hypochlorite. South Africa was, by far, the largest exporter of calcium hypochlorite among the countries listed in the Surrogate Country Memorandum. The remaining countries on the list have less than 200,000 kilograms and most have less than 100,000 kilograms while South Africa has 3.8 million kilograms. Therefore, the Department is selecting South Africa as the primary surrogate country. The Department will continue to evaluate any additional evidence timely placed on the record that other countries on the surrogate country list produce identical or comparable merchandise, and whether there are other types of merchandise produced in the surrogate countries on the list that could be considered comparable to chlorinated isos.

*Data Availability*

When evaluating surrogate value data, the Department considers several factors including whether the surrogate value is publicly available, contemporaneous with the POR, from an approved surrogate country, tax and duty-exclusive, and specific to the input, and represents a broad market average. There is no hierarchy among these criteria; it is the Department's practice to carefully consider the available evidence in light of the particular facts of each industry when undertaking its analysis.[29] The record of this review does contain data for South Africa and Thailand, as well as some data for the Philippines. As noted above, because South Africa is a significant producer of comparable merchandise, and because there is data on the record from South Africa to value FOPs, we have preliminarily determined for purposes of these preliminary results that South Africa is the most appropriate surrogate country to use in this review, and, accordingly, have calculated NV using South African prices to value the respondents' FOPs, when available and appropriate (*see* discussion below regarding why certain data from South Africa would likely provide inaccurate surrogate values for some FOPs).[30] We

[19] *See* the Department's Policy Bulletin No. 04.1, ''Non-Market Economy Surrogate Country Selection Process,'' (March 1, 2004) (Policy Bulletin 04.1), available on the Department's Web site at *http://ia.ita.doc.gov/policy/bull04-1.html.*

[20] *See* Policy Bulletin 04.1.

[21] *Id.*

[22] Policy Bulletin 04.1 also states that ''if considering a producer of identical merchandise leads to data difficulties, the operations team may consider countries that produce a broader category of reasonably comparable merchandise.'' *Id.* at note 6.

[23] *See Sebacic Acid from the People's Republic of China: Final Results of Antidumping Duty Administrative Review,* 62 FR 65674 (December 15, 1997) and accompanying Issues and Decision Memorandum at Comment 1 (to impose a requirement that merchandise must be produced by the same process and share the same end uses to be considered comparable would be contrary to the intent of the statute).

[24] *See* Policy Bulletin 04.1, at 2.

[25] *See* section 773(c) of the Act and *Nation Ford Chem. Co.* v. *United States,* 166 F.3d 1373, 1377 (Fed. Cir. 1990).

[26] *See* Conference Report to the 1988 Omnibus Trade & Competitiveness Act, H.R. Conf. Rep. No. 576,100 Cong, 2d Sess. (1988), reprinted in Cong. Rec. H2032 (Daily Ed. April 20, 1988).

[27] *See* Preliminary Surrogate Value Memorandum.

[28] *See Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates From the People's Republic of China,* 70 FR 24502 (May 10, 2005) and accompanying Issues and Decision Memorandum at Comment 2.

[29] *See* Policy Bulletin 04.1.

[30] *See* Preliminary Surrogate Value Memorandum.

have obtained and relied upon publicly available information wherever possible.

The Surrogate Country Memorandum further explains that the list of countries it provides is a ''non-exhaustive'' list of potential surrogate countries. Furthermore, it states that

> You may also consider other countries on the case record if the record provides you adequate information to evaluate them. You may be unable to obtain the necessary factor price information in a suitable surrogate country. If that is the case, you will have to rely on the price of comparable merchandise that is produced in a surrogate country and sold in other countries, including the United States.

Since acceptable data sources for certain inputs have not been placed on the record from any of the countries provided in the Surrogate Country Memorandum, for a limited number of FOPs, the Department must rely on alternative countries as sources of surrogate data.[31] In this review, the only alternative data on the record for these FOPs is from India. These data were placed on the record by interested parties or were obtained from the record of the previous review in these proceedings. Even though India is not on the list of possible surrogate countries provided in the Surrogate Country Memorandum, India is a significant producer of comparable merchandise that has the data needed to calculate certain surrogate values.[32] Accordingly, where data from South Africa was not available, Indian data was used.

Indian data was used in the following circumstances. First, there are no acceptable financial statements from any of the potential surrogate countries on the record of this review for identical or comparable merchandise. Petitioner submitted a contemporaneous financial statement from an Indian company that the Department has previously used to calculate financial ratios. Therefore, based on the record of this review and the guidance provided in the Surrogate Country Memorandum,[33] the Department is using financial statements from an Indian company to calculate the financial ratios. There are also several chemical inputs that are valued using specific concentration levels that cannot be obtained from GTA data for South Africa.[34] Petitioners did place on the record data by concentration level for one input, sulfuric acid, from a South African chemical producer on the record, but because no information has been placed on the record of this review to value the remaining inputs using specific concentration levels, the Department is selecting data from the Indian publication, *Chemical Weekly,* used in the previous review of this order.[35] The Department has previously determined that several inputs are not frequently traded internationally and face special concerns both in transporting and in packaging, such that GTA data cannot be used.[36] The Department is therefore using data from Indian financial statements placed on the record of the previous review to value these specific inputs, as no data was placed on the record from any country listed in the Surrogate Country Memorandum. Finally, South Africa does not have labor rates from Chapter 6A: Labor Cost in Manufacturing, of the International Labor Organization (ILO) Yearbook of Labor Statistics (Yearbook), which the Department has determined to be the best source of data when valuing the labor input. India does have labor rates from Chapter 6A, so we are using Indian data to value labor as well. As explained below under ''Factor Valuations,'' the Department has inflated non-contemporaneous data to the POR.

In accordance with 19 CFR 351.301(c)(3)(ii), interested parties may submit publicly available information to value FOPs until 20 days after the date of publication of these preliminary results.[37]

**Separate Rates**

In proceedings involving NME countries, the Department has a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assessed a single AD rate. It is the Department's policy to assign all exporters of merchandise subject to review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.

In the *Initiation Notice,* the Department notified parties of the process by which exporters and producers may obtain separate rate status. This process requires exporters and producers wishing to qualify for separate rate status in this administrative review to complete, as appropriate, either a separate rate application or certification.[38] In particular, companies for which a review was requested, and which were assigned a separate rate in the most recent segment of the same proceeding in which they participated, need to certify that they continue to meet the criteria for obtaining a separate rate.[39] For companies that have not previously been assigned a separate rate, the companies must submit a separate rate application demonstrating eligibility for a separate rate.

Kangtai and Nanning were assigned a separate rate in the most recent segment of this proceeding in which they participated,[40] and they timely certified in this administrative review that they continue to meet the criteria for obtaining a separate rate. In addition, Jiheng and Zhucheng timely filed separate rate applications.[41]

In order to establish independence from the NME entity, exporters must demonstrate the absence of both *de jure* and *de facto* government control over export activities. The Department

[31] Section 773(c)(4)(A) of the Act states that the Department shall value FOPs using prices in a country economically comparable to the NME country ''to the extent possible.'' As stated in the Department's Policy Bulletin 04.1, ''Non-Market Economy Surrogate Country Selection Process,'' ''Limited data availability sometimes is the reason why the team will ''go off'' the OP list in search of a viable primary surrogate country.''

[32] *See* Preliminary Surrogate Value Memorandum.

[33] *See* Policy Bulletin 04.1, which states that the Department ''may also consider other countries on the case record if the record provides you adequate information to evaluate them.''

[34] *See* Memorandum titled ''Preliminary Results of the 2009–2010 Administrative Review of the Antidumping Duty Order on Chlorinated Isocyanurates from the People's Republic of China: Surrogate Value Memorandum,'' dated June 30, 2011 (2009–2010 Surrogate Value Memorandum).

[35] *See* Preliminary Surrogate Value Memorandum. *See also* 2009–2010 Surrogate Value Memorandum.

[36] *See* 2009–2010 Surrogate Value Memorandum.

[37] In accordance with 19 CFR 351.301(c)(1), for the final results of this administrative review, interested parties may submit factual information to rebut, clarify, or correct factual information submitted by an interested party less than ten days before, on, or after, the applicable deadline for submission of such factual information. However, the Department notes that 19 CFR 351.301(c)(1) permits new information only insofar as it rebuts, clarifies, or corrects information placed on the record. The Department generally will not accept the submission of additional, previously absent-from-the-record alternative surrogate value information pursuant to 19 CFR 351.301(c)(1). *See, e.g., Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part,* 72 FR 58809 (October 17, 2007), and accompanying Issues and Decision Memorandum at Comment 2.

[38] *See Initiation Notice,* 75 FR at 44224.

[39] *See Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from the People's Republic of China: Final Results of 2005–2006 Administrative Review and Partial Rescission of Review,* 72 FR 56724 and accompanying Issues and Decision Memorandum at Comment 2; upheld by *Peer Bearing Company—Changshan* v. *United States,* 587 F. Supp. 2d 1319, 1324–25 (CIT 2008).

[40] *See Kangtai Final Results* and *Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates From the People's Republic of China,* 70 FR 24502 (May 10, 2005).

[41] *See* Jiheng's September 26, 2011 submission, Nanning's September 26, 2011 submission, Zhucheng's September 6, 2011 and October 3, 2011 submission, and Kangtai's October 3, 2011 submission.

analyzes each entity exporting the subject merchandise under a test arising from the *Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China,* 56 FR 20588 (May 6, 1991) (*Sparklers*), as further developed in *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China,* 59 FR 22585 (May 2, 1994) (*Silicon Carbide*). However, if the Department determines that a company is wholly foreign-owned or located in an ME country, then a separate rate analysis is not necessary to determine whether it is independent from government control.

*Separate Rate Analysis*

Jiheng, Kangtai, Nanning and Zhucheng stated that they are either joint ventures between Chinese and foreign companies or are wholly Chinese-owned companies. Thus, the Department has analyzed whether each of these companies has demonstrated the absence of *de jure* and *de facto* governmental control over their respective export activities.

a. Absence of *de Jure* Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies.[42]

The evidence Jiheng, Kangtai, Nanning and Zhucheng provided in their separate rate certifications and separate rate applications supports a preliminary finding of absence of *de jure* government control based on the following factors: (1) An absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) applicable legislative enactments decentralizing control of the companies; and (3) formal measures by the government decentralizing control of PRC companies.

b. Absence of *de Facto* Control

Typically, the Department considers four factors in evaluating whether each respondent is subject to *de facto* government control of its export functions: (1) Whether the export prices are set by or are subject to the approval of a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.[43] The Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of government control which would preclude the Department from assigning separate rates.

The evidence Kangtai and Nanning provided in their separate rate certifications, and the evidence Jiheng and Zhucheng provided in their separate rate applications, supports a preliminary finding of absence of *de facto* government control based on the following factors: (1) An absence of restrictive government control on export prices; (2) a showing of authority to negotiate and sign contracts and other agreements; (3) a showing that Jiheng, Kangtai, Nanning and Zhucheng maintain autonomy from the government in making decisions regarding the selection of management; and (4) a showing that Jiheng, Kangtai, Nanning and Zhucheng retain the proceeds of their respective export sales and make independent decisions regarding disposition of profits or financing of losses.

Ultimately, the evidence placed on the record of this administrative review by Jiheng, Kangtai, Nanning and Zhucheng demonstrates an absence of *de jure* and *de facto* government control, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide*. Therefore, the Department has preliminarily granted Jiheng, Kangtai, Nanning and Zhucheng a separate rate.

**Margin for Separate-Rate Companies**

As discussed above, the Department received timely and complete separate rate applications or certifications from Jiheng, Kangtai, Nanning and Zhucheng, all of which were exporters of chlorinated isos from the PRC during the POR. Nanning and Zhucheng were not selected to be individually examined respondents in this review. Through the evidence in their respective separate rate applications or certifications, these companies have demonstrated their eligibility for a separate rate. The statute and the Department's regulations do not address the establishment of a rate to be applied to individual companies not selected for examination where the Department limited its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, we have looked to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for respondents we did not examine in an administrative review. For the exporters subject to a review that were determined to be eligible for separate rate status, but were not selected as mandatory respondents, the Department generally weight-averages the rates calculated for the mandatory respondents, excluding any rates that are zero, *de minimis,* or based entirely on facts available.[44] For one of the mandatory respondents, Kangtai, we have calculated a rate of zero for these preliminary results of review. Therefore, the Department is assigning to the separate rate companies the only rate calculated in this review that is not zero, *de minimis,* or based entirely on facts available. Accordingly, we are assigning to the separate rate companies the rate calculated for Jiheng.[45]

**Date of Sale**

We preliminarily determine that the invoice date is the most appropriate date to use as the date of sale for both respondents in accordance with 19 CFR 351.401(i). In this regard, no interested parties provided evidence indicating that the material terms of sale were established on another date. Instead, according to the respondents' questionnaire responses, the material terms of the sale are fixed at invoice date. Thus, the Department finds that the invoice date is the date of sale. Evidence on the record also demonstrates that, with respect to Jiheng's sales to the United States, for some sales the shipment date occurs prior to the invoice date.[46] In such

[42] *See Sparklers,* 56 FR at 20589.

[43] *See Silicon Carbide,* 59 FR at 22586–87; *see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China,* 60 FR 22544, 22545 (May 8, 1995).

[44] *See, e.g., Wooden Bedroom Furniture From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, Preliminary Results of New Shipper Review and Partial Rescission of Administrative Review,* 73 FR 8273, 8279 (February 13, 2008) (unchanged in *Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review,* 73 FR 49162 (August 20, 2008)).

[45] *See* Memorandum titled ''Preliminary Results Surrogate Value Memorandum,'' dated June 29, 2012. *See also Multilayered Wood Flooring From the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 76 FR 64318 (October 18, 2011).

[46] *See* Jiheng's November 29, 2011 questionnaire response at 13.

cases, we limit the date of sale to no later than shipment date.[47]

**Fair Value Comparisons**

To determine whether sales of chlorinated isos to the United States by Jiheng and Kangtai were made at less than NV, we compared export price (EP) to NV, as described in the ''Export Price'' and ''Normal Value'' sections of this notice, pursuant to section 771(35) of the Act.[48]

*Export Price*

Jiheng and Kangtai sold the subject merchandise directly to unaffiliated purchasers in the United States prior to importation into the United States. Therefore, we have used EP in accordance with section 772(a) of the Act because the use of the constructed export price methodology is not otherwise indicated. We calculated EP based on the price, including the appropriate shipping terms, to the first unaffiliated purchasers reported by Jiheng and Kangtai. To this price, we added amounts for components that were supplied free of charge (Jiheng and Kangtai) or for which the respondent was separately reimbursed by the customer (Jiheng), where applicable, pursuant to section 772(c)(1)(A) of the Act and consistent with our treatment of Jiheng's sales in prior reviews.[49] For free raw materials and packing materials, we added the surrogate values for these materials, multiplied by the reported FOPs for these items, to the U.S. price paid by Jiheng's or Kangtai's customer.[50] The reimbursed raw materials were always listed separately on sales invoices, and were not included in the U.S. prices reported by Jiheng.[51] Since these reimbursed items were raw materials, we added the amount paid by the U.S. customer for these materials to the U.S. price.

*Normal Value*

Section 773(c)(1) of the Act provides that, in an NME proceeding, the Department shall determine NV using an FOP methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act.

The Department bases NV on FOPs in NMEs because the presence of government controls on various aspects of these economies renders price comparisons and the calculation of production costs invalid under the Department's normal methodologies. Therefore, we calculated NV based on FOPs in accordance with sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c). The FOPs include: (1) Hours of labor required; (2) quantities of raw materials consumed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs. We used the FOPs reported by the respondent for materials, energy, labor, by-products, and packing. These reported FOPs included FOPs for various materials provided free of charge or reimbursed by the customer as discussed in the ''Export Price'' section, above.

In accordance with 19 CFR 351.408(c)(1), the Department will normally use publicly available information to value the FOPs, but when a producer sources an input from an ME country and pays for this input in an ME currency, the Department may value the factor using the actual price paid for this input.[52] Jiheng and Kangtai both reported that they did not purchase any inputs from ME suppliers for the production of the subject merchandise.[53]

With regard to the South African import-based surrogate values, we have disregarded prices that we have reason to believe or suspect may be subsidized, such as those imports from India, Indonesia, South Korea, and Thailand. We have found in other proceedings that these countries maintain broadly available, non-industry-specific export subsidies and, therefore, it is reasonable to infer that all exports to all markets from these countries may be subsidized.[54] We are also guided by the statute's legislative history that explains that it is not necessary to conduct a formal investigation to ensure that such prices are not subsidized.[55] Rather, the Department bases its decision on information that is available to it at the time it is making its determination. Therefore, we have not used prices from these countries in calculating the South African import-based surrogate values. Additionally, we disregarded prices from NME countries.[56] Finally, imports that were labeled as originating from an ''unspecified'' country were excluded from the average value, because the Department could not be certain that they were not from either an NME country or a country with general export subsidies.

**Factor Valuations**

In accordance with section 773(c) of the Act, we calculated NV based on the FOPs reported by Jiheng and Kangtai for the POR. To calculate NV, we multiplied the reported per-unit factor quantities by publicly available South African surrogate values (except as noted below). In selecting the surrogate values, we selected, where possible, publicly available data, which represent an average non-export value and are contemporaneous with the POR, product-specific, and tax-exclusive. As appropriate, we adjusted input prices by including freight costs to render them delivered prices. Specifically, we added to the import surrogate values a

[47] *See, e.g., Narrow Woven Ribbons with Woven Selvedge from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 75 FR 7244, 7251 (February 18, 2010), unchanged in *Narrow Woven Ribbons With Woven Selvedge From the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 75 FR 41808 (July 19, 2010).

[48] In these preliminary results, the Department applied the weighted-average dumping margin calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101 (February 14, 2012) (*Final Modification for Reviews*). In particular, the Department compared monthly weighted-average export prices with monthly weighted-average normal values and granted offsets for non-dumped comparisons in the calculation of the weighted average dumping margin.

[49] *See* Memoranda titled ''Analysis for the Preliminary Results of the 2010–2011 Administrative Review of Chlorinated Isocyanurates from the People's Republic of China: Hebei Jiheng Chemical Company Ltd.,'' and ''Analysis for the Preliminary Results of the 2010–2011 Administrative Review of Chlorinated Isocyanurates from the People's Republic of China: Juancheng Kangtai Chemical Co., Ltd.'' (Kangtai Preliminary Analysis Memorandum) dated June 29, 2012.

[50] *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China,* 71 FR 53079 (September 8, 2006), and accompanying Issues and Decision Memorandum at Comment 17.

[51] *See* Jiheng's November 29, 2011 questionnaire response at 20.

[52] *See* 19 CFR 351.408(c)(1); *see also Shakeproof Assembly Components, Div. of Illinois Tool Works, Inc.* v. *United States,* 268 F.3d 1376, 1382–1383 (Fed. Cir. 2001) (affirming the Department's use of market-based prices to value certain FOPs).

[53] *See* Jiheng's November 29, 2011 Section D response at D–12 and Kangtai's November 28, 2011 Section D response at 7.

[54] *See, e.g., Frontseating Service Valves from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value, Preliminary Negative Determination of Critical Circumstances, and Postponement of Final Determination,* 73 FR 62952, 62957 (October 22, 2008), unchanged in *Frontseating Service Valves From the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances,* 74 FR 10886 (March 13, 2009); and *China National Machinery Import & Export Corporation* v. *United States,* 293 F. Supp. 2d 1334, 1339 (CIT 2003), affirmed 104 Fed. Appx. 183 (Fed. Cir. 2004).

[55] *See* H.R. Rep. No. 100–576 (1988), at 590.

[56] The list of excluded NME countries includes: Armenia, Azerbaijan, Belarus, Georgia, Kyrgyzstan, Moldova, the PRC, Tajikistan, Turkmenistan, Uzbekistan, and Vietnam.

surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory. This adjustment is in accordance with the decision of the U.S. Court of Appeals for the Federal Circuit in *Sigma Corp.* v. *United States,* 117 F.3d 1401, 1408 (Fed. Cir. 1997).[57]

Except as noted below, we valued raw material inputs using the weighted-average unit import values as reported by the South African Revenue Service in GTA.[58] Where we could not obtain publicly available information contemporaneous with the POR with which to value FOPs, we adjusted the surrogate values using, where appropriate, the South African Consumer Price Index as published in the *International Financial Statistics* of the International Monetary Fund,[59] or the Indian Wholesale Price Indexes as published by the Office of the Economic Advisor to the Government of India.[60] We further adjusted these prices to account for freight expenses incurred between the input supplier and respondent.

To value calcium chloride, barium chloride, zinc sulfate, we used *Chemical Weekly* data because South African import data by concentration level was unavailable in the GTA. We adjusted these values for taxes and to account for freight expenses incurred between the supplier and the respondent. We inflated the data to make it contemporaneous with the POR.[61]

To value sulfuric acid, the Department used a price list placed on the record by Petitioners for a South African chemical company called Norceline Chemicals Suppliers. The prices for sulfuric acid are for one specific concentration level, packaged two different ways. The Department took an average of the price, and, because the data is contemporaneous with the POR, we did not inflate the value.

As noted above, Jiheng and Kangtai reported that a U.S. customer provided certain raw materials and packing materials free of charge. Raw materials and packing materials that are provided free of charge to a respondent by its customer and materials for which a respondent is separately reimbursed by its customer are part of the cost of manufacturing, and must be included when calculating NV. Thus, for Jiheng's and Kangtai's products that included raw materials and packing materials provided free of charge, consistent with the Department's practice and section 773(c)(1)(B) of the Act, we used the built-up cost (*i.e.,* the surrogate value for these raw materials and packing materials multiplied by the reported FOPs for these items) in the NV calculation.[62] We also added the built-up costs for the raw materials for which Jiheng was reimbursed by a U.S. customer to NV. Where applicable, we also adjusted these values to account for freight expenses incurred between the nearest port of entry and Jiheng's plants.[63]

Because water was used by the respondents in the production of chlorinated isos, the Department considers water to be a direct material input rather than part of overhead. We valued water using data from the city of Johannesburg's ''Amendment of Tariff Charges for Water for Water Services,'' Annexure ''A'', with tariffs effective July 1, 2010. We did not inflate this rate since it is contemporaneous with the POR.[64]

For packing materials, we used the per-kilogram values obtained from the GTA and made adjustments to account for freight expense incurred between the PRC supplier and the respondents' plants.[65]

Jiheng reported chlorine, hydrogen gas, ammonia gas, and sulfuric acid as by-products in the production of subject merchandise. We find in this administrative review that Jiheng has appropriately explained how by-products are produced during the manufacture of chlorinated isos and has appropriately supported its claim that a by-product offset to NV should be granted. We valued ammonia gas and sulfuric acid using GTA and Norceline Chemicals Suppliers price list data, respectively. The Department determined in the previous review that chlorine and hydrogen are rarely traded via ocean transport on an international basis, and used Indian financial statements to provide more representative values for chlorine and hydrogen gas.[66] In the instant review, the Department is using data from financial statements placed on the record of the last review to value chlorine and hydrogen. Since this data is not contemporaneous with the POR, we inflated it using the wholesale price index from India.[67]

Kangtai reported ammonium sulfate as a by-product in the production of subject merchandise. However, the Department has found that ammonium sulfate is not a by-product of the chlorinated isos production process.[68] The production process does yield ammonia gas and sulfuric acid as by-products, which can be further produced to make ammonium sulfate. The Department adjusted Kangtai's reported ammonium sulfate by-product to calculate an ammonia gas and sulfuric acid by-product.[69] We valued the by-products using GTA and Norceline Chemicals Suppliers price list data.

For electricity, we used data from a South African electric public utility, Eskom. We used an average of the tariff rates for a ''Megaflex'' consumer, which is for time of use electricity for an urban consumer, able to shift load, with a maximum demand of greater than one megavolt ampere, which appears to be the tariff category that most closely matches the category our respondents would be classified in. These electricity rates represent publicly-available information on tax-exclusive electricity rates charged to industries in South Africa.[70]

On June 21, 2011, the Department revised its methodology for valuing the labor input in NME AD proceedings.[71] In *Labor Methodologies,* the Department determined that the best methodology to value the labor input is to use industry-specific labor rates from the primary surrogate country. Additionally, the Department determined that the best data source for industry-specific labor rates is Chapter 6A of the Yearbook.

The Department valued labor in this review using the methodology described

[57] For a detailed description of all surrogate values used for Jiheng and Kangtai, *see* Preliminary Surrogate Value Memorandum.

[58] Available at *http://www.gtis.com/gta/.*

[59] A wholesale price index was not available for Thailand.

[60] *See* Preliminary Surrogate Value Memorandum.

[61] *Id.*

[62] *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China,* and accompanying Issues and Decision Memorandum at Comment 17.

[63] *See* Preliminary Surrogate Value Memorandum.

[64] Available at: *http://www.boi.go.th/index.php?page=utility_costs; see also* Preliminary Surrogate Value Memorandum.

[65] *See* Preliminary Surrogate Value Memorandum.

[66] *See Chlorinated Isocyanurates From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review,* 76 FR 40690 (July 11, 2011).

[67] *See* Preliminary Surrogate Value Memorandum.

[68] *See Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review,* 73 FR 52645 (September 10, 2008) and accompanying Issues and Decision Memorandum at Comment 6.

[69] *See* Kangtai Preliminary Analysis Memorandum for details on these calculations.

[70] *Id.*

[71] *See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor,* 76 FR 36092 (June 21, 2011) (*Labor Methodologies*).

in *Labor Methodologies.* Specifically, to value the respondents' labor, because South Africa does not report labor rates in Chapter 6A of the Yearbook, the Department relied on data reported by India to the ILO in Chapter 6A of the Yearbook. The Department further finds the two-digit description under ISIC-Revision 3 (Manufacture of Chemicals and Chemical Products) to be the best available information on the record because it is specific to the industry being examined, and is therefore derived from industries that produce comparable merchandise. This is the same classification used in the prior review of this case. Accordingly, relying on Chapter 6A of the Yearbook, the Department calculated the labor input using labor data reported by India to the ILO under Sub-Classification 24 of the ISIC-Revision 3 standard, in accordance with section 773(c)(4) of the Act. Because these rates were in effect before the POR, we are adjusting the average value for inflation.[72]

As stated above, the Department used India ILO data reported under Chapter 6A of the Yearbook, which reflects all costs related to labor, including wages, benefits, housing, training, *etc.* Since the financial statements used to calculate the surrogate financial ratios include itemized detail of indirect labor costs, the Department made adjustments to the surrogate financial ratios.[73]

We valued truck freight using an average of truck freight costs as reported in a July 2008 working paper titled ''Transport Prices and Costs in Africa: A Review of the Main International Corridors,'' published by the International Bank for Reconstruction and Development/World Bank and a short-haul freight contract for transportation services in South Africa from October 2011. Since both sources were dated outside the POR, we inflated or deflated them to reach a rate contemporaneous with the POR.[74]

**Financial Ratios**

As discussed above, there are no financial statements from South Africa on the record of this review, and the Department could not find any financial statements from South African companies producing identical or comparable merchandise.[75] To calculate surrogate values for factory overhead, selling, general, and administrative expenses (SG&A), and profit for these preliminary results, we used financial information from Kanoria Chemicals & Industries Limited (an Indian producer of comparable merchandise—stable bleaching powder) for the fiscal year ending March 31, 2011.[76] From this information, we were able to determine average factory overhead as a percentage of the total raw materials, labor, and energy (ML&E), average SG&A as a percentage of ML&E plus overhead (*i.e.,* cost of manufacture), and an average profit rate as a percentage of the cost of manufacture plus SG&A.[77]

**Currency Conversion**

Where the factor valuations were reported in a currency other than U.S. dollars, in accordance with section 773A(a) of the Act, we made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank.

**Preliminary Results**

We preliminarily determine that the following dumping margins exist:

| Exporter | Weight-average margin percentage |
|---|---|
| Hebei Jiheng Chemical Co., Ltd. | 82.29 |
| Juancheng Kangtai Chemical Co., Ltd. | 0.00 |
| Nanning Chemical Industry Co., Ltd. | 82.29 |
| Zhucheng Taisheng Chemical Co., Ltd. | 82.29 |

**Assessment Rates**

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review. The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review. If a respondent's weighted-average dumping margin is above *de minimis* in the final results of this review, we will calculate an importer specific (or customer-specific, if the importer is unknown) assessment rate on the basis of the ratio of the total amount of antidumping duties calculated for the importer's examined sales and the total entered value for those sales in accordance with 19 CFR 351.212(b)(1).[78]

Where an importer-specific (or customer-specific) *ad valorem* rate is zero or *de minimis,* we will instruct CBP to liquidate appropriate entries without regard to antidumping duties.[79] For the companies receiving a separate rate that were not selected for individual review, we will assign an assessment rate based on the average of the weighted-average dumping margins we calculated for the mandatory respondents whose rate were not *de minimis,* as discussed above. We intend to instruct CBP to liquidate entries containing subject merchandise exported by the PRC-wide entity at the PRC-wide rate.

**Cash Deposit Requirements**

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For the exporter's listed above, the cash deposit rate will be the rate established in the final results of this review (except, if the rate is zero or *de minimis, i.e.,* less than 0.5 percent, a zero cash deposit rate will be required for that company); (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise that have not been found to be eligible for a separate rate, the cash deposit rate will be the PRC-wide rate of 285.63 percent;[80] and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter(s) that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

**Disclosure and Public Comment**

We will disclose the calculations used in our analysis to parties to this proceeding within five days of the publication date of this notice, in accordance with 19 CFR 351.224(b).

[72] *See* Preliminary Surrogate Value Memorandum.

[73] *See Labor Methodologies* and Preliminary Surrogate Value Memorandum for details of adjustments.

[74] *See* Preliminary Surrogate Value Memorandum.

[75] *See id.*

[76] *See* Preliminary Surrogate Value Memorandum for a discussion on the selection of financial statements to value financial ratios.

[77] *See* Preliminary Surrogate Value Memorandum.

[78] In these preliminary results, the Department applied the assessment rate calculation method adopted in *Final Modification for Reviews, i.e.,* on the basis of monthly average-to-average comparisons using only the transactions associated with that importer with offsets being provided for non-dumped comparisons.

[79] *See* 19 CFR 351.106(c)(2).

[80] For an explanation on the derivation of the PRC-wide rate, *see Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates From the People's Republic of China,* 70 FR at 24505.

Interested parties are invited to comment on the preliminary results. The schedule for filing case briefs will be provided to parties at a later date. Rebuttal briefs, limited to issues raised in case briefs, may be filed no later than five days after the time limit for filing the case briefs, as specified by 19 CFR 351.309(d). The Department requests that parties submitting case or rebuttal briefs provide an executive summary and a table of authorities as well as an electronic copy.

Any interested party may request a hearing within 30 days of publication of this notice, as provided by 19 CFR 351.310(c). Hearing requests should contain the following information: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the case briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing to be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

The Department intends to issue the final results of this administrative review, which will include the results of its analysis of issues raised in any comments, within 120 days of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act, unless otherwise extended.

### Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These preliminary results are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: June 29, 2012.

**Paul Piquado,**

*Assistant Secretary for Import Administration.*

[FR Doc. 2012–17314 Filed 7–13–12; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–983]**

### Drawn Stainless Steel Sinks From the People's Republic of China: Postponement of Preliminary Determination of Antidumping Duty Investigation

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

**DATES:** *Effective Date:* July 16, 2012.

**FOR FURTHER INFORMATION CONTACT:** Frances Veith or Eve Wang, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4295 or (202) 482–6231, respectively.

**SUPPLEMENTARY INFORMATION:**

### Postponement of Preliminary Determination

On March 27, 2012, the Department of Commerce (''the Department'') initiated an antidumping duty investigation on drawn stainless steel sinks from the People's Republic of China.[1] The notice of initiation stated that, unless postponed, the Department would issue its preliminary determination no later than 140 days after the date of issuance of the initiation, in accordance with section 733(b)(1)(A) of the Tariff Act of 1930, as amended (''the Act''). The preliminary determination is currently due no later than August 8, 2012.

On June 29, 2012, Petitioner, Elkay Manufacturing Company, made a timely request, pursuant to 19 CFR 351.205(b)(2) and (e), for a 50-day postponement of the preliminary determination, in order to allow additional time for the Department to review respondents' sections C and D questionnaire submissions.[2] Because there are no compelling reasons to deny the request, in accordance with section 733(c)(1)(A) of the Act, the Department is postponing the deadline for the preliminary determination by 50 days.

An extension of 50 days from the current deadline of August 8, 2012, would result in a new deadline of September 27, 2012. The deadline for the final determination will continue to be 75 days after the date of the preliminary determination, unless extended.

This notice is issued and published pursuant to section 733(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: July 10, 2012.

**Ronald K. Lorentzen,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 2012–17286 Filed 7–13–12; 8:45 am]

**BILLING CODE 3510–DS–P**

[1] *See Drawn Stainless Steel Sinks From the People's Republic of China: Initiation of Antidumping Duty Investigation,* 77 FR 18207 (March 27, 2012).

[2] *See* Petitioner's letter regarding, ''Drawn Stainless Steel Sinks From The People's Republic of China: Request For Extension Of The Preliminary Determination And The Deadline To Submit Surrogate Country Comments And Surrogate Value Data,'' dated June 29, 2012.

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XC073**

### Fishing Capacity Reduction Program for the Southeast Alaska Purse Seine Salmon Fishery

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

**ACTION:** Notice of industry fee collection system effective date.

**SUMMARY:** NMFS issues this notice to establish the effective date of fees to repay the $13,133,030 reduction loan to finance a fishing capacity reduction program in the Southeast Alaska purse seine salmon fishery. NMFS conducted a referendum to approve the reduction loan repayment fees of $13,133,030 to remove 64 permits, which post-reduction harvesters will repay over a 40-year period. NMFS has tendered reduction payments to the selected bidders.

**DATES:** Fee payment collection will begin on July 22, 2012.

**ADDRESSES:** Send comments about this notice to Paul Marx, Chief, Financial Services Division, NMFS, Attn: SE Alaska Purse Seine Salmon Buyback, 1315 East-West Highway, Silver Spring, MD 20910 (see **FOR FURTHER INFORMATION CONTACT**).

**FOR FURTHER INFORMATION CONTACT:** Michael A. Sturtevant at (301) 427–8799, fax (301) 713–1306, or *Michael.A.Sturtevant@noaa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Background

The Southeast Alaska purse seine salmon fishery is a commercial fishery in Alaska State waters and adjacent Federal waters. It encompasses the commercial taking of salmon with purse

seine gear, and participation is limited to fishermen designated by the Alaska Commercial Fisheries Entry Commission (CFEC).

NMFS published proposed program regulations on May 23, 2011 (76 FR 29707), and final program regulations on October 6, 2011 (76 FR 61985), to implement the reduction program. Subsequently, the Southeast Revitalization Association submitted a capacity reduction plan to NMFS. NMFS approved the plan on February 24, 2012. NMFS published the list of eligible voters on March 1, 2012 (77 FR 12568) and the notice of referendum period on March 29, 2012 (77 FR 19004). Interested persons should review these for further program details.

NMFS conducted a referendum to determine the industry's willingness to repay a fishing capacity reduction loan to purchase the permits identified in the reduction plan. NMFS mailed ballots to 379 permanent permit holders in the fishery designated as S01A by CFEC who were eligible to vote in the referendum. The voting period opened on March 30, 2012, and closed on April 30, 2012. NMFS received 269 timely and valid votes. Two hundred and fifteen of the permit holders voted in favor of the program and the reduction loan repayment fees. This exceeded the majority of permit holders (190) required for industry fee system approval.

On May 7, 2012, NMFS published another **Federal Register** document (77 FR 26744) advising the public that NMFS would tender the program's reduction payments to the 64 selected bidders who would permanently stop fishing with the permits they had relinquished in return for reduction payments. Subsequently, NMFS disbursed $13,133,030 in reduction payments to the 64 selected bidders.

## II. Purpose

This document's purpose is to establish the reduction loan repayment fee's effective date in accordance with subpart M to 50 CFR 600.1107.

## III. Notice

Southeast Alaska purse seine salmon program fee payment and collection will begin on July 22, 2012. Starting on this date, all harvesters of Southeast Alaska purse seine salmon (designated as S01A by CFEC) must pay the fee in accordance with the applicable regulations. All fish buyers of Southeast Alaska purse seine salmon must collect the fee in accordance with the applicable regulations.

The initial fee applicable to the Southeast Alaska purse seine salmon program's reduction fishery is 3.00% of landed value and any subsequent bonus payments. Fish sellers and fish buyers must pay and collect the fee in the manner set out in 50 CFR 600.1107 and the framework rule. Consequently, all harvesters and fish buyers should read subpart L to 50 CFR 600.1013 to understand how fish harvesters must pay and fish buyers must collect the fee.

Dated: July 10, 2012.

**Cherish Johnson,**

*Acting Director, Office of Management and Budget, National Marine Fisheries Service.*

[FR Doc. 2012–17255 Filed 7–13–12; 8:45 am]

**BILLING CODE 3510–22–P**

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XB105**

### Takes of Marine Mammals Incidental to Specified Activities; Three Marine Geophysical Surveys in the Northeast Pacific Ocean, June Through July, 2012

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

**ACTION:** Notice; issuance of three incidental take authorizations (ITA).

**SUMMARY:** In accordance with the Marine Mammal Protection Act (MMPA) regulations, notification is hereby given that we have issued three Incidental Harassment Authorizations to the Lamont-Doherty Earth Observatory (Observatory), a part of Columbia University, to take marine mammals, by Level B harassment, incidental to conducting three consecutive marine geophysical (seismic) surveys in the northeast Pacific Ocean, June through July, 2012.

**DATES:** Effective June 13 through July 25, 2012; July 1 through August 1, 2012; and July 12 through August 10, 2012.

**ADDRESSES:** A copy of the Incidental Harassment Authorizations and application are available by writing to P. Michael Payne, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910 or by telephoning the contacts listed here. A copy of the application containing a list of the references used in this document may be obtained by writing to the above address, telephoning the contact listed here (see **FOR FURTHER INFORMATION CONTACT**) or visiting the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.*

**FOR FURTHER INFORMATION CONTACT:** Jeannine Cody or Howard Goldstein, NMFS, Office of Protected Resources, 301–427–8401.

**SUPPLEMENTARY INFORMATION:**

## Background

Section 101(a)(5)(D) of the MMPA of 1972, as amended (16 U.S.C. 1361 *et seq.*), directs the Secretary of Commerce to authorize, upon request, the incidental, but not intentional, taking of small numbers of marine mammals of a species or population stock, by United States citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if: (1) We make certain findings; (2) the taking is limited to harassment; and (3) we provide a notice of a proposed authorization to the public for review.

We shall grant authorization for the incidental taking of small numbers of marine mammals if we find that the taking will have a negligible impact on the species or stock(s), and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant). The authorization must set forth the permissible methods of taking; other means of effecting the least practicable adverse impact on the species or stock and its habitat; and requirements pertaining to the mitigation, monitoring and reporting of such takings. We have defined ''negligible impact'' in 50 CFR 216.103 as ''* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Section 101(a)(5)(D) of the Act establishes a 45-day time limit for our review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the public comment period, we must either issue or deny the authorization and must publish a notice in the **Federal Register** within 30 days of our determination to issue or deny the authorization.

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: any act of pursuit, torment, or annoyance which (i)

has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

The U.S. National Science Foundation (Foundation) has prepared an ''Environmental Assessment and Finding of No Significant Impact Determination Pursuant to the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.* and Executive Order 12114 Marine Seismic Surveys in the northeastern Pacific Ocean, 2012.'' The Environmental Assessment incorporates an ''Environmental Assessment of a Marine Geophysical Surveys by the R/V *Marcus G. Langseth* in the Northeastern Pacific Ocean, June–July 2012,'' prepared by LGL Limited Environmental Research Associates, on behalf of the Foundation. We also issued a Biological Opinion under section 7 of the Endangered Species Act (ESA) to evaluate the effects of the survey and Incidental Harassment Authorization on marine species listed as threatened or endangered. The Biological Opinion will be available online at: *http://www.nmfs.noaa.gov/pr/consultations/opinions.htm.* The public can view documents cited in this notice by appointment, during regular business hours, at the aforementioned address.

**Summary of Request**

We received an application on January 27, 2012, from the Observatory for the taking by harassment, of small numbers of marine mammals, incidental to conducting three separate marine seismic surveys in the northeast Pacific Ocean. We determined the application complete and adequate on March 27, 2012. On May 2, 2012, we published a notice in the **Federal Register** (77 FR 25966) disclosing the effects on marine mammals, making preliminary determinations, and proposing to issue the Incidental Harassment Authorization. The notice initiated a 30 day public comment period.

The Observatory, with research funding from the Foundation, plans to conduct three research studies on the Juan de Fuca Plate, the Cascadia thrust zone, and the Cascadia subduction margin in waters off the Oregon and Washington coasts. The Observatory will conduct the first survey from June 14 through July 8, 2012, the second survey from July 4 through July 6, 2012, and the third survey from July 12 through July 23, 2012, for a total of 30 days of active seismic operations. Some minor deviation from these dates is possible, depending on logistics, weather conditions, and the need to repeat some lines if data quality is substandard. Therefore, the authorizations are effective from June 13, 2012 to July 25, 2012; July 1 to August 1, 2012; and July 12 to August 10, 2012, respectively.

The Observatory will use one source vessel, the R/V *Marcus G. Langseth* (*Langseth*), a seismic airgun array, a single hydrophone streamer, and ocean bottom seismometers to conduct the seismic surveys.

The surveys will provide data necessary to:

- Characterize the evolution and state of hydration of the Juan de Fuca plate at the Cascadia subduction zone;
- Provide information on the buried structures in the region; and
- Assess the location, physical state, fluid budget, and methane systems of the Juan de Fuca plate boundary and overlying crust.

The results of the three studies will provide background information for generating improved earthquake hazards analyses and a better understanding of the processes that control megathrust earthquakes, which are produced by a sudden slip along the boundary between a subducting and an overriding plate.

In addition to the operations of the seismic airgun array and hydrophone streamer, and the ocean bottom seismometers (seismometers), the Observatory intends to operate a multibeam echosounder and a sub-bottom profiler continuously throughout the surveys.

Acoustic stimuli (i.e., increased underwater sound) generated during the operation of the seismic airgun arrays, may have the potential to cause a short-term behavioral disturbance for marine mammals in the survey area. This is the principal means of marine mammal taking associated with these activities, and the Observatory has requested an authorization to take 26 species of marine mammals by Level B harassment. We do not expect that the use of the multibeam echosounder, the sub-bottom profiler, or the ocean bottom seismometers (seismometers) will result in the take of marine mammals and will discuss our reasoning later in this notice. Also, we do not expect take to result from a collision with the *Langseth* because it is a single vessel moving at relatively slow speeds (4.6 knots (kts); 8.5 kilometers per hour (km/h); 5.3 miles per hour (mph)) during seismic acquisition within the survey, for a relatively short period of time. It is likely that any marine mammal would be able to avoid the vessel.

**Description of the Specified Activities, Dates, Duration, and Specified Geographic Region**

The notice for the proposed Incidental Harassment Authorization (77 FR 25966, May 2, 2012) contained a full description of the Observatory's planned activities. That notice describes the dates, locations, and operational details of the three surveys. The activities to be conducted have not changed between the proposed Incidental Harassment Authorization notice and this final notice announcing the issuance of the Incidental Harassment Authorization; therefore, only a short summary is provided here. For a more detailed description of the authorized action, including vessel and acoustic source specifications, the reader should refer to the notice of the proposed Incidental Harassment Authorization notice (77 FR 25966, May 2, 2012), the Incidental Harassment Authorization application, Environmental Assessment, and associated documents referenced above this section.

*Juan de Fuca Plate Survey*

The first seismic survey would begin on June 14, 2012, and end on July 8, 2012. The *Langseth* will depart from Astoria, Oregon on June 14, 2012, and transit to the survey area in the northeast Pacific Ocean in international waters and the Exclusive Economic Zones of the United States and Canada. The study area will encompass an area bounded by approximately 43 to 48 degrees (°) North by approximately 124 to 130° East (see Figure 1 in the Observatory's Application #1). Water depths in the survey area range from approximately 50 to 3,000 meters (m) (164 feet [ft] to 1.7 nautical miles [nmi]). At the conclusion of the first survey, the *Langseth* would begin a second three-day seismic survey on July 5, 2012, in the same area.

During this survey, the *Langseth* would deploy a 36-airgun array as an energy source, an 8-kilometer (km)-long (4.3 nmi-long) hydrophone streamer, and 46 seismometers.

The Observatory plans to discharge the airgun array along three long transect lines and three semi-circular arcs using the seismometers as the receivers and then repeat along the long transect lines in multichannel seismic mode using the 8-km streamer as the receiver (see Figure 1 in the Observatory's Application #1). Also, the Observatory will use one support vessel, the R/V *Oceanus* (*Oceanus*) to deploy

46 seismometers on the northern onshore-offshore line, retrieve the 46 seismometers from the northern line, and then deploy 39 seismometers on the southern onshore-offshore lines and retrieve them at the conclusion of the survey.

The first study (e.g., equipment testing, startup, line changes, repeat coverage of any areas, and equipment recovery) will require approximately 17 days to complete approximately 3,051 km (1,647.4 nmi) of transect lines. The total survey effort including contingency will consist of approximately 2,878 km (1,554 nmi) of transect lines in depths greater than 1,000 m (3,280.8 ft), 102 km (55.1 nmi) in depths 100 to 1,000 m (328 to 3,280 ft), and 71 km (38.3 nmi) in water depths less than 100 m (328 ft). The northern and southern onshore-offshore lines are 70 to 310 km (37.8 to 167.4 mi) and 15 to 450 km (8.1 to 243 mi) from shore, respectively.

Data acquisition will include approximately 408 hours of airgun operations (i.e., 17 days over 24 hours).

*Cascadia Thrust Zone Survey*

The second survey would begin on July 4, 2012, and end on July 6, 2012. The survey would take place in the U.S. Exclusive Economic Zone in waters off of the Oregon and Washington coasts. The study area will encompass an area bounded by approximately 43.5 to 47° North by approximately 124 to 125° East (see Figure 1 in the Observatory's Application #2). Water depths in the survey area range from approximately 50 to 1,000 m (164 ft to 3,280.8 ft). At the conclusion of this survey, the *Langseth* would return to Astoria, Oregon on July 8, 2012.

The *Langseth* would deploy a 36-airgun array as an energy source, 12 seismometers, and 48 seismometers (33 in Oregon and 15 in Washington) onshore (on land). The Observatory plans to use the *Oceanus* to deploy and retrieve the seismometers.

The Observatory plans to discharge the airgun array along a grid of lines off Oregon and along an onshore-offshore line off Washington (see Figure 1 in the Observatory's Application #2).

The study (e.g., equipment testing, startup, line changes, repeat coverage of any areas, and equipment recovery) will require approximately 3 days to complete approximately 793 km (492.7 mi) of transect lines. The total survey effort including contingency will consist of approximately 5 km (2.7 nmi) of transect lines in depths greater than 1,000 m, 501 km (270.5 mi) in depths 100 to 1,000 m (328 to 3,280 ft), and 287 km (155 nmi) in water depths less than 100 m (328 ft). The northern and southern legs of the onshore-offshore lines are 15 to 70 km (8.1 to 37.8 nmi) and 15 to 50 km (8.1 to 27 nmi) from shore, respectively. Data acquisition will include approximately 72 hours of airgun operations (i.e., 3 days over 24 hours).

*Cascadia Subduction Margin Survey*

The last seismic survey would begin on July 12, 2012, and end on July 23, 2012. The *Langseth* would depart from Astoria, Oregon on July 12, 2012, and transit to waters off of the Washington coast. The study area encompasses an area bounded by approximately 46.5 to 47.5° North by approximately 124.5 to 126° East (see Figure 1 in the Observatory's Application #3). Water depths in the survey area range from approximately 95 to 2,650 m (311.7 ft to 8,694.2 ft). At the conclusion of this survey, the *Langseth* would return to Astoria, Oregon.

The *Langseth* would deploy a 36-airgun array as an energy source and an 8-km-long (4.3 nmi-long) hydrophone streamer. The Observatory plans to discharge the airgun array along nine parallel lines that are spaced eight km apart. If time permits, the *Langseth* would survey an additional two lines perpendicular to the parallel lines (see Figure 1 in the Observatory's Application #3).

The study (e.g., equipment testing, startup, line changes, repeat coverage of any areas, and equipment recovery) will require approximately 10 days to complete approximately 1,147 km (619.3 nmi) of transect lines. The total survey effort including contingency will consist of approximately 785 km (423.9 nmi) of transect lines in depths greater than1,000 m, 350 km (189 nmi) of transect lines in depths 100 to 1,000 m, and 12 km (6.5 mi) of transect lines in water depths less than 100 m. The survey area is 32 to 150 km (17.3 to 81 nmi) from shore. Data acquisition will include approximately 240 hours of airgun operations (i.e., 10 days over 24 hours).

Some minor deviation from these dates is possible, depending on logistics, weather conditions, and the need to repeat some lines if data quality is substandard. Therefore, the issued authorizations are effective from June 13 through July 25, 2012; July 1 through August 1, 2012; and July 12 through August 10, 2012.

**Comments and Responses**

A notice of preliminary determinations and proposed Incidental Harassment Authorization for the Observatory's three proposed seismic surveys was published in the **Federal Register** on May 2, 2012 (77 FR 25966). During the 30-day public comment period NMFS received comments from the Marine Mammal Commission (Commission). The Commission's comments are available online at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.* On June 8 and 11, 2012, we received information and a letter, respectively, from the Orca Network regarding the seismic survey's potential impacts on endangered Southern Resident killer whales after the close of the public comment period. The Orca Network's letter is available online at: *http://www.orcanetwork.org/news/seismicsurvey2012.html* and *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.* The Observatory has made changes and enhancements to the seismic survey plan since they were originally proposed, and additional monitoring and mitigation measures have been required in the Incidental Harassment Authorization. Following is a summary of the Commission's comments and our responses:

*Comment 1:* The Commission recommends that we require the Observatory to re-estimate the proposed exclusion and buffer zones and associated takes of marine mammals using site-specific information—if the exclusion and buffer zones and numbers of takes are not re-estimated require the Observatory to provide a detailed justification explaining the rationale for (1) basing the exclusion and buffer zones for the proposed survey in the northeast Pacific Ocean on empirical data collected in the Gulf of Mexico or on modeling that relies on measurements from the Gulf of Mexico and (2) using simple ratios to adjust for tow depth and applying median values to estimate propagation in intermediate water depths rather than using empirical measurements.

*Response:* With respect to the Commission's first point, based upon the best available information and our analysis of the likely effects of the specified activity on marine mammals and their habitat, we are satisfied that the data supplied by the Observatory are sufficient for us to conduct our analysis and support the determinations under the MMPA, ESA of 1973 (16 U.S.C. 1531 *et seq.*), and the National Environmental Policy Act (NEPA). The identified zones are appropriate for the survey and additional field measurements are not necessary at this time. Thus, for this survey, NMFS will not require the Observatory to re-estimate the proposed exclusion zones and buffer zones and associated number of marine mammal

takes using operational and site-specific environmental parameters.

With respect to the Commission's second point, the Observatory has modeled the exclusion and buffer zones in the action area based on the Observatory's 2003 (Tolstoy *et al.,* 2004) and 2007 to 2008 (Tolstoy *et al.,* 2009) peer-reviewed, calibration studies in the northern Gulf of Mexico. Received levels have been modeled by the Observatory for a number of airgun configurations in relation to distance and direction from the airguns (see Figure 3 of the Incidental Harassment Authorization applications). The Foundation's Environmental Assessment (see Appendix A) includes detailed information on the study, and their modeling process of the calibration experiment in shallow, intermediate, and deep water. The conclusions in Appendix A show that the Observatory's model represents the actual produced sound levels, particularly within the first few kilometers, where the predicted zone (i.e., exclusion zone) lie. At greater distances, local oceanographic variations begin to take effect, and the model tends to over predict.

Because the modeling matches the observed measurement data, the authors concluded that those using the models to predict zones can continue to do so, including predicting exclusion zones and buffer zones around the vessel for various tow depths. At present, the Observatory's model does not account for site-specific environmental conditions, and the calibration study analysis of the model predicted that using site-specific information may actually estimate less conservative exclusion zones at greater distances.

While it is difficult to estimate exposures of marine mammals to acoustic stimuli, we are confident that the Observatory's approach to quantifying the exclusion and buffer zones uses the best available scientific information (as required by our regulations) and estimation methodologies. After considering this comment and evaluating the respective approaches for establishing exclusion and buffer zones, we have determined that the Observatory's approach and corresponding monitoring and mitigation measures will effect the least practicable impact on the affected marine mammal species or stocks.

*Comment 2:* The Commission recommends that we require the Observatory to re-estimate the number of takes during the first survey (i.e., Juan de Fuca plate survey) by accounting for two passes over the three long transect lines, which should effectively double the estimated number of takes from a single survey pass of those lines.

*Response:* NMFS and the Observatory base the estimated number of takes on the number of individual animals that are exposed to sound levels greater than or equal to 160 dB (rms), and some animals may be exposed multiple times in a 24 hour period. In the context of a diel cycle, if multiple exposures occur to an individual within a 24 hour period, NMFS and the Observatory considered this as one take, for purposes of estimating the number takes by Level B harassment. The Observatory's calculated number of takes assumes that the animals are stationary, so two passes over the three long transect lines is affecting the same number of individuals twice. Because the animals are considered stationary, these calculated take numbers are likely overestimates, as animals are constantly moving in the real marine environment. The Observatory's use of these peer-reviewed, model-based, density estimates are the best available information to estimate density for the survey area and to estimate the number of authorized takes for the seismic surveys in the northeastern Pacific Ocean.

*Comment 3:* The Commission recommends that we prohibit an 8 minute pause following the sighting of a marine mammal in the exclusion zone and extend that pause to cover the maximum dive times of the species likely to be encountered prior to resuming airgun operations after both power-down and shut-down procedures.

*Response:* The Incidental Harassment Authorization specifies the conditions under which the *Langseth* will resume full-power operations of the airguns after a power-down or shut-down. During periods of active seismic operations, there are occasions when the airguns need to be temporarily shut-down (e.g., due to equipment failure, maintenance, or shut-down) or when a power-down is necessary (e.g., when a marine mammal is seen entering or about to enter the exclusion zone) for less than 8 minutes.

Should the airguns be inactive or powered-down for more than 8 minutes, then the Observatory would follow the ramp-up procedures identified in the ''Mitigation'' section (discussed later in this document) where airguns will be re-started beginning with the smallest airgun in the array and increase in steps not to exceed 6 dB per 5 minutes over a total duration of approximately 30 minutes. We and the Foundation believe that the 8 minute period in question is an appropriate minimum amount of time to pass after which a ramp-up process should be followed. In these instances, should it be possible for the Observatory to reactivate the airguns without exceeding the eight minute period (e.g., equipment is fixed or a marine mammal is visually observed to have left the exclusion zone for the full source level), then the Observatory would reactivate the airguns to the full operating source level identified for the survey (in this case 6,600 $in^3$) without need for initiating ramp-up procedures. In the event a marine mammal enters the exclusion zone and the Observatory initiates a power-down, and the Protected Species Observers do not visually observe the marine mammal leaving the exclusion zone, then the Observatory must wait 15 minutes (for species with shorter dive durations—small odontocetes and pinnipeds) or 30 minutes (for species with longer dive durations—mysticetes and large ondontocetes) after the last sighting before initiating a 30-minute ramp-up. However, ramp-up will not occur as long as a marine mammal is detected within the exclusion zone, which provides more time for animals to leave the exclusion zone, and accounts for the position, swim speed, and heading of marine mammals within the exclusion zone.

We recognize that several species of deep-diving cetaceans are capable of remaining underwater for more than 30 minutes (e.g., sperm whales and several species of beaked whales); however, for the following reasons we believe that 30 minutes is an adequate length for the monitoring period prior to the ramp-up of airguns:

(1) Because the *Langseth* is required to monitor before ramp-up of the airgun array, the time of monitoring prior to the start-up of any but the smallest array is effectively longer than 30 minutes (ramp-up will begin with the smallest airgun in the array and airguns will be added in sequence such that the source level of the array will increase in steps not exceeding approximately 6 dB per five minute period over a total duration of about 30 minutes);

(2) In many cases Protected Species Observers are observing during times when the Observatory is not operating the seismic airguns and would observe the area prior to the 30-minute observation period;

(3) The majority of the species that may be exposed do not stay underwater more than 30 minutes; and

(4) All else being equal and if deep-diving individuals happened to be in the area in the short time immediately prior to the pre-ramp-up monitoring, if an animal's maximum underwater dive

time is 45 minutes, then there is only a one in three chance that the last random surfacing would occur prior to the beginning of the required 30 minute monitoring period and that the animal would not be seen during that 30-minute period.

Finally, seismic vessels are moving continuously (because of the long, towed array and streamer) and we believe that unless the animal submerges and follows at the speed of the vessel (highly unlikely, especially when considering that a significant part of their movement is vertical [deep-diving]), the vessel will be far beyond the length of the exclusion zone within 30 minutes, and therefore it will be safe to start the airguns again.

Under the MMPA, incidental take authorizations must include means of effecting the least practicable impact on marine mammal species and their habitat. Monitoring and mitigation measures are designed to comply with this requirement. The effectiveness of monitoring is science-based, and monitoring and mitigation measures must be ''practicable.'' We believe that the framework for visual monitoring will: (1) Be effective at spotting almost all species for which take is requested; and (2) that imposing additional requirements, such as those suggested by the Commission, would not meaningfully increase the effectiveness of observing marine mammals approaching or entering exclusion zones and thus further minimize the potential for take.

*Comment 4:* The Commission recommends that we provide additional justification for our preliminary determination that the proposed monitoring program will be sufficient to detect, with a high level of confidence, all marine mammals within or entering the identified exclusion and buffer zones—such justification should (1) Identify those species that it believes can be detected with a high degree of confidence using visual monitoring only under the expected environmental conditions, (2) describe detection probability as a function of distance from the vessel, (3) describe changes in detection probability under various sea state and weather conditions and light levels, and (4) explain how close to the vessel marine mammals must be for observers to achieve high nighttime detection rates.

*Response:* We believe that the planned monitoring program will be sufficient to detect (using visual monitoring and passive acoustic monitoring), with reasonable certainty, marine mammals within or entering the identified exclusion zones. This monitoring, along with the required mitigation measures, will result in the least practicable impact on the affected species or stocks and will result in a negligible impact on the affected species or stocks of marine mammals. Also, NMFS expects some animals to avoid areas around the airgun array ensonified at the level of the exclusion zone.

We acknowledge that the detection probability for certain species of marine mammals varies depending on the animal's size and behavior, as well as sea state, weather conditions, and light levels. The detectability of marine mammals likely decreases in low light (i.e., darkness), higher Beaufort sea states and wind conditions, and poor weather (e.g., fog and/or rain). However, at present, we view the combination of visual monitoring and passive acoustic monitoring as the most effective monitoring and mitigation techniques available for detecting marine mammals within or entering the exclusion zone. The final monitoring and mitigation measures are the most effective and feasible measures, and we are not aware of any additional measures which could meaningfully increase the likelihood of detecting marine mammals in and around the exclusion zone. Further, public comment has not revealed any additional monitoring and mitigation measures that could be feasibly implemented to increase the effectiveness of detection.

The Foundation and Observatory are receptive to incorporating proven technologies and techniques to enhance the current monitoring and mitigation program. Until proven technological advances are made nighttime mitigation measures during operations include combinations of the use of Protected Species Visual Observers for ramp-ups, passive acoustic monitoring, night vision devices provided to Protected Species Visual Observers, and continuous shooting of a mitigation airgun. Should the airgun array be powered-down the operation of a single airgun would continue to serve as a sound deterrent to marine mammals. In the event of a complete shut-down of the airgun array at night for mitigation or repairs, the Observatory suspends the data collection until 30 minutes after nautical twilight-dawn (when Protected Species Visual Observers are able to clear the exclusion zone). The Observatory will not activate the airguns until the entire exclusion zone is visible and free of marine mammals for at least 30 minutes.

In cooperation with us, the Observatory will be conducting efficacy experiments of night vision devices during a future *Langseth* cruise. In addition, in response to a recommendation from us, the Observatory is evaluating the use of forward-looking thermal imaging cameras to supplement nighttime monitoring and mitigation practices. During other low-power seismic and seafloor mapping surveys throughout the world, the Observatory successfully used these devices while conducting nighttime seismic operations.

*Comment 5:* The Commission recommends that we consult with the funding agency (i.e., the Foundation) and individual applicants (i.e., the Observatory and U.S. Geological Survey) to develop, validate, and implement a monitoring program that provides a scientifically sound, reasonably accurate assessment of the types of marine mammal taking and the number of marine mammals taken.

*Response:* Several studies have reported on the abundance and distribution of marine mammals inhabiting the Pacific Ocean, and the Observatory has incorporated these data into their analyses used to predict marine mammal take in their Incidental Harassment Authorization applications. We believe that the Observatory's approach for estimating abundance in the survey areas (prior to the survey) is the best available approach.

There will be periods of transit time during the cruise, and Protected Species Observers will be on watch prior to and after the seismic portions of the surveys, in addition to during the surveys. The collection of this visual observational data by Protected Species Observers may contribute to baseline data on marine mammals (presence/absence) and provide some generalized support for estimated take numbers, but it is unlikely that the information gathered from these cruises alone would result in any statistically robust conclusions for any particular species because of the small number of animals typically observed.

We acknowledge the Commission's recommendations and are open to further coordination with the Commission, Foundation (the vessel owner), and the Observatory (the ship operator on behalf of the Foundation), to develop, validate, and implement a monitoring program that will provide or contribute towards a more scientifically sound and reasonably accurate assessment of the types of marine mammal taking and the number of marine mammals taken. However, the cruise's primary focus is marine seismic research, and the surveys may be operationally limited due to considerations such as location, time, fuel, services, and other resources.

*Comment 6:* The Commission recommends that we require the Observatory to (1) Report the number of marine mammals that were detected acoustically and for which a power-down or shut-down of the airguns was initiated, (2) specify if such animals also were detected visually, (3) compare the results from the two monitoring methods (visual versus acoustic) to help identify their respective strengths and weaknesses, and (4) use that information to improve mitigation and monitoring methods.

*Response:* The Incidental Harassment Authorization requires that Protected Species Acoustic Observers on the *Langseth* do and record the following when a marine mammal is detected by passive acoustic monitoring:

(i) Notify the on-duty Protected Species Visual Observer(s) immediately of a vocalizing marine mammal so a power-down or shut-down can be initiated, if required:

(ii) Enter the information regarding the vocalization into a database. The data to be entered include an acoustic encounter identification number, whether it was linked with a visual sighting, data, time when first and last heard and whenever any additional information was recorded, position, and water depth when first detected, bearing if determinable, species or species group (e.g., unidentified dolphin, sperm whale), types and nature of sounds heard (e.g., clicks, continuous, sporadic, whistles, creaks, burst pulses, strength of signal, etc.), and any other notable information.

We acknowledge the Commission's request for a comparison between the Observatory's visual and acoustic monitoring programs, and we will work with the Foundation (the vessel owner) and the Observatory (the ship operator on behalf of the Foundation) to analyze the results of the two monitoring methods to help identify their respective strengths and weaknesses. The results of our analyses may provide information to improve mitigation and monitoring for future seismic surveys.

The Observatory reports on the number of acoustic detections made by the passive acoustic monitoring system within the post-cruise monitoring reports as required by the Incidental Harassment Authorization. The report also includes a description of any acoustic detections that were concurrent with visual sightings, which allows for a comparison of acoustic and visual detection methods for each cruise. The post-cruise monitoring reports also include the following information: total operations effort in daylight (hours), total operation effort at night (hours), total number of hours of visual observations conducted, total number of sightings, and total number of hours of acoustic detections conducted.

LGL Ltd., Environmental Research Associates (LGL), a contractor for the Observatory, has processed sighting and density data, and their publications can be viewed online at: *http://www.lgl.com/index.php?option=con_content&view=article&id=69&Itemid=162&lang=en.* Post-cruise monitoring reports are currently available on our MMPA Incidental Take Program Web site (see **ADDRESSES**) and on the Foundation's Web site (*http://www.nsf.gov/geo/oce/envcomp/index.jsp*) should there be interest in further analysis of this data by the public.

*Comment 7:* The Commission recommends that we work with the Foundation to analyze those data collected during ramp-up procedures to help determine the effectiveness of those procedures as a mitigation measure for seismic surveys.

*Response:* We acknowledge the Commission's request for an analysis of ramp-ups and will work with the Foundation and the Observatory to help identify the effectiveness of the mitigation measure for seismic surveys. The Incidental Harassment Authorization requires that Protected Species Observers on the *Langseth* make observations for 30 minutes prior to ramp-up, during all ramp-ups, and during all daytime seismic operations and record the following information when a marine mammal is sighted:

(i) Species, group size, age/size/sex categories (if determinable), behavior when first sighted and after initial sighting, heading (if consistent), bearing and distance from the seismic vessel, sighting cue, apparent reaction of the airguns or vessel (e.g., none, avoidance, approach, paralleling, etc., and including responses to ramp-up), and behavioral pace; and

(ii) Time, location, heading, speed, activity of the vessel (including number of airguns operating and whether in state of ramp-up or shut-down), Beaufort wind force and sea state, visibility, and sun glare.

One of the primary purposes of monitoring is to result in ''increased knowledge of the species'' and the effectiveness of required monitoring and mitigation measures. The effectiveness of ramp-up as a mitigation measure and marine mammal reaction to ramp-up would be useful information in this regard. We require the Foundation and the Observatory to gather all data that could potentially provide information regarding the effectiveness of ramp-up as a mitigation measure in its monitoring report. However, considering the low numbers of marine mammal sightings and low number of ramp-ups, it is unlikely that the information will result in any statistically robust conclusions for this particular seismic survey. Over the long term, these requirements may provide information regarding the effectiveness of ramp-up as a mitigation measure, provided Protected Species Observers detect animals during ramp-up.

**Description of the Marine Mammals in the Area of the Specified Activity**

Thirty-one marine mammal species under our jurisdiction may occur in the survey areas, including 19 odontocetes (toothed cetaceans), seven mysticetes (baleen whales), and five species of pinniped during June through July, 2012. Six of these species and two stocks are listed as endangered under the ESA, including the blue (*Balaenoptera musculus*), fin (*Balaenoptera physalus*), humpback (*Megaptera novaeangliae*), north Pacific right (*Eubalaena japonica*), sei (*Balaenoptera borealis*), and sperm (*Physeter macrocephalus*) whales; the southern resident stock of killer (*Orcinus orca*) whales; and the eastern U.S. stock of the Steller sea lion (*Eumetopias jubatus*).

The U.S. Fish and Wildlife Service manages the northern sea otter (*Enhydra lutis*) (listed under the ESA). Because this species is not under our jurisdiction, we do not consider this species further in this notice.

Based on available data, the Observatory does not expect to encounter five of the 31 species in the survey areas because of their rare and/or extralimital occurrence in the survey areas. They include the: the North Pacific right, false killer (*Pseudorca crassidens*), and short-finned pilot (*Globicephala macrorhynchus*) whales; the California sea lion (*Zalophus californianus*); and the bottlenose dolphin (*Tursiops truncatus*). Accordingly, we did not consider these species in greater detail, and the authorization only addresses take for 26 species: six mysticetes, 16 odontocetes, and four pinnipeds.

Of these 26 species, the most common marine mammals in the survey area will be the: harbor porpoise (*Phocoena phocoena*), Dall's porpoise (*Phocoenoides dalli*), northern fur seal (*Callorhinus ursinus*), and northern elephant seal (*Mirounga angustirostris*).

Table 1 presents information on the abundance, distribution, and conservation status of the marine mammals that may occur in the

proposed survey area June through July, 2012.

TABLE 1—HABITAT, ABUNDANCE, DENSITY, AND ESA STATUS OF MARINE MAMMALS THAT MAY OCCUR IN OR NEAR THE SEISMIC SURVEY AREAS IN THE NORTHEAST PACIFIC OCEAN

[See text and Tables 2 and 3 in the Observatory's applications and the Foundation's Environmental Assessment for further details]

| Species | Habitat | Regional abundance [4] | ESA [1] | MMPA [2] | Density (#/1,000 km$^2$) [3] |
|---|---|---|---|---|---|
| Mysticetes: | | | | | |
| North Pacific right whale (*Eubalaena japonica*). | Pelagic and coastal. | 31 [4] | EN | D | 0 |
| Gray whale (*Eschrictius robustus*). | Coastal, shallow shelf. | 19,126 [5] | DL (Eastern stock) EN (Western stock) | NC (Eastern stock) D (Western stock). | 3.21 |
| Humpback whale (*Megaptera novaeangliae*). | Mainly nearshore, banks. | 20,800 [6] | EN | D | 0.81 |
| Minke whale (*Balaenoptera acutorostrata*). | Pelagic and coastal. | 9,000 [7] | NL | NC | 0.46 |
| Sei whale (*Balaenoptera borealis*). | Primarily offshore, pelagic. | 12,620 [8] | EN | D | 0.16 |
| Fin whale (*Balaenoptera physalus*). | Continental slope, pelagic. | 13,620 to 18,680 [9] | EN | D | 1.29 |
| Blue whale (*Balaenoptera musculus*). | Pelagic, shelf, coastal. | 2,597 | EN | D | 0.18 |
| Odontocetes: | | | | | |
| Sperm whale (*Physeter macrocephalus*). | Pelagic, deep sea | 24,000 [10] | EN | D | 1.02 |
| Pygmy sperm whale (*Kogia breviceps*). | Deep waters off the shelf. | NA | NL | NC | 0.71 |
| Dwarf sperm whale (*Kogia sima*) | Deep waters off the shelf. | NA | NL | NC | 0.71 |
| Cuvier's beaked whale (*Ziphius cavirostris*). | Pelagic | 2,143 | NL | NC | 0.43 |
| Baird's beaked whale (*Berardius bairdii*). | Pelagic | 907 | NL | NC | 1.18 |
| Blainville's beaked whale (*Mesoplodon densirostris*). | Pelagic | 1,024 [11] | NL | NC | 1.75 |
| Hubb's beaked whale (*Mesoplodon carlhubbsi*). | Slope, offshore | 1,024 [11] | NL | NC | 1.75 |
| Stejneger's beaked whale (*Mesoplodon stejnegeri*). | Slope, offshore | 1,024 [11] | NL | NC | 1.75 |
| Bottlenose dolphin (*Tursiops truncatus*). | Coastal, oceanic, shelf break. | 1,006 [12] | NL | NC D—Western North Atlantic coastal. | 0 |
| Striped dolphin (*Stenella coeruleoalba*). | Off continental shelf. | 10,908 | NL | NC | 0.04 |
| Short-beaked common dolphin (*Delphinus delphis*). | Shelf, pelagic, seamounts. | 411,211 | NL | NC | 10.28 |
| Pacific white-sided dolphin (*Lagenorhynchus obliquidens*). | Offshore, slope | 26,930 | NL | NC | 34.91 |
| Northern right whale dolphin (*Lissodelphis borealis*). | Slope, offshore waters. | 8,334 | NL | NC | 12.88 |
| Risso's dolphin (*Grampus griseus*). | Deep water, seamounts. | 6,272 | NL | NC | 11.19 |
| False killer whale (*Pseudorca crassidens*). | Pelagic | NA | NL Proposed EN—insular Hawaiian. | NC | 0 |
| Killer whale (*Orcinus orca*) | Pelagic, shelf, coastal. | 2,250 to 2,700 | NL EN—Southern resident [13]. | NC D—Southern resident, AT1 transient. | 1.66 |
| Short-finned pilot whale (*Globicephala macrorhynchus*). | Pelagic, shelf coastal. | 760 | NL | NC | 0 |
| Harbor porpoise (*Phocoena phocoena*). | Coastal and inland waters. | 55,255 [13] | NL | NC | 632.4 |
| Dall's porpoise (*Phocoenoides dalli*). | Shelf, slope, offshore. | 42,000 | NL | NC | 83.82 |
| Pinnipeds: | | | | | |
| Northern fur seal (*Callorhinus ursinus*). | Pelagic, offshore | 653,171 [5] | NL | NC D—Pribilof Island, Eastern Pacific stock. | 83.62 |
| California sea lion (*Zalophus californianus*). | Coastal, shelf | 296,750 | NL | NC | 0 |

TABLE 1—HABITAT, ABUNDANCE, DENSITY, AND ESA STATUS OF MARINE MAMMALS THAT MAY OCCUR IN OR NEAR THE SEISMIC SURVEY AREAS IN THE NORTHEAST PACIFIC OCEAN—Continued

[See text and Tables 2 and 3 in the Observatory's applications and the Foundation's Environmental Assessment for further details]

| Species | Habitat | Regional abundance [4] | ESA [1] | MMPA [2] | Density (#/1,000 km$^2$) [3] |
|---|---|---|---|---|---|
| Steller sea lion (*Eumetopias jubatus*). | Coastal, shelf | 58,334 to 72,223 [5] | T—Eastern stock<br>EN—Western stock | D | 13.12 |
| Pacific harbor seal (*Phoca vitulina richardsi*). | Coastal | 24,732 [14] | NL | NC | 292.3 |
| Northern elephant seal (*Mirounga angustirostris*). | Coastal, pelagic in migration. | 124,000 [15] | NL | NC | 45.81 |

NA = Not available or not assessed.
[1] U.S. Endangered Species Act: EN = Endangered, T = Threatened, DL = Delisted, NL = Not listed.
[2] U.S. Marine Mammal Protection Act: D = Depleted, NC = Not Classified.
[3] Density estimate as listed in Table 3 of the applications.
[4] Bering Sea (Wade *et al.,* 2010).
[5] Eastern North Pacific (Allen and Angliss, 2011).
[6] North Pacific (Barlow *et al.,* 2009).
[7] North Pacific (Wada, 1976).
[8] North Pacific (Tillman, 1977).
[9] North Pacific (Ohsumi and Wada, 1974).
[10] Eastern Temperate North Pacific (Whitehead, 2002a).
[11] All *Mesoplodon* spp.
[12] Offshore stock (Carretta *et al.,* 2011a).
[13] Eastern North Pacific Southern Resident Stock of killer whales is listed as EN under ESA.
[14] Northern Oregon/Washington Coast and Northern California/Southern Oregon stocks.
[15] Oregon/Washington Coastal Stock (Carretta *et al.,* 2011a).

Refer to sections III and IV of the Observatory's applications for detailed information regarding the abundance and distribution, population status, and life history and behavior of these species and their occurrence in the project area. The applications also present how the Observatory calculated the estimated densities for the marine mammals in the survey area. We have reviewed these data and determined them to be the best available scientific information for the purposes of the Incidental Harassment Authorizations.

**Potential Effects on Marine Mammals**

Acoustic stimuli generated by the operation of the airguns, which introduce sound into the marine environment, may have the potential to cause Level B harassment of marine mammals in the survey area. The effects of sounds from airgun operations might include one or more of the following: Tolerance, masking of natural sounds, behavioral disturbance, temporary or permanent impairment, or non-auditory physical or physiological effects (Richardson *et al.,* 1995; Gordon *et al.,* 2004; Nowacek *et al.,* 2007; Southall *et al.,* 2007). Permanent hearing impairment, in the unlikely event that it occurred, would constitute injury, but temporary threshold shift is not an injury (Southall *et al.,* 2007). Although we cannot exclude the possibility entirely, it is unlikely that the project would result in any cases of temporary or permanent hearing impairment, or any significant non-auditory physical or physiological effects. Based on the available data and studies described in this document, we expect some behavioral disturbance, but we expect the disturbance to be localized.

The notice of the proposed Incidental Harassment Authorization (77 FR 25966, May 2, 2012) included a discussion of the effects of sound from airguns on mysticetes, ondontocetes, and pinnipeds including tolerance, masking, behavioral disturbance, hearing impairment, and other non-auditory physical effects. We refer the reader to that document, as well as the Observatory's applications, and Environmental Assessment for additional information on the behavioral reactions (or lack thereof) by all types of marine mammals to seismic surveys.

**Anticipated Effects on Marine Mammal Habitat, Fish, Fisheries and Invertebrates**

We included a detailed discussion of the potential effects of this action on marine mammal habitat, including physiological and behavioral effects on marine fish, fisheries, and invertebrates in the notice of the proposed Incidental Harassment Authorization (77 FR 25966, May 2, 2012). While we anticipate that the specified activity may result in marine mammals avoiding certain areas due to temporary ensonification, this impact to habitat its temporary and reversible which we considered in further detail in the notice of the proposed Incidental Harassment Authorization (77 FR 25966, May 2, 2012) as behavioral modification. The main impact associated with the activity will be temporarily elevated noise levels and the associated direct effects on marine mammals.

Recent work by Andre *et al.* (2011) purports to present the first morphological and ultrastructural evidence of massive acoustic trauma (i.e., permanent and substantial alterations of statocyst sensory hair cells) in four cephalopod species subjected to low-frequency sound. The cephalopods, primarily cuttlefish, were exposed to continuous 40 to 400 Hz sinusoidal wave sweeps (100% duty cycle and 1 s sweep period) for two hours while captive in relatively small tanks (one 2,000 liter (L 2 m$^3$] and one 200 L [0.2 m$^3$] tank). The received SPL was reported as 175 ± 5 dB re 1 μPa, with peak levels at 175 dB re 1 μPa. As in the McCauley *et al.* (2003) paper on sensory hair cell damage in pink snapper as a result of exposure to seismic sound (described in the notice of the proposed Incidental Harassment Authorization), the cephalopods were subjected to higher sound levels than they would be under natural conditions, and they were unable to swim away from the sound source.

**Mitigation**

In order to issue an ITA under section 101(a)(5)(D) of the MMPA, we must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds,

and areas of similar significance, and the availability of such species or stock for taking for certain subsistence uses.

The Observatory has based the mitigation measures which they will implement during the seismic survey, on the following:

(1) Protocols used during previous seismic research cruises as approved by us;

(2) Previous Incidental Harassment Authorization applications and authorizations that we have approved and authorized; and

(3) Recommended best practices in Richardson *et al.* (1995), Pierson *et al.* (1998), and Weir and Dolman (2007).

To reduce the potential for disturbance from acoustic stimuli associated with the activities, the Observatory and/or its designees is required to implement the following mitigation measures for marine mammals:

(1) Exclusion zones;

(2) Power-down procedures;

(3) Shut-down procedures;

(4) Ramp-up procedures; and

(5) Additional measures for species of concern.

*Exclusion Zones*—The Observatory uses safety radii to designate exclusion zones and to estimate take for marine mammals. Table 2 (presented earlier in this document) shows the distances at which one would expect to receive three sound levels (160-, 180-, and 190-dB) from the 36-airgun array and a single airgun. The 180-dB and 190-dB level shut-down criteria are applicable to cetaceans and pinnipeds, respectively, as specified by NMFS (2000). The Observatory used these levels to establish the exclusion zones.

If the Protected Species Visual Observer detects marine mammal(s) within or about to enter the appropriate exclusion zone, the *Langseth* crew will immediately power-down the airgun array, or perform a shut-down if necessary (see Shut-down Procedures).

Table 2 summarizes the predicted distances at which sound levels (160, 180, and 190 dB [rms]) are expected to be received from the airgun array operating in shallow, intermediate, and deep water depths.

TABLE 2—DISTANCES TO WHICH SOUND LEVELS ≥190, 180, AND 160 DB RE 1 μPA (RMS) COULD BE RECEIVED IN SHALLOW, INTERMEDIATE, AND DEEP WATER DURING THE THREE SEISMIC SURVEYS IN THE NORTHEASTERN PACIFIC OCEAN, JUNE TO JULY 2012

[Distances are based on model results provided by the Observatory]

| Source and volume (in$^3$) | Tow depth (m) | Water depth (m) | Predicted RMS radii distances [2] (m) | | |
|---|---|---|---|---|---|
| | | | 160 dB | 180 dB | 190 dB |
| Single Bolt airgun (40 in$^3$) | [1] 6–15 | Deep (>1,000) | 385 | 40 | 12 |
| | | Intermediate (100 to 1,000) | 578 | 60 | 18 |
| | | Shallow (<100) | 1,050 | 296 | 150 |
| 36-Airgun Array (6,600 in$^3$) | 9 | Deep (>1,000) | 3,850 | 940 | 400 |
| | | Intermediate (100 to 1,000) | 12,200 | 1,540 | 550 |
| | | Shallow (<100) | 20,550 | 2,140 | 680 |
| 36-Airgun Array (6,600 in$^3$) | 12 | Deep (>1,000) | 4,400 | 1,100 | 460 |
| | | Intermediate (100 to 1,000) | 13,935 | 1,810 | 615 |
| | | Shallow (<100) | 23,470 | 2,250 | 770 |
| 36-Airgun Array (6,600 in$^3$) | 15 | Deep (>1,000) | 4,490 | 1,200 | 520 |
| | | Intermediate (100 to 1,000) | 15,650 | 1,975 | 690 |
| | | Shallow (<100) | 26,350 | 2,750 | 865 |

[1] For a single airgun, the tow depth has minimal effect on the maximum near-field output and the shape of the frequency spectrum for the single airgun; thus, the predicted exclusion zones are essentially the same at different tow depths.

[2] The Observatory has based the radii for the array on data in Tolstoy *et al.* (2009) and has corrected for tow depth using modeled results. They have based the predicted radii for a single airgun upon their model (see Figure 3 in application #1).

*Power-down Procedures* – A power-down involves decreasing the number of airguns in use such that the radius of the 180-dB (or 190-dB) zone is smaller to the extent that marine mammals are no longer within or about to enter the exclusion zone. A power-down of the airgun array can also occur when the vessel is moving from one seismic line to another. During a power-down for mitigation, the Observatory will operate one airgun (40 in$^3$). The continued operation of one airgun is intended to alert marine mammals to the presence of the seismic vessel in the area. In contrast, a shut-down occurs when the *Langseth* suspends all airgun activity.

If the Protected Species Observer detects a marine mammal outside the exclusion zone and the animal is likely to enter the zone, the crew will power-down the airguns to reduce the size of the 180-dB exclusion zone before the animal enters that zone.

Likewise, if a mammal is already within the zone when first detected, the crew will power-down the airguns immediately. During a power-down of the airgun array, the crew will operate a single 40-in$^3$ airgun which has a smaller exclusion zone. If the Protected Species Observer detects a marine mammal within or near the smaller exclusion zone around the airgun (Table 2), the crew will shut-down the single airgun (see next section).

*Shut-down Procedures*—The *Langseth* crew will shut-down the operating airgun(s) if a marine mammal is seen within or approaching the exclusion zone for the single airgun. The crew will implement a shut-down:

(1) If an animal enters the exclusion zone of the single airgun after the crew has initiated a power-down; or

(2) If an animal is initially seen within the exclusion zone of the single airgun when more than one airgun (typically the full airgun array) is operating.

Considering the conservation status for endangered North Pacific right whales and Southern Resident killer whales, the *Langseth* crew will shut-down the airgun(s) immediately in the unlikely event that these species are visually sighted and/or acoustically detected, regardless of the distance from the vessel. Ramp-up will only begin if the animals have not been visually sighted or acoustically detected for 30 minutes.

*Resuming Airgun Operations After a Power-Down*

Following a power-down, the *Langseth* crew will not resume full airgun activity until the marine mammal has cleared the 180-dB exclusion zone

(see Table 2). The Protected Species Observers will consider the animal to have cleared the exclusion zone if:

- The observer has visually observed the animal leave the exclusion zone; or
- An observer has not sighted the animal within the exclusion zone for 15 minutes for species with shorter dive durations (i.e., small odontocetes or pinnipeds), or 30 minutes for species with longer dive durations (i.e., mysticetes and large odontocetes, including sperm, pygmy sperm, dwarf sperm, and beaked whales); or
- The vessel has transited outside the original 180-dB exclusion zone after an 8-minute wait period. This period is based on the 180-dB exclusion zone for the 36-airgun array (940 m) towed at a depth of 9 m (29.5 ft) in relation to the average speed of the *Langseth* while operating the airguns (8.5 km/h; 5.3 mph).

The *Langseth* crew will resume operating the airguns at full power after 15 minutes of sighting any species with short dive durations (i.e., small odontocetes or pinnipeds). Likewise, the crew will resume airgun operations at full power after 30 minutes of sighting any species with longer dive durations (i.e., mysticetes and large odontocetes, including sperm, pygmy sperm, dwarf sperm, and beaked whales).

Because the vessel has transited 1.13 km (0.61 nmi) away from the vicinity of the original sighting during the 8-minute period, implementing ramp-up procedures for the full array after an extended power-down (i.e., transiting for an additional 35 minutes from the location of initial sighting) would not meaningfully increase the effectiveness of observing marine mammals approaching or entering the exclusion zone for the full source level and would not further minimize the potential for take. The *Langseth's* Protected Species Observers are continually monitoring the exclusion zone for the full source level while the mitigation airgun is firing. On average, Protected Species Observers can observe to the horizon (10 km or 5.4 nmi) from the height of the *Langseth's* observation deck and should be able to state with a reasonable degree of confidence whether a marine mammal would be encountered within this distance before resuming airgun operations at full power.

*Resuming Airgun Operations After a Shut-Down*

Following a shut-down, the *Langseth* crew will initiate a ramp-up with the smallest airgun in the array (40-in$^3$). The crew will turn on additional airguns in a sequence such that the source level of the array will increase in steps not exceeding 6 dB per five-minute period over a total duration of approximately 30 minutes. During ramp-up, the Protected Species Observers will monitor the exclusion zone, and if he/she sights a marine mammal, the *Langseth* crew will implement a power-down or shut-down as though the full airgun array were operational.

During periods of active seismic operations, there are occasions when the *Langseth* crew will need to temporarily shut down the airguns due to equipment failure or for maintenance. In this case, if the airguns are inactive longer than eight minutes, the crew will follow ramp-up procedures for a shut-down described earlier and the Protected Species Observers will monitor the full exclusion zone and will implement a power-down or shut-down if necessary.

If the full exclusion zone is not visible to the Protected Species Observer for at least 30 minutes prior to the start of operations in either daylight or nighttime, the *Langseth* crew will not commence ramp-up unless at least one airgun (40-in$^3$ or similar) has been operating during the interruption of seismic survey operations. Given these provisions, it is likely that the vessel's crew will not ramp-up the airgun array from a complete shut-down at night or in thick fog, because the outer part of the zone for that array will not be visible during those conditions.

If one airgun has operated during a power-down period, ramp-up to full power will be permissible at night or in poor visibility, on the assumption that marine mammals will be alerted to the approaching seismic vessel by the sounds from the single airgun and could move away. The vessel's crew will not initiate a ramp-up of the airguns if a marine mammal is sighted within or near the applicable exclusion zones during the day or close to the vessel at night.

*Additional Mitigation Measures for Species of Concern*

The Observatory will communicate with NMFS Northwest Fisheries Science Center (*Brad.Hanson@noaa.gov*, 206–300–0282), NMFS Northwest Regional Office (*Lynne.Barre@noaa.gov*, 206–718–3807 or *Brent.Norberg@noaa.gov*, 206–526–6550), The Whale Museum (*hotline@whalemuseum.org*, 1–800–562–8832), Orca Network (*info@orcanetwork.org*, 1–866–672–2638), and/or other sources for near real-time reporting of the whereabouts of Southern Resident killer whales.

For the Cascadia Thrust Zone Northern Area Survey and the Cascadia Subduction Zone Survey:

- The Observatory will conduct a pre-survey beginning on July 11 (2 days before seismic operations commence) using the support vessel M/V *Northern Light* (*Northern Light*) or equivalent with three Protected Species Observers onboard for purposes of monitoring for the presence of marine mammals (particularly focusing attention to Southern Resident killer whales). The pre-survey will begin upon leaving port and during transit to the Northern Trehu line. The support vessel will then begin a zig-zag transect of the 160 dB buffer zone around the Trehu North line to either side of the Trehu North line from inshore to offshore remaining on the shelf looking for marine mammals. When the *Langseth* is ready to begin the seismic survey, the support vessel *Northern Light* will monitor north of the *Langseth* approximately 5 km away in the same zig-zag fashion as the pre-survey to monitor the 160 dB exclusion zone around the *Langseth* when the ship begins the survey on the continental shelf.
- To the maximum extent practicable, utilize a portable hydrophone from the support vessel *Northern Light* to listen for and determine the presence of vocalizing marine mammals and assist with visual detections.
- Conduct seismic operations according to relevant sightings of marine mammals from the *Langseth* and the support vessel *Northern Light.* For example, if high densities of marine mammals, including Southern Resident killer whales, are sighted in the northern region of the seismic survey area then seismic operations will begin in the southern region of the study area.

We have carefully evaluated the applicant's mitigation measures and have considered a range of other measures in the context of ensuring that we have prescribed the means of effecting the least practicable impact on the affected marine mammal species or stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another:

(1) The manner in which, and the degree to which, we expect that the successful implementation of the measure would minimize adverse impacts to marine mammals;

(2) The proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and

(3) The practicability of the measure for applicant implementation.

Based on our evaluation of the Observatory's measures, as well as other measures considered by us or recommended by the public, we have determined that the mitigation measures

provide the means of effecting the least practicable impacts on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

**Monitoring and Reporting**

In order to issue an Incidental Take Authorization for an activity, section 101(a)(5)(D) of the MMPA states that we must set forth ''requirements pertaining to the monitoring and reporting of such taking.'' The Marine Mammal Protection Act's implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for an authorization must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and the level of taking or impacts on populations of marine mammals expected to be present in the action area.

*Monitoring*

The Observatory will sponsor marine mammal monitoring during the present project, in order to implement the mitigation measures that require real-time monitoring, and to satisfy the monitoring requirements of the Incidental Harassment Authorizations. We describe the Observatory's Monitoring Plan below this section. The Observatory has planned the monitoring work as a self-contained project independent of any other related monitoring projects that may occur in the same regions at the same time. Further, the Observatory would discuss coordination of its monitoring program with any other related work by other groups working in the same area, if practical.

*Vessel-Based Visual Monitoring*

The Observatory will position Protected Species Visual Observers aboard the seismic source vessel to watch for marine mammals near the vessel during daytime airgun operations and during any start-ups at night. Protected Species Visual Observers will also watch for marine mammals near the seismic vessel for at least 30 minutes prior to the start of airgun operations after an extended shut-down (i.e., greater than approximately eight minutes for this cruise). When feasible, the Protected Species Visual Observers will conduct observations during daytime periods when the seismic system is not operating for comparison of sighting rates and behavior with and without airgun operations and between acquisition periods. Based on the observations, the *Langseth* will power-down or shut-down the airguns when marine mammals are observed within or about to enter a designated exclusion zone which is a region in which a possibility exists of adverse effects on animal hearing or other physical effects.

During seismic operations, at least four Protected Species Observers (Protected Species Visual Observer and/or Protected Species Acoustic Observer) will be aboard the *Langseth.* The Observatory will appoint the Protected Species Observers with our concurrence. They will conduct observations during ongoing daytime operations and nighttime ramp-ups of the airgun array. During the majority of seismic operations, two Protected Species Observers will be on duty from the observation tower to monitor marine mammals near the seismic vessel. Using two Protected Species Observers will increase the effectiveness of detecting animals near the source vessel. However, during mealtimes and bathroom breaks, it is sometimes difficult to have two Protected Species Observers on effort, but at least one observer will be on watch during bathroom breaks and mealtimes. Protected Species Observers will be on duty in shifts of no longer than four hours in duration.

Two Protected Species Observers will also be on visual watch during all nighttime ramp-ups of the seismic airguns. A third Protected Species Acoustic Observer will monitor the passive acoustic monitoring equipment 24 hours a day to detect vocalizing marine mammals present in the action area. In summary, a typical daytime cruise would have scheduled two Protected Species Observers (visual) on duty from the observation tower, and a Protected Species Observer (acoustic) on the passive acoustic monitoring system. Before the start of the seismic survey, the Observatory will instruct the vessel's crew to assist in detecting marine mammals and implementing mitigation requirements.

The *Langseth* is a suitable platform for marine mammal observations. When stationed on the observation platform, the eye level will be approximately 21.5 m (70.5 ft) above sea level, and the Protected Species Visual Observer will have a good view around the entire vessel. During daytime, the observers will scan the area around the vessel systematically with reticle binoculars (e.g., 7 x 50 Fujinon), Big-eye binoculars (25 x 150), and with the naked eye. Laser range-finding binoculars (Leica LRF 1200 laser rangefinder or equivalent) will be available to assist with distance estimation. Those are useful in training observers to estimate distances visually, but are generally not useful in measuring distances to animals directly; that is done primarily with the reticles in the binoculars.

When the Protected Species Observers see marine mammals within or about to enter the designated exclusion zone, the *Langseth* will immediately power-down or shut-down the airguns if necessary. The Protected Species Visual Observer(s) will continue to maintain watch to determine when the animal(s) are outside the exclusion zone by visual confirmation. Airgun operations will not resume until the Protected Species Observer has confirmed that the animal has left the zone, or if not observed after 15 minutes for species with shorter dive durations (small odontocetes and pinnipeds) or 30 minutes for species with longer dive durations (mysticetes and large odontocetes, including sperm, pygmy sperm, dwarf sperm, killer, and beaked whales).

*Passive Acoustic Monitoring*

Passive acoustic monitoring will complement the visual monitoring program, when practicable. Visual monitoring typically is not effective during periods of poor visibility or at night, and even with good visibility, is unable to detect marine mammals when they are below the surface or beyond visual range. Acoustical monitoring can be used in conjunction with visual observations to improve detection, identification, and localization of cetaceans. The acoustic monitoring will serve to alert visual observers (if on duty) when vocalizing cetaceans are detected. It is only useful when marine mammals call, but it can be effective either by day or by night, and does not depend on good visibility. The Protected Species Acoustic Observer will monitor the system in real time so that he/she can advise the visual observers if they acoustically detect cetaceans. When the Protected Species Acoustic Observer determines the bearing (primary and mirror-image) to calling cetacean(s), he/she will alert the Protected Species Visual Observer to help him/her sight the calling animal(s).

The passive acoustic monitoring system consists of hardware (i.e., hydrophones) and software. The ''wet end'' of the system consists of a towed hydrophone array that is connected to the vessel by a tow cable. The tow cable is 250 m (820.2 ft) long, and the hydrophones are fitted in the last 10 m (32.8 ft) of cable. A depth gauge is attached to the free end of the cable, and the cable is typically towed at depths less than 20 m (65.6 ft). The *Langseth* crew will deploy the array from a winch located on the back deck. A deck cable

will connect the tow cable to the electronics unit in the main computer lab where the acoustic station, signal conditioning, and processing system will be located. The acoustic signals received by the hydrophones are amplified, digitized, and then processed by the Pamguard software. The system can detect marine mammal vocalizations at frequencies up to 250 kHz.

As described earlier in this document, one Protected Species Acoustic Observer, an expert bioacoustician with primary responsibility for the passive acoustic monitoring system will be aboard the *Langseth* in addition to the four Protected Species Visual Observers. The Protected Species Acoustic Observer will monitor the towed hydrophones 24 hours per day during airgun operations and during most periods when the *Langseth* is underway while the airguns are not operating. However, passive acoustic monitoring may not be possible if damage occurs to both the primary and back-up hydrophone arrays during operations. The primary passive acoustic monitoring streamer on the *Langseth* is a digital hydrophone streamer. Should the digital streamer fail, back-up systems should include an analog spare streamer and a hull-mounted hydrophone.

One Protected Species Acoustic Observer will monitor the acoustic detection system by listening to the signals from two channels via headphones and/or speakers and watching the real-time spectrographic display for frequency ranges produced by cetaceans. The Protected Species Acoustic Observer monitoring the acoustical data will be on shift for one to six hours at a time. The other Protected Species Observers will rotate as a Protected Species Acoustic Observer, although the expert acoustician will be on passive acoustic monitoring duty more frequently.

When the Protected Species Acoustic Observer detects a vocalization while visual observations are in progress, the Protected Species Acoustic Observer on duty will contact the Protected Species Visual Observer immediately, to alert him/her to the presence of cetaceans (if they have not already been seen), so that the vessel's crew can initiate a power-down or shut-down, if required. The Protected Species Acoustic Observer will enter the information regarding the call into a database. Data entry will include an acoustic encounter identification number, whether it was linked with a visual sighting, date, time when first and last heard and whenever any additional information was recorded, position and water depth when first detected, bearing if determinable, species or species group (e.g., unidentified dolphin, sperm whale), types and nature of sounds heard (e.g., clicks, continuous, sporadic, whistles, creaks, burst pulses, strength of signal, etc.), and any other notable information. The acoustic detection can also be recorded for further analysis.

*Protected Species Observer Data and Documentation*

Observers will record data to estimate the numbers of marine mammals exposed to various received sound levels and to document apparent disturbance reactions or lack thereof. They will use the data to estimate numbers of animals potentially 'taken' by harassment (as defined in the MMPA). They will also provide information needed to order a power-down or shut-down of the airguns when a marine mammal is within or near the exclusion zone. Observations will also be made during daytime periods when the Langseth is underway without seismic operations (i.e., transits to, from, and through the study area) to collect baseline biological data.

When a Protected Species Observer makes a sighting, they will record the following information:

1. Species, group size, age/size/sex categories (if determinable), behavior when first sighted and after initial sighting, heading (if consistent), bearing and distance from seismic vessel, sighting cue, apparent reaction to the airguns or vessel (e.g., none, avoidance, approach, paralleling, etc.), and behavioral pace.

2. Time, location, heading, speed, activity of the vessel, sea state, visibility, and sun glare.

The Protected Species Observer will record the data listed under (2) at the start and end of each observation watch, and during a watch whenever there is a change in one or more of the variables.

Protected Species Observers will record all observations and power-downs or shut-downs in a standardized format and will enter data into an electronic database. The Protected Species Observers will verify the accuracy of the data entry by computerized data validity checks as the data are entered and by subsequent manual checking of the database. These procedures will allow the preparation of initial summaries of data during and shortly after the field program, and will facilitate transfer of the data to statistical, graphical, and other programs for further processing and archiving.

Results from the vessel-based observations will provide the following information:

1. The basis for real-time mitigation (airgun power-down or shut-down).

2. Information needed to estimate the number of marine mammals potentially taken by harassment, which the Observatory must report to the Office of Protected Resources.

3. Data on the occurrence, distribution, and activities of marine mammals and turtles in the area where the Observatory will conduct the seismic study.

4. Information to compare the distance and distribution of marine mammals and turtles relative to the source vessel at times with and without seismic activity.

5. Data on the behavior and movement patterns of marine mammals detected during non-active and active seismic operations.

*Reporting*

The Observatory will submit a report to us and to the Foundation within 90 days after the end of the cruise. The report will describe the operations that were conducted and sightings of marine mammals near the operations. The report will provide full documentation of methods, results, and interpretation pertaining to all monitoring. The 90-day report will summarize the dates and locations of seismic operations, and all marine mammal sightings (dates, times, locations, activities, associated seismic survey activities). The report will also include estimates of the number and nature of exposures that could result in ''takes'' of marine mammals by harassment or in other ways. After the report is considered final, it will be publicly available on our and the Foundation's Web sites.

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by the Incidental Harassment Authorization, such as an injury (Level A harassment), serious injury, or mortality (e.g., ship-strike, gear interaction, and/or entanglement), the Observatory shall immediately cease the specified activities and immediately report the incident to the Incidental Take Program Supervisor, Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401 and/or by email to *Jolie.Harrison@noaa.gov, Jeannine.Cody@noaa.gov*, and *Howard.Goldstein@noaa.govmailto*: and to the Northwest Regional Stranding Coordinator at 206–526–6550 (*Brent.Norberg@noaa.gov*). The report must include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Name and type of vessel involved;
- Vessel's speed during and leading up to the incident;
- Description of the incident;
- Status of all sound source use in the 24 hours preceding the incident;
- Water depth;
- Environmental conditions (e.g., wind speed and direction, Beaufort sea state, cloud cover, and visibility);
- Description of all marine mammal observations in the 24 hours preceding the incident;
- Species identification or description of the animal(s) involved;
- Fate of the animal(s); and
- Photographs or video footage of the animal(s) (if equipment is available).

The Observatory shall not resume its activities until we are able to review the circumstances of the prohibited take. We shall work with the Observatory to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. The Observatory may not resume their activities until notified by us via letter, email, or telephone.

In the event that the Observatory discovers an injured or dead marine mammal, and the lead Protected Species Visual Observer determines that the cause of the injury or death is unknown and the death is relatively recent (i.e., in less than a moderate state of decomposition as we describe in the next paragraph), the Observatory will immediately report the incident to the Incidental Take Program Supervisor, Permits and Conservation Division, Office of Protected Resources, at 301–427–8401 and/or by email to *Jolie.Harrison@noaa.gov*, *Jeannine.Cody@noaa.gov*, and *Howard.Goldstein@noaa.gov* and to the Northwest Regional Stranding Coordinator at 206–526–6550 (*Brent.Norberg@noaa.gov*). The report must include the same information identified in the paragraph above this section. Activities may continue while we review the circumstances of the incident. We will work with the Observatory to determine whether modifications in the activities are appropriate.

In the event that the Observatory discovers an injured or dead marine mammal, and the lead Protected Species Observer determines that the injury or death is not associated with or related to the authorized activities (e.g., previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), the Observatory will report the incident to the Incidental Take Program Supervisor, Permits and Conservation Division, Office of Protected Resources, at 301–427–8401 and/or by email to *Jolie.Harrison@noaa.gov*, *Jeannine.Cody@noaa.gov* and *Howard.Goldstein@noaa.gov* and the Northwest Regional Stranding Coordinator at 206–526–6550 (*Brent.Norberg@noaa.gov*), within 24 hours of the discovery. The Observatory will provide photographs or video footage (if available) or other documentation of the stranded animal sighting to us.

**Estimated Take by Incidental Harassment**

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

We anticipate and authorize take by Level B harassment only for the marine seismic surveys in the northeastern Pacific Ocean. Acoustic stimuli (i.e., increased underwater sound) generated during the operation of the seismic airgun array may have the potential to cause marine mammals in the survey area to be exposed to sounds at or greater than 160 dB or cause temporary, short-term changes in behavior. There is no evidence that the Observatory's planned activities could result in injury, serious injury or mortality within the specified geographic area for which we have issued the requested authorization. Take by injury, serious injury, or mortality is thus neither anticipated nor authorized. We have determined that the required mitigation and monitoring measures will minimize any potential risk for injury, serious injury, or mortality.

The following sections describe the Observatory's methods to estimate take by incidental harassment and present their estimates of the numbers of marine mammals that could be affected during the seismic program. The Observatory's estimates assume that marine mammals exposed to airgun sounds greater than or equal to 160 dB might change their behavior sufficiently for us to consider them as taken by harassment. They have based their estimates on the number of marine mammals that could be disturbed appreciably by operations with the 36-airgun array during approximately 4,991 km (2,694.2 nmi) of transect lines in the northeastern Pacific Ocean.

We assume that during simultaneous operations of the airgun array and the other sources, any marine mammals close enough to be affected by the multibeam echosounder and sub-bottom profiler would already be affected by the airguns. However, whether or not the airguns are operating simultaneously with the other sources, we expect that the marine mammals would exhibit no more than short-term and inconsequential responses to the multibeam echosounder and profiler given their characteristics (e.g., narrow downward-directed beam) and other considerations described previously. Based on the best available information, we do not consider that these reactions constitute a ''take'' (NMFS, 2001). Therefore, the Observatory did not provide any additional allowance for animals that could be affected by sound sources other than the airguns.

*Ensonified Area Calculations*—Because the Observatory assumes that the *Langseth* may need to repeat some tracklines, accommodate the turning of the vessel, address equipment malfunctions, or conduct equipment testing to complete the survey; they have increased the number of line-kilometers for the seismic operations by 25 percent (i.e., contingency lines).

The Observatory calculated the expected ensonified area by entering the planned survey lines (including the 25 percent contingency lines) into a MapInfo Geographic Information System (system). The Observatory used the system to draw a 160-dB radius (see Table 2) around the operating airgun array (i.e., the ensonified area) around each seismic line. This first calculation is the area excluding overlap.

Depending on the spacing of the transect lines within the ensonified area, the Observatory may also calculate areas of transit overlap. For example, if the ratio of transit overlap is 1.5 times the area excluding overlap, then a marine mammal that stayed within the area during the entire survey could be exposed to acoustic stimuli approximately two times. However, it is unlikely that a particular animal would stay in the area during the entire survey. For the Juan de Fuca survey, the transit lines are closely spaced together and the ratio of transect overlap is 1.7 greater than the area excluding overlapping transect lines. For the Cascadia Thrust Zone survey the ratio is 2.8, and for the Cascadia Subduction Margin survey the ratio is 2.0 times the area excluding overlap. Table 3 presents the area calculations for each survey. Refer to the

Incidental Harassment Authorization application and Environmental Assessment for additional information.

TABLE 3—ENSONIFIED AREA CALCULATIONS FOR THREE SEISMIC SURVEYS IN THE NORTHEAST PACIFIC OCEAN, DURING JUNE TO JULY, 2012

| Survey | Area excluding overlap ($km^2$) | Area with contingency lines ($km^2$) | Transect line spacing | Overlap ratio ($km^2$) |
|---|---|---|---|---|
| Juan de Fuca Plate | 18,471 | 23,089 | Closely spaced | 1.7 |
| Cascadia Thrust Zone | 11,448 | 14,310 | Closely spaced | 2.8 |
| Cascadia Subduction Margin | 11,387 | 14,234 | Closely spaced | 2.0 |

*Density Information*—The Observatory calculated the density data for 26 species reported off the Oregon and Washington coasts in the northeastern Pacific Ocean using the following data sources:

- Pooled results of the 1991 to 2008 NMFS Southwest Fishery Science Center ship surveys as synthesized by Barlow and Forney (2007) and Barlow (2010) for all species except the gray whale and harbor porpoise.
- Abundance estimates for gray whales that remain between Oregon and British Columbia in summer and the within area out to 43 km (23.2 mi) from shore in the U.S. Navy's Keyport Range Complex Extension Environmental Impact Statement/Overseas Environmental Impact Statement (DoN, 2010); and
- The population estimate for the Northern Oregon/Washington Coast stock of harbor porpoises from the Pacific Marine Mammal Stock Assessments 2010 Report (Carretta *et al.,* 2010).

For the pooled results of the 1991 to 2008 NMFS Southwest Fishery Science Center ship surveys, the Observatory has corrected the densities for trackline detectability probability bias and availability bias. Trackline detectability probability bias is associated with diminishing sightability with increasing lateral distance from the track line [$f(0)$]. Availability bias refers to the fact that there is less than a 100 percent probability of sighting an animal that is present along the survey track line, and it is measured by $g(0)$.

*Exposure Calculations*—The Observatory calculated the number of different individuals that could be exposed to airgun sounds with received levels greater than or equal to 160 dB re: 1 μPa by multiplying the expected density of the marine mammals by the ensonified area excluding areas of overlap. This area includes the 25 percent contingency lines.

Any marine mammal sightings within or near the designated exclusion zone will result in the shut-down of seismic operations as a mitigation measure. Thus, the following estimates of the numbers of marine mammals potentially exposed to 160 dB re: 1 μPa sounds are precautionary, and probably overestimate the actual numbers of marine mammals that might be involved. These estimates assume that there will be no weather, equipment, or mitigation delays, which is highly unlikely.

Because this approach does not allow for turnover in the marine mammal populations in the study area during the course of the survey, the actual number of individuals exposed could be underestimated. However, the approach assumes that no cetaceans will move away from or toward the trackline as the *Langseth* approaches in response to increasing sound levels prior to the time the levels reach 160 dB re: 1 μPa, which will result in overestimates for those species known to avoid seismic vessels.

*Juan de Fuca Plate Survey Exposure Estimates*

The total estimate of the number of individual cetaceans that could be exposed to seismic sounds with received levels greater than or equal to 160 dB re: 1 μPa during this survey is 10,208 (see Table 4). The total includes 78 baleen whales, 56 of which are endangered: four blue whales (0.17 percent of the regional population), 30 fin whales (0.18 percent of the regional population), 19 humpback whales (0.09 percent of the regional population), and four sei whales (0.03 percent of the population). In addition, 24 sperm whales (0.10 percent of the regional population) and 303 Steller sea lions (0.46 percent of the population) (both listed as endangered under the Endangered Species Act) could be exposed during the survey.

Of the cetaceans potentially exposed, 57 percent are delphinids and 42 percent are pinnipeds. The most common species in the area potentially exposed to sound levels greater than or equal to 160 dB re: 1 μPa during the proposed survey would be harbor porpoises (2,153 or 4.12 percent), Dall's porpoises (1,935 or 4.61 percent), northern fur seals (1,931 or 0.30 percent), and northern elephant seals (1,058 or 0.85 percent). While potential exposures were modeled for killer whales, no incidental takes were authorized for killer whales due to the difficulty for Protected Species Observers to visually and acoustically distinguish endangered Southern Resident killer whales from other types and stocks of killer whales (e.g.., transient, resident, and offshore). We believe the additional required monitoring and mitigation measures and modifications in the survey design will reduce the take to zero.

TABLE 4—ESTIMATES OF THE POSSIBLE NUMBERS OF MARINE MAMMALS EXPOSED TO SOUND LEVELS GREATER THAN OR EQUAL TO 160 dB RE: 1 μPA DURING THE PROPOSED JUAN DE FUCA PLATE SEISMIC SURVEY IN THE NORTHEAST PACIFIC OCEAN, JUNE TO JULY, 2012

| Species | Estimated number of individuals exposed to sound levels ≥ 160 dB re: 1 μPa[1] | Incidental take authorized | Approximate percent of regional population[2] |
|---|---|---|---|
| Mysticetes: | | | |
| Gray whale | 10 | 10 | 0.05 |
| Humpback whale | 19 | 19 | 0.09 |
| Minke whale | 11 | 11 | 0.12 |
| Sei whale | 4 | 4 | 0.03 |
| Fin whale | 30 | 30 | 0.18 |
| Blue whale | 4 | 4 | 0.17 |
| Odontocetes: | | | |
| Sperm whale | 24 | 24 | 0.10 |
| Pygmy/Dwarf sperm whale | 16 | 16 | N/A |
| Cuvier's beaked whale | 10 | 10 | 0.46 |
| Baird's beaked whale | 27 | 27 | 3.0 |
| *Mesoplodon* spp.[3] | 40 | 40 | 3.95 |
| Striped dolphin | 1 | 2[4] | 0.01 |
| Short-beaked common dolphin | 237 | 238[4] | 0.06 |
| Pacific white-sided dolphin | 806 | 806 | 299 |
| Northern right whale dolphin | 297 | 297 | 3.57 |
| Risso's dolphin | 258 | 258 | 4.12 |
| Killer whale | 38 | 0 | 0 |
| Harbor porpoise[5] | 2,153 | 2,153 | 4.12 |
| Dall's porpoise | 1,935 | 1,935 | 4.61 |
| Pinnipeds: | | | |
| Northern fur seal | 1,931 | 1,931 | 0.30 |
| Steller sea lion | 303 | 303 | 0.46 |
| Harbor seal[5] | 995 | 995 | 4.02 |
| Northern elephant seal | 1,058 | 1,058 | 0.85 |

N/A = Not Available.
[1] Estimates are based on densities in Table 1 and an ensonified area (including 25% contingency of 23,089 km$^2$).
[2] Regional population size estimates are from Table 1 (page 48 in Application #1).
[3] Includes Blainville's, Stejneger's, and Hubb's beaked whales.
[4] Requested take authorization increased to mean group size (see Application #1).
[5] Estimates based on densities from Table 1 (page 48 in Application #1) and an ensonified area in water depths less than 100 m (328 ft) (including 25 percent contingency) of 3,404 km$^2$.

*Cascadia Thrust Zone Survey Exposure Estimates*

The total estimate of the number of individual cetaceans that could be exposed to seismic sounds with received levels greater than or equal to 160 dB re: 1 μPa during this survey is 15,100 (see Table 5). The total includes 79 baleen whales, 35 of which are endangered: three blue whales (0.10 percent of the regional population), 18 fin whales (0.11 percent of the regional population), 12 humpback whales (0.06 percent of the regional population), and two sei whales (0.02 percent of the population). In addition, 15 sperm whales (0.06 percent of the regional population) and 188 Steller sea lions (0.29 percent of the population) (both listed as endangered under the Endangered Species Act) could be exposed during the survey.

Of the cetaceans potentially exposed, 63 percent are delphinids and 36 percent are pinnipeds. The most common species in the area potentially exposed to sound levels greater than or equal to 160 dB re: 1 μPa during the proposed survey would be, Dall's porpoises (1,199 or 2.86 percent), harbor porpoises (7,314 or 14 percent of the regional population or 9.2 percent of the overall population), and harbor seals (3,380 or 13.67 percent of the regional population or 4.6% of the overall population) and northern fur seals (1,197 or 0.18 percent) (Allen and Angliss, 2011). The percentages for harbor porpoises and harbor seals are the upper boundaries of the regional populations that could be affected by the proposed survey. However, these take estimates are small relative to the overall population sizes for each species in the northeast Pacific. Thus, these take estimates are likely an overestimate of the actual number of animals that may be taken by Level B harassment, and we expect that the actual number of individual animals that may be taken by Level B harassment to be less than the request. While potential exposures were modeled for killer whales, no incidental takes were authorized for killer whales due to the difficulty for Protected Species Observers to visually and acoustically distinguish endangered Southern Resident killer whales from other types and stocks of killer whales (e.g.., transient, resident, and offshore). We believe the additional required monitoring and mitigation measures and modifications in the survey design will reduce the take to zero.

TABLE 5—ESTIMATES OF THE POSSIBLE NUMBERS OF MARINE MAMMALS EXPOSED TO SOUND LEVELS GREATER THAN OR EQUAL TO 160 DB RE: 1 μPA DURING THE CASCADIA THRUST ZONE SEISMIC SURVEY IN THE NORTHEAST PACIFIC OCEAN, JULY 2012

| Species | Estimated number of individuals exposed to sound levels ≥160 dB re: 1 μPa [1] | Incidental take authorized | Approximate percent of regional population [2] |
|---|---|---|---|
| Mysticetes: | | | |
| Gray whale | 35 | 35 | 0.18 |
| Humpback whale | 12 | 12 | 0.06 |
| Minke whale | 7 | 7 | 0.07 |
| Sei whale | 2 | 2 | 0.02 |
| Fin whale | 18 | 18 | 0.11 |
| Blue whale | 3 | 3 | 0.10 |
| Odontocetes: | | | |
| Sperm whale | 15 | 15 | 0.06 |
| Pygmy/Dwarf sperm whale | 10 | 10 | NA |
| Cuvier's beaked whale | 6 | 6 | 0.28 |
| Baird's beaked whale | 17 | 17 | 1.86 |
| *Mesoplodon* spp. [3] | 25 | 25 | 2.45 |
| Striped dolphin | 1 | [4] 2 | <0.01 |
| Short-beaked common dolphin | 147 | [4] 238 | 0.04 |
| Pacific white-sided dolphin | 500 | 500 | 1.86 |
| Northern right whale dolphin | 184 | 184 | 2.21 |
| Risso's dolphin | 160 | 160 | 2.55 |
| Killer whale | 24 | 0 | 0 |
| Harbor porpoise [5] | 7,314 | 7,314 | 14.00 |
| Dall's porpoise | 1,199 | 1,199 | 2.86 |
| Pinnipeds: | | | |
| Northern fur seal | 1,197 | 1,197 | 0.18 |
| Steller sea lion | 188 | 188 | 0.29 |
| Harbor seal [5] | 3,380 | 3,380 | 13.67 |
| Northern elephant seal | 656 | 656 | 0.53 |

NA = Not Available.
[1] Estimates are based on densities in Table 1 and an ensonified area (including 25% contingency of 14,310 km$^2$).
[2] Regional population size estimates are from Table 1 (page 47 in Application #2).
[3] Includes Blainville's, Stejneger's, and Hubb's beaked whales.
[4] Requested take authorization increased to mean group size (see Application #2).
[5] Estimates based on densities from Table 1 (page 47 in Application #2) and an ensonified area in water depths less than 100 m (328 ft) (including 25 percent contingency) of 11.565 km$^2$.

*Cascadia Subduction Margin Survey Exposure Estimates*

The total estimate of the number of individual cetaceans that could be exposed to seismic sounds with received levels greater than or equal to 160 dB re: 1 μPa during this survey is 8,132 (see Table 6). The total includes 54 baleen whales, 35 of which are endangered: three blue whales (0.10 percent of the regional population), 18 fin whales (0.11 percent of the regional population), 11 humpback whales (0.06 percent of the regional population), and two sei whales (0.02 percent of the population). In addition, 15 sperm whales (0.06 percent of the regional population) and 187 Steller sea lions (0.29 percent of the population) (both listed as endangered under the Endangered Species Act) could be exposed during the survey.

Of the cetaceans potentially exposed, 59 percent are delphinids and 40 percent are pinnipeds. The most common species in the area potentially exposed to sound levels greater than or equal to 160 dB re: 1 μPa during the proposed survey would be harbor porpoises (2,580 or 4.94 percent), Dall's porpoises (1,193 or 2.84 percent), northern fur seals (1,190 or 0.18 percent), and harbor seals (1,192 or 4.82 percent). While potential exposures were modeled for killer whales, no incidental takes were authorized for killer whales due to the difficulty for Protected Species Observers to visually and acoustically distinguish endangered Southern Resident killer whales from other types and stocks of killer whales (e.g., transient, resident, and offshore). We believe the additional required monitoring and mitigation measures and modifications in the survey design will reduce the take to zero.

TABLE 6—ESTIMATES OF THE POSSIBLE NUMBERS OF MARINE MAMMALS EXPOSED TO SOUND LEVELS GREATER THAN OR EQUAL TO 160 DB RE: 1 μPA DURING THE CASCADIA SUBDUCTION MARGIN SEISMIC SURVEY IN THE NORTHEAST PACIFIC OCEAN, JULY 2012

| Species | Estimated number of individuals exposed to sound levels ≥160 dB re: 1 μPa[1] | Incidental take authorized | Approximate percent of regional population [2] |
|---|---|---|---|
| Mysticetes: | | | |
| Gray whale | 12 | 12 | 0.06 |

TABLE 6—ESTIMATES OF THE POSSIBLE NUMBERS OF MARINE MAMMALS EXPOSED TO SOUND LEVELS GREATER THAN OR EQUAL TO 160 dB RE: 1 μPA DURING THE CASCADIA SUBDUCTION MARGIN SEISMIC SURVEY IN THE NORTHEAST PACIFIC OCEAN, JULY 2012—Continued

| Species | Estimated number of individuals exposed to sound levels ≥160 dB re: 1 μPa[1] | Incidental take authorized | Approximate percent of regional population[2] |
|---|---|---|---|
| Humpback whale | 11 | 11 | 0.06 |
| Minke whale | 6 | 6 | 0.07 |
| Sei whale | 2 | 2 | 0.02 |
| Fin whale | 18 | 18 | 0.11 |
| Blue whale | 3 | 3 | 0.10 |
| Odontocetes: | | | |
| Sperm whale | 15 | 15 | 0.06 |
| Pygmy/Dwarf sperm whale | 10 | 10 | NA |
| Cuvier's beaked whale | 6 | 6 | 0.28 |
| Baird's beaked whale | 17 | 17 | 1.85 |
| *Mesoplodon* spp.[3] | 25 | 25 | 2.44 |
| Striped dolphin | 1 | [4]2 | < 0.01 |
| Short-beaked common dolphin | 146 | [4]238 | 0.04 |
| Pacific white-sided dolphin | 497 | 497 | 1.85 |
| Northern right whale dolphin | 183 | 183 | 2.20 |
| Risso's dolphin | 159 | 159 | 2.54 |
| Killer whale | 24 | 0 | 0 |
| Harbor porpoise[5] | 2,580 | 2,580 | 4.94 |
| Dall's porpoise | 1,193 | 1,193 | 2.84 |
| Pinnipeds: | | | |
| Northern fur seal | 1,190 | 1,190 | 0.18 |
| Steller sea lion | 187 | 187 | 0.29 |
| Harbor seal[5] | 1,192 | 1,192 | 4.82 |
| Northern elephant seal | 652 | 652 | 0.53 |

NA = Not Available.
[1] Estimates are based on densities in Table 1 and an ensonified area (including 25% contingency of 14,234 km$^2$).
[2] Regional population size estimates are from Table 1 (page 47 in Application #3).
[3] Includes Blainville's, Stejneger's, and Hubb's beaked whales.
[4] Requested take authorization increased to mean group size (see Application #3).
[5] Estimates based on densities from Table 1 (page 47 in Application #3) and an ensonified area in water depths less than 100 m (328 ft) (including 25 percent contingency) of 4,080 km$^2$.

## Encouraging and Coordinating Research

The Observatory and the Foundation will coordinate the planned marine mammal monitoring program associated with each seismic survey in the northeastern Pacific Ocean with other parties that may have interest in the area and/or may be conducting marine mammal studies in the same region during the seismic surveys.

## Negligible Impact and Small Numbers Analysis and Determination

We have defined ''negligible impact'' in 50 CFR 216.103 as ''* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.'' In making a negligible impact determination, we consider:

(1) The number of anticipated injuries, serious injuries, or mortalities;

(2) The number, nature, and intensity, and duration of Level B harassment (all relatively limited);

(3) The context in which the takes occur (i.e., impacts to areas of significance, impacts to local populations, and cumulative impacts when taking into account successive/contemporaneous actions when added to baseline data);

(4) The status of stock or species of marine mammals (i.e., depleted, not depleted, decreasing, increasing, stable, impact relative to the size of the population);

(5) Impacts on habitat affecting rates of recruitment/survival; and

(6) The effectiveness of monitoring and mitigation measures (i.e., the manner and degree in which the measure is likely to reduce adverse impacts to marine mammals, the likely effectiveness of the measures, and the practicability of implementation).

For reasons stated previously in this document, and in the notice of the proposed Incidental Harassment Authorization (77 FR 25966, May 2, 2012), the specified activities associated with the marine seismic surveys are not likely to cause permanent threshold shift, or other non-auditory injury, serious injury, or death because:

(1) The likelihood that, given sufficient notice through relatively slow ship speed, we expect marine mammals to move away from a noise source that is annoying prior to its becoming potentially injurious;

(2) The potential for temporary or permanent hearing impairment is relatively low and that we would likely avoid this impact through the incorporation of the required monitoring and mitigation measures (described previously in this document);

(3) The fact that cetaceans would have to be closer than 940 m (3,084 ft) in deep water, 1,540 m (5,052 ft) in intermediate depths, and 2,140 m (7,020 ft) in shallow depths, when the 36-airgun array is in use at 9 m (29.5 ft) tow depth from the vessel to be exposed to levels of sound believed to have a minimal chance of causing permanent threshold shift;

(4) The fact that cetaceans would have to be closer than 1,100 m (3,609 ft) in deep water, 1,810 m (5,938 ft) in intermediate depths, and 2,520 m (8,268

ft) in shallow depths, when the 36-airgun array is in use at 12 m (39.4 ft) tow depth from the vessel to be exposed to levels of sound believed to have a minimal chance of causing permanent threshold shift;

(5) The fact that cetaceans would have to be closer than 1,200 m (3,937 ft) in deep water, 1,975 m (6,480 ft) in intermediate depths, and 2,750 m (9,022 ft) in shallow depths, when the 36-airgun array is in use at 15 m (49.2 ft) tow depth from the vessel to be exposed to levels of sound believed to have a minimal chance of causing permanent threshold shift;

(6) The fact that cetaceans would have to be closer than 40 m (131 ft) in deep water, 60 m (197 ft) in intermediate depths, and 296 m (971 ft) in shallow depths, when the single airgun is in use at six to 15 m (20 to 49.2 ft) tow depth from the vessel to be exposed to levels of sound believed to have a minimal chance of causing permanent threshold shift;

(7) The fact that pinnipeds would have to be closer than 400 m (1,312 ft) in deep water, 550 m (1,804 ft) in intermediate depths, and 680 m (2,231 ft) in shallow depths, when the 36-airgun array is in use at 9 m (29.5 ft) tow depth from the vessel to be exposed to levels of sound believed to have a minimal chance of causing permanent threshold shift;

(8) The fact that pinnipeds would have to be closer than 460 m (1,509 ft) in deep water, 615 m (2,018 ft) in intermediate depths, and 770 m (2,526 ft) in shallow depths, when the single airgun is in use at 12 m (39.4 ft) tow depth from the vessel to be exposed to levels of sound believed to have a minimal chance of causing permanent threshold shift;

(9) The fact that pinnipeds would have to be closer than 520 m (1,706 ft) in deep water, 690 m (2,264 ft) in intermediate depths, and 865 m (2,838 ft) in shallow depths, when the single airgun is in use at 15 m (49.2 ft) tow depth from the vessel to be exposed to levels of sound believed to have a minimal chance of causing permanent threshold shift;

(10) The fact that pinnipeds would have to be closer than 12 m (39.4 ft) in deep water, 18 m (59 ft) in intermediate depths, and 150 m (492 ft) in shallow depths, when the single airgun is in use at six to 15 m (20 to 49.2 ft) tow depth from the vessel to be exposed to levels of sound believed to have a minimal chance of causing permanent threshold shift; and

(11) The likelihood that marine mammal detection ability by trained Protected Species Visual Observers is high at close proximity to the vessel.

We do not anticipate that any injuries, serious injuries, or mortalities would occur as a result of the Observatory's planned marine seismic surveys, and we are not authorizing injury, serious injury or mortality for these surveys. We anticipate only short-term behavioral disturbance to occur during the conduct of the survey activities. Tables 5, 6, and 7 of this document outline the number of Level B harassment takes that we anticipate as a result of these activities. Due to the nature, degree, and context of Level B (behavioral) harassment anticipated and described (see ''Potential Effects on Marine Mammals'' section in this notice), we do not expect the activity to impact rates of recruitment or survival for any affected species or stock. Further, the seismic surveys would not take place in areas of significance for marine mammal feeding, resting, breeding, or calving and would not adversely impact marine mammal habitat.

Many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (i.e., 24 hour cycle). Behavioral reactions to noise exposure (such as disruption of critical life functions, displacement, or avoidance of important habitat) are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.,* 2007). While we anticipate that the seismic operations would occur on consecutive days, the estimated duration of the Juan de Fuca Plate survey would last no more than 17 days, the Cascadia Thrust Zone survey would last approximately 3 days, and the Cascadia Subduction Margin survey would occur over 10 days.

Because the *Langseth* will move continuously along planned tracklines, each of the three seismic surveys would increase sound levels in the marine environment surrounding the vessel for 21 days during the first and second study and for 10 days during the last study. There will be an estimated 4-day period of non-seismic activity between the second and third survey.

Of the 31 marine mammal species under our jurisdiction that are known to occur or likely to occur in the study area, six of these species and two stocks are listed as endangered under the ESA: the blue, fin, humpback, North Pacific right, sei, and sperm whales; the Southern Resident stock of killer whales; and the eastern U.S. stock of the Steller sea lion. These species are also categorized as depleted under the MMPA. With the exception of North Pacific right whales and Southern Resident killer whales, the Observatory has requested take for these listed species. To protect these animals (and other marine mammals in the study area), the Observatory must cease or reduce airgun operations if animals enter designated zones. No injury, serious injury, or mortality is expected to occur and due to the nature, degree, and context of the Level B harassment anticipated, the activity is not expected to impact rates of recruitment or survival.

Based on available data, we do not expect the Observatory to encounter five of the 31 species under our jurisdiction in the proposed survey areas. They include the following: the North Pacific right, false killer, and short-finned pilot whales; the California sea lion; and the bottlenose dolphin because of the species' rare and/or extralimital occurrence in the survey areas. As mentioned previously, we estimate that 26 species of marine mammals under our jurisdiction could be potentially affected by Level B harassment over the course of the Incidental Take Authorization. For each species, these numbers are small, relative to the regional or overall population size and we have provided the regional population estimates for the marine mammal species that may be taken by Level B harassment in Tables 4, 5, and 6 in this document.

Our practice has been to apply the 160 dB re: 1 μPa (rms) received level threshold for underwater impulse sound levels to determine whether take by Level B harassment occurs. Southall *et al.* (2007) provides a severity scale for ranking observed behavioral responses of both free-ranging marine mammals and laboratory subjects to various types of anthropogenic sound (see Table 4 in Southall *et al.* [2007]).

We have determined, provided that the aforementioned mitigation and monitoring measures are implemented, that the impact of conducting three marine seismic surveys off Oregon and Washington in the northeastern Pacific Ocean, June through July 2012, may result, at worst, in a temporary modification in behavior and/or low-level physiological effects (Level B harassment) of small numbers of certain species of marine mammals. See Tables 4, 5, and 6 for the requested authorized take numbers of cetaceans and pinnipeds.

While these species may make behavioral modifications, including temporarily vacating the area during the operation of the airgun(s) to avoid the resultant acoustic disturbance, the availability of alternate areas within these areas and the short duration of the research activities, have led us to

determine that this action will have a negligible impact on the species in the specified geographic region.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, we find that the Observatory's planned research activities will result in the incidental take of small numbers of marine mammals, by Level B harassment only, and that the required measures mitigate impacts to affected species or stocks of marine mammals to the lowest level practicable.

**Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses**

Section 101(a)(5)(D) of the Marine Mammal Protection Act also requires us to determine that the authorization will not have an unmitigable adverse effect on the availability of marine mammal species or stocks for subsistence use. There are no relevant subsistence uses of marine mammals in the study area (northeastern Pacific Ocean) that implicate section 101(a)(5)(D) of the MMPA.

**Endangered Species Act**

Of the species of marine mammals that may occur in the survey area, several are listed as endangered under the ESA, including the blue, fin, humpback, North Pacific right, sei, sperm, and Southern Resident killer whales. The Observatory did not request take of endangered North Pacific right whales because of the low likelihood of encountering these species during the cruise. No incidental takes of Southern Resident killer whales has been authorized.

Under section 7 of the ESA, the Foundation initiated formal consultation with the Service's Office of Protected Resources, Endangered Species Act Interagency Cooperation Division, on these seismic surveys. We (i.e., NMFS, Office of Protected Resources, Permits and Conservation Division), also initiated and engaged in formal consultation under section 7 of the ESA with the Endangered Species Act Interagency Cooperation Division to obtain a Biological Opinion evaluating the effects of issuing the Incidental Harassment Authorization under section 101(a)(5)(D) of the MMPA for this activity. These two consultations were consolidated and addressed in a single Biological Opinion addressing the direct and indirect effects of these interdependent actions. On June 8 and 11, 2012, new information was received and consultation was reinitiated on the three proposed seismic surveys and the associated issuance of the Incidental Harassment Authorizations. The designs of the seismic surveys were modified and enhanced monitoring and mitigation measures were added to address concerns regarding endangered Southern Resident killer whales. In June and July 2012, we issued three Biological Opinions and concluded that the action and issuance of the Incidental Harassment Authorizations are not likely to jeopardize the continued existence of endangered or threatened cetaceans, pinnipeds, and sea turtles and included an Incidental Take Statement incorporating the requirements of the Incidental Harassment Authorizations as Terms and Conditions. Compliance with those Relevant Terms and Conditions of the Incidental Take Statement is likewise a mandatory requirement of the Incidental Harassment Authorizations. The Biological Opinion also concluded that designated critical habitat would not be destroyed or adversely modified by the surveys.

**National Environmental Policy Act**

With its complete application, the Foundation and the Observatory provided an ''Environmental Assessment and Finding of No Significant Impact Determination Pursuant to the National Environmental Policy Act, (NEPA: 42 U.S.C. 4321 *et seq.*) and Executive Order 12114 for a Marine Seismic Survey in the northeastern Pacific Ocean, 2012,'' which incorporates an ''Environmental Assessment of a Marine Geophysical Survey by the R/V *Marcus G. Langseth* in the Northeastern Pacific Ocean, June–July 2012,'' prepared by LGL Limited, Environmental Research Associates.

The Environmental Assessment analyzes the direct, indirect, and cumulative environmental impacts of the specified activities on marine mammals including those listed as threatened or endangered under the ESA. We have conducted an independent review and evaluation of the document for sufficiency and compliance with the Council of Environmental Quality and NOAA Administrative Order 216–6 § 5.09(d), Environmental Review Procedures for Implementing the National Environmental Policy Act, and have determined that issuance of the Incidental Harassment Authorizations is not likely to result in significant impacts on the human environment. Also, we have provided relevant environmental information to the public through the notice of the proposed Incidental Harassment Authorization (77 FR 25966, May 2, 2012) and have considered public comments received in response prior to adopting the Foundation's Environmental Assessment. We have concluded that the issuance of the Incidental Harassment Authorizations would not significantly affect the quality of the human environment and have issued a separate Finding of No Significant Impact. Because we have made this finding, it is not necessary to prepare an Environmental Impact Statement for the issuance of the Incidental Harassment Authorizations to the Observatory for this activity.

**Authorization**

We have issued three Incidental Harassment Authorizations to the Observatory for the take of marine mammals incidental to conducting three marine seismic surveys in the northeast Pacific Ocean, June to July 2012, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: July 10, 2012.

**Helen M. Golde,**

*Acting Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2012–17258 Filed 7–13–12; 8:45 am]

BILLING CODE 3510–22–P

## CONSUMER PRODUCT SAFETY COMMISSION

### Sunshine Act Meeting

**TIME AND DATE:** Wednesday, July 18, 2012; 3 p.m.–5 p.m.

**PLACE:** Hearing Room 420, Bethesda Towers, 4330 East West Highway Bethesda, Maryland.

**STATUS:** Closed to the Public.

**MATTER TO BE CONSIDERED:**

**Compliance Briefing**

The Commission staff will brief the Commission on the status of compliance matters.

For a recorded message containing the latest agenda information, call (301) 504–7948.

**CONTACT PERSON FOR MORE INFORMATION:** Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway Bethesda, MD 20814, (301) 504–7923.

Dated: July 12, 2012.

**Todd A Stevenson,**

*Secretary.*

[FR Doc. 2012–17383 Filed 7–12–12; 4:15 pm]

BILLING CODE 6355–01–P

## CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

### Sunshine Act Meeting

**AGENCY:** Corporation for National and Community Service.

**ACTION:** Notice of NCCC Advisory Board Meeting; correction.

**SUMMARY:** The Corporation for National and Community Service is correcting the Notice regarding the call-in information for the NCCC Advisory Board meeting that appeared in the **Federal Register** of July 6, 2012 (77 FR 40023). That document incorrectly listed the call-in number as 888–455–7057 and the conference call access code number as 1876264. The meeting leader, Kate Raftery, was also omitted.

**FOR FURTHER INFORMATION CONTACT:** Erma Hodge, NCCC, Corporation for National and Community Service, 9th Floor, Room 9802B, 1201 New York Avenue NW., Washington, DC 20525. Phone (202) 606–6696. Fax (202) 606–3459. TTY: (800) 833–3722. Email: *ehodge@cns.gov.*

**SUPPLEMENTARY INFORMATION:** In the 77 FR 40023, beginning on page 40023 in the **Federal Register** of Friday, July 6, 2012, make the following correction: On page 40023, in the third column, revise the call-in number 888–455–7057 and conference call access code number 1876264 to read as follows: call-in number 800–988–9402 and conference call access number 1876264. Kate Raftery will be the lead on the call.

Dated: July 11, 2012.

**Valerie E. Green,**

*General Counsel.*

[FR Doc. 2012–17298 Filed 7–12–12; 11:15 am]

BILLING CODE 6050–$$–P

## DEPARTMENT OF EDUCATION

### Privacy Act of 1974; System of Records

**AGENCY:** Office of Management, Department of Education.

**ACTION:** Notice of deletion of existing system of records.

**SUMMARY:** In accordance with the Privacy Act of 1974, as amended (Privacy Act), the Department of Education (Department) deletes one system of records from its existing inventory of systems of records subject to the Privacy Act.

**DATES:** This deletion is effective July 16, 2012.

**FOR FURTHER INFORMATION CONTACT:** Winona H. Varnon, Principal Deputy Assistant Secretary, Office of Management, U.S. Department of Education, 400 Maryland Avenue SW., Room 2W311, Washington, DC 20202–4500. Telephone: (202) 401–1583.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities may obtain this document in an accessible format (e.g., Braille, large print, audiotape, or compact disc) on request to the contact person listed in this section.

**SUPPLEMENTARY INFORMATION:** The Department deletes one system of records from its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The deletion is not within the purview of subsection (r) of the Privacy Act, which requires submission of a report on a new or altered system of records.

This system of records is no longer needed because this system has been decommissioned. Further, no records have been retained; therefore the following system of records is deleted:

(18–05–14) Human Capital Learning and Performance Improvement System, 69 FR 19171–19176 (April 12, 2004).

*Electronic Access to This Document:* The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

*Delegation of Authority:* The Secretary of Education has delegated authority to Winona H. Varnon, Principal Deputy Assistant Secretary for Management to perform the functions and duties of the Assistant Secretary for Management.

Dated: July 11, 2012.

**Winona H. Varnon,**

*Principal Deputy Assistant Secretary for Management, delegated the authority to perform the functions and duties of the Assistant Secretary for Management.*

For the reasons discussed in the preamble, the Principal Deputy Assistant Secretary of the Office of Management deletes the following system of records:

| System No. | System name |
|---|---|
| 18–05–14 .... | Human Capital Learning and Performance Improvement System. |

[FR Doc. 2012–17310 Filed 7–13–12; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF ENERGY

### Notice of Final Environmental Assessment and Finding of No Significant Impact for the Construction and Operation of a Radiological Work and Storage Building

**AGENCY:** Department of Energy.

**ACTION:** Finding of no significant impact.

**SUMMARY:** Pursuant to the National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*); the Council on Environmental Quality Regulations for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508); and the Department of Energy (DOE) implementing procedures (10 CFR part 1021); the Naval Nuclear Propulsion Program (NNPP) announces the availability of a Final Environmental Assessment (EA) for construction and operation of a radiological work and storage building at the Knolls Atomic Power Laboratory Kesselring Site in West Milton, New York. A modernized facility is needed to streamline radioactive material handling and storage operations, permit demolition of aging facilities, and accommodate efficient maintenance of existing nuclear reactors. The EA shows that the potential effects on the human environment associated with the construction and operation of the radiological work and storage building are not significant. Therefore, the NNPP has concluded that an Environmental Impact Statement (EIS) is not required to be prepared and is issuing a Finding of No Significant Impact (FONSI).

**ADDRESSES:** The Final EA and FONSI may be viewed at the Saratoga Springs Public Library in Saratoga Springs, NY,

the Schenectady County Public Library (Niskayuna Branch) in Niskayuna, NY, or online at *http://www.NNPP-NEPA.us/environmental_assessments/kesselring_site/rwsb_ea.*

**SUPPLEMENTARY INFORMATION:** The NNPP is responsible for all aspects of U.S. Navy nuclear power and propulsion pursuant to 50 U.S.C. 2406 and 2511. These responsibilities include design, maintenance, and safe operation of nuclear propulsion systems throughout their operational life cycles. Crucial components of this mission are to provide prospective Naval nuclear propulsion plant operators and officers with training and certification in the actual hands-on operation of a nuclear propulsion plant, and to test new Naval nuclear propulsion plant technologies. Two land-based training platforms are located at the Knolls Atomic Power Laboratory Kesselring Site near West Milton, Saratoga County, New York.

*Purpose and Need:* The operation, maintenance, refueling, overhaul, and decommissioning of the prototype naval nuclear reactors results in low-level radioactive contamination of some support equipment and the generation of low-level radioactive waste. A shortfall has been identified between the radiological work and storage space currently available at the Kesselring Site and the space that is necessary to support continued operation and maintenance on the prototypes. Radioactive materials must be handled in facilities that are specifically designed to contain radioactivity and prevent the spread of radioactive contamination to workers, the public, and the environment. Additional modernized radiological work and storage space is needed to support maintenance on the operational nuclear prototypes at the Kesselring Site. No spent nuclear fuel will be handled or stored in the new Radiological Work and Storage Building or any of the alternatives being considered.

*Alternatives Considered:* The NNPP identified three alternatives to address the above need.

- Alternative 1—Construct a new Radiological Work and Storage Building (Proposed Action)
- Alternative 2—Construct a Temporary Radiological Work Structure
- Alternative 3—Continue to use existing facilities (No Action Alternative)

*Description of the Proposed Action:* The Proposed Action demolishes Building 80C and constructs a modernized Radiological Work and Storage Building that would have a footprint of approximately 670–1,270 square meters (7,200–13,600 square feet). Demolition of Building 80C and disposition of equipment inside of Building 80C would be completed in accordance with stringent NNPP requirements. The new facility would be used for the preparation of equipment for maintenance operations, packaging of radiological waste for shipment, and temporary storage of radiologically controlled material. The facility would be built within an already developed portion of the Kesselring Site. The Radiological Work and Storage Building would be designed and constructed to meet stringent NNPP requirements to contain radioactivity and prevent the spread of radioactive contamination to workers, the public, and the environment. NNPP standards include applicable Environmental Protection Agency (EPA) standards (ANSI–1999 and 40 CFR part 61). The proposed location of the Radiological Work and Storage Building allows for staging equipment for maintenance in parallel with moving equipment during prototype maintenance evolutions. The facility design would be a site-specific adaptation of radiological work facilities constructed at naval shipyards that perform similar work on nuclear-powered ships. The facility would be equipped with internal bridge cranes to support movement of equipment and material within the facility.

*Environmental Impacts of Proposed Action:* The DOE evaluated the potential environmental impacts of the construction and operation of the proposed new Radiological Work and Storage Building, a Temporary Radiological Work Structure, and a No Action Alternative. The DOE considered geology, topography and soils, ecological resources, water resources, noise, air quality, greenhouse gas emissions, land use, cultural resources, socioeconomics and environmental justice, traffic and transportation, aesthetic and scenic resources, utilities and energy, non-hazardous waste, radiological impacts, and cumulative effects. The DOE determined that either there would be no impacts or the potential impacts would be insignificant, short-term or both.

**Geology, Topography, and Soils**

The geology and topography at the Kesselring Site would not be affected by the construction and demolition activities. Short-term soil impacts would occur but would be minimized through the use of erosion and sedimentation control techniques such as installing silt fencing and sediment traps to stabilize soil.

**Ecological Resources**

Ecological resources would not be affected since the construction and demolition activities are on previously developed portions of the Kesselring Site. The developed area of the Kesselring Site is not a typical habitat for endangered species and the wetlands that exist outside of the developed area would not be affected by any of the alternatives. None of the alternatives would change the existing conditions.

**Water Resources**

Demolition and construction activities associated with the new modernized storage facility would be in the developed area of the Kesselring Site. Activities would be done in accordance with applicable federal, state, and local requirements, including development and implementation of an erosion and sediment control plan for storm water management. Radiological work areas in the new modernized facility would be built with impermeable floors, thus no impact would be expected during operations.

**Noise**

Noise during construction, demolition, and operation of the new modernized storage facility would not be discernible beyond the site boundaries which are nearly one mile from the developed area of the site.

**Air Quality**

The emissions from the Kesselring Site resulting from steam boilers would not increase from the addition of a new modernized facility. There would be short-term, temporary impacts to air quality during construction but would not impact the designation of the area with respect to National Ambient Air Quality Standards. The new modernized storage facility would be equipped with high efficiency air particulate filters, and emissions would be expected to be well within EPA requirements (40 CFR part 61). Building 80C would be evaluated as a diffuse source of airborne radioactivity and surveyed using stringent NNPP standards prior to demolition, with applicable monitoring performed during demolition to ensure compliance with EPA regulations in 40 CFR part 61. The impacts on air quality would not be significant and would be temporary during construction and demolition.

**Greenhouse Gas Emissions**

Under any of the alternatives, there would be minor emissions of carbon dioxide due to construction traffic and equipment; however, these actions would not be significant.

**Land Use**

The new modernized facility would be located within the developed portion of the Kesselring Site and would not impact the land use; the land use would be unchanged.

**Cultural Resources**

The alternatives have no impact on historic properties or other cultural resources.

**Socioeconomics and Environmental Justice**

Implementation of the Proposed Action would result in a temporary increase in jobs during construction; however, the increase would be small compared to surrounding area employment. There would be no increase or decrease in long term employment as a result of operations in the new modernized storage facility. Since no significant impacts are expected, there would be no expected disproportionately high and adverse impacts to minority and low income populations as a result of implementing any of the alternatives.

**Traffic and Transportation**

Vehicular traffic to the Kesselring site would increase by about 30 vehicles compared to more than 2,000 vehicles a day currently. During demolition, radioactive waste shipments would increase about 10 percent. The effect of the Proposed Action on traffic and transportation would be minimal and temporary during the construction and demolition activities.

**Aesthetic and Scenic Resources**

The developed area of the Kesselring Site is not visible from off-site locations; none of the alternatives would have an impact on the aesthetic and scenic resources.

**Utilities and Energy**

Existing site utility systems have sufficient capacity to support the utility requirements for the new modernized storage facility. The operation of the new modernized storage facility would have little impact on the amount of energy used by the Kesselring Site as this facility would replace a less energy efficient facility that would be demolished.

**Non-Hazardous Waste**

Construction and operation of a new Radiological Work and Storage Building is expected to produce about 40 tons of non-hazardous waste in addition to the approximately 1,500 tons produced in a typical year by the Kesselring Site. Solid waste would continue to be contained, stored, transported, and disposed of in accordance with state and federal regulations. No significant impacts to the environment would be expected.

**Radiological Impact**

Stringent NNPP radiological control practices are utilized at the Kesselring Site to contain radioactivity and to ensure the protection of workers, the public, and the environment. The new modernized Radiological Work and Storage Building would be designed and operated to stringent NNPP standards that would also ensure compliance with applicable EPA requirements.

Building 80C would be surveyed before demolition in accordance with stringent NNPP standards, which provide equivalent or better levels of detection and assessment as the Multi-Agency Radiation Survey and Site Investigation Manual (MARSSIM) and Multi-Agency Radiation Survey and Assessment of Materials and Equipment (MARSAME). Building 80C would be evaluated as a diffuse source of airborne radioactivity during demolition to ensure compliance with EPA regulations in 40 CFR part 61 and consistent with the Memorandum of Understanding between U.S. EPA and U.S. DOE concerning the Clean Air Act Emissions Standards for Radionuclides.

Radioactive low-level solid waste from demolition of Building 80C and operation of the new Radioactive Work and Storage Building would be shipped by authorized common carriers to disposal sites outside of New York State in accordance with applicable Department of Transportation, DOE, and Nuclear Regulatory Commission requirements that have been previously analyzed and shown to have no significant impacts. These waste shipments would be a small part of the shipments of radioactive materials made annually in the United States.

The Kesselring Site conducts extensive monitoring of adjacent streams, perimeter radiation levels, and airborne discharges from radiological facilities. No significant impacts to the environment and no adverse impact on the health and safety of the public would be expected from the demolition of Building 80C, and the construction and operation of a modernized Radiological Work and Storage Building. This is consistent with the conclusions from on-going environmental monitoring.

**Cumulative Impacts**

Since construction of the modernized Radiological Work and Storage Building and all projects currently being considered at the Kesselring Site would occur in the previously developed industrial area, no significant cumulative impacts would be expected.

**Conclusion**

Because the Proposed Action meets the needs of the NNPP and has no significant impact on the quality of the human environment, the NNPP concludes that the Proposed Action to construct a modernized Radiological Work and Storage Building is the preferred action to address the need for streamlining radioactive material handling and storage operations, permitting demolition of aging facilities, and accommodating efficient maintenance of existing nuclear reactors at the Kesselring Site.

**Public Participation**

The NNPP published a Notice of Intent (NOI) to prepare this EA in the **Federal Register** on August 31, 2011 to solicit comments on the scope of the EA. A notification was also published in three newspapers in New York (The Saratogian, The Times Union, and The Daily Gazette). In addition, notifications were sent to federal, state, and local public officials. The NNPP published a Notice of Availability (NOA) for the Draft EA in the **Federal Register** on March 8, 2012. The NOA was also published in three newspapers in New York. A summary of the comments received is included in the Final EA. Clarifications to the Draft EA have been incorporated into the Final EA which addressed all comments received.

*Finding of No Significant Impact:* On the basis of the EA prepared in support of the construction and operation of the modernized Radiological Work and Storage Building, the Department of Energy Naval Nuclear Propulsion Program has determined that the Proposed Action will not significantly affect the quality of the human environment. Therefore, the Department of Energy is not required to prepare an EIS and is issuing this Finding of No Significant Impact.

Signed in Washington, DC this 10th day of July 2012.

**Kirkland H. Donald,**

*Deputy Administrator for Naval Reactors.*

[FR Doc. 2012–17230 Filed 7–13–12; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

*Docket Numbers:* EC12–116–000.
*Applicants:* Iron Energy LLC.
*Description:* Application for Authorization for Disposition of Jurisdictional Facilities and Request for Expedited Action of Iron Energy LLC.
*Filed Date:* 7/6/12.
*Accession Number:* 20120706–5121.
*Comments Due:* 5 p.m. ET 7/27/12.

Take notice that the Commission received the following exempt wholesale generator filings:

*Docket Numbers:* EG12–84–000.
*Applicants:* Spion Kop Wind, LLC.
*Description:* Spion Kop Wind, LLC Notice of Self-Certification of Exempt Wholesale Generator Status.
*Filed Date:* 7/6/12.
*Accession Number:* 20120706–5088.
*Comments Due:* 5 p.m. ET 7/27/12.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER07–956–002.
*Applicants:* Entergy Services, Inc.
*Description:* Compliance refund report of Entergy Services, Inc.
*Filed Date:* 7/6/12.
*Accession Number:* 20120706–5120.
*Comments Due:* 5 p.m. ET 7/27/12.

*Docket Numbers:* ER10–2172–011; ER11–2016–006; ER10–2184–011; ER10–2183–008; ER10–1048–008; ER10–2176–012; ER10–2192–011; ER11–2056–005; ER10–2178–011; ER10–2174–011; ER11–2014–008; ER11–2013–008; ER10–3308–010; ER10–1017–007; ER10–1020–007; ER10–1145–007; ER10–1144–006; ER10–1078–007; ER10–1079–007; ER10–1080–007; ER11–2010–008; ER10–1081–007; ER10–2180–011; ER11–2011–007; ER11–2009–007; ER11–3989–006; ER10–1143–007; ER11–2780–004; ER11–2007–006; ER12–1223–005; ER11–2005–008.
*Applicants:* Constellation Energy Commodities Group, Inc., Commonwealth Edison Company, PECO Energy Company, Wind Capital Holdings, LLC, Constellation Power Source Generation, Inc., Safe Harbor Water Power Corporation, Baltimore Gas & Electric Company, Handsome Lake Energy, LLC, Constellation Energy Commodities Group Maine, LLC, Exelon Framingham LLC, Exelon New England Power Marketing, LP, Exelon New Boston, LLC, Exelon West Medway, LLC, Exelon Wyman, LLC, Constellation NewEenergy, Inc., Exelon Generation Company, LLC, Exelon Energy Company, CER Generation, LLC, CER Generation II, LLC, Constellation Mystic Power, LLC, Cassia Gulch Wind Park, LLC, Michigan Wind 1, LLC, Tuana Springs Energy, LLC, Harvest Windfarm, LLC, CR Clearing, LLC, Exelon Wind 4, LLC, Cow Branch Wind Power, L.L.C., Michigan Wind 2, LLC, Criterion Power Parnters, LLC, Wildcat Wind, LLC.
*Description:* Notice of Non-Material Change in Status of Baltimore Gas & Electric Company, *et al.*
*Filed Date:* 7/6/12.
*Accession Number:* 20120706–5131.
*Comments Due:* 5 p.m. ET 7/27/12.

*Docket Numbers:* ER10–2181–013; *ER10–2179–013; ER10–2182–013.*
*Applicants:* R.E. Ginna Nuclear Power Plant, LLC, Calvert Cliffs Nuclear Power Plant, LLC, Nine Mile Point Nuclear Station, LLC.
*Description:* Notice of Non-Material Change in Status of Nine Mile Point Nuclear Station, LLC, *et al.*
*Filed Date:* 7/6/12.
*Accession Number:* 20120706–5123.
*Comments Due:* 5 p.m. ET 7/27/12.

*Docket Numbers:* ER12–1840–001.
*Applicants:* Michigan Electric Transmission Company, LLC.
*Description:* METC Certificate of Concurrence to be effective 7/13/2012.
*Filed Date:* 7/6/12.
*Accession Number:* 20120706–5043.
*Comments Due:* 5 p.m. ET 7/27/12.

*Docket Numbers:* ER12–1841–001.
*Applicants:* Michigan Electric Transmission Company, LLC.
*Description:* METC Certificate of Concurrence to be effective 7/11/2012.
*Filed Date:* 7/6/12.
*Accession Number:* 20120706–5050.
*Comments Due:* 5 p.m. ET 7/27/12.

*Docket Numbers:* ER12–1843–001.
*Applicants:* Michigan Electric Transmission Company, LLC.
*Description:* METC Certificate of Concurrence to be effective 7/12/2012.
*Filed Date:* 7/6/12.
*Accession Number:* 20120706–5052.
*Comments Due:* 5 p.m. ET 7/27/12.

*Docket Numbers:* ER12–2215–000.
*Applicants:* Spion Kop Wind, LLC.
*Description:* Application for Market-Based Rate Authority to be effective 7/9/2012.
*Filed Date:* 7/6/12.
*Accession Number:* 20120706–5074.
*Comments Due:* 5 p.m. ET 7/27/12.

*Docket Numbers:* ER12–2216–000.
*Applicants:* Midwest Independent Transmission System Operator, Inc.
*Description:* 07–06–12 AIC Attachment O and GG to be effective 1/1/2013 under ER12–2216 Filing Type: 10.
*Filed Date:* 7/6/12.
*Accession Number:* 20120706–5075.
*Comments Due:* 5 p.m. ET 7/27/12.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 9, 2012.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2012–17216 Filed 7–13–12; 8:45 am]

BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. DI12–9–000]**

### Jacob Focht; Notice of Declaration of Intention and Soliciting Comments, Protests, and/or Motions To Intervene

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Declaration of Intention.
b. *Docket No:* DI12–9–000.
c. *Date Filed:* June 27, 2012.
d. *Applicant:* Jacob Focht.
e. *Name of Project:* Jacobs Creek Hydroelectric Project.
f. *Location:* The proposed Jacobs Creek Hydroelectric Project will be located near the city of Valdez, Unorganized Borough, Alaska, affecting T. 9 S., R. 4 W., sec. 30, Copper River Meridian.
g. *Filed Pursuant to:* Section 23(b)(1) of the Federal Power Act, 16 U.S.C. 817(b).
h. *Applicant Contact:* Troy Hardwick, H & K Energy Solutions LLC, P.O. Box 90961, Anchorage, AK 99509; telephone: (907) 301–1641; email: *www.troy@handkenergy.com.*

i. *FERC Contact:* Any questions on this notice should be addressed to Henry Ecton, (202) 502–8768, or Email address: *henry.ecton@ferc.gov.*

j. *Deadline for filing comments, protests, and/or motions:* August 13, 2012.

Comments, Motions to Intervene, and Protests may be filed electronically via the Internet. See 18 CFR 385.2001(a)(l)(iii) and the instructions on the Commission's Web site under the ''eFiling'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. For more information on how to submit these types of filings, please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.*

Please include the docket number (DI12–9–000) on any comments, protests, and/or motions filed.

k. *Description of Project:* The proposed Jacobs Creek Hydroelectric Project will be located on Jacobs Creek, tributary to Lowe River, near Valdez, AK. The proposed project will consist of: (1) A small reservoir created by an existing large log that traverses Jacobs Creek; (2) a 6-inch-diameter, 600-foot-long penstock; (3) a powerhouse that will contain a 24-kW Turgo Runner on a 3-phase generator; (4) a 422-foot-long tailrace returning water to Jacobs Creek; (5) a 166-foot-long underground transmission line transmitting power to the Copper River Electric Association, Inc.; and (6) appurtenant facilities.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. *Locations of the Application:* Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the Docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOlineSupport@ferc.gov* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*—All filings must bear in all capital letters the title ''COMMENTS'', ''PROTESTS'', and/or ''MOTIONS TO INTERVENE'', as applicable, and the Docket Number of the particular application to which the filing refers. A copy of any Motion to Intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: July 10, 2012.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2012–17252 Filed 7–13–12; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. DI12–11–000]**

### City of Sandpoint; Notice of Declaration of Intention and Soliciting Comments, Protests, and/or Motions To Intervene

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Declaration of Intention.

b. *Docket No.:* DI12–11–000.

c. *Date Filed:* July 3, 2012.

d. *Applicant:* City of Sandpoint.

e. *Name of Project:* Little Sand Creek Hydroelectric Project.

f. *Location:* The proposed Little Sand Creek Hydroelectric Project will be located near the city of Sandpoint, Bonner County, Idaho, affecting T. 57 N, R. 02 W, Boise Meridian.

g. *Filed Pursuant to:* Section 23(b)(1) of the Federal Power Act, 16 U.S.C. 817(b).

h. *Applicant Contact:* Jared Yost, 1123 Lake Street, Sandpoint, ID 83864; telephone: (208) 265–1480; Fax: (208) 263–3678; email: *www.jyost@ci.sandpoint.id.us.*

i. *FERC Contact:* Any questions on this notice should be addressed to Henry Ecton, (202) 502–8768, or Email address: *henry.ecton@ferc.gov.*

j. *Deadline for filing comments, protests, and/or motions:* August 13, 2012.

Comments, Motions to Intervene, and Protests may be filed electronically via the Internet. See 18 CFR 385.2001(a)(l)(iii) and the instructions on the Commission's Web site under the ''eFiling'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. For more information on how to submit these types of filings, please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.*

Please include the docket number (DI12–11–000) on any comments, protests, and/or motions filed.

k. *Description of Project:* The proposed Little Sand Creek Hydroelectric Project will be located in the Sand Creek Water Treatment Plant, using water being diverted for the Sandpoint water supply. The proposed project will consist of a small 30-foot-high rock dam, a small reservoir, an 18-

inch-diameter, 2500-foot-long steel penstock, a 65-kW pelton wheel generator, and appurtenant facilities. The power generated will be used on site, to supplement power from the local power company.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. *Locations of the Application:* Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the Docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOlineSupport@ferc.gov* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*—All filings must bear in all capital letters the title ''COMMENTS'', ''PROTESTS'', and/or ''MOTIONS TO INTERVENE'', as applicable, and the Docket Number of the particular application to which the filing refers. A copy of any Motion to Intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: July 10, 2012.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2012–17253 Filed 7–13–12; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. PF12–10–000]**

### Millennium Pipeline Company, LLC; Notice of Intent To Prepare an Environmental Assessment for the Planned Hancock Compressor Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meeting

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Hancock Compressor Project involving construction and operation of facilities by Millennium Pipeline Company, LLC (Millennium) in Delaware County, New York. The Commission will use this EA in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the project. Your input will help the Commission staff determine what issues they need to evaluate in the EA. Please note that the scoping period will close on August 10, 2012.

You may submit comments in written form or verbally. Further details on how to submit written comments are in the Public Participation section of this notice. In lieu of or in addition to sending written comments, the Commission invites you to attend the public scoping meeting scheduled as follows:

**FERC Public Scoping Meeting**

*Hancock Compressor Project Thursday, August 2, 2012—7 p.m., Hancock Middle/High School, 16 Read Street, Hancock, NY 13783*

Millennium has also agreed to set up a table at 6 p.m. to answer questions.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this planned project and encourage them to comment on their areas of concern.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' is available for viewing on the FERC Web site (*www.ferc.gov*). This fact sheet addresses a number of typically-asked questions, including the use of eminent domain and how to participate in the Commission's proceedings.

**Summary of the Planned Project**

Millennium plans to construct and operate a 15,900 horsepower compressor station and associated appurtenant facilities in the Town of Hancock, Delaware County, New York. The Hancock Compressor Project would provide about 107,500 dekatherms of natural gas per day (Dth/d) to Algonquin Gas Transmission, LLC located in Ramapo, New York and points further east. The Project would also deliver about 115,000 Dth/d of natural gas from an interconnect with Laser Gathering System to an existing interconnect with Columbia Gas Transmission, L.L.C. at Wagoner. The planned facilities would provide bi-directional gas flow capabilities between Millennium's existing compressor station in Corning, New York and the planned Hancock Compressor Station. According to Millennium, its project would enable Millennium to meet the demands of existing customers who are producing natural gas near its existing natural gas system.

The Hancock Compressor Project would consist of the following facilities:

- One 15,900-horsepower natural gas-fired compressor unit at the new Hancock Compressor Station;
- About 260 feet of 36-inch-diameter pipeline for suction from the existing Millennium mainline and about 365 feet of 36-inch-diameter pipeline for discharge to the existing Millennium mainline;

- A 480-foot-long permanent access road; and
- Associated ancillary facilities.

The general location of the project facilities is shown in appendix 1.[1]

**Land Requirements for Construction**

Construction of the planned facilities would take place on a 10.8-acre parcel of land that is owned by Millennium. Following construction, Millennium would maintain about 3.7 acres for permanent operation of the Hancock Compressor Station; the remaining acreage would be restored and revert to former uses.

**The EA Process**

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us [2] to discover and address concerns the public may have about proposals. This process is referred to as scoping. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. We will consider all filed comments during the preparation of the EA.

In the EA we will discuss impacts that could occur as a result of the construction and operation of the planned project under these general headings:

- Geology and soils;
- Land use;
- Water resources, fisheries, and wetlands;
- Cultural resources;
- Vegetation and wildlife;
- Air quality and noise;
- Endangered and threatened species; and
- Public safety.

We will also evaluate possible alternatives to the planned project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Although no formal application has been filed, we have already initiated our NEPA review under the Commission's pre-filing process. The purpose of the pre-filing process is to encourage early involvement of interested stakeholders and to identify and resolve issues before the FERC receives an application. As part of our pre-filing review, we have begun to contact some federal and state agencies to discuss their involvement in the scoping process and the preparation of the EA.

The EA will present our independent analysis of the issues. The EA will be available in the public record through eLibrary. Depending on the comments received during the scoping process, we may also publish and distribute the EA to the public for an allotted comment period. We will consider all comments on the EA before we make our recommendations to the Commission. To ensure we have the opportunity to consider and address your comments, please carefully follow the instructions in the Public Participation section beginning on page 5.

With this notice, we are asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues related to this project to formally cooperate with us in the preparation of the EA.[3] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

**Consultations Under Section 106 of the National Historic Preservation Act**

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, we are using this notice to initiate consultation with applicable State Historic Preservation Office(s), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[4] We will define the project-specific Area of Potential Effects (APE) in consultation with the SHPO(s) as the project develops. On natural gas facility projects, the APE at a minimum encompasses all areas subject to ground disturbance (examples include construction right-of-way, contractor/pipe storage yards, compressor stations, and access roads). Our EA for this project will document our findings on the impacts on historic properties and summarize the status of consultations under section 106.

**Public Participation**

You can make a difference by providing us with your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send your comments so that the Commission receives them in Washington, DC on or before August 10, 2012.

For your convenience, there are three methods you can use to submit your comments to the Commission. In all instances, please reference the project docket number (PF12–10–000) with your submission. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov.*

(1) You can file your comments electronically using the eComment feature located on the Commission's Web site (*www.ferc.gov*) under the link to Documents and Filings. This is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You can file your comments electronically using the eFiling feature located on the Commission's Web site (*www.ferc.gov*) under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You must select the type of filing you are making. If you are filing a comment on a particular project, please select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

**Environmental Mailing List**

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries

[1] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary'' or from the Commission's Public Reference Room, 888 First Street NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

[2] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the Commission's Office of Energy Projects.

[3] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, 1501.6.

[4] The Advisory Council on Historic Preservation regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register for Historic Places.

and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the planned project.

If we publish and distribute the EA, copies will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the CD version or would like to remove your name from the mailing list, please return the attached Information Request (appendix 2).

**Becoming an Intervenor**

Once Millennium files its application with the Commission, you may want to become an ''intervenor'' which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an intervenor are in the User's Guide under the ''e-filing'' link on the Commission's Web site. Please note that the Commission will not accept requests for intervenor status at this time. You must wait until the Commission receives a formal application for the project.

**Additional Information**

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number, excluding the last three digits in the Docket Number field (i.e., PF12–10). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/esubscribenow.htm.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Dated: July 10, 2012.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2012–17246 Filed 7–13–12; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 13331–002; Project No. 14402–000]**

### City of Quincy; FFP Project 109, LLC; Notice of Competing Preliminary Permit Applications Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On May 1, 2012, City of Quincy and FFP Project 109, LLC filed preliminary permit applications pursuant to section 4(f) of the Federal Power Act proposing to study the feasibility of a hydropower project, to be located at the existing Mississippi River Lock and Dam No. 24 on the Mississippi River, near the city of Clarksville in Pike County, Missouri and Calhoun County, Illinois. City of Quincy's application is for a successive preliminary permit. Mississippi River Lock and Dam No. 24 is owned by the United States government and operated by the United States Army Corps of Engineers. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owner's express permission.

City of Quincy's proposed project would consist of: (1) Sixty new 500-kilowatt submersible low-head turbine-generator units, having a total combined generating capacity of 30 megawatts; (2) one of three transmission line alternatives: a 2.7-mile-long section of an existing, 34.5-kilovolt transmission line that is part of the Missouri electric power grid, or a 4.2-mile-long portion of an existing 12.5-kilovolt transmission line that is part of the Illinois electric power grid that would be upgraded to 34.5-kilovolt, or a 6.7-mile-long portion of an existing 12.5-kilovolt transmission line that is part of the Illinois electric power grid that would be upgraded to 34.5-kilovolts; (3) new switchyard; and (4) appurtenant facilities. The project would have an estimated annual generation of 154 gigawatt-hours.

*Applicant Contact:* Mr. Charles Bevelheimer, 730 Maine Street, Quincy, IL 62301; (217) 228–4500.

FFP Project 109, LLC's proposed project would consist of: (1) Fifteen new 60-foot by 80-foot reinforced concrete powerhouses, each containing two 500-kilowatt bulb turbine-generators, having a total combined generating capacity of 15 megawatts; (2) fifteen existing submersible tainter gates; (3) a new 40-foot by 35-foot substation; (4) a new 10-foot by 80-foot intake structure; (5) a new 2.8-mile-long, 34.5-kilovolt transmission line; and (6) appurtenant facilities. The project would have an estimated annual generation of 60 gigawatt-hours.

*Applicant Contact:* Ms. Ramya Swaminathan, 239 Causeway Street, Suite 300, Boston, MA 02114; (978) 283–2822.

*FERC Contact:* Tyrone A. Williams, (202) 502–6331.

Deadline for filing comments, motions to intervene, and competing applications (without notices of intent) or notices of intent to file competing applications for Project No. 13331: 60 days from the issuance of this notice. We previously issued an acceptance notice for Project No. 14402 on May 24, 2012. That notice established a deadline of July 23, 2012 for filing comments, motions to intervene, and competing applications. The deadline for filing comments, motions to intervene, and competing applications, or notices of intent to file competing applications for Project No. 14402 is herewith extended to 60 days from the issuance of this notice to coincide with the deadline for Project No. 13331. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/*

*ecomment.asp*. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

More information about this project, including a copy of either application can be viewed or printed on the ''eLibrary'' link of Commission's Web *site at http://www.ferc.gov/docs-filing/elibrary.asp*. Enter the docket number (P–13331or P–14402) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: July 10, 2012.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2012–17248 Filed 7–13–12; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 13330–001; Project No. 14403–000]**

### City of Quincy; FFP Project 110, LLC; Notice of Competing Preliminary Permit Applications Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On May 1, 2012, City of Quincy and FFP Project 110, LLC filed preliminary permit applications pursuant to section 4(f) of the Federal Power Act proposing to study the feasibility of a hydropower project, to be located at the existing Mississippi River Lock and Dam No. 25 on the Mississippi River, near the city of Winfield in Lincoln County, Missouri and Calhoun County, Illinois. The City of Quincy's application is for a successive preliminary permit. Mississippi River Lock and Dam No. 25 is owned by the United States government and operated by the United States Army Corps of Engineers. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owner's express permission.

City of Quincy's proposed project would consist of: (1) Forty new 500-kilowatt submersible low-head turbine-generator units, having a total combined generating capacity of 30 megawatts; (2) a new 878-foot-long concrete and steel control building structure immediately downstream of an existing dyke; (3) a new 3.1-mile-long, 34.5-kilovolt transmission line that would connect to the Missouri electric power grid, or a new 6.8-mile-long, 34.5-kilovolt transmission line that would connect to the Illinois electric power grid; and (4) appurtenant facilities. The project would have an estimated annual generation of 98.3 gigawatt-hours.

*Applicant Contact:* Mr. Charles Bevelheimer, 730 Maine Street, Quincy, IL 62301; (217) 228–4500.

FFP Project 110, LLC's proposed project would consist of: (1) Fourteen new 60-foot by 60-foot reinforced concrete powerhouses, each containing two 500-kilowatt bulb turbine-generators, having a total combined generating capacity of 14 megawatts; (2) fourteen existing submersible tainter gates; (3) a new 40-foot by 35-foot substation; (4) a new 10-foot by 60-foot intake structure; (5) a new 3-mile-long, 34.5-kilovolt transmission line; and (6) appurtenant facilities. The project would have an estimated annual generation of 56 gigawatt-hours.

*Applicant Contact:* Ms. Ramya Swaminathan, 239 Causeway Street, Suite 300, Boston, MA 02114; (978) 283–2822.

*FERC Contact:* Tyrone A. Williams, (202) 502–6331.

*Deadline for filing comments, motions to intervene, and competing applications (without notices of intent) or notices of intent to file competing applications for Project No. 13330:* 60 days from the issuance of this notice. We previously issued an acceptance notice for Project No. 14403 on May 21, 2012. That notice established a deadline of July 20, 2012 for filing comments, motions to intervene, and competing applications. The deadline for filing comments, motions to intervene, and competing applications, or notices of intent to file competing applications for Project No. 14403 is herewith extended to 60 days from the issuance of this notice to coincide with the deadline for Project No. 13330. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp*. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp*. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

More information about this project, including a copy of either application can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp*. Enter the docket number (P–13330 or P–14403) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: July 10, 2012.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2012–17247 Filed 7–13–12; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 14391–000]**

### American River Power VIII, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On April 20, 2012, American River Power VIII, LLC filed an application for a preliminary permit under section 4(f) of the Federal Power Act proposing to study the feasibility of the proposed Upper Appleton Dam Hydroelectric Water Power Project No. 14391, to be located at the existing Upper Appleton Dam on the Fox River, near the city of Appleton in Outagamie County, Wisconsin. The Upper Appleton Dam is owned by the United States government and operated by the United States Army Corps of Engineers.

The proposed project would consist of: (1) One new 80-foot-long by 50-foot-wide by 20-foot-high reinforced concrete powerhouse, containing two 2.5-megawatt (MW) turbine/generator

units for a total capacity of 5 MW; (2) a new 75-foot-long by 36-foot-wide by 24- to 39-foot-high reinforced concrete draft tube structure; (3) a new transformer and switchyard; (4) a new 850-foot-long, 69-kilovolt transmission line; and (5) appurtenant facilities. The project would have an estimated annual generation of 38.5 gigawatt-hours.

*Applicant Contact:* Mr. Michael Skelly, 726 Eldridge Avenue, Collingswood, NJ 08107–1708; (856) 240–0707.

*FERC Contact:* Tyrone A. Williams, (202) 502–6331.

Deadline for filing comments, motions to intervene, and competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

More information about this project, including a copy of the application can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14391) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: July 10, 2012.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2012–17250 Filed 7–13–12; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 14392–000]**

### American River Power VI, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On April 23, 2012, the American River Power VI, LLC filed an application for a preliminary permit under section 4(f) of the Federal Power Act proposing to study the feasibility of the proposed La Grange Hydroelectric Water Power Project No. 14392, to be located at the existing La Grange Dam on the Illinois River, near the city of Beardstown in Cass County, Illinois. The La Grange Dam is owned by the United States government and operated by the United States Army Corps of Engineers.

*The proposed project would consist of:* (1) One new 80-foot-long by 50-foot-wide by 28-foot-high reinforced concrete powerhouse, containing two 5-megawatt (MW) turbines for a total capacity of 10 MW; (2) a new 50-foot-long by 30-foot-wide by 12-foot-high reinforced concrete draft tube structure; (3) a new transformer and switchyard; (4) a new 12,540-foot-long, 69-kilovolt transmission line; and (5) appurtenant facilities. The project would have an estimated annual generation of 76.2 gigawatt-hours.

*Applicant Contact:* Mr. Michael Skelly, 726 Eldridge Avenue, Collingswood, NJ 08107–1708; (856) 240–0707.

*ERC Contact:* Tyrone A. Williams, (202) 502–6331.

*Deadline for filing comments, motions to intervene, and competing applications (without notices of intent), or notices of intent to file competing applications:* 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

More information about this project, including a copy of the application can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14392) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: July 10, 2012.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2012–17251 Filed 7–13–12; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 14389–000]**

### American River Power VII, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On April 18, 2012, American River Power VII, LLC filed an application for a preliminary permit under section 4(f) of the Federal Power Act proposing to study the feasibility of the proposed Lower Appleton Dam Hydroelectric Water Power Project No. 14389, to be located at the existing Lower Appleton Dam on the Fox River, near the city of Appleton in Outagamie County, Wisconsin. The Lower Appleton Dam is owned by the United States government and operated by the United States Army Corps of Engineers.

The proposed project would consist of: (1) One new 80-foot-long by 30-foot-wide by 20-foot-high reinforced concrete powerhouse, containing two 2.5-megawatt (MW) turbine/generator units for a total capacity of 5 MW; (2) a new 50-foot-long by 18-foot-wide by 9-foot-high reinforced concrete draft tube structure; (3) a new transformer and switchyard; (4) a new 1,200-foot-long, 36.7-kilovolt transmission line; and (5) appurtenant facilities. The project would have an estimated annual generation of 38.0 gigawatt-hours.

*Applicant Contact:* Mr. Michael Skelly, 726 Eldridge Avenue,

Collingswood, NJ 08107–1708; (856) 240–0707.

*FERC Contact:* Tyrone A. Williams, (202) 502–6331.

*Deadline for filing comments, motions to intervene, and competing applications (without notices of intent), or notices of intent to file competing applications:* 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp*. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp*. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

More information about this project, including a copy of the application can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp*. Enter the docket number (P–14389) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: July 10, 2012.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2012–17249 Filed 7–13–12; 8:45 am]

**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–ORD–2012–0523; FRL–9697–4]**

## Integrated Risk Information System (IRIS); Announcement of Availability of Literature Searches for IRIS Assessments

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of availability of a literature search for benzo(a)pyrene; request for information.

**SUMMARY:** The U.S. Environmental Protection Agency (EPA) is announcing the availability of a literature search for benzo(a)pyrene (CASRN 50–32–8). EPA is also requesting scientific information on health effects that may result from exposure to this chemical substance. EPA's IRIS is a human health assessment program that evaluates quantitative and qualitative risk information on effects that may result from exposure to specific chemical substances found in the environment.

**DATES:** EPA will accept information related to the specific substance included herein as well as any other compound being assessed by the IRIS Program. Please submit any information in accordance with the instructions provided below.

**ADDRESSES:** Please submit relevant scientific information identified by docket ID number EPA–HQ–ORD–2012–0523, online at *www.regulations.gov* (EPA's preferred method); by email to *Docket_ORD@epa.gov;* mailed to Office of Environmental Information (OEI) Docket (Mail Code: 28221T), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Information on a disk or CD–ROM should be formatted in Word or as an ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

**FOR FURTHER INFORMATION CONTACT:** For information on the IRIS program, contact Joseph DeSantis, Senior Advisor for Logistical Support, IRIS Division, National Center for Environmental Assessment, (mail code: 8601P), Office of Research and Development, U.S. Environmental Protection Agency, Washington, DC 20460; telephone: (703) 347–8616, facsimile: (703) 347–8696; or email: *FRNquestions@epa.gov.*

For general questions about access to IRIS, or the content of IRIS, please call the IRIS Hotline at (202) 566–1676 or send electronic mail inquiries to *hotline.iris@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Background

EPA's IRIS is a human health assessment program that evaluates quantitative and qualitative risk information on effects that may result from exposure to specific chemical substances found in the environment. Through the IRIS Program, EPA provides the highest quality science-based human health assessments to support the Agency's regulatory activities. The IRIS database contains information for more than 540 chemical substances that can be used to support the first two steps (hazard identification and dose-response evaluation) of the risk assessment process. When supported by available data, IRIS provides oral reference doses (RfDs) and inhalation reference concentrations (RfCs) for chronic noncancer health effects as well as assessments of potential carcinogenic effects resulting from chronic exposure. Combined with specific exposure information, government and private entities use IRIS to help characterize public health risks of chemical substances in a site-specific situation and thereby support risk management decisions designed to protect public health.

This data call-in is a step in the IRIS process. As literature searches are completed, the results will be posted on the IRIS Web site (*http://www.epa.gov/iris*). The public is invited to review the literature search results and submit additional information to EPA.

### Request for Public Involvement in IRIS Assessments

EPA is soliciting public involvement in assessments on the IRIS agenda. While EPA conducts a thorough literature search for each chemical substance, there may be unpublished studies or other primary technical sources that are not available through the open literature. EPA would appreciate receiving scientific information from the public during the information gathering stage for the assessment listed in this notice or any other assessments on the IRIS agenda. Interested persons may provide scientific analyses, studies, and other pertinent scientific information. While EPA is primarily soliciting information on new assessments, the public may submit information on any chemical substance at any time.

EPA is announcing the availability of an additional literature search on the IRIS Web site (*www.epa.gov/iris*). The public is invited to review the literature search results and submit additional information to EPA. A literature search is now available for benzo(a)pyrene (CASRN 50–32–8) at *www.epa.gov/iris* under ''IRIS Agenda and Literature Searches.'' Additional literature searches will be posted as they are completed. Availability will be announced in the **Federal Register**. Instructions on how to submit information are provided below under General Information.

**General Information**

Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2012–0523 by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: Docket_ORD@epa.gov.*
- *Fax:* 202–566–9744.
- *Mail:* Office of Environmental Information (OEI) Docket, (Mail Code: 28221T), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460. The phone number is 202–566–1752.
- *Hand Delivery:* The OEI Docket is located in the EPA Headquarters Docket Center, EPA West Building, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA Docket Center's 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. Such deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. If you provide information by mail or hand delivery, please submit one unbound original with pages numbered consecutively, and three copies of the comments. For attachments, provide an index, number pages consecutively with the main text, and submit an unbound original and three copies.

*Instructions:* Direct your comments to Docket ID No. EPA–HQ–ORD–2012–0523. It is EPA's policy to include all comments it receives in the public docket without change and to make the comments available online at *http://www.regulations.gov,* including any personal information provided, unless a comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *http://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

*Docket:* All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the OEI Docket in the EPA Headquarters Docket Center.

Dated: July 9, 2012.

**Rebecca Clark,**

*Director, National Center for Environmental Assessment.*

[FR Doc. 2012–17145 Filed 7–13–12; 8:45 am]

BILLING CODE 6560–50–P

## EXPORT-IMPORT BANK OF THE UNITED STATES

### Sunshine Act Meeting

**ACTION:** Notice of a Partially Open Meeting of the Board of Directors of the Export-Import Bank of the United States.

**TIME AND PLACE:** Thursday, July 19, 2012 at 9:30 a.m. The meeting will be held at Ex-Im Bank in Room 1143, 811 Vermont Avenue NW., Washington, DC 20571.

**OPEN AGENDA ITEMS:** Item No. 1: Ex-Im Bank Sub-Saharan Africa Advisory Committee for 2012.

**PUBLIC PARTICIPATION:** The meeting will be open to public observation for Item No. 1 only.

**FURTHER INFORMATION:** For further information, contact: Office of the Secretary, 811 Vermont Avenue NW., Washington, DC 20571 (202) 565–3336.

**Lisa V. Terry,**

*Assistant General Counsel.*

[FR Doc. 2012–17377 Filed 7–12–12; 4:15 pm]

BILLING CODE 6690–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### Information Collection Being Submitted for Review and Approval to the Office of Management and Budget

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Federal Communications Commission (FCC), as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act (PRA) of 1995. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid control number. Comments are requested concerning whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

**DATES:** Written comments should be submitted on or before August 15, 2012. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Nicholas A. Fraser, OMB, via fax 202–395–5167, or via email *Nicholas_A._Fraser@omb.eop.gov*; and to Cathy Williams, FCC, via email *PRA@fcc.gov* and to

*Cathy.Williams@fcc.gov.* Include in the comments the OMB control number as shown in the ''Supplementary Information'' section below.

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain*, (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060–0010.

*Title:* Ownership Report for Commercial Broadcast Stations, FCC Form 323.

*Form Number:* FCC Form 323.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for profit entities; not-for-profit institutions; State, Local or Tribal Governments.

*Number of Respondents/Responses:* 9,250 respondents; 9,250 responses.

*Estimated Time per Response:* 2.5 hours to 4.5 hours.

*Frequency of Response:* Recordkeeping requirement; on occasion reporting requirement; biennially reporting requirement.

*Total Annual Burden:* 38,125 hours.

*Total Annual Costs:* $26,940,000.

*Nature of Response:* Required to obtain or retain benefits. Statutory authority for this collection of information is contained in Sections 154(i), 303, 310 and 533 of the Communications Act of 1934, as amended.

*Nature and Extent of Confidentiality:* Form 323 collects two types of information from respondents: personal information in the form of names, addresses, job titles and demographic information; and FCC Registration Numbers (FRNs).

The FCC is in the process of publishing a system of records notice (SORN), FCC/MB–1, ''Ownership Report for Commercial Broadcast Stations,'' to cover the collection, purposes(s), storage, safeguards, and disposal of the PII that individual respondents may submit on FCC Form 323. FCC Form 323 will include a privacy statement to inform applicants (respondents) of the Commission's need to obtain the information and the protections that the FCC has in place to protect the PII. This privacy statement will be finalized and included with the form instructions after the Commission has published the SORN for the collection.

FRNs are assigned to applicants who complete FCC Form 160 (OMB Control No. 3060–0917). Form 160 requires applicants for FRNs to provide their Taxpayer Information Number (TIN) and/or Social Security Number (SSN). The FCC's electronic CORES Registration System then provides each registrant with a FCC Registration Number (FRN), which identifies the registrant in his/her subsequent dealings with the FCC. This is done to protect the individual's privacy. The Commission maintains a SORN, FCC/OMD–9, ''Commission Registration System (CORES)'' to cover the collection, purpose(s), storage, safeguards, and disposal of the PII that individual respondents may submit on FCC Form 160. FCC Form 160 includes a privacy statement to inform applicants (respondents) of the Commission's need to obtain the information and the protections that the FCC has in place to protect the PII.

*Privacy Act Impact Assessment:* The FCC is in the process of publishing a system of records notice (SORN), FCC/MB–1, ''Ownership Report for Commercial Broadcast Stations,'' to cover the collection, purposes(s), storage, safeguards, and disposal of the PII that individual respondents may submit on FCC Form 323. The FCC will publish the SORN in the **Federal Register**. Going forward, if the FCC makes substantive changes to Form 323 after its SORN is published, the Commission will conduct a full Privacy Impact Assessment of FCC/MB–1 SORN, publish a Notice in the **Federal Register**, and post both documents on the FCC Web page, as required by the Office of Management and Budget (OMB) Memorandum, M–03–22 (September 22, 2003).

*Needs and Uses:* Licensees of commercial AM, FM, and full power television broadcast stations, as well as licensees of Class A and Low Power Television stations must file FCC Form 323 every two years. Ownership Reports shall provide information accurate as of October 1 of the year in which the Report is filed. Thereafter, the Form shall be filed biennially beginning November 1, 2011, and every two years thereafter.

Also, Licensees and Permittees of commercial AM, FM, or full power television stations must file Form 323 following the consummation of a transfer of control or an assignment of a commercial AM, FM, or full power television station license or construction permit; a Permittee of a new commercial AM, FM or full power television broadcast station must file Form 323 within 30 days after the grant of the construction permit; and a Permittee of a new commercial AM, FM, or full power television broadcast station must file Form 323 to update the initial report or to certify the continuing accuracy and completeness of the previously filed report on the date that the Permittee applies for a license to cover the construction permit.

In the case of organizational structures that include holding companies or other forms of indirect ownership, a separate FCC Form 323 must be filed for each entity in the organizational structure that has an attributable interest in the Licensee if the filing is a nonbiennial filing or a reportable interest in the Licensee if the filing is a biennial filing.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary, Office of the Secretary, Office of Managing Director.*

[FR Doc. 2012–17254 Filed 7–13–12; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### Sunshine Act Meeting; Open Commission Meeting; Thursday, July 19, 2012

July 12, 2012.

The Federal Communications Commission will hold an Open Meeting on Thursday, July 19, 2012. The meeting is scheduled to commence at 10:30 a.m. in Room TW–C305, at 445 12th Street SW., Washington, DC.

The meeting will feature presentations on:

**FCC Next-Generation Mapping**

- The latest advancements in mapping at the Commission, including the launch of fcc.gov/maps, and novel use of maps and the latest open source mapping technology to increase transparency across the agency and promote data-driven decision-making to benefit consumers, industry, and developers.

**White Spaces for Wireless Broadband**

• A progress report by the Wireless Telecommunications Bureau and Office of Engineering & Technology on the development and use of white space technology to unleash more spectrum for wireless broadband.

**Measuring Broadband America Report 2012**

• The Measuring Broadband America July 2012 Report, which extends the study into more regions and publishes more kinds of data. This latest study of broadband performance in the U.S. follows the Commission's first-of-its-kind report last year to test and report transparent broadband speed and performance data in collaboration with Internet Service Providers.

The meeting site is fully accessible to people using wheelchairs or other mobility aids. Sign language interpreters, open captioning, and assistive listening devices will be provided on site. Other reasonable accommodations for people with disabilities are available upon request. In your request, include a description of the accommodation you will need and a way we can contact you if we need more information. Last minute requests will be accepted, but may be impossible to fill. Send an email to: *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Additional information concerning this meeting may be obtained from Audrey Spivack or David Fiske, Office of Media Relations, (202) 418–0500; TTY 1–888–835–5322. Audio/Video coverage of the meeting will be broadcast live with open captioning over the Internet from the FCC Live Web page at *www.fcc.gov/live*.

For a fee this meeting can be viewed live over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. To purchase these services call (703) 993–3100 or go to *www.capitolconnection.gmu.edu.*

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, Best Copy and Printing, Inc. (202) 488–5300; Fax (202) 488–5563; TTY (202) 488–5562. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio and video tape. Best Copy and Printing, Inc. may be reached by email at *FCC@BCPIWEB.com.*

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary, Office of the Secretary, Office of Managing Director.*

[FR Doc. 2012–17400 Filed 7–12–12; 4:15 pm]

**BILLING CODE 6712–01–P**

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**AGENCY:** Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act.

**SUMMARY:** In accordance with requirements of the Paperwork Reduction Act of 1995 (''PRA''), 44 U.S.C. 3501 *et seq.,* the FDIC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the renewal of an existing information collection, as required by the PRA. On May 4, 2012 (77 FR 26551), the FDIC solicited public comment for a 60-day period on renewal of the following information collection: Recordkeeping/Confirmation Requirements for Securities Transactions (OMB No. 3064–0028). No comments were received. Therefore, the FDIC hereby gives notice of submission of its request for renewal to OMB for review.

**DATES:** Comments must be submitted on or before August 15, 2012.

**ADDRESSES:** Interested parties are invited to submit written comments to the FDIC by any of the following methods:

• *http://www.FDIC.gov/regulations/laws/federal/notices.html.*

• *Email: comments@fdic.gov* Include the name of the collection in the subject line of the message.

• *Mail:* Leneta G. Gregorie (202–898–3719), Counsel, Room NYA–5050, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

• *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Leneta G. Gregorie, at the FDIC address above.

**SUPPLEMENTARY INFORMATION:**

**Proposal To Renew the Following Currently Approved Collection of Information**

*Title:* Recordkeeping and Confirmation Requirements for Securities Transactions.

*OMB Number:* 3064–0028.

*Frequency of Response:* On occasion.

*Affected Public:* Business or other financial institutions.

*Estimated Number of Respondents:* 4534.

*Average Time per Response:* 27.91 hours.

*Total Annual Burden:* 126,544 hours.

*General Description of Collection:* The information collection requirements are contained in 12 CFR part 344. The regulation's purpose is to ensure that purchasers of securities in transactions effected by insured state nonmember banks are provided with adequate records concerning the transactions. The regulation is also designed to ensure that insured state nonmember banks maintain adequate records and controls with respect to the securities transactions they effect.

**Request for Comment**

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC, this 10th day of July 2012.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

[FR Doc. 2012–17177 Filed 7–13–12; 8:45 am]

**BILLING CODE 6714–01–P**

## FEDERAL ELECTION COMMISSION

### Sunshine Act Meeting

**AGENCY:** Federal Election Commission.

**FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT:** 77 FR 40355 (July 9, 2012).

**DATE AND TIME:** Thursday, July 12, 2012 at 10 a.m.

**PLACE:** 999 E Street NW., Washington, DC (Ninth Floor).

**STATUS:** This meeting has been canceled.

**CHANGES IN THE MEETING:** This meeting has been canceled.

* * * * *

**PERSON TO CONTACT FOR INFORMATION:** Judith Ingram, Press Officer, Telephone: (202) 694–1220.

**Shawn Woodhead Werth,**

*Secretary and Clerk of the Commission.*

[FR Doc. 2012–17306 Filed 7–12–12; 11:15 am]

BILLING CODE 6715–01–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 July 30, 2012.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *High Plains Banking Group, Inc. KSOP, Flagler, Colorado; Thomas Creighton, Jr., Denver, Colorado, individually and as trustee of High Plains Banking Group, Inc. KSOP; Lucy Loomis, Denver, Colorado; John and Johnita Creighton, Longmont, Colorado; Virginia Newton, Snowmass, Colorado; Ann Creighton, Sammamish, Washington; and Lavina Creighton, Atwood, Kansas, all to become members of the Creighton Family Group;* to acquire control of High Plains Banking Group, Inc., and thereby indirectly acquire control of High Plains Bank, both in Flagler, Colorado.

Board of Governors of the Federal Reserve System, July 10, 2012.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 2012–17181 Filed 7–13–12; 8:45 am]

BILLING CODE 6210–01–P

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 9, 2012.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue Minneapolis, Minnesota 55480–0291:

1. *Beall Bancshares Inc.,* Velva, North Dakota; to become a bank holding company by acquiring 100 percent of the voting shares of Peoples State Bank of Velva, Velva, North Dakota.

Board of Governors of the Federal Reserve System, July 10, 2012.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 2012–17180 Filed 7–13–12; 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 August 1, 2012, from 10 a.m. to 3 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: July 5, 2012.

**MacKenzie Robertson,**

*FACA Program Lead, Office of Policy and Planning, Office of the National Coordinator for Health Information Technology.*

[FR Doc. 2012–17288 Filed 7–13–12; 8:45 am]

**BILLING CODE 4150–45–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Public Meeting of the Presidential Commission for the Study of Bioethical Issues

**AGENCY:** Department of Health and Human Services, Office of the Assistant Secretary for Health, Presidential Commission for the Study of Bioethical Issues.

**ACTION:** Notice of meeting.

**SUMMARY:** The Presidential Commission for the Study of Bioethical Issues will conduct its tenth meeting in August. At this meeting, the Commission will continue discussing topics related to the ethical issues associated with the development of medical countermeasures for children. The Commission will also develop and finalize recommendations regarding access to, and privacy of human genome sequence data.

**DATES:** The meeting will take place Wednesday and Thursday, August 1–2, 2012.

**ADDRESSES:** Renaissance Washington, DC Downtown Hotel, 999 9th Street NW., Washington, DC 20001. Telephone (202) 898–9000.

**FOR FURTHER INFORMATION CONTACT:** Hillary Wicai Viers, Communications Director, Presidential Commission for the Study of Bioethical Issues, 1425 New York Avenue NW., Suite C–100, Washington, DC 20005. Telephone: 202–233–3960. Email: *Hillary.Viers@bioethics.gov.* Additional information may be obtained at *www.bioethics.gov.*

**SUPPLEMENTARY INFORMATION:** Pursuant to the Federal Advisory Committee Act of 1972, Public Law 92–463, 5 U.S.C. app. 2, notice is hereby given of the tenth meeting of the Presidential Commission for the Study of Bioethical Issues (the Commission). The meeting will be held from 9 a.m. to approximately 5:30 p.m. on Wednesday, August 1, 2012, and from 9 a.m. to approximately 4 p.m. on Thursday, August 2, 2012, in Washington, DC. The meeting will be open to the public with attendance limited to space available. The meeting will also be webcast at *www.bioethics.gov.*

Under authority of Executive Order 13521, dated November 24, 2009, the President established the Commission. The Commission is an advisory panel of the nation's leaders in medicine, science, ethics, religion, law, and engineering. The Commission advises the President on bioethical issues arising from advances in biomedicine and related areas of science and technology. The Commission seeks to identify and promote policies and practices that ensure scientific research, health care delivery, and technological innovation are conducted in a socially and ethically responsible manner.

The main agenda item for the Commission's tenth meeting is to continue discussing topics related to the ethical issues associated with the development of medical countermeasures for children. The Commission will also develop and finalize recommendations regarding access to, and privacy of human genome sequence data.

The draft meeting agenda and other information about PCSBI, including information about access to the webcast, will be available at *www.bioethics.gov.*

The Commission welcomes input from anyone wishing to provide public comment on any issue before it. Respectful debate of opposing views and active participation by citizens in public exchange of ideas enhances overall public understanding of the issues at hand and conclusions reached by the Commission. The Commission is particularly interested in receiving comments and questions during the meeting that are responsive to specific sessions. Written comments will be accepted at the registration desk and comment forms will be provided to members of the public in order to write down questions and comments for the Commission as they arise. To accommodate as many individuals as possible, the time for each question or comment may be limited. If the number of individuals wishing to pose a question or make a comment is greater than can reasonably be accommodated during the scheduled meeting, the Commission may make a random selection.

Anyone planning to attend the meeting who needs special assistance, such as sign language interpretation or other reasonable accommodations, should notify Esther Yoo by telephone at (202) 233–3960, or email at *Esther.Yoo@bioethics.gov* in advance of the meeting. The Commission will make every effort to accommodate persons who need special assistance.

Written comments will also be accepted in advance of the meeting and are especially welcome. Please address written comments by email to *info@bioethics.gov,* or by mail to the following address: Public Commentary, Presidential Commission for the Study of Bioethical Issues, 1425 New York Ave. NW., Suite C–100, Washington, DC 20005. Comments will be publicly available, including any personally identifiable or confidential business information that they contain. Trade secrets should not be submitted.

Dated: July 9, 2012.

**Lisa M. Lee,**

*Executive Director, Presidential Commission for the Study of Bioethical Issues.*

[FR Doc. 2012–17313 Filed 7–13–12; 8:45 am]

**BILLING CODE 4154–06–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[30 Day–12–0556]**

### Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7570 or send an email to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

**Proposed Project**

Assisted Reproductive Technology (ART) Program Reporting System (0920–0556, exp. 9/30/2012)—Revision—National Center for Chronic Disease and Public Health Promotion (NCDDPHP), Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

The ART program reporting system is used to comply with Section 2(a) of Public Law 102–493 (known as the Fertility Clinic Success Rate and Certification Act of 1992 (FCSRCA)), 42 U.S.C. 263a–1(a)). FCSRCA requires each ART program to annually report to the Secretary through the CDC pregnancy success rates achieved by each ART program, the identity of each embryo laboratory used by such ART program, and whether the laboratory is certified or has applied for certification under the Act. The reporting system allows CDC to publish an annual success rate report to Congress as specified by the FCSRCA.

CDC requests OMB approval to continue information collection for three years. This Revision request includes an increase in the total estimated burden hours due to an increase in the estimated number of responding clinics and an increase in the estimated number of responses per respondent. In addition, this Revision request describes implementation of a brief, one-time optional feedback survey at the end of the data submission for each reporting year. The feedback survey will elicit information about ART reporting system usability as well as respondents' perspectives on the usefulness of the information collection.

Information is collected electronically through the National ART Surveillance System (NASS), a web-based interface, or by electronic submission of NASS-compatible files. The NASS includes information about all ART cycles initiated by any of the ART programs practicing in the United States and its territories. The system also collects information about the pregnancy outcome of each cycle as well as a number of data items deemed important to explain variability in success rates across ART programs and individuals.

Respondents are the 484 ART programs in the United States. Approximately 440 ART programs are expected to report an average of 339 ART cycles each. The burden estimate includes the time for collecting, validating, and reporting the requested information. Information is collected on an annual schedule.

There are no costs to the respondents other than their time. The total estimated annualized burden hours are 96,960.

ESTIMATED ANNUALIZED BURDEN HOURS

| Respondents | Form name | Number of respondents | Number of responses per respondent | Average burden per response (in hours) |
|---|---|---|---|---|
| ART Programs | NASS | 440 | 339 | 39/60 |
| | Feedback Survey | 176 | 1 | 2/60 |

**Kimberly S. Lane,**

*Deputy Director, Office of Science Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.*

[FR Doc. 2012–17292 Filed 7–13–12; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2012–N–0001]**

### Advisory Committee for Pharmaceutical Science and Clinical Pharmacology; Notice of Meeting

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

*Name of Committee:* Advisory Committee for Pharmaceutical Science and Clinical Pharmacology.

*General Function of the Committee:* To provide advice and recommendations to the Agency on FDA's regulatory issues.

*Date and Time:* The meeting will be held on August 9, 2012, from 8 a.m. to 5 p.m.

*Location:* FDA White Oak Campus, 10903 New Hampshire Ave., Building 31 Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993–0002. Information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *http://www.fda.gov/AdvisoryCommittees/default.htm;* under the heading ''Resources for You,'' click on ''Public Meetings at the FDA White Oak Campus.'' Please note that visitors to the White Oak Campus must enter through Building 1.

*Contact Person:* Yvette Waples, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, FAX: 301–847–8533, email: *ACPS-CP@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), to find out further information regarding FDA advisory committee information. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site at *http://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the

advisory committee information line to learn about possible modifications before coming to the meeting.

*Agenda:* During the morning session, the committee will discuss FDA's draft guidance on tablet scoring. This topic will include an overview of FDA's proposed plan to move forward and the United States Pharmacopoeia's perspective on the topic. During the afternoon session, the committee will discuss: (1) The Center for Drug Evaluation and Research (CDER) Nanotechnology Risk Management Working Group activities; (2) nanotechnology-related research conducted and published by CDER, to include examples related to sunscreens; and (3) the overview and preliminary analysis of nanotechnology-related information collected from drug application submissions.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee link.

*Procedure:* Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before July 26, 2012. Oral presentations from the public will be scheduled between approximately 10:30 a.m. to 11 a.m. for the morning session, and 3:15 p.m. to 3:45 p.m. for the afternoon session. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before July 18, 2012. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by July 19, 2012.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Yvette Waples at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: July 10, 2012.

**Jill Hartzler Warner,**

*Acting Associate Commissioner for Special Medical Programs.*

[FR Doc. 2012–17193 Filed 7–13–12; 8:45 am]

BILLING CODE 4160–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Proposed Collection; Comment Request; Prostate, Lung, Colorectal and Ovarian Cancer Screening Trial (PLCO) (NCI)

**SUMMARY:** In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Cancer Institute (NCI), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

*Proposed Collection: Title:* Prostate, Lung, Colorectal, and Ovarian Cancer Screening Trial (PLCO) (NCI). *Type of Information Collection Request:* Revision (OMB #: 0925–0407, current expiration date 9/30/2014). *Need and Use of Information Collection:* This trial was designed to determine if cancer screening for prostate, lung, colorectal, and ovarian cancer can reduce mortality from these cancers which currently cause an estimated 255,700 deaths annually in the U.S. The design is a two-armed randomized trial of men and women aged 55 to 74 at entry. OMB first approved this study in 1993 and has approved it every 3 years since. The main change to this submission is that the Supplemental Questionnaire is being replaced with the Medication Use Questionnaire. As PLCO participants now range from 74–94 years of age, the focus is now on collecting additional information regarding medications that are particularly common among older adults. Additionally, the contracts for 8 of the 10 Screening Centers (SCs) ended in 2011 and the remaining two sites will close in 2012 and 2014. NCI has awarded a contract for continuation of participant follow-up activities to one data collection site named the PLCO Central Data Collection Center (CDCC). In 2011, participants were re-consented for at least an additional five years of follow-up. The current number of respondents is limited to the approximately 94,000 participants being actively followed up. The reports on cancer screening and prostate, lung, colorectal, and ovarian cancer mortality based on this trial have been published in peer review medical journals. The additional follow-up will provide data that will clarify further the long term effects of the screening on cancer incidence and mortality for the four targeted cancers. Further, demographic and risk factor information may be used to analyze the differential effectiveness of cancer screening in high versus low risk individuals. *Frequency of Response:* Annually. *Affected Public:* Individuals. *Type of Respondents:* Adult men and women. The annual reporting burden is provided for each study component as shown in Table 1 below. There are no Capital Costs, Operating Costs, and/or Maintenance Costs to report.

TABLE 1—ESTIMATES OF ANNUAL BURDEN HOURS

| Type of respondents | Survey instrument | Number of respondents | Frequency of response | Average time per response (minutes/hour) | Annual burden hours |
|---|---|---|---|---|---|
| Male and female participants. | ASU | 94,000 | 1.00 | 5/60 | 7,833 |

TABLE 1—ESTIMATES OF ANNUAL BURDEN HOURS—Continued

| Type of respondents | Survey instrument | Number of respondents | Frequency of response | Average time per response (minutes/hour) | Annual burden hours |
|---|---|---|---|---|---|
| | Script for ASU Non-response. | 3,760 | 1.00 | 5/60 | 313 |
| | HSQ | 2,000 | 1.00 | 5/60 | 167 |
| | MUQ | 94,000 | 1.00 | 15/60 | 23,500 |
| Total | | | | | 31,813 |

*Request for Comments:* Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the 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 the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

**FOR FURTHER INFORMATION CONTACT:** To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Dr. Christine D. Berg, Chief, Early Detection Research Group, National Cancer Institute, NIH, EPN Building, Room 3100, 6130 Executive Boulevard, Bethesda, MD 20892, or call non-toll-free number 301–496–8544 or email your request, including your address to: *bergc@mail.nih.gov.*

*Comments Due Date:* Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: July 10, 2012.

**Vivian Horovitch-Kelley,**

*NCI Project Clearance Liaison, National Institutes of Health.*

[FR Doc. 2012–17237 Filed 7–13–12; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Prospective Grant of Co-Exclusive License: The Development of Human Anti-CD22 Monoclonal Antibodies for the Treatment of Human Cancers and Autoimmune Disease

**AGENCY:** National Institutes of Health, Public Health Service, HHS.

**ACTION:** Notice.

**SUMMARY:** This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR Part 404.7(a)(1)(i), that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of a co-exclusive license to practice the inventions embodied in U.S. Patent Application 61/042,239 entitled ''Human Monoclonal Antibodies Specific for CD22'' [HHS Ref. E–080–2008/0–US–01], PCT Application PCT/US2009/124109 entitled ''Human and Improved Murine Monoclonal Antibodies Against CD22'' [HHS Ref. E–080–2008/0–PCT–02], US patent application 12/934,214 entitled ''Human Monoclonal Antibodies Specific for CD22'' [HHS Ref. E–080–2008/0–US–03], and all related continuing and foreign patents/patent applications for the technology family, to Customized Therapeutics. The patent rights in these inventions have been assigned to and/or exclusively licensed to the Government of the United States of America.

The prospective co-exclusive licensed territory may be worldwide, and the field of use may be limited to:

The use of the m971 and m972 (SMB–002) monoclonal antibodies as therapies for the treatment of B cell cancers and autoimmune disease. The Licensed Field of Use includes the use of the antibodies in the form of an immunoconjugate, including immunotoxins.

**DATES:** Only written comments and/or applications for a license which are received by the NIH Office of Technology Transfer on or before July 31, 2012 will be considered.

**ADDRESSES:** Requests for copies of the patent application, inquiries, comments, and other materials relating to the contemplated co-exclusive license should be directed to: David A. Lambertson, Ph.D., Senior Licensing and Patenting Manager, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 435–4632; Facsimile: (301) 402–0220; E-mail: *lambertsond@od.nih.gov.*

**SUPPLEMENTARY INFORMATION:** This invention concerns monoclonal antibodies against CD22 and methods of using the antibodies for the treatment of CD22-expressing cancers, including hematological malignancies such as hairy cell leukemia, chronic lymphocytic leukemia and pediatric acute lymphoblastic leukemia, and autoimmune disease such as lupus and Sjogren's syndrome. The specific antibodies covered by this technology are designated m971 and m972 (SMB–002; applicant designation).

CD22 is a cell surface antigen that is preferentially expressed on certain types of cancer cells, and is involved in the modulation of the immune system. The m971 and m972 antibodies can selectively bind to diseased cells and induce cell death while leaving healthy, essential cells unharmed. This can result in an effective therapeutic strategy with fewer side effects due to less non-specific killing of cells.

The prospective co-exclusive license may be granted unless the NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7 within fifteen (15) days from the date of this published notice.

Complete applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated co-exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the

Freedom of Information Act, 5 U.S.C. 552.

Dated: July 11, 2012.

**Richard U. Rodriguez,**

*Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.*

[FR Doc. 2012–17218 Filed 7–13–12; 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 Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; AIDS and AIDS Related Research.

*Date:* August 2, 2012.

*Time:* 2 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Robert Freund, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5216, MSC 7852, Bethesda, MD 20892, 301–435–1050, *freundr@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: July 10, 2012.

**Carolyn A. Baum,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2012–17214 Filed 7–13–12; 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 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 Mental Health Special Emphasis Panel Services Research.

*Date:* July 20, 2012.

*Time:* 2 p.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

*Contact Person:* Aileen Schulte, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6140, MSC 9608, Bethesda, MD 20892–9608, 301–443–1225, *aschulte@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(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: July 10, 2012.

**Jennifer S. Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2012–17239 Filed 7–13–12; 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 Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Social Science and Population Studies: Special Topics.

*Date:* July 30, 2012.

*Time:* 3:30 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Valerie Durrant, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3148, MSC 7770, Bethesda, MD 20892, (301) 827–6390, *durrantv@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 10, 2012.

**David Clary,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2012–17213 Filed 7–13–12; 8:45 am]

BILLING CODE 4140–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration

(SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

**Project: Cross-Site Evaluation of the Minority Substance Abuse/HIV Prevention Program—(OMB No. 0930–0298)—Revision and Reinstatement**

The Substance Abuse and Mental Health Services Administration Center for Substance Abuse Prevention (CSAP) is requesting from the Office of Management and Budget (OMB) approval for the revision of data collection activities for the cross-site study of the Minority HIV/AIDS Initiative (MAI), which includes both youth and adult questionnaires. This revision includes the addition of four cohorts, changes to the data collection procedures based on intervention duration, and the addition of two questions on binge drinking behavior. The instruments were also modified to include six items for adults and three items for youth on military families and deployment that were recently approved by OMB under the CSAP National Outcomes Measures (NOMs) (OMB # 0930–0230). The current approval for the full cross-site is under OMB No. 0930–0298, which expires on 4/30/12.

This cross-site study supports two of SAMHSA's eight Strategic Initiatives: Prevention of Substance Abuse and Mental Illness and Data, Outcomes, and Quality. The primary objectives of the cross-site study are to:

- Determine the success of the MAI in preventing, delaying, and/or reducing the use of alcohol, tobacco, and other drugs (ATOD) among the target populations.
- Measure the effectiveness of evidence-based programs and infrastructure development activities such as: Outreach and training, mobilization of key stakeholders, substance abuse and HIV/AIDS counseling and education, referrals to appropriate medical treatment and/or other intervention strategies (i.e., cultural enrichment activities, educational and vocational resources, and computer-based curricula).
- Assess the process of adopting and implementing the Strategic Prevention Framework (SPF) with the target populations.

Grantees are community based organizations that are required to address the SAMSHA Strategic Prevention Framework (SPF) and participate in this cross-site evaluation. The grantees are expected to provide leadership and coordination on the planning and implementation of the SPF that targets minority populations, the minority reentry population, as well as other high risk groups residing in communities of color with high prevalence of SA and HIV/AIDS.

The grantees are expected to provide an effective prevention process, direction, and a common set of goals, expectations, and accountabilities to be adapted and integrated at the community level. While the grantees have substantial flexibility in choosing their individual evidence-based programs, they are all required to base them on the five steps of the SPF to build service capacity specific to SA and HIV prevention services. Conducting this cross-site evaluation will assist SAMHSA/CSAP in promoting and disseminating optimally effective prevention programs.

Grantees must also conduct ongoing monitoring and evaluation of their projects to assess program effectiveness including Federal reporting of the Government Performance and Results Act (GPRA) Modernization Act of 2010, SAMHSA/CSAP National Outcome Measures (NOMs), and HIV Counseling and Testing. All of this information will be collected through self-report questionnaires administered to program participants. All grantees will use two instruments, one for youth aged between 12 and 17 and one for adults aged 18 and older. The common design for participants in interventions lasting 30 days or longer includes assessments at baseline, program exit, and three to six months post-exit (follow-up). The common questionnaires will be administered to all 30-day intervention (program participants) youth and adults at baseline (first data collection point), program exit (second data collection point), and follow-up (third data collection point). For participants in interventions lasting between 2 and 29 days questionnaires will be administered at baseline and exit. For single session interventions an exit only questionnaire will be administered. See breakdown below:

| Intervention duration | Length | Definition | Sections of survey to be administered |
|---|---|---|---|
| Single Session Intervention | 1 day or less | A direct service intervention that lasts one day or less. Participants may receive multiple services during the session, but do not continue in a CSAP HIV grant funded activity for more than one day. | • Section One: Facts about You.<br>• 3 to 5 questions from Section Two: Attitudes & Knowledge. |
| Multiple Session Brief Intervention. | Less than 30 days | The participant should receive at least two HIV Grant funded sessions or service encounters. The period of time between the first session or encounter and the last session or encounter should be two to 29 days. | • Section One: Facts about You<br>• Section Two: Attitudes & Knowledge. |
| Multiple Session Long Intervention. | 30 days or more | The participant should receive at least two HIV Grant funded sessions or service encounters. The period of time between the first session/encounter and the last session/encounter should be 30 days or more. | • Section One: Facts about You.<br>• Section Two: Attitudes & Knowledge.<br>• Section Three: Behavior & Relationships. |

The CSAP National Outcome Measures (NOMs) on the instruments have already been approved by OMB (OMB No. 0930–0230) will expire on 2/28/2013. These NOMs data are used to report on Government Performance and Results Act (GPRA) and findings across CSAP programs. For this program, these cross-site instruments are augmented with additional scales (currently approved under OMB No. 0930–0298 and expiring on 4/30/2012) to measure other important risk and protective factors uniquely associated with HIV/AIDS among minority populations and minority re-entry populations in communities of color. The youth (covering ages 12–17) questionnaire

contains 128 questions, of which 28 relate to HIV/AIDS and the adult questionnaire contains 122 items, of which 47 relate to HIV/AIDS. Two new questions have been added to both the youth and adult questionnaires to address SAMHSA's need to collect information on binge drinking behavior, not covered under any prior OMB package. These questions are:

1. Females only: During the past 30 days, on how many days did you have 4 or more drinks on the same occasion?

2. Males only: During the past 30 days, on how many days did you have 5 or more drinks on the same occasion?

Procedures are employed to safeguard the privacy and confidentiality of participants. The cross-site evaluation results will have significant implications for the substance abuse and HIV/AIDS prevention fields, the allocation of grant funds, and other evaluation activities conducted by multiple Federal, State, and local government agencies. They will be used to develop Federal policy in support of SAMHSA/CSAP program initiatives, inform the public of lessons learned and findings, improve existing programs, and promote replication and dissemination of effective prevention strategies.

**Total Estimates of Annualized Hour Burden**

The following table shows the estimated annualized burden for data collection.

TABLE 1a—ESTIMATES OF ANNUALIZED HOUR BURDEN BY INTERVENTION LENGTH

| Intervention length | Number of respondents | Responses per respondent | Total responses | Hours per response | Total hour burden |
|---|---|---|---|---|---|
| **30-Days or More Intervention** | | | | | |
| Base line | 7,937 | 1 | 7,937 | 0.83 | 6,588 |
| Exit | 4,887 | 1 | 4,887 | 0.83 | 4,056 |
| Follow-up | 2,942 | 1 | 2,942 | 0.83 | 2,442 |
| Subtotal | 7,937 | ..... | 15,766 | ..... | 13,086 |
| **2 to 29 Day Intervention** | | | | | |
| Base line | 1,416 | 1 | 1,416 | 0.5 | 708 |
| Exit | 872 | 1 | 872 | 0.5 | 436 |
| Subtotal | 1,416 | ..... | 2,288 | ..... | 1,144 |
| **Single Day Intervention** | | | | | |
| Exit | 2,458 | 1 | 2,458 | 0.25 | 614 |
| Annualized Total | 11,811 | ..... | 20,512 | ..... | 14,844 |

TABLE 1b—ESTIMATES OF ANNUALIZED HOUR BURDEN BY SURVEY TYPE

| Questionnaire | Number of respondents | Total responses | Total hour burden |
|---|---|---|---|
| Annualized Total Adult | 9,682 | 16,899 | 12,234 |
| Annualized Total Youth | 2,128 | 3,612 | 2,610 |
| Annualized Total | 11,811 | 20,512 | 14,844 |

Written comments and recommendations concerning the proposed information collection should be sent by August 15, 2012 to the SAMHSA Desk Officer at the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). To ensure timely receipt of comments, and to avoid potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov.* Although commenters are encouraged to send their comments via email, commenters may also fax their comments to: 202–395–7285. Commenters may also mail them to: Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building, Room 10102, Washington, DC 20503.

**Summer King,**

*Statistician.*

[FR Doc. 2012–17241 Filed 7–13–12; 8:45 am]

BILLING CODE 4162–20–P

## DEPARTMENT OF HOMELAND SECURITY

### Office of the Secretary

### Exercise of Authority Under Section 212(d)(3)(B)(i) of the Immigration and Nationality Act

**AGENCY:** Office of the Secretary, DHS.

**ACTION:** Notice of determination.

**Authority:** 8 U.S.C. 1182(d)(3)(B)(i).

Following consultations with the Secretary of State and the Attorney General, I hereby conclude, as a matter of discretion in accordance with the authority granted to me by section 212(d)(3)(B)(i) of the Immigration and

Nationality Act (INA), 8 U.S.C. 1182(d)(3)(B)(i), as amended, as well as the foreign policy and national security interests deemed relevant in these consultations, that, subject to paragraph (c) of this determination:

(a) Section 212(a)(3)(B) of the INA, 8 U.S.C. 1182(a)(3)(B), excluding subclause (i)(II), shall not apply with respect to an alien applying for a nonimmigrant visa for any activity or association relating to the Kosovo Liberation Army (KLA) and

(b) Subclauses (iv)(IV), (iv)(V), and (iv)(VI), and (i)(VIII) of section 212(a)(3)(B) of the INA, 8 U.S.C. 1182(a)(3)(B), shall not apply with respect to an alien who:

(1) Solicited funds or other things of value for;

(2) Solicited any individual for membership in;

(3) Provided material support to; or

(4) Received military-type training from or on behalf of the KLA.

(c) To meet the requirements of this determination under paragraph (a) or (b), the alien must satisfy the relevant agency authority that the alien:

(1) Is seeking a benefit or protection under the INA and has been determined to be otherwise eligible for the benefit or protection;

(2) Has undergone and passed all relevant background and security checks;

(3) Has fully disclosed, to the best of his or her knowledge, in all relevant applications and interviews with U.S. government representatives and agents, the nature and circumstances of activities or associations falling within the scope of section 212(a)(3)(B) of the INA, 8 U.S.C. 1182(a)(3)(B);

(4) Is not and has not been subject to an indictment by an international tribunal;

(5) Has not participated in, or knowingly provided material support to, terrorist activities that targeted noncombatant persons or U.S. interests;

(6) Poses no danger to the safety and security of the United States; and

(7) Warrants an exemption from the relevant inadmissibility provision(s) in the totality of the circumstances.

Implementation of this determination will be made by U.S. Citizenship and Immigration Services (USCIS), in consultation with U.S. Immigration and Customs Enforcement (ICE), or by U.S. consular officers, as applicable, who shall ascertain, to their satisfaction, and in their discretion, that the particular applicant meets each of the criteria set forth above.

This exercise of authority may be revoked as a matter of discretion and without notice at any time, with respect to any and all persons subject to it. Any determination made under this exercise of authority as set out above can inform but shall not control a decision regarding any subsequent benefit or protection application, unless such exercise of authority has been revoked.

This exercise of authority shall not be construed to prejudice, in any way, the ability of the U.S. government to commence subsequent criminal or civil proceedings in accordance with U.S. law involving any beneficiary of this exercise of authority (or any other person). This exercise of authority creates no substantive or procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person.

In accordance with section 212(d)(3)(B)(ii) of the INA, 8 U.S.C. 1182(d)(3)(B)(ii), a report on the aliens to whom this exercise of authority is applied, on the basis of case-by-case decisions by the U.S. Department of Homeland Security or by the U.S. Department of State, shall be provided to the specified congressional committees not later than 90 days after the end of the fiscal year.

This determination is based on an assessment related to the national security and foreign policy interests of the United States as they apply to the particular persons described herein and shall not have any application with respect to other persons or to other provisions of U.S. law.

Dated: July 10, 2012.

**Janet Napolitano,**

*Secretary of Homeland Security.*

[FR Doc. 2012–17232 Filed 7–13–12; 8:45 am]

**BILLING CODE 9110–9M–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Citizenship and Immigration Services

### Agency Information Collection Activities: Monthly Report on Naturalization Papers, Form N–4; Extension of a Currently Approved Information Collection; Comment Request

**ACTION:** 60-Day Notice of Information Collection under Review, OMB Control No. 1615–0051.

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. 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 September 14, 2012.

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 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 email at *USCISFRComment@dhs.gov* or via the Federal eRulemaking Portal at *http://www.Regulations.gov* under e-Docket ID number USCIS–2005–0032. When submitting comments by email please add the OMB Control Number 1615–0051 in the subject box. All submissions received must include the agency name and e-Docket ID.

Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.Regulations.gov*, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments for public viewing that it determines may impact the privacy of an individual or is offensive. For additional information please read the Privacy Act notice that is available via the link in the footer of *http://www.Regulations.gov.*

**Note:** The address listed in this notice should only be used to submit comments concerning this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check ''My Case Status'' online at *https://egov.uscis.gov/cris/Dashboard.do*, or call the USCIS National Customer Service Center at 1–800–375–5283.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the 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 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:* Monthly Report on Naturalization Papers.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form N–4; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* State or local Governments. Section 339 of the Immigration and Nationality Act (Act) requires that the clerk of each court that administers the oath of allegiance notify USCIS of all persons to whom the oath of allegiance for naturalization is administered, within 30 days after the close of the month in which the oath was administered. This form provides a format listing the number of those persons to USCIS and provides accountability for the delivery of the certificates of naturalization as required under that section of law.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 160 respondents at 12 responses annually at 30 minutes (.50) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 960 annual burden hours.

If you need a copy of the information collection instrument, please visit the Federal eRulemaking Portal 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 20529–2020, Telephone number 202–272–8377.

Dated: July 11, 2012.

**Laura Dawkins,**

*Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.*

[FR Doc. 2012–17231 Filed 7–13–12; 8:45 am]

BILLING CODE 9111–97–P

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Citizenship and Immigration Services

### Agency Information Collection Activities: Notice of Appeal of Decision Under Section 201 or 245A, Form I–694, OMB Control No. 1615–0034; Extension of a Currently Approved Information Collection; Comment Request

**ACTION:** 30-Day notice of information collection under review.

The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act (PRA) of 1995. The information collection was previously published in the **Federal Register** on April 9, 2012, at 77 FR 21104, allowing for a 60-day public comment period. USCIS received one comment for this information collection in response to the 60-day notice, and acknowledges receipt.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until August 15, 2012. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to DHS, and to the Office of Information and Regulatory Affairs, OMB, USCIS Desk Officer. Comments may be submitted to: Chief, Regulatory Coordination Division, Office of Policy and Strategy, USCIS, 20 Massachusetts Avenue NW., Washington, DC 20529–2020. Comments may also be submitted to DHS via email at *USCISFRComment@dhs.gov* or via the Federal eRulemaking Portal Web site at *http://www.Regulations.gov* under e-Docket number USCIS–2007–0014, and to the OMB USCIS Desk Officer via facsimile at 202–395–5806 or via *oira_submission@omb.eop.gov.* When submitting comments by email please make sure to add OMB Control Number 1615–0034 in the subject box. All submissions received must also include the agency name and e-Docket ID.

Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.Regulations.gov*, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments for public viewing that it determines may impact the privacy of an individual or is offensive. For additional information please read the Privacy Act notice that is available via the link in the footer of *http://www.Regulations.gov.*

**Note:** The address listed in this notice should only be used to submit comments concerning the extension of 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 (TTY 1–800–767–1833).

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

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

(2) Evaluate the accuracy of the agencies' estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**Overview of This Information Collection**

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Notice of Appeal of Decision Under Section 210 or 245A.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–694; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or Households.* This information collection will be used by USCIS in considering appeals of denials or termination of temporary and permanent residence status by legalization applicants and special agricultural workers, under sections 210 and 245A of the Immigration and Nationality Act, and related applications for waiver of grounds of inadmissibility.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 50 responses at 30 minutes (0.5 hour) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 25 annual burden hours.

If you need a copy of this information collection instrument, please visit the Federal eRulemaking Portal Web site at *http://www.Regulations.gov.* If additional information is required contact: USCIS, Regulatory Coordination Division, Office of Policy and Strategy, 20 Massachusetts Avenue NW., Washington, DC 20529–2020, telephone (202) 272–8377.

Dated: July 11, 2012.

**Laura Dawkins,**

*Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.*

[FR Doc. 2012–17225 Filed 7–13–12; 8:45 am]

**BILLING CODE 9111–97–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLCOF00000 L16520000.XX0000]**

### Notice of Meeting, Rio Grande Natural Area Commission

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of public meeting.

**SUMMARY:** In accordance with the Federal Land Policy and Management Act of 1976 (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Rio Grande Natural Area Commission will meet as indicated below.

**DATES:** The meeting will be held from 10 a.m. to 3 p.m. on September 13, 2012.

**ADDRESSES:** Hampton Inn Alamosa, 710 Mariposa Street, Alamosa, CO 81101.

**FOR FURTHER INFORMATION CONTACT:** Denise Adamic, Public Affairs Specialist, BLM Front Range District Office, 3028 East Main St., Cañon City, CO 81212. Phone: (719) 269–8553. Email: *dadamic@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** The Rio Grande Natural Area Commission was established in the Rio Grande Natural Area Act (16 U.S.C. 460rrr–2). The nine-member Commission advises the Secretary of the Interior, through the BLM, concerning the preparation and implementation of a management plan for non-Federal land in the Rio Grande Natural Area, as directed by law. Planned agenda topics for this meeting include: resource concerns and goals to be addressed in the management plan, subcommittee reports on the draft plan and the process for public involvement. The public may offer oral comments at 10:15 a.m. or written statements, which may be submitted for the Commission's consideration. Please send written comments to Denise Adamic at the address above by September 10, 2012. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Summary minutes for the Commission meeting will be maintained in the San Luis Valley Field Office and will be available for public inspection and reproduction during regular business hours within 30 days following the meeting. Meeting minutes and agenda are also available at: *www.blm.gov/co/st/en/fo/slvfo.html.*

Dated: July 9, 2012.

**Helen M. Hankins,**

*BLM Colorado State Director.*

[FR Doc. 2012–17309 Filed 7–13–12; 8:45 am]

**BILLING CODE 4310–JB–P**

## DEPARTMENT OF JUSTICE

**[OMB Number 1103–NEW]**

### Agency Information Collection Activities; Proposed Collection, Comments Requested: CRS Customer Satisfaction Survey

**ACTION:** 30-Day Notice of Information Collection Under Review.

The Department of Justice (DOJ), Community Relations Service (CRS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 77, Number 85, page 26043, on May 2, 2012, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until August 15, 2012. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological

collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**Overview of This Information Collection**

(1) *Type of Information Collection:* Response to agency survey questions numerically measuring (0–5) professional effectiveness of service deliverables rendered.

(2) *Title of the Form/Collection:* CRS—Customer Satisfaction Survey.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: XXXX, Community Relations Service (CRS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Local and state elected officials, heads of support service agencies as Police, Education, Human Relations agencies, heads of public advocacy organizations, and vested formal and informal community leaders. Abstract: The CRS 'Customer Satisfaction Survey' will help CRS maintain the highest standards of professional conciliation and mediation work while also identifying new areas and programs of expertise needed to improve service deliverables to emerging community concerns.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 500 voluntary respondents, who will complete the form within approximately 15 minutes.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 10 total CRS burden hours a month associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Two Constitution Square, 145 N Street NE., Room 2E–508, Washington, DC 20530.

Dated: July 10, 2012.

**Jerri Murray,**

*Department Clearance Officer, PRA, United States Department of Justice.*

[FR Doc. 2012–17189 Filed 7–13–12; 8:45 am]

BILLING CODE 4410–17–P

## DEPARTMENT OF JUSTICE

### Office of Justice Programs

**[OMB Number 1121–0321]**

### Agency Information Collection Activities: Proposed Collection; Comments Requested

**ACTION:** 60-Day Notice of Information Collection Under Review: National Institute of Justice Compliance Testing Program.

The Department of Justice, Office of Justice Programs, National Institute of Justice (NIJ) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with review procedures of the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. If granted, the approval is valid for three years. Comments are encouraged and should be directed to the National Institute of Justice, Office of Justice Programs, Department of Justice, Attention: Jamie Phillips, 810 7th St. NW., Washington, DC 20503. Comments are encouraged and will be accepted for 60 days until September 14, 2012. This process is conducted in accordance with 5 CFR 1320.10.

All comments and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to NIJ at the above address.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Enhance the quality, utility, and clarity of the information to be collected; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**Overview of This Information**

(1) *Type of information collection:* Revision of a currently approved collection.

(2) *The title of the form/collection:* National Institute of Justice Compliance Testing Program (NIJ CTP). This collection consists of seven forms: NIJ CTP Applicant Agreement; NIJ CTP Authorized Representatives Notification; NIJ CTP Body Armor Build Sheet; NIJ CTP Body Armor Agreement; NIJ CTP Manufacturing Location Notification; NIJ CTP Multiple Listee Notification; NIJ Approved Laboratory Application and Agreement.

(3) *Agency Form Number:* None. Component Sponsoring Collection: National Institute of Justice, Office of Justice Programs, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract. Primary:* Applicants to the NIJ Compliance Testing Program and Testing Laboratories. Other: None. The purpose of the voluntary NIJ Compliance Testing Program (CTP) is to provide confidence that equipment used for law enforcement and corrections applications meets minimum published performance requirements. One type of equipment is ballistic body armor. Ballistic body armor designs that are determined to meet minimum requirements by NIJ and listed on the NIJ Compliant Products List are eligible for purchase with grant funding through the Ballistic Vest Partnership.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* Total of 90 respondents estimated.

*NIJ CTP Applicant Agreement:* Estimated 90 respondents at 1 hour each;

*NIJ CTP Authorized Representatives Notification:* Estimated 90 respondents at 20 minutes each;

*NIJ CTP Body Armor Build Sheet:* Estimated 60 respondents (estimated 300 responses) at 1 hour each;

*NIJ CTP Body Armor Agreement:* Estimated 60 respondents (estimated 300 responses) at 20 minutes each;

*NIJ CTP Manufacturing Location Notification:* Estimated 90 respondents (estimated 350 responses) at 20 minutes each;

*NIJ CTP Listee Notification:* Estimated 90 respondents (estimated 350 responses) at 20 minutes each;

*NIJ Approved Laboratory Application and Agreement:* Estimated 10 respondents at 1 hour each.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated total public burden associated with this information is 322 hours in the first year and 222 hours each subsequent year.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Room 2E–508, Washington, DC 20530.

Dated: July 10, 2012.

**Jerri Murray,**

*Department Clearance Officer, PRA, U.S. Department of Justice.*

[FR Doc. 2012–17226 Filed 7–13–12; 8:45 am]

**BILLING CODE 4410–18–P**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on June 29, 2012, a proposed Consent Decree (the Consent Decree) in *United States of America* v. *Chester Mining Company,* Civil Action No. 2:12–CV–00334–CWD, was lodged with the United States District Court for the District of Idaho.

In this action the United States sought reimbursement under Section 107 of CERCLA for past costs incurred at the Conjecture Mine Superfund Site (the Site), located in Bonner County, Idaho. The United States also sought a declaratory judgment under Section 113 of CERCLA for future costs to be incurred at the Site. Under the proposed Consent Decree, which is based on ability to pay, Chester Mining Company has agreed to pay $75,000. The Consent Decree includes a covenant not to sue Chester Mining Company pursuant to Sections 106 and 107 of CERCLA, 42 U.S.C. 9606 & 9607.

For thirty (30) days following the publication of this notice, the Department of Justice will receive comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either emailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. The comments should refer to *United States of America* v. *Chester Mining Company,* D.J. Ref. 90–11–3–10110.

During the public comment period, the Consent Decree may be examined on the following Department of Justice Web site, at *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or emailing a request to ''Consent Decree Copy'' (*EESCDCopy.ENRD@usdoj.gov*), fax number (202) 514–0097, phone confirmation number (202) 514–5271. If requesting a copy from the Consent Decree Library by mail, please enclose a check in the amount of $8.00 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if requesting by email or fax, forward a check in that amount to the Consent Decree Library at the address given above.

**Robert E. Maher, Jr.,**

*Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 2012–17204 Filed 7–13–12; 8:45 am]

**BILLING CODE 4410–15–P**

## DEPARTMENT OF JUSTICE

### Notice of Proposed Partial Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on July 9, 2012, the United States, on behalf of the U.S. Environmental Protection Agency (''EPA''), lodged a proposed Partial Consent Decree under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (''CERCLA''), 42 U.S.C. 9601, *et seq.,* in *United States and State of California* v. *Montrose Chemical Corp. of California, et al.,* Civil No. CV 90 3122–R (C.D. Cal.), relating to the Dual Site Groundwater Operable Unit of the Montrose and Del Amo Superfund Sites (''Dual Site''). The Dual Site is a comingled groundwater plume, primarily composed of chlorobenzene emanating from the Montrose Chemical Corp. of California former plant property, 20201 Normandie Avenue, Los Angeles, California (used for DDT manufacturing from 1947 to 1982), and several smaller plumes and pools of benzene from the neighboring Del Amo facility (used for synthetic rubber manufacturing from 1942 to 1975), as well as certain chlorinated solvents, including trichloroethylene, associated with historic industrial operations in the area.

Under the proposed Partial Consent Decree, the Settling Defendants—Montrose Chemical Corp. of California, Bayer CropScience Inc., News Publishing Australia Limited, and Stauffer Management Company LLC—will perform a discrete component of the environmental remedy for the Dual Site selected by EPA in a 1999 record of decision (''ROD''), namely financing and performing construction of the primary groundwater treatment system for the Dual Site. Settling Defendants will also pay oversight costs for that work incurred by EPA and the California Department of Toxic Substances Control (''DTSC''). Operation and maintenance of the primary groundwater treatment system, once built, implementation of other remedial action elements in the ROD, and payment of EPA's and DTSC's other response costs are not addressed or resolved by this Partial Consent Decree, but instead will be pursued separately by EPA and DTSC. The United States and DTSC provide the Settling Defendants with covenants not to sue in the Partial Consent Decree limited to the specific work required by the Decree and the associated oversight costs, with all other matters relating to the 1999 ROD for the Dual Site reserved for separate negotiations or proceedings.

For thirty (30) days following the publication of this notice, the Department of Justice will receive comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either emailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. The comments should refer to *United States and State of California* v. *Montrose Chemical Corp. of California, et al.,* Civil No. CV 90 3122–R (C.D. Cal.), D.J. Ref. 90–11–3–511/3.

During the public comment period, the Consent Decree may be examined at the U.S. Environmental Protection Agency, Region 9, Office of Regional Counsel, 75 Hawthorne Street, San Francisco, California 94105. The Consent Decree may also be examined on the following Department of Justice Web site: http://*www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or emailing a request to ''Consent Decree Copy'' (*EESCDCopy.ENRD@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–5271. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of

$92.00 (.25 cents per page reproduction cost) payable to the U.S. Treasury, or if by email or fax, forward a check in that amount to the Consent Decree Library at the stated address.

**Robert E. Maher, Jr.,**

*Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 2012–17201 Filed 7–13–12; 8:45 am]

**BILLING CODE 4410–15–P**

## DEPARTMENT OF JUSTICE

### Federal Bureau of Investigation

**[OMB Number 1110–0039]**

### Agency Information Collection Activities: Proposed Collection, Comments Requested; Extension of a Currently Approved Collection; Bioterrorism Preparedness Act: Entity/Individual Information

**ACTION:** 60-day Notice of information collection under review.

The Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Division will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with established review procedures of the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until September 14, 2012 This process in conducted in accordance with 5 CFR 1320.10.

All comments and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to John E. Strovers, National Instant Criminal Background Check System (NICS) Strategy and Systems Unit, Federal Bureau of Investigation, Criminal Justice Information Services Division, (CJIS), Module E–3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306; facsimile (304) 625–2198.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Comments 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 agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques of other forms of information technology, e.g., permitting electronic submission of responses.

**Overview of This Information Collection**

(1) *Type of information collection:* Extension of current collection.

(2) *The title of the form/collection:* Federal Bureau of Investigation Bioterrorism Preparedness Act: Entity/Individual Information.

(3) *The agency form number, if any, and the applicable component of the department sponsoring the collection:* Forms FD–961; Criminal Justice Information Services Division, Federal Bureau of Investigation, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: City, county, state, federal, individuals, business or other for profit, and not-for-profit institute. This collection is needed to receive names and other identifying information submitted by individuals requesting access to specific agents or toxins, and consult with appropriate officials of the Department of Health and Human Services and the Department of Agriculture as to whether certain individuals specified in the provisions should be denied access to or granted limited access to specific agents.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There are approximately 4,005 (FY 2011) respondents at 45 minutes for FD–961 Form.

(6) *An estimate of the total public burden (in hours) associated with this collection:*

There are approximately 3,004 hours, annual burden, associated with this information collection.

If additional information is required please contact Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, U.S. Department of Justice, Two Constitution Square, 145 N Street NE., Room 2E–508, Washington, DC 20530.

Dated: July 10, 2012.

**Jerri Murray,**

*Department Clearance Officer, United States Department of Justice.*

[FR Doc. 2012–17187 Filed 7–13–12; 8:45 am]

**BILLING CODE 4410–02–P**

## DEPARTMENT OF JUSTICE

### National Institute of Corrections

### Solicitation for a Cooperative Agreement—Transition From Jail to the Community (TJC)

**AGENCY:** National Institute of Corrections, U.S. Department of Justice.

**ACTION:** Solicitation for a Cooperative Agreement.

**SUMMARY:** The National Institute of Corrections (NIC) is soliciting proposals from organizations, groups, or individuals interested in entering into a 30-month cooperative agreement to assist at least two California counties with the implementation of the ''Transition from Jail to Community'' (TJC) model in response to California's Assembly Bill (AB) 109 realignment.

**DATES:** Applications must be received by 4 p.m. EDT on Friday, July 27, 2012.

**ADDRESSES:** Mailed applications must be sent to: Director, National Institute of Corrections, 320 First Street NW., Room 5002, Washington, DC 20534. Applicants are encouraged to use Federal Express, UPS, or similar service to ensure delivery by the due date. Hand delivered applications should be brought to 500 First Street NW., Washington, DC 20534. At the front desk, dial 7–3106, extension 0 for pickup.

Faxed applications will not be accepted. Electronic applications can be submitted via *http://www.grants.gov.*

**FOR FURTHER INFORMATION CONTACT:** All technical or programmatic questions concerning this announcement should be directed to P. Elizabeth Taylor, Correctional Program Specialist, National Institute of Corrections. You may reach her by phone at 800–995–6423 extension 3–9354 or by email at *petaylor@bop.gov.* In addition to the direct reply, all questions and responses will be posted on NIC's Web site at *www.nicic.gov* for public review (the names of those submitting questions will not be posted). The Web site will be updated regularly and postings will remain on the Web site until the closing date of this cooperative agreement solicitation. Only questions received by 4 p.m. EDT on Friday, July 20, 2012 will

be answered and posted on the NIC Web site.

**SUPPLEMENTARY INFORMATION:** *Overview:* Jail populations comprise accused, convicted but un-sentenced, and sentenced individuals, including those with holds for agencies like parole, probation, and immigration. It is a population of individuals who often also appear on the rosters of other agencies providing services for mental health, substance abuse, homelessness, unemployment, social services, and a variety of medical and public health concerns. Upon release, it is extremely likely that these individuals will remain in the community where the jail is located. Recent changes in California will result in many persons serving their entire sentence in local jails when in the past they would have been in state prison. Therefore, it is in the community's interest that the needs and challenges facing individuals in jail be addressed effectively and that ultimate responsibility for their behavior rests not just with the jail but with the community and its agencies in general.

While the safety and security of staff and confined individuals must always be the paramount responsibility of jail administrators, transition or reentry is not an issue that jail administrators can or should address exclusively. Partnering with community resource providers and expertise outside the jail dramatically increases opportunities for success once individuals are released. Some communities include pretrial diversion and/or release as important components of transition/reentry strategies. Effective transition relies on collaboration with public human services agencies, nonprofit and faith-based organizations, assessment of risk and need, and the use of evidence-based practices to guide targeted case planning. NIC recognizes that its resources permit direct assistance to only a very few jurisdictions. Therefore, products from the implementation of the TJC model in a California jurisdiction will be developed to share with other jails and communities for their future consideration and use.

*Background:* NIC began funding a Transition from Prison to the Community (TPC) initiative during Fiscal Year 2000. The NIC TJC Transition/Reentry Model was developed in 2007 and provided assistance to six jurisdictions in phase 1 of its multi-phase program. In May 2012, NIC requested applications for a second set of six jurisdictions, and it is anticipated that site selection will be completed by July 30, 2012. This initiative focuses specifically on TJC implementation in at least two California jurisdictions and includes the following objectives: (1) To assist with the execution of the California realignment process (AB 109), (2) To identify lessons that selected California jails can share specifically with other counties in the state, and (3) To provide more general information about TJC for a nationwide audience.

**TPC/TJC History**

Six jurisdictions received assistance during the Phase 1 award period: Orange County, CA; Denver County, CO; Kent County, MI; LaCrosse County, WI; Davidson County, TN; and Douglas County, KS. Phase 1 started with the provider convening a national advisory group and building an effective TJC model that incorporates NIC suggested correctional practices like risk assessment at admission; implementation of evidence-based practices targeting the higher risk offenders; and strategic collaboration among criminal justice agencies, other local agencies, and nongovernmental community groups for the purpose of public safety (thus reducing the likelihood of released individuals subsequently committing a crime in the community). In addition to providing quality direct technical assistance, NIC funded the development of tools and products for use by non-participating jurisdictions so that it might share with others those lessons learned from the participating sites. NIC also funded the development of the TJC Tool Kit, an online resource, and began using WebEx as a technical assistance tool for maintaining project momentum without requiring as many costly trips to sites. NIC will soon select a second set of six jurisdictions from around the country—TJC Phase 2 sites—and will focus this current award specifically on at least two California jurisdictions.

*Purpose:* Applicants will submit a proposal designed to achieve and complete the following:

*Scope of Work:* The overall goal of Transition from Jail to the Community (TJC) is to improve public safety and reintegration outcomes for exiting jail inmates. Specifically, TJC seeks to (1) improve public safety by reducing the threat of harm to persons and property from individuals released from local jails to their home communities and (2) increase successful integration outcomes for persons newly released, focusing on areas like employment retention, sobriety, reduced homelessness, improved health, and family connectedness.

Applicants must discuss the context and implications of this project goal in the current environment, and they must specifically describe how they will achieve each of the eight objectives that follow. Also included in the application must be a discussion about a proposed selection process for project sites (with participation by NIC), a description of project staff, milestones and projected timelines, and other elements that speak to their organizational capacity to manage this initiative.

*Objective 1*—The awardee will be responsible for helping the California sites achieve the TJC goal of developing a systems change process involving collaborative strategic planning. Other core components include (1) Collaboration and joint ownership; (2) local strategic planning; (3) ''reentry for all,'' where no group in the jail is automatically excluded from the TJC approach; (4) continuity of care in multiple service areas; (5) evidence-based practices, where programs and processes are based on the body of evidence regarding effective practice; and (6) data-driven decisionmaking and self-evaluation.

*Objective 2*—Provide strategically focused technical assistance, both in person onsite and remotely by efficient use of distance technology. NIC can provide access as needed to its WebEx resource.

*Objective 3*—Develop an evaluation component of the TJC initiative to (1) enhance local capacity for self-evaluation through the provision of evaluation-related technical assistance and (2) document implementation of the TJC model in learning sites. A related objective of the implementation evaluation is to measure evidence of systems change in each community (i.e., the extent to which implementation of the TJC model changed ''business as usual'' in these communities, including how and for whom).

*Objective 4*—Create tools for the field. Part of the intent of the TJC initiative is to inform jail-to-community transition practice beyond the learning sites through two primary activities: (1) Development and dissemination of tools to local jurisdictions interested in improving their jail transition work and (2) obtaining and disseminating results of the implementation and systems change evaluations. A primary vehicle for the dissemination of TJC concepts and tools to the field is the NIC Web site. Project team members may speak at conferences and workshops and publish articles. In addition, the awardee should develop end-of-project practitioner-oriented briefs.

*Objective 5*—Pretrial system enhancements: Assess/reassess the TJC model to determine whether and how it

should be strengthened with regard to pretrial strategies, polices, tools, and expectations. The awardee should include relevant change strategies as part of the overall technical assistance effort.

*Objective 6*—Assist at least two California county partnership teams with implementation of the NIC's TJC Model. The history and context for NIC's Transition from Prison to Community (TPC) and Transition from Jail to Community (TJC) initiatives are reflected in materials presented at *http://nicic.gov/TPJC.* The TJC Online Learning Toolkit (*http://nicic.gov/TJCToolkit2*) also draws on the implementation experiences of the six first round learning sites. The Web page and links combined with material from the toolkit's nine modules include information, tools, and resources associated with implementing all the elements of the TJC model. This is NIC's model that selected sites will implement in the AB 109-influenced California counties. It is also the portion of project activity that demands the preponderance of time, attention, and resource.

*Objective 7*—Facilitate a forum for other California counties. There will be much interest in what participating jurisdictions are learning that may have relevance elsewhere in the state. Therefore, a second-level priority is a requirement that the awardee work with NIC to develop a forum to share lessons learned with other California counties. Applicants must explain the details of their proposed strategies, approach, and approximate resource demand.

*Objective 8*—Responding to nationwide interest. There will be significant interest from around the country about how effective TJC will be in the AB 109 environment. As the lowest priority consuming the smallest funding commitment, the awardee will disseminate information on a national level to practitioners, stakeholders, and policymakers interested in program outcomes. Applicants must explain the details of their proposed strategies, approach, and approximate resource demand.

*Specific Requirements:* Documents or other media that are produced under this award must follow these guidelines: Prior to the preparation of the final draft of any document or other media, the awardee must consult with NIC's writer/editor concerning the acceptable formats for manuscript submissions and the technical specifications for electronic media. For all awards in which a document will be a deliverable, the awardee must follow the guidelines listed herein, as well as follow the Guidelines for Preparing and Submitting Manuscripts for Publication as found in the ''General Guidelines for Cooperative Agreements,'' which can be found on the NIC Web site at *www.nicic.gov/cooperativeagreements.* In addition, awardees should adhere to NIC's recommendations for plain language writing, which is available on the NIC Web site at *www.nicic.gov/plainlanguage.*

All final documents and other media submitted for posting on the NIC Web site must meet the federal government's requirement for accessibility (e.g., 508 PDF or HTML file). The awardee must provide descriptive text interpreting all graphics, photos, graphs, and/or multimedia to be included with or distributed alongside the materials and must provide transcripts for all applicable audio/visual works.

*Application Requirements:* Applications should be concisely written, typed double spaced and reference the project by the ''NIC Opportunity Number'' and title in this announcement. The package must include: a cover letter that identifies the audit agency responsible for the applicant's financial accounts as well as the audit period or fiscal year that the applicant operates under (e.g., July 1 through June 30); a program narrative (not to exceed 12 pages) in response to the statement of work and a budget narrative explaining projected costs. The following forms must also be included: OMB Standard Form 424, Application for Federal Assistance; OMB Standard Form 424A, Budget information—Non-Construction Programs; OMB Standard Form 424B, Assurances—Non-Construction Programs (these forms are available at *http://www.grants.gov*) and DOJ/NIC Certification Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and the Drug-Free Workplace Requirements (available at *http://nicic.gov/Downloads/General/certif-frm.pdf.*

Applications may be submitted in hard copy, or electronically via *http://www.grants.gov.* If submitted in hard copy, there needs to be an original and three copies of the full proposal (program and budget narratives, application forms and assurances). The original should have the applicant's signature in blue ink.

**Authority:** Pub. L. 93–415.

*Funds Available:* NIC is seeking the applicant's best ideas regarding accomplishment of the scope of work and the related costs for achieving the goals of this solicitation. Funds may be used only for the activities that are linked to the desired outcome of the project. The amount of the award will not exceed $450,000.

This project will be a collaborative venture with the Community Services Division of NIC.

*Eligibility of Applicants:* An eligible applicant is any public or private agency, educational institution, organization, individual, or team with expertise in the described areas.

*Review Considerations:* Applications received under this announcement will be subject to the NIC Review Process. Applications considered unresponsive will be disqualified. The criteria for the evaluation of each application will be as follows:

**Programmatic (60%)**

Is there demonstrated knowledge of NIC's Transition from Jail to Community Initiative? Is there demonstrated knowledge of techniques and/or interventions that successfully address offender transition/reentry issues? Is there demonstrated knowledge and/or experience with strategic planning and/or systems' change processes? Is there demonstrated knowledge of data-driven decisionmaking and self-evaluation? Are project goals/objectives adequately discussed? Is there a clear statement of how project goals will be accomplished, including major objectives that will lead to achieving the goal, the strategies to be employed, required staffing, and other required resources? Are there any innovative approaches, techniques, or design aspects proposed that will enhance the project?

**Organizational (20%)**

Do the skills, knowledge, and expertise of the organization and the proposed project staff demonstrate a high level of competency to complete the objectives? Does the applicant/organization have the necessary experience and organizational capacity to complete all the goals of the project? Are the proposed project management and staffing plans realistic and sufficient to complete the project within the 12-month time frame?

**Project Management/Administration (20%)**

Does the applicant identify reasonable objectives, milestones, and measures to track progress? If consultants and/or partnerships are proposed, is there a reasonable justification for their inclusion in the project and a clear structure to ensure effective coordination? Is the proposed budget realistic, does it provide sufficient cost detail/narrative, and does it represent

good value relative to the anticipated results?

**Note:** NIC will NOT award a cooperative agreement to an applicant who does not have a Dun and Bradstreet Database Universal Number (DUNS) and is not registered in the Central Contractor Registry (CCR).

A DUNS number can be received at no cost by calling the dedicated toll-free DUNS number request line at 1–800–333–0505 (if you are a sole proprietor, you would dial 1–866–705–5711 and select option 1).

*Registration in the CCR can be done online at the CCR Web site: http://www.bpn.gov/ccr.* A CCR Handbook and worksheet can also be reviewed at the Web site.

*Number of Awards:* One.

*NIC Opportunity Number:* 12CS16. This number should appear as a reference line in the cover letter, where indicated on Standard Form 424, and outside of the envelope in which the application is sent.

Catalog of Federal Domestic Assistance Number: 16.603.

*Executive Order 12372:* This program is subject to the provisions of Executive Order 12372. E.O. 12372 allows states the option of setting up a system for reviewing applications from within their states for assistance under certain Federal programs. Applicants (other than Federally-recognized Indian tribal governments) should contact their State Single Point of Contact (SPOC), a list of which can be found at *http://www.whitehouse.gov/omb/grants_spoc.*

**Morris L. Thigpen,**

*Director, National Institute of Corrections.*

[FR Doc. 2012–17192 Filed 7–13–12; 8:45 am]

**BILLING CODE 4410–36–P**

## DEPARTMENT OF JUSTICE

### National Institute of Corrections

### Solicitation for a Cooperative Agreement: Development of Materials Specific to Compassion Fatigue and Vicarious Trauma in Corrections

**AGENCY:** National Institute of Corrections, U.S. Department of Justice.

**ACTION:** Solicitation for a cooperative agreement.

**SUMMARY:** The National Institute of Corrections (NIC) is seeking applications from organizations, groups, or individuals to enter into a cooperative agreement with NIC for an 18-month period to develop a series of products to define, identify, and address compassion fatigue and vicarious trauma within the corrections profession. Corrections professionals are those individuals with responsibility for the care, custody, case management, treatment, supervision, and discharge of those awaiting adjudication or who are sentenced, incarcerated, or on some form of community supervision.

**DATES:** Applications must be received by 4 p.m. (EDT) on Friday, August 17, 2012.

**ADDRESSES:** Mailed applications must be sent to: Director, National Institute of Corrections, 320 First Street NW., Room 5002, Washington, DC 20534. Applicants are encouraged to use Federal Express, UPS, or similar service to ensure delivery by the due date.

Hand delivered applications should be brought to 500 First Street NW., Washington, DC 20534. At the front security desk, dial 7–3106, ext. 0 for pickup.

Faxed or emailed applications will not be accepted. Electronic applications can only be submitted via *http://www.grants.gov.*

**FOR FURTHER INFORMATION CONTACT:** A copy of this announcement and links to the required application forms can be downloaded from the NIC Web site at *http://www.nicic.gov/cooperativeagreements.*

All technical or programmatic questions concerning this announcement should be directed to Maureen Buell, Correctional Program Specialist, National Institute of Corrections, Community Services Division. Ms. Buell can be reached directly at 1–800–995–6423 ext. 40121 or by email at *mbuell@bop.gov.* In addition to the direct reply, all questions and responses will be posted on NIC's Web site at *www.nicic.gov* for public review (the names of those submitting questions will not be posted). The Web site will be updated regularly and postings will remain on the Web site until the closing date of this cooperative agreement solicitation. Only questions received by 12 p.m. (EDT) on July 25, 2012 will be posted on the NIC Web site.

**SUPPLEMENTARY INFORMATION:**

*Overview:* The materials developed through this cooperative agreement are intended for a broad audience of corrections professionals and related stakeholders working in pretrial, jail, prison, and community corrections (probation and parole) organizations. Awardees should develop the materials based on current research, knowledge, best practice, and specific information related to the experiences of corrections professionals. NIC will use the materials to define, identify, acknowledge, and address vicarious trauma and compassion fatigue within the corrections profession. The deliverables will help advance and foster healthier correctional environments while positively influencing systems, staff, and justice-involved men and women.

*Background:* The National Institute of Corrections has been providing support to federal, state, and local criminal justice organizations nationally. In 1974, Congress established NIC both as a center for the dissemination of timely correctional knowledge and professional training and as a place to exchange and discuss advances in criminal justice practice. Vicarious trauma and compassion fatigue are topics that affect a broad swath of corrections professionals, just as they affect the general public, yet they are rarely discussed openly or made part of corrections training events and curricula.

Daily interactions with justice-involved men and women can adversely affect corrections professionals, regardless of their role. Often the impact is cumulative, and certain emotions can become normalized over time, significantly influencing professional and personal lives. Staff may bring personal experiences and challenges with them to work during the course of their employment, which can contribute to negative attitudes, behaviors, and actions. Corrections work is challenging and encompasses an inordinate amount of responsibility: To maintain safe and secure institutions, manage and provide oversight to those under community supervision, positively contribute to safer communities, and meet the expectations of the courts and other criminal justice authorities. These are enormous challenges for a profession that the public does not understand well and generally undervalues.

Corrections professionals face challenges in the workplace that test even the most well-trained individuals, working with populations who have caused harm to others after being exposed to some of the most extreme dysfunctions of life. For years, staff have used the term ''burnout'' to describe the toll the work often takes on individuals, but the formidable challenges that corrections professionals are subject to often result in much more than ''burnout.'' The constant exposure to the realities of the corrections profession, whether in an institutional or community-based setting, often become ''normalized,'' with the potential to evolve into excessive absenteeism; health issues; unprofessional behavior in the work place; stressful interactions with family, friends, and colleagues; withdrawal; and other actions that are

normally out of character for the individual.

The fields of law enforcement, social work, mental health, medicine, and the judiciary are examples of professions where individuals are exposed to vicarious trauma and compassion fatigue through the nature of their work. These fields routinely incorporate information about this common occurrence as part of their ongoing training and supervision. The military as well has recognized the impact of vicarious trauma and compassion fatigue in their troops and is making inroads to address it. Even some criminal justice and corrections entities have recognized this as an issue and have begun to incorporate it into training. However, the field should not view vicarious trauma and compassion fatigue as an anomaly, rather they are common occurrences in professions that deal directly with people in challenging circumstances, and they have a significant impact on how staff carry out their professional roles and balance work with life.

*Statement of Work:* The objective of this cooperative agreement is to develop materials that NIC will use to identify and discuss the implications of vicarious trauma and compassion fatigue on the corrections workforce and within an organization's culture. Activities and products from this cooperative agreement will include a literature search with an annotated bibliography of materials, convening and facilitating a work session comprised of researchers and practitioners to organize and synthesize the available research and knowledge on this topic, work toward the development of a white paper, content for an NIC Web page, and the development of learning objectives and content for an NIC webinar series. Resulting products will be in the public domain and available through the National Institute of Corrections Web site and Information Center.

*Tasks to be performed through this cooperative agreement include:* (1) Conducting a literature search, creating an annotated bibliography, and organizing the material addressing vicarious trauma and compassion fatigue across the corrections continuum (jails, prisons, community corrections), and other relevant disciplines. (2) convening a working session at an approved federal training location for up to 10 participants, including researchers and corrections practitioners; designing the working agenda; providing facilitation; and using content from the session to inform project deliverables. (3) working with NIC, project staff, and designated experts to draft a white paper on vicarious trauma and compassion fatigue in corrections; distributing the paper for peer review; revising the draft; and publishing the final document. (4) developing and gathering existing information and materials for a series of webinars for a broad correctional audience. (5) working with the NIC Information Center to discuss Web page appearance and development and with the NIC writer/editor to finalize written content on the site. (6) creating a final report that summarizes the project and recommendations for followup work on this topic. This project will be completed in conjunction with the NIC Community Services Division and the awardee will work closely with NIC staff on all aspects of the project. The awardee will participate in an initial meeting with designated NIC staff for a project overview and preliminary planning prior to September 15, 2012. Additionally, the awardee will meet routinely with NIC staff to discuss the activities noted in the project timeline submitted during the course of the cooperative agreement. Meetings will be held no less than quarterly and may be conducted via webinar with at least one onsite as agreed upon by NIC and the awardee.

*Required Expertise:* The successful applicant will at a minimum understand the distinction between burnout, vicarious trauma, and compassion fatigue, its impact and prevalence not only in the general public but in corrections; have broad experience and in-depth knowledge of the roles and tasks encountered by correctional professionals, whether working in an institutional environment or community-based setting (i.e., balancing of various roles, multi-tasking); have knowledge about the effect that critical incidents can have on staff; be familiar with relevant research, including the Adverse Childhood Experiences study and related resources; have expertise in meeting facilitation; have knowledge of evidence-based practices and its application to corrections.

*Document Requirements:* The length of the document should be determined by content. Brevity and clarity are encouraged. Documents and other products developed under this award must follow these guidelines. Prior to the preparation of the final draft of any document or other products, the awardee must consult with NIC's writer/editor concerning the acceptable formats for document submissions. The awardee must follow the guidelines listed herein as well as follow (1) the Guidelines for Preparing and Submitting Manuscripts for Publication as found in the ''General Guidelines for Cooperative Agreements,'' which can be found on our Web site at *www.nicic.gov/cooperativeagreements* and (2) NIC recommendations for producing products using plain language, which can be found at *www.nicic.gov/plainlanguage.*

All final documents and other materials submitted under this project may be posted on the NIC Web site and must meet the federal government's requirement for accessibility (e.g., 508 PDFs or HTML files). The awardee must provide descriptive text interpreting all graphics, photos, graphs, and/or multimedia that will be included with or distributed alongside the materials and must provide transcripts for all applicable audio/visual works.

*Application Requirements:* An application package must include OMB Standard Form 424, Application for Federal Assistance; a cover letter that identifies the audit agency responsible for the applicant's financial accounts as well as the audit period or fiscal year under which the applicant operates (e.g. July 1 through June 30); an outline of projected costs with the budget and strategy narratives described in the announcement. The following additional forms must also be included: OMB Standard Form 424A, Budget Information—Non-Construction Programs; OMB Standard Form 424B, Assurances—Non-Construction Programs (both available at *www.grants.gov*); DOJ/FBOP/NIC Certification Regarding Lobbying, Debarment, Suspension and Other Responsibility Matters; and the Drug-Free Workplace Requirements (available at *http://www.nicic.gov/Downloads/General/certif-frm.pdf.*

Applications should be concisely written, typed double spaced, and reference the NIC opportunity number and title referenced in this announcement. If you are hand delivering or submitting via Fed-Ex, please include an original and three copies of your full proposal (program and budget narrative, application forms, assurances, and other descriptions). The original should have the applicant's signature in blue ink. Electronic submissions will be accepted only via *www.grants.gov.*

*Place the following at the top of the abstract:* Project title; Applicant name (Legal name of applicant organization); Mailing address; Contact phone numbers (voice, fax); Email address; Web site address, if applicable.

*The narrative portion of the application should include, at a minimum:* A statement indicating the

applicant's understanding of the project's purpose and objectives. The applicant should state this in language other than that used in the solicitation.

*Project Design and Implementation:* This section should describe the design and implementation of the project and how the awardee aims to address key design and implementation issues and challenges.

*Project Management:* Chart of measurable project milestones and timelines for the completion of each milestone.

*Capabilities and Competencies:* This section should describe the qualifications of the applicant organization, any partner organizations to do the work proposed, and the expertise of key staff to be involved in the project. Attach resumes that document relevant knowledge, skills, and abilities needed for each staff member assigned to complete the project. If the applicant organization has completed similar projects in the past, please include the URL/Web site or ISBN number for accessing a copy of the referenced work.

*Budget:* The budget should detail all costs for the project, show consideration for all contingencies for the project, note a commitment to work within the proposed budget, and demonstrate the ability to provide deliverables according to schedule.

**Authority:** Pub. L. 93–415.

*Funds Available:* NIC is seeking the applicant's best ideas regarding accomplishment of the scope of work and the related costs for achieving the objectives of this solicitation. Funds may be used only for the activities linked to the desired outcome of the project. The funding amount should not exceed $58,000 for a period of 18 months.

*Eligibility of Applicants:* An eligible applicant is any state or general unit of government, private agency, educational institution, organization, individual, or team with expertise in the described areas. Applicants must have demonstrated ability to implement a project of this size and scope.

*Review Considerations:* Applications will be reviewed by a team. Among the criteria used to evaluate the applications are indication of a clear understanding of the project requirements as stated in the solicitation; background, experience, and expertise of the proposed project staff, including any sub-contractors; effectiveness of an innovative approach to the project; a clear, concise description of all elements and tasks of the project, with sufficient and realistic timeframes necessary to complete the tasks; technical soundness of project design and methodology; financial and administrative integrity of the proposal, including adherence to federal financial guidelines and processes; a sufficiently detailed budget that shows consideration of all contingencies for this project and commitment to work within the proposed budget; and indication of availability to work with NIC staff.

Applications received under this announcement will be subject to a collaborative review process. The criteria for the evaluation of each application will be as follows:

*Programmatic:* 40 Points.

Are all of the tasks and activities adequately covered? Is there a clear description of how the applicant will accomplish each project activity, including major tasks; the strategies to be employed; required staffing; responsible parties, and other required resources? Are there any unique or exceptional approaches, techniques, or design aspects proposed that will enhance the project?

*Project Management and Administration:* 20 Points.

Does the applicant identify milestones and measures that demonstrate achievement of the specific tasks? Are the proposed management and staffing plans clear, realistic, and sufficient to complete the project? Is the applicant willing to meet with NIC as specified in the solicitation for this cooperative agreement?

*Organizational and Project Staff Background:* 30 Points.

Do the skills, knowledge, and expertise of the organization and the proposed project staff demonstrate a high level of competency to complete the tasks? Does the applicant/organization have the necessary experience and organizational capacity to meet all objectives of the project? If the applicant proposes consultants and/or partnerships, is there a reasonable justification for their inclusion in the project and a clear structure to ensure effective coordination?

*Budget:* 10 Points.

Is the proposed budget realistic, does it provide sufficient cost detail/narrative, and does it represent good value relative to the anticipated results? Does the application include a chart that aligns the budget with project activities along a timeline with, at minimum, quarterly benchmarks? In terms of program value, is the estimated cost reasonable in relation to the work to be performed and project products?

**Note:** NIC will NOT award a cooperative agreement to an applicant who does not have a Dun and Bradstreet Database Universal Number (DUNS) and is not registered in the Central Contractor Registry (CCR).

Applicants can obtain a DUNS number at no cost by calling the dedicated toll-free request line at 800–333–0505. Applicants who are sole proprietors should dial 866–705–5711 and select option #1.

Applicants may register in the CCR online at the CCR Web site: *www.ccr.gov.* Applicants can also review a CCR handbook and worksheet at this Web site.

*Number of Awards:* One.

*NIC Opportunity Number:* 12CS14. This number should appear as a reference line in the cover letter, where indicated on Standard Form 425, and outside of the envelope in which the application is sent.

Catalog of Federal Domestic Assistance Number: 16.601.

*Executive Order 12372:* This project is not subject to the provisions of Executive Order 12372.

**Morris L. Thigpen,**

*Director, National Institute of Corrections.*

[FR Doc. 2012–17215 Filed 7–13–12; 8:45 am]

**BILLING CODE 4410–36–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–74,919]**

### RG Steel Sparrows Point LLC, Formerly Known as Severstal Sparrows Point LLC, a Subsidiary of RG Steel LLC, Including On-Site Leased Workers From Echelon Service Company, Sun Associated Industries, INC., MPI Consultants LLC, Alliance Engineering, INC., Washington Group International, Javan & Walter, INC., Kinetic Technical Resources Co., Innovative Practical Approach, Inc., and CPSI, Sparrows Point, MD; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (''Act''), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 9, 2011, applicable to workers of Severstal International, including on-site leased workers from Echelon Service Company, Sun Associated Industries, Inc., MPI Consultants LLC, Alliance Engineering, Inc., Washington Group International, Javan & Walter, Inc.,

Kinetic Technical Resources Co., Innovative Practical Approach, Inc., and CPSI, Sparrows Point, Maryland. The workers are engaged in activities related to the production of rolled steel.

The Department's notice of determination was published in the **Federal Register** on March 28, 2011 (76 FR 17154).

As a result of a review of new information, the Department reviewed the certification for workers of the subject firm.

New information shows that, as of March 31, 2011, the subject worker firm has been purchased by, and is under the operational control of, RG Steel Sparrows Point LLC, a subsidiary of RG Steel LLC.

Accordingly, the Department is amending this certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by increased company imports of flat rolled steel.

The amended notice applicable to TA–W–74,919 is hereby issued as follows:

All workers of RG Steel Sparrows Point LLC, formerly known as Severstal Sparrows Point LLC, a subsidiary of RG Steel LLC, including on-site leased workers from Echelon Service Company, Sun Associated Industries, Inc., MPI Consultants LLC, Alliance Engineering, Inc., Washington Group International, Javan & Walter, Inc., Kinetic Technical Resources Co., Innovative Practical Approach, Inc., and CPSI, Sparrows Point, Maryland who became totally or partially separated from employment on or after November 22, 2009 through February 9, 2013, and all workers in the group threatened with total or partial separation from employment on February 9, 2011 through February 9, 2013, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed at Washington, DC, this 22nd day of June, 2012.

**Del Min Amy Chen,**

*Certifying Officer, Office of Trade Adjustment Assistance.*

[FR Doc. 2012–17210 Filed 7–13–12; 8:45 am]

**BILLING CODE 4510–FN–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–74,940]**

### New Gear Process, a Division of Magna Powertrain, Including On-Site Leased Workers From ABM Janitorial Service Northeast, Inc., East Syracuse, NY; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (''Act''), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on January 7, 2011, applicable to workers of New Process Gear, a Division of Magna Powertrain, East Syracuse, New York. The workers produce automotive components. The Notice was published in the **Federal Register** on January 26, 2011 (75 FR 77669).

At the request of the petitioners, the Department reviewed the certification for workers of the subject firm. The company reports that workers leased from ABM Janitorial Service Northeast, Inc. were employed on-site at the East Syracuse, New York location of New Process Gear. The Department has determined that these workers were sufficiently under the control of New Process Gear to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from ABM Janitorial Service Northeast, Inc. working on-site at the East Syracuse, New York location of New Process Gear. The amended notice applicable to TA–W–74,940 is hereby issued as follows:

All workers of New Process Gear, a Division of Magna Powertrain, including on-site leased workers from ABM Janitorial Service Northeast, Inc., East Syracuse, New York, who became totally or partially separated from employment on or after December 17, 2010, through January 7, 2013, and all workers in the group threatened with total or partial separation from employment on January 7, 2011 through January 7, 2013, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed at Washington, DC this 21st day of June 2012.

**Del Min Amy Chen,**

*Certifying Officer, Office of Trade Adjustment Assistance.*

[FR Doc. 2012–17211 Filed 7–13–12; 8:45 am]

**BILLING CODE 4510–FN–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–81,045; TA–W–81,045A]**

### Dow Jones & Company, Inc., Dow Jones Content Services Division, Including On-Site Workers From Aerotek, Inc., Princeton, NJ; Generate, Inc., a Subsidiary of Dow Jones & Company, Inc., Boston, MA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (''Act''), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on January 26, 2011, applicable to workers of Dow Jones & Company, Inc., Dow Jones Content Services, including on-site workers from Aerotek, Inc., Princeton, New Jersey. The Department's notice of determination was published in the **Federal Register** on February 8, 2012 (77 FR 6590).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. The workers are engaged in activities related to the production digital newsletters.

New information shows Generate, Inc., is a subsidiary of Dow Jones & Company, Inc. Generate, Inc., operated in conjunction with Dow Jones, Dow Jones Content Services and both have experienced worker layoffs.

Based on these findings, the Department is amending this certification to include workers of Generate, Inc., Boston, Massachusetts in support of Dow Jones & Company, Inc., Dow Jones Content Services, Princeton, New Jersey.

The intent of the Department's certification is to include all workers employed at Dow Jones & Company, Inc., Dow Jones Content Services, Princeton, New Jersey who were adversely affected by a shift in production of digital newsletters to Sophia, Bulgaria.

The amended notice applicable to TA–W–81,045 is hereby issued as follows:

All workers of Dow Jones & Company, Dow Jones Content Services Division, including on-site workers from Aerotek, Inc., Princeton, New Jersey (TA–W–81,045) and Generate, Inc., a subsidiary of Dow Jones & Company, Inc., Boston Massachusetts (TA–W–81,045A) who became totally or partially separated from employment on or after February 13, 2010 through January 26, 2014, and all

workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 27th day of June, 2012.

**Elliott S. Kushner,**

*Certifying Officer, Office of Trade Adjustment Assistance.*

[FR Doc. 2012–17212 Filed 7–13–12; 8:45 am]

**BILLING CODE 4510–FN–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–81,448]**

### General Dynamics Itronix Corporation, a Subsidiary of General Dynamics Corporation, Including Remote Workers Reporting to Sunrise, FL; Notice of Affirmative Determination Regarding Application for Reconsideration

By application dated May 29, 2012, a State Workforce Office requested administrative reconsideration of the negative determination regarding workers' eligibility to apply for Trade Adjustment Assistance (TAA) applicable to workers and former workers of General Dynamics Itronix Corporation, a subsidiary of General Dynamics Corporation, Sunrise, Florida. The determination was issued on May 18, 2012. The workers provide program management services.

The initial investigation resulted in a negative determination based on the findings that the subject firm did not shift program management services to a foreign country nor did the subject firm or its customers increase reliance on imports of program management services during the relevant period.

The Department of Labor has carefully reviewed the request for reconsideration and the existing record, and has determined that the Department will conduct further investigation to determine if the workers meet the eligibility requirements of the Trade Act of 1974.

### Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the U.S. Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 22nd day of June 2012.

**Del Min Amy Chen,**

*Certifying Officer, Office of Trade Adjustment Assistance.*

[FR Doc. 2012–17209 Filed 7–13–12; 8:45 am]

**BILLING CODE 4510–FN–P**

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### Arts Advisory Panel Meeting

**AGENCY:** National Endowment for the Arts, National Foundation on the Arts and Humanities.

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that two meetings of the Arts Advisory Panel to the National Council on the Arts will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC, 20506 as follows (ending times are approximate):

*Literature (application review):* In room 716. This meeting will be closed.

*Dates:* August 1, 2012; 9 a.m. to 6:30 p.m. EDT.

*Literature (application review):* In room 716. This meeting will be closed.

*Dates:* August 2, 2012; 9 a.m. to 6:30 p.m. EDT.

**FOR FURTHER INFORMATION CONTACT:** Further information with reference to these meetings can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

**SUPPLEMENTARY INFORMATION:** The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of February 15, 2012, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of Title 5, United States Code.

Dated: July 11, 2012.

**Kathy Plowitz-Worden,**

*Panel Coordinator, National Endowment for the Arts.*

[FR Doc. 2012–17217 Filed 7–13–12; 8:45 am]

**BILLING CODE 7537–01–P**

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### Meetings of Humanities Panel

**AGENCY:** National Endowment for the Humanities, National Foundation on the Arts and the Humanities.

**ACTION:** Notice of meetings.

**SUMMARY:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that 22 meetings of the Humanities Panel will be held during August 2012, as follows. The purpose of the meetings is for panel review, discussion, evaluation, and recommendation of applications for financial assistance under the National Foundation on the Arts and Humanities Act of 1965 (20 U.S.C. 951–960, as amended).

**DATES:** See **SUPPLEMENTARY INFORMATION** section for meeting dates.

**ADDRESSES:** The meetings will be held at the Old Post Office Building, 1100 Pennsylvania Ave. NW., Washington, DC 20506. See Supplementary Information section for meeting room numbers.

**FOR FURTHER INFORMATION CONTACT:** Lisette Voyatzis, Committee Management Officer, 1100 Pennsylvania Ave. NW., Room, 529, Washington, DC 20506, or call (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the National Endowment for the Humanities' TDD terminal at (202) 606–8282.

**SUPPLEMENTARY INFORMATION:**

### Meetings

1. Date: August 1, 2012.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
This meeting will discuss applications on the subject of Anthropology and New World Archaeology for the Fellowships for University Teachers grant program, submitted to the Division of Research Programs.

2. Date: August 2, 2012.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
This meeting will discuss applications on the subject of European History for the Fellowships for University Teachers grant program, submitted to the Division of Research Programs.

3. Date: August 2, 2012.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
This meeting will discuss applications on the subject of European History for the Fellowships for

University Teachers grant program, submitted to the Division of Research Programs.

4. Date: August 2, 2012.
Time: 8:30 a.m. to 5 p.m.
Room: 421.
This meeting will discuss applications on the subject of Art and Anthropology for the Challenge Grants grant program, submitted to the Office of Challenge Grants.

5. Date: August 3, 2012.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
This meeting will discuss applications on the subject of Sociology, Psychology and Education for the Fellowships for University Teachers grant program, submitted to the Division of Research Programs.

6. Date: August 3, 2012.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
This meeting will discuss applications for the Fellowships for Advanced Research on Japan grant program, submitted to the Division of Research Programs.

7. Date: August 6, 2012.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
This meeting will discuss applications on the subject of Political Science and Jurisprudence for the Fellowships for University Teachers grant program, submitted to the Division of Research Programs.

8. Date: August 6, 2012.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
This meeting will discuss applications on the subject of European Literature and Studies for the Fellowships for University Teachers grant program, submitted to the Division of Research Programs.

9. Date: August 7, 2012.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
This meeting will discuss applications on the subject of American Studies for the Fellowships for University Teachers grant program, submitted to the Division of Research Programs.

10. Date: August 8, 2012.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
This meeting will discuss applications on the subject of American History for the Fellowships for University Teachers grant program, submitted to the Division of Research Programs.

11. Date: August 8, 2012.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
This meeting will discuss applications on the subject of Asian Studies for the Fellowships for University Teachers grant program, submitted to the Division of Research Programs.

12. Date: August 9, 2012.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
This meeting will discuss applications on the subject of African Studies and Middle Eastern Studies for the Fellowships for University Teachers grant program, submitted to the Division of Research Programs.

13. Date: August 9, 2012.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
This meeting will discuss applications on the subject of Art History for the Fellowships for University Teachers grant program, submitted to the Division of Research Programs.

14. Date: August 14, 2012.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
This meeting will discuss applications on the subject of Asian Studies for the Fellowships for University Teachers grant program, submitted to the Division of Research Programs.

15. Date: August 15, 2012.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
This meeting will discuss applications on the subject of Ancient and Classical Studies and Archaeology for the Fellowships for University Teachers grant program, submitted to the Division of Research Programs.

16. Date: August 15, 2012.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
This meeting will discuss applications on the subject of American Literature for the Fellowships for University Teachers grant program, submitted to the Division of Research Programs.

17. Date: August 16, 2012.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
This meeting will discuss applications on the subject of Latin American Studies for the Fellowships for University Teachers grant program, submitted to the Division of Research Programs.

18. Date: August 16, 2012.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
This meeting will discuss applications on the subject of Latin American Studies for the Fellowships for University Teachers grant program, submitted to the Division of Research Programs.

19. Date: August 21, 2012.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
This meeting will discuss applications on the subject of Religious Studies for the Fellowships for University Teachers grant program, submitted to the Division of Research Programs.

20. Date: August 21, 2012.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
This meeting will discuss applications on the subject of Religious Studies for the Fellowships for University Teachers grant program, submitted to the Division of Research Programs.

21. Date: August 22, 2012.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
This meeting will discuss applications on the subject of Medieval and Renaissance Studies for the Fellowships for University Teachers grant program, submitted to the Division of Research Programs.

22. Date: August 30, 2012.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
This meeting will discuss applications for the Preservation Education and Training grant program, submitted to the Division of Preservation and Access.

Because these meetings will include review of personal and/or proprietary financial and commercial information given in confidence to the agency by grant applicants, the meetings will be closed to the public pursuant to sections 552b(c)(4) and 552b(c)(6) of Title 5 U.S.C., as amended. I have made this determination pursuant to the authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings dated July 19, 1993.

Dated: July 10, 2012.

**Lisette Voyatzis,**

*Committee Management Officer.*

[FR Doc. 2012–17233 Filed 7–13–12; 8:45 am]

BILLING CODE 7536–01–P

## NATIONAL SCIENCE FOUNDATION

### Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978

**AGENCY:** National Science Foundation.

**ACTION:** Notice of Permit Applications Received under the Antarctic Conservation Act of 1978, Public Law 95–541.

**SUMMARY:** The National Science Foundation (NSF) is required to publish a notice of permit applications received

to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

**DATES:** Interested parties are invited to submit written data, comments, or views with respect to this permit application by August 15, 2012. This application may be inspected by interested parties at the Permit Office, address below.

**ADDRESSES:** Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

**FOR FURTHER INFORMATION CONTACT:** Polly A. Penhale at the above address or (703) 292–7420.

**SUPPLEMENTARY INFORMATION:** The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas a requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

The applications received are as follows:

**Permit Application: 2013–011**

1 *Applicant:* Celia Lang, Lockheed Martin IS&GS, Antarctic Support Contract, 7400 S. Tucson Way, Centennial, CO 80112–3938.

*Activity for Which Permit Is Requested*

Enter Antarctic Specially Protected Area. The applicant plans to enter ASPA 122—Arrival Heights to operate the ELFNLF receiver, riometer and magnetometer for studies of the earth's magnetic field and ionosphere, high latitude neutral mesospheric and thermospheric dynamics and thermodynamics, UV monitoring, aerosols investigations, and pollution surveys. Crary Science and Engineering Center Research Associate(s) will need to access the site daily for equipment monitoring, data acquisition, calibration, and repairs. Official scientific visitors may enter the site for educational and for oversight purposes.

Personnel from the ASC Infrastructure and Operations (I&O) and other support departments may be called upon to perform inspections, maintenance or repair functions at the faculties within the ASPA. Other personnel will need to enter ASPA 122 to monitor and maintain or repair weather equipment within the site.

*Location*

Arrival Heights, Hut Point Peninsula, Ross Island (ASPA 122).

*Dates*

August 15, 2012 to August 31, 2017.

**Permit Application: 2013–012**

2. *Applicant:* Celia Lang, Lockheed Martin IS&GS, Antarctic Support Contract, 7400 S. Tucson Way, Centennial, CO 80112–3938.

*Activity for Which Permit Is Requested*

Enter Antarctic Specially Protected Area. The applicant plans to enter ASPA 149—Cape Shirreff, Livingston Island to support activities in support of scientific research conducted at the USAP field research facility at Cape Shirreff. Activities include: movement of personnel and supplies from ship to shore via zodiac or small boat; opening and closing the research facility onshore and associated activities; and, maintaining and servicing on-shore facilities and equipment.

*Location*

Cape Shirreff, Livingston Island (ASPA 149).

*Dates*

August 15, 2012 to August 31, 2017.

**Permit Application: 2013–013**

3. *Applicant:* Celia Lang, Lockheed Martin IS&GS, Antarctic Support Contract, 7400 S. Tucson Way, Centennial, CO 80112–3938.

*Activity for Which Permit Is Requested*

Enter Antarctic Specially Protected Areas. The applicant plans to possibly enter ASPA 105-Beaufort Island, ASPA 116—New College Valley, Caughley Beach, Cape Bird, Ross Island, ASPA 121—Cape Royds, ASPA 122—Arrival Heights, ASPA 124—Cape Crozier, ASPA 157—Backdoor Bay, Cape Royds, and ASPA 185-Cape Evans for the purpose of gathering professional video footage, still photographs, and to interview scientists. Any footage, pictures, interviews, and information gathered during site visits could potentially be used in outreach videos, archived for future use, or be published in The Antarctic Sun, the official online publication of the U.S. Antarctic Program (USA), which is managed by the National Science Foundation.

Visits to the ASPAs will be limited as operational, scientific conditions, and the availability of transportation permits. Visits will take place in conjunction with valid scientific activities for the express purpose of gathering footage and information on scientific research, general scenic locations, and interviews with scientists working in the field.

*Location*

ASPA 105—Beaufort Island, ASPA 116—New College Valley, Caughley Beach, Cape Bird, Ross Island, ASPA 121—Cape Royds, ASPA 122—Arrival Heights, ASPA 124—Cape Crozier, ASPA 157—Backdoor Bay, Cape Royds, and ASPA 185—Cape Evans.

*Dates*

August 15, 2012 to August 31, 2017.

**Permit Application: 2013–014**

4. *Applicant:* Celia Lang, Lockheed Martin IS&GS, Antarctic Support Contract, 7400 S. Tucson Way, Centennial, CO 80112–3938.

*Activity for Which Permit Is Requested*

Enter Antarctic Specially Protected Area. The applicant plans to enter ASPA 128—Cape Copacabana, Western shore of Admiralty Bay, King George Island to support research activities conducted at the USAP field research facility at Copacabana. Activities include: movement of personnel and supplies from ship to shore via zodiac or small boat; opening and closing the research facilities on shore and associated activities; and, maintaining and servicing on-shore facilities and equipment.

*Location*

ASPA 128—Cape Copacabana, Western shore of Admiralty Bay, King George Island.

*Dates*

August 15, 2012 to August 31, 2017.

**Permit Application: 2013–015**

5. *Applicant:* Celia Lang, Lockheed Martin IS&GS, Antarctic Support Contract, 7400 S. Tucson Way, Centennial, CO 80112–3938.

*Activity for Which Permit Is Requested*

Enter Antarctic Specially Protected Area. The applicant plans to enter ASPA 124—Cape Crozier, Ross Island to conduct occasional operations, maintenance, construction, and rehabilitation activities on an annual basis inside the Cape Crozier ASPA. The USAP civilian support contractor work centers that perform annual work at Cape Crozier include: Infrastructure and Operations (I&O), the Communications

shop, the Mechanical Equipment Center (MEC), and the Berg Field Center (BFC). Typically, these visits are conducted at the beginning and end of each austral summer season to open and close facilities used for scientific research; additional visits may also be necessary during the course of the season.

*Location*

ASPA 124—Cape Crozier, Ross Island.

*Dates*

August 15, 2012 to August 31, 2017.

**Permit Application: 2013–016**

6. *Applicant:* Celia Lang, Lockheed Martin IS&GS, Antarctic Support Contract, 7400 S. Tucson Way, Centennial, CO 80112–3938.

*Activity for Which Permit Is Requested*

Enter Antarctic Specially Protected Areas. The applicant plans to enter ASPA 155—Cape Evans, Ross Island (Scott's Hut), ASPA 157—Backdoor Bay, Cape Royds, Ross Island (Shackleton's Hut), ASPA 158—Hut Point, Ross Island, and ASPA 159—Cape Adare to allow recreational and educational visits to the historic sites, as permitted by the Management Plans, for USAP participants. The historic huts at Cape Royds and Cape Evan are in close proximity to McMurdo Station, whereas Hut Point sits adjacent to the station. Procedures for monitoring numbers of USAP visitors to the huts throughout the season will be implemented

*Location*

ASPA 155—Cape Evans, Ross Island (Scott's Hut), ASPA 157—Backdoor Bay, Cape Royds, Ross Island (Shackleton's Hut), ASPA 158—Hut Point, Ross Island, and ASPA 159—Cape Adare

*Dates*

August 15, 2012 to August 31, 2017.

**Nadene G. Kennedy,**

*Permit Officer, Office of Polar Programs.*

[FR Doc. 2012–17195 Filed 7–13–12; 8:45 am]

BILLING CODE 7555–01–P

## NUCLEAR REGULATORY COMMISSION

**[NRC–2012–0171; Docket Nos. 50–391; Construction Permit No. CPPR–92]**

## In the Matter of Tennessee Valley Authority Watts Bar Nuclear Plant EA–12–021; Confirmatory Order (Effective Immediately)

**I**

Tennessee Valley Authority (TVA or Applicant) is the holder of Construction Permit No. CPPR–92, issued by the U.S. Nuclear Regulatory Commission (NRC or the Commission) pursuant to Title 10 of the Code of Federal Regulations (10 CFR) Part 50, on January 23, 1973, and extended to March 31, 2013. The permit authorizes the construction of Watts Bar Nuclear Plant, Unit 2 (Watts Bar or facility), in accordance with conditions specified therein. The facility is located on the Applicant's site in Spring City, Tennessee.

This Confirmatory Order is the result of an agreement reached during an alternative dispute resolution (ADR) mediation session conducted on May 21, 2012.

**II**

On January 13, 2012, the NRC's Office of Investigations (OI) completed an investigation (OI Case No. 2–2011–003) regarding activities at the Watts Bar Nuclear Plant. Based on the evidence developed during the investigation, the NRC staff concluded that on or about August 16, 2010, an electrician and foreman employed by a subcontractor at Watts Bar, Unit 2, deliberately falsified work order packages for primary containment penetrations, and caused TVA to be in apparent violation of 10 CFR part 50, appendix B, Criterion V, *Instructions, Procedures, and Drawings,* and 10 CFR 50.9, *Completeness and Accuracy of Information.* The results of the investigation were sent to TVA in a letter dated March 23, 2012.

**III**

On May 21, 2012, the NRC and TVA met in an ADR session mediated by a professional mediator, arranged through Cornell University's Institute on Conflict Resolution. ADR is a process in which a neutral mediator with no decision-making authority assists the parties in reaching an agreement or resolving any differences regarding their dispute. This confirmatory order is issued pursuant to the agreement reached during the ADR process. The elements of the agreement consist of the following:

1. TVA agreed that on or about August 16, 2010, one violation occurred involving the requirements of 10 CFR part 50, appendix B, Criterion V, *Instructions, Procedures, and Drawings,* and 10 CFR 50.9, *Completeness and Accuracy of Information.* Specifically, on August 16, 2010, two subcontractor employees (one craft and one craft foreman) at Watts Bar Unit 2 deliberately falsified the micrometer readings for cables listed in Modification/Addition Instruction (MAI) 3.3 data sheets, and falsely annotated on the WOs that micrometer readings had been performed for cables in primary containment penetrations, when the micrometer readings had not been completed. Additionally, the craft foreman falsely attested that a work order review, field walk down, review of craft documentation, and the scope of work had all been completed. The failure to follow the WO procedures and perform the required micrometer measurements, field walk downs, and WO reviews is a violation of 10 CFR part 50, appendix B, Criterion V, which requires, in part, that activities affecting quality shall be prescribed by documented instructions, procedures, or drawings, of a type appropriate to the circumstances and shall be accomplished in accordance with these instructions, procedures, or drawings. As a result of the WOs and MAI 3.3 data sheets being falsified, the applicant also failed to comply with 10 CFR 50.9(a), which requires, in part, that information required by the Commission's regulations to be maintained by an applicant shall be complete and accurate in all material respects. 10 CFR part 50, appendix B, Criterion XVII, *Quality Assurance Records,* requires that sufficient records be maintained to furnish evidence of activities affecting quality. The WOs and associated MAI–3.3 data sheets are related to primary containment penetration electrical cabling, which involve activities affecting quality, and thus are required by 10 CFR part 50, appendix B, Criterion XVII, to be maintained by an applicant.

2. At the ADR, TVA provided corrective actions and enhancements taken shortly after its identification of the incident in August 2010. These actions included but were not limited to the following:

a. The prompt cessation of all containment electrical penetration work activities, and the initiation of an internal review of the incident. Prior to resuming work associated with electrical penetrations, briefings were conducted with contractor electrical support personnel regarding the falsification event and lessons learned to ensure that the scope of the event was communicated to the group.

b. TVA conducted a root cause evaluation of the incident. In addition, an extent of condition review of the incident was conducted, which confirmed that there were no additional examples of falsification.

c. TVA's Office of Inspector General performed an independent investigation of this event, the results of which led to felony prosecution and conviction of two individuals for falsifying government records.

d. Safety meetings were conducted the week of April 5, 2011, with all contractor personnel (supervision, support personnel, and craft) that addressed the Watts Bar Unit 2 Site Vice President's and Contractor Project Manager's expectations regarding the value of one's signature and warning about the falsification of documents.

e. TVA recognized the need to re-enforce, TVA fleet-wide, many of the same human performance factors that were identified as contributors to the electrical penetration event. In June 2011, TVA implemented the Operating Group Human Performance (HU) program to promote behaviors throughout the TVA Operating Group (both Nuclear and non-Nuclear) that support safe and reliable execution of work, and that contribute to achieving an incident-free safety culture.

f. TVA has also completed 10 CFR 50.9 training at Belemnite Nuclear Plant for the TVA and Contractor leadership team. This training was conducted in five separate training sessions from June 2011 through November 2011.

3. Based on TVA's review of the incident and NRC concerns with respect to precluding recurrence of the violation, TVA agrees to the following corrective actions and enhancements:

a. The Chief Nuclear Officer and the Senior Vice President of Nuclear Construction will issue a joint communication to all Nuclear Power Group and Nuclear Construction employees, including contractor and subcontractor employees located at TVA nuclear sites, regarding expectations for assuring work activities are performed and documented in a complete and accurate manner. This communication will be issued on or before August 1, 2012.

b. These expectations will be reinforced through the use of fleet wide posters and communications. Communications will specifically discuss 10 CFR 50.9, complete and accurate information, willful violations, and their consequences. Posters will be installed on or before October 1, 2012.

c. TVA will revise the existing Nuclear Power Group procedure on procedure use and adherence to reinforce the requirements of 10 CFR 50.9 and the need to ensure complete and accurate documentation of work completion steps. TVA will update major contracts to include the requirement to comply with TVA's Procedure Use and Adherence procedure. Revisions will be completed by December 21, 2012.

d. TVA will provide 10 CFR 50.9 training (both manager/supervisor as well as craft-level) to employees, including contractor and subcontractor employees, at all Nuclear Construction (Watts Bar Unit 2 and Bellefonte) locations. Training will be completed by December 21, 2012.

e. TVA will provide refresher 10 CFR 50.9 training (both manager/supervisor as well as craft-level) to employees, including contractor and subcontractor employees, at all Nuclear Construction (Watts Bar Unit 2 and Bellefonte) locations every two years through 2016. TVA will reassess the continued need for such training thereafter.

f. TVA will enhance existing 10 CFR 50.9-related general employee training (GET) for new employees, including contractor and subcontractor employees located at TVA nuclear sites, joining Nuclear Power Group and Nuclear Construction and update annual requalification GET training. TVA will complete this item by December 21, 2012.

g. Within six months of issuance of the Confirmatory Order, and again on or before July 1, 2013, TVA will perform checks of the Watts Bar Unit 2 Employee Concerns Program (ECP), to identify undue scheduling pressure issues identified by employees and employees of construction contractors and subcontractors. Issues identified will be addressed commensurate with safety and in accordance with TVA's Corrective Action Program.

h. TVA will perform an effectiveness review of actions taken and actions planned, including those taken in response to the ECP checks described in Item 5.g, on or before July 1, 2013. Based on the results of the effectiveness review, TVA will implement appropriate corrective actions.

i. Upon completion of the terms of the Confirmatory Order, TVA will provide the NRC with a letter discussing its basis for concluding that the Order has been satisfied.

4. The NRC considers the corrective actions and enhancements discussed in Section III and Section V of this Confirmatory Order to be appropriately prompt and comprehensive to address the root and contributing causes that gave rise to the incident of August 2010.

5. The NRC and TVA agree that the above elements will be incorporated into a Confirmatory Order.

6. The resulting Confirmatory Order will be considered an escalated enforcement action by the NRC for any future assessment of Watts Bar, as appropriate.

7. In consideration of the commitments delineated in Section III.3 and Section V of this Confirmatory Order, the NRC agrees to refrain from proposing a civil penalty or issuing a Notice of Violation for all matters discussed in the NRC's letter to TVA of March 23, 2012 (EA–12–021).

8. This agreement is binding upon successors and assigns of TVA.

On June 12, 2012, the Applicant consented to issuance of this Order with the commitments, as described in Section V below. The Applicant further agreed that this Order is to be effective upon issuance and that it has waived its right to a hearing.

**IV**

Since the Applicant has agreed to take actions to address the violation as set forth in Section V, the NRC has concluded that its concerns can be resolved through issuance of this Order.

I find that the Applicant's commitments as set forth in Section V are acceptable and necessary and conclude that with these commitments the public health and safety are reasonably assured. In view of the foregoing, I have determined that public health and safety require that the Applicant's commitments be confirmed by this Order. Based on the above and the Applicant's consent, this Order is immediately effective upon issuance.

**V**

Accordingly, pursuant to Sections 104b., 161b., 161i., 161o., 182, and 186 of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations in 10 CFR 2.202 and 10 FR Part 50, *it is hereby ordered, effective immediately,* that Construction Permit No. CPPR–92 *is modified as follows:*

a. TVA's Chief Nuclear Officer and the Senior Vice President of Nuclear Construction will issue a joint communication to all Nuclear Power Group and Nuclear Construction employees, including contractor and subcontractor employees located at TVA nuclear sites, regarding expectations for assuring work activities are performed and documented in a complete and accurate manner. This communication will be issued on or before August 1, 2012.

b. These expectations will be reinforced through the use of fleet wide posters and communications. Communications will specifically discuss 10 CFR 50.9, complete and accurate information, willful violations, and their consequences. Posters will be installed on or before October 1, 2012.

c. TVA will revise the existing Nuclear Power Group procedure on procedure use and adherence to reinforce the requirements of 10 CFR 50.9 and the need to ensure complete and accurate documentation of work

completion steps. TVA will update major contracts to include the requirement to comply with TVA's Procedure Use and Adherence procedure. Revisions will be completed by December 21, 2012.

d. TVA will provide 10 CFR 50.9 training (both manager/supervisor as well as craft-level) to employees, including contractor and subcontractor employees, at all Nuclear Construction (Watts Bar Unit 2 and Bellefonte Nuclear Plant) locations. Training will be completed by December 21, 2012.

e. TVA will provide refresher 10 CFR 50.9 training (both manager/supervisor as well as craft-level) to employees, including contractor and subcontractor employees, at all Nuclear Construction (Watts Bar Unit 2 and Bellefonte Nuclear Plant) locations every two years through 2016. TVA will reassess the continued need for such training thereafter.

f. TVA will enhance existing 10 CFR 50.9-related general employee training (GET) for new employees, including contractor and subcontractor employees located at TVA nuclear sites, joining Nuclear Power Group and Nuclear Construction and update annual requalification GET training. TVA will complete this item by December 21, 2012.

g. Within six months of issuance of the Confirmatory Order, and again on or before July 1, 2013, TVA will perform checks of the Watts Bar Unit 2 construction contractors and subcontractors, via its Employee Concerns Program (ECP), to identify undue scheduling pressure issues. Issues identified will be addressed commensurate with safety and in accordance with TVA's Corrective Action Program.

h. TVA will perform effectiveness review of actions taken and actions planned, including those taken in response to the ECP checks described in Item 5.g, on or before July 1, 2013. Based on the results of the effectiveness review, TVA will implement appropriate corrective actions.

i. Upon completion of the terms of the Confirmatory Order, TVA will provide the NRC with a letter discussing its basis for concluding that the Order has been satisfied.

The Regional Administrator, NRC Region II, may relax or rescind, in writing, any of the above conditions upon a showing by TVA of good cause.

**VI**

Any person adversely affected by this Confirmatory Order, other than TVA, may request a hearing within 20 days of its publication in the **Federal Register**. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension.

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 NRC's ''Guidance for Electronic Submission,'' which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through 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/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with the NRC guidance available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC'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/e-submittals.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.

If a person (other than TVA) requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Confirmatory Order and shall address the criteria set forth in 10 CFR 2.309(d) and (f).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section V above shall be final 20 days from the date on which this Confirmatory Order is published in the **Federal Register**, without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section V shall be final when the extension expires if a hearing request has not been received.

A request for hearing shall not stay the immediate effectiveness of this order.

Dated: Dated this 18th day of June 2012.

For the Nuclear Regulatory Commission.

**Victor M. McCree,**

*Regional Administrator.*

[FR Doc. 2012–17227 Filed 7–13–12; 8:45 am]

**BILLING CODE 7590–01–P**

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## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–416; NRC–2012–0105]**

## Entergy Operations, Inc.; Grand Gulf Nuclear Station, Unit 1

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Final environmental assessment and finding of no significant impact; issuance.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–29, issued to Entergy Operations, Inc. (Entergy, the licensee), for operation of the Grand Gulf Nuclear Station, Unit 1 (GGNS Unit 1), located in Claiborne County, Mississippi, in accordance with NRC's regulations. Therefore, the NRC has prepared this final environmental assessment (EA) and finding of no significant impact (FONSI) for the proposed action.

**ADDRESSES:** Please refer to Docket ID NRC–2012–0105 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 are publicly available, using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0105. 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.* The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced. Entergy Operations, Inc. (Entergy, the licensee), application for amendment is dated September 8, 2010, and supplemented by letters dated November 18, 2010, November 23, 2010, February 23, 2011 (four letters), March 9, 2011 (two letters), March 22, 2011, March 30, 2011, March 31, 2011, April 14, 2011, April 21, 2011, May 3, 2011, May 5, 2011, May 11, 2011, June 8, 2011, June 15, 2011, June 21, 2011, June 23, 2011, July 6, 2011, July 28, 2011, August 25, 2011, August 29, 2011, August 30, 2011, September 2, 2011, September 9, 2011, September 12, 2011, September 15, 2011, September 26, 2011, October 10, 2011 (two letters), October 24, 2011, November 14, 2011, November 25, 2011, November 28, 2011, December 19, 2011, February 6, 2012, February 15, 2012, February 20, 2012, March 13, 2012, March 21, 2012, April 5, and April 18, 2012 (two letters), April 26, 2012, May 9, 2012, and June 12, 2012. Portions of the letters dated September 8 and November 23, 2010, and February 23, April 21, May 11, July 6, July 28, September 2, October 10, November 14, November 25, and November 28, 2011, and February 6, February 15, February 20, March 13, March 21, April 5, April 18, 2012 (two letters), April 26, 2012, and May 9, 2012, contain sensitive unclassified non-safeguards information (proprietary) and, accordingly, have been withheld from public disclosure. The licensee's letters are publicly available in ADAMS at the accession numbers listed in the table below:

| Document date | Accession No. | Document date | Accession No. | Document date | Accession No. |
|---|---|---|---|---|---|
| 9/8/2010 | ML120660409 | 6/8/2011 | ML111590836 | 11/14/2011 | ML113190403 |
| 11/18/2010 | ML103260003 | 6/15/2011 | ML111670059 | 11/25/2011 | ML113290137 |
| 11/23/2010 | ML103330093 | 6/21/2011 | ML111730235 | 11/28/2011 | ML113320403 |
| 2/23/2011 | ML110540534 | 6/23/2011 | ML111750244 | 12/19/2011 | ML113530656 |
| 2/23/2011 | ML110540540 | 7/6/2011 | ML111880138 | 2/6/2012 | ML12039A071 |
| 2/23/2011 | ML110540545 | 7/28/2011 | ML112101485 | 2/15/2012 | ML120470138 |
| 2/23/2011 | ML110550318 | 8/25/2011 | ML112370770 | 2/20/2012 | ML12054A038 |
| 3/9/2011 | ML110680507 | 8/29/2011 | ML112410566 | 3/13/2012 | ML120740083 |
| 3/9/2011 | ML110730025 | 8/30/2011 | ML112420169 | 3/21/2012 | ML12082A025 |
| 3/22/2011 | ML110820262 | 9/2/2011 | ML112490050 | 4/5/2012 | ML12097A055 |
| 3/30/2011 | ML110900275 | 9/9/2011 | ML112521284 | 4/18/2012 | ML12109A308 |
| 3/31/2011 | ML110900586 | 9/12/2011 | ML112550495 | 4/18/2012 | ML12109A290 |
| 4/14/2011 | ML111050134 | 9/15/2011 | ML112580223 | 4/26/2012 | ML12118A145 |
| 4/21/2011 | ML11112A098 | 9/26/2011 | ML112690143 | 5/9/2012 | ML12131A535 |
| 5/3/2011 | ML111240288 | 10/10/2011 | ML112840155 | 6/12/2012 | ML12165A250 |
| 5/5/2011 | ML111250552 | 10/10/2011 | ML112840171 | | |
| 5/11/2011 | ML111320263 | 10/24/2011 | ML112980113 | | |

- *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:** Alan B. Wang, Project Manager, Plant Licensing Branch IV, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1445; email: *AlanWang@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Background

The NRC published a notice in the **Federal Register** requesting public review and comment on a draft EA and FONSI for the proposed action on May 11, 2012 (77 FR 27804), and established June 11, 2012, as the deadline for submitting public comments. The NRC has received no comments regarding the draft EA.

## II. Environmental Assessment

### *Plant Site and Environs*

The GGNS Unit 1 site is located in Claiborne County, Mississippi, on the east bank of the Mississippi River at River Mile (RM) 406, approximately 25 miles south of Vicksburg, Mississippi, and 37 miles north-northeast of Natchez, Mississippi. The GGNS Unit 1 site consists of approximately 2,100 acres, comprised primarily of woodlands and former farms as well as two lakes, Hamilton Lake and Gin Lake. The land in the vicinity of GGNS is mostly rural. GGNS Unit 1 is a General Electric Mark 3 boiling-water reactor.

### *Identification of the Proposed Action*

By application dated September 8, 2010, as supplemented, the licensee requested an amendment for an extended power uprate (EPU) for GGNS Unit 1 to increase the licensed thermal power level from 3,898 megawatts thermal (MWt) to 4,408 MWt, which represents an increase of approximately 13 percent above the current licensed thermal power and approximately 15 percent over the original licensed thermal power level of 3833 MWt. This change in core thermal power level requires the NRC to amend the facility's operating license. The operational goal of the proposed EPU is a corresponding increase in net electrical output of 178 megawatts electric (MWe). The proposed action is considered an EPU by the NRC because it exceeds the typical 7 percent power increase that can be accommodated with only minor plant changes. EPUs typically involve extensive modifications to the nuclear steam supply system.

The licensee plans to make several extensive physical modifications to systems necessary to generate and/or accommodate the increased feedwater and steam flow rates to achieve EPU power levels during a refueling outage currently scheduled for 2012. In addition, there will be land disturbance involving installation of a new radial well system. The actual power uprate, if approved by the NRC, would occur following the refueling outage in 2012.

### *The Need for the Proposed Action*

The proposed action provides GGNS Unit 1 with the flexibility to increase its potential electrical output and to supply additional electrical generation to the State of Mississippi and the surrounding region.

### *Environmental Impacts of the Proposed Action*

As part of the licensing process for GGNS Unit 1, the NRC published a Final Environmental Statement (FES) in 1981, *Final Environmental Statement for the Operation of the Grand Gulf Nuclear Station Units 1 and 2 (NUREG–0777).* The FES provides an evaluation of the environmental impacts associated with the construction and operation of GGNS Units 1 and 2 (Unit 2 has since been cancelled) over their licensed lifetimes. The NRC staff used information from the licensee's license amendment request and the FES to perform its EA for the proposed EPU.

There will be extensive changes made to the steam supply system of GGNS Unit 1 related to the EPU action, but no new construction is planned outside of existing facilities. No extensive changes are anticipated to existing buildings or plant systems that directly or indirectly interface with the environment. All necessary modifications would be performed in existing buildings at GGNS Unit 1 with the exception of the installation of a new radial well and additional cooling units being added to the auxiliary cooling tower. Modifications to the steam supply system of GGNS Unit 1 include the following: replacing the reactor feed pump turbine rotors; replacing the main generator current transformers, replacing the high pressure turbine; replacing the moisture separator reheater shell and internals; replacing the steam dryer; and other modifications to upgrade the plant service water heat removal system.

The sections below describe the non-radiological and radiological impacts to the environment that may result from the proposed EPU.

### *Non-Radiological Impacts*

#### Land Use and Aesthetic Impacts

Potential land use and aesthetic impacts from the proposed EPU include impacts from plant modifications at the GGNS site. The licensee states that any land disturbance activities, including

those associated with EPU, are reviewed in accordance with Entergy procedures to ensure that necessary environmental protection measures are implemented during the project. Entergy states that these measures would include provisions to protect such things as threatened and endangered species, cultural resources, wetland areas, water quality, etc.

The licensee's analysis concluded that additional cooling tower make-up water is projected to be needed (~3,200 gallons per minute (gpm)) due to the increase in heat load generated as a result of the EPU, which will also results in an increase in water loss through evaporation, blowdown, and drift. A new radial well has been installed to ensure sufficient cooling water is available to support the higher EPU power level because GGNS's existing radial wells have degraded over time and thus cannot perform at their design capacity. Activities to support the well construction include clearing and grubbing of trees, construction of a working pad using engineered fill, and excavation of trenches for supply piping to the plant service water header, discharge piping into the river, and electrical equipment feeders. The proposed working pad is designed to contain all the equipment needed for construction of the well and to provide an area for material laydown and parking. Activities conducted in wetland areas would be managed under a Section 404 permit issued by the United States Army Corps of Engineers (USACE). The remaining non-wetland areas would be managed under Mississippi Department of Environmental Quality (MDEQ) stormwater permitting program (Permit Number MSR15) and associated best management practices.

Improvements are also being made to the Heavy Haul Road, which connects the site to the barge slip area, to support activities associated with the installation of the new radial well and potential delivery of heavy equipment as discussed below. These improvements consist of refurbishing the existing road and road base in low areas or areas that have become washed out over the years. These refurbishment activities would occur within the plant site boundary with appropriate best management practices applied and in accordance with GGNS' National Pollutant Discharge Elimination System (NPDES) Permit MSR000883 and associated Stormwater Pollution Prevention Plan to control silt and erosion.

Entergy used the Port of Claiborne for delivery of new transformers and other heavy equipment associated with the proposed EPU. As such Entergy did not need to conduct any dredging activities in the existing barge slip area to accommodate delivery of such equipment.

While some plant components would be modified, most changes related to the proposed EPU would occur within existing structures, buildings, and fenced equipment yards housing major components within the developed part of the site. Existing parking lots, road access, equipment lay-down areas, offices, workshops, warehouses, and restrooms would be used during plant modifications. Therefore, land use conditions would not change at the GGNS site. Also, there would be no land use changes along transmission line corridors, and no new transmission lines would be required.

Since land use conditions would not change at the GGNS Unit 1 site, and because any land disturbance would occur within previously disturbed areas, and those activities will be conducted in accordance with State and Federal permits to ensure the potential impacts are not significant, there would be little or no impact to aesthetic resources in the vicinity of GGNS Unit 1. Therefore, there would be no significant impact from EPU-related plant modifications on land use and aesthetic resources in the vicinity of the GGNS Unit 1 site.

Air Quality Impacts

Major air pollution emission sources at the GGNS site are regulated by the MDEQ in accordance with GGNS Air Permit 0420–00023. Nonradioactive emission sources at GGNS Unit 1 result primarily from periodic testing of diesel generators and fire water pump diesel engines, and operation of the cooling towers. There will be no changes to the emissions from these sources as a result of the EPU.

Some minor and short duration air quality impacts would occur during implementation of the EPU at the GGNS site. The main source of air emissions would come from the vehicles driven by outage workers needed to implement the EPU. However, this source will be short term and temporary. The majority of the EPU activities would be performed inside existing buildings and would not cause additional atmospheric emissions. Therefore, there would be no significant impact on air quality during and following implementation of the proposed EPU.

The licensee also evaluated the potential for an increase in particulate emissions that could occur as a result of the modification to the auxiliary cooling tower and the addition of two 60-gallon lube oil tanks associated with the new radial well pumps. These sources will result in some minor emissions of volatile organic compounds (VOC). By letter dated September 9, 2011 (ADAMS Accession No. ML112521284), the licensee informed the NRC that based on the determination that the modification to increase circulating water flow is not needed to support EPU conditions, the particulate emissions will not change significantly. In addition, the emission impact due to the lube oil tanks associated with the new radial wells is minor. Therefore, no change is required to the GGNS Air Permit 0420–00023 to the MDEQ prior to these activities occurring.

Upon completion of the proposed EPU, non-radioactive air pollutant emissions would increase slightly due to the modification of the auxiliary cooling tower and the addition of two 60-gallon lube oil tanks for the new radial well pumps but will be regulated in accordance with the GGNS Air Permit with MDEQ and there would be no significant impact on air quality in the region during and following implementation of the proposed EPU.

Water Use Impacts

Surface Water

The western boundary of the GGNS site is defined by the Mississippi River's eastern bank. At the site, the Mississippi River is about 0.5 miles wide at low flow and about 1.4 miles during a typical annual high flow period. The massive nature of the Mississippi River makes the liquid effluent discharges from the GGNS facility undetectable within the overall flow regime, and any changes in the quality are small and localized compared to the overall volume of water in the river. Hamilton and Gin are lakes on the GGNS site. These lakes are what remain of the former river channel after the Mississippi River moved to the west. Hamilton and Gin lakes are relatively small (Hamilton Lake is approximately 64 acres, and Gin Lake is approximately 55 acres) and shallow with an average depth of 8 to 10 feet. There is no effluent discharged or water drawn from these lakes for plant operations.

Limitations and monitoring requirements for plant effluent discharges are specified in the NPDES Permit. Discharges directly to the Mississippi River are required to be monitored continuously. Modifications of the nonradiological drain systems or other systems conveying wastewaters are not required for the EPU, and biocide/chemical discharges would be within existing permit limits. Although

it is estimated that blowdown (the release of liquid effluent to clean the water in the system) would increase slightly (~825 gpm) based on evaporation, the EPU is not introducing any new contaminants or pollutants and is not increasing the amount of those potential contaminants presently allowed for release by GGNS Unit 1.

Chemical and biocide wastes are produced from processes used to control the pH in the coolant, to control scale, to control corrosion, and to clean and defoul the condenser. These waste liquids are typically combined with cooling water discharges in accordance with the site's NPDES Permit MS0029521. Sanitary wastewater from all plant locations are regulated by GGNS NPDES Permit MS0029521, and flow to an onsite sewage treatment plant prior to discharge into the Mississippi River. Solids associated with treatment of the sanitary wastewater are placed in drying beds and then managed appropriately for eventual offsite disposal.

Surface water and wastewater discharges are regulated by the MDEQ via the NPDES permit. The permits are reviewed by the MDEQ on a 5-year basis. The current GGNS NPDES permit, which has been administratively continued by the MDEQ based on Entergy's timely submittal of the permit renewal application, authorizes discharges from 11 outfalls into the Mississippi River. None of the NPDES permit limits would require a modification to support or implement the EPU.

Total surface water withdrawals in Claiborne County are predominantly for agricultural use (livestock and irrigation), with no surface water usage reported for public supply, domestic self-supplied systems, mining, hydroelectric power, thermoelectric power, or industrial or commercial uses.

The nearest downstream user of Mississippi River water is the Southeast Wood Fiber company located at the Claiborne County Port facility, 0.8 miles downstream of the GGNS site. The maximum intake requirement for this facility is less than 0.9 million gallons per day (mgd). There are only three public water supply systems in the State of Mississippi that use surface water as a source, and none of these are located within 50 miles of the GGNS site.

Based on the above, the NRC staff concludes that the proposed EPU will not have a significant impact on surface water in the area of GGNS, and operation under EPU conditions would not cause a water use conflict with other surface water users in the GGNS area.

Groundwater

There are 16 groundwater wells currently used for withdrawal purposes at the GGNS site. Groundwater is used for domestic water, once-through cooling for plant air conditioners, and for regenerating the water softeners at the Energy Services Center.

There are currently four radial wells which supply water to the plant service water system. Since additional cooling tower make-up water is projected to be needed (~3,200 gpm) due to the increase in heat load generated as a result of the EPU, and an increase in water loss through evaporation, blowdown, and drift, a new radial well was installed to provide additional water needed during EPU operating conditions. The new radial well was completed and made operational during the spring 2012 refueling outage. As previously discussed, the existing radial wells have degraded over time and thus cannot perform at their full design capacity. Although water being utilized for cooling tower make-up is projected to increase from current levels, the estimated EPU cooling tower makeup flow value of 27,860 gpm (62 cubic feet per second (cfs)) is less than the estimated 42,636 gpm (95 cfs) value identified in the GGNS FES; therefore, groundwater consumption remains lower than the value analyzed in the GGNS FES.

Public water supply wells in Claiborne County (excluding GGNS) are supplied by the Catahoula Formation with well depths ranging from 166 to 960 feet. Aside from GGNS Unit 1, the primary use of groundwater in Claiborne County is for public supply purposes with a small percentage used for domestic water, irrigation, and livestock. Within a two-mile radius of the plant site, essentially all groundwater is used for domestic purposes.

GGNS groundwater is supplied from the Mississippi River Alluvium (radial wells) and the Upland Complex (potable wells) aquifers. Residents within the vicinity of GGNS are served by CS&I Water Association which withdraws water from the Miocene aquifer. Since the GGNS withdraws groundwater from the Mississippi River Alluvium and Upland Complex aquifers, the Miocene aquifers, including the Catahoula Formation, are unaffected.

The impact to offsite groundwater users from the withdrawal of water by GGNS Unit 1 is limited by the recharge boundary created by the river, and thus, is not expected to extend to the west beyond the river. Based on estimates of the radius of anticipated drawdown of the GGNS radial wells, drawdown at the GGNS property boundaries would have minimal impact on potential offsite use in the Mississippi River Alluvium aquifer. This is a conservative estimate of aquifer capacity impact, as aquifer recharge from sources other than the river (flooding and rainfall events) was not considered. GGNS's potable water wells are the closest wells withdrawing groundwater in the vicinity (although not from the Mississippi River Alluvium) and have operated to supply adequate water supply to the GGNS site without noticeable impact from the operation of the radial wells. There are no known withdrawals from the Mississippi River Alluvium aquifer other than GGNS Unit 1 between the Big Black River to the north, and Bayou Pierre River to the south.

Water rights and allocations of groundwater are regulated by MDEQ. Therefore, all existing GGNS Unit 1 groundwater withdrawals, including those from the radial wells, are regulated by a groundwater allocation permitting program. These permits were granted considering their identified potential impact on other uses in the area and considering those withdrawals in the recharge area of the Mississippi River Alluvium aquifer. Based on the above, there are no groundwater use conflicts between GGNS and other local groundwater users.

Approximately 40 percent of the GGNS site is bottomland, including forested, shrub, and emergent marsh wetlands. As stated above, the groundwater in the alluvium in the floodplain is in close hydraulic communication with the river. The groundwater contour figures reveal that the impact of the cone of depression surrounding the radial wells is dependent upon river stage. This impact is limited also by recharge to the alluvium derived from infiltration of precipitation, westward flow of groundwater across the terrace alluvium contact at the bluffs, and the flooding of the Mississippi River during high river stages. Thus, based on the localized influence of the drawdown zone surrounding the wells, the groundwater's hydraulic connection with the river, recharge from seasonal flooding and additional recharge from the Upland Terrace aquifer east of the bluffs, the impact of radial well groundwater withdrawal in the floodplain is of limited extent. Even though there is potentially greater impact to groundwater levels at the lowest river stages than at higher river stages, the low river stages are generally temporary. Therefore, the impact of the

radial wells on nearby wetlands is minimal.

Plant operation at the proposed EPU power level is not expected to cause impacts significantly greater than current operations. As previously discussed, groundwater withdrawals would continue to be lower than the values analyzed in the GGNS FES as a result of EPU and continued operational activities. The installation of an additional radial well is expected to reduce the per-well withdrawal rates without an increase in overall groundwater impacts. No major construction is planned, so additional groundwater withdrawals will not be required. Based on the above, the NRC staff concludes that the EPU will not have a significant impact on groundwater in the underlying aquifers, and operation under EPU conditions would not cause a water use conflict with other groundwater users in the GGNS area.

Aquatic Resources Impacts

The potential impacts to aquatic biota from the proposed action could include thermal and chemical discharge effects. GGNS does not have an intake structure that withdraws surface water directly from a body of water, therefore, no entrainment or impingement of organisms would occur.

GGNS uses groundwater from a series of radial wells to supply its plant service water system, as discussed in the Water Use Impacts section. The circulating water system is a closed system utilizing a natural draft cooling tower and a mechanical draft auxiliary cooling tower. The natural draft cooling tower is designed to operate alone or in conjunction with the auxiliary cooling tower to dissipate all excess heat removed from the main condensers. Additional cooling units will be added to the auxiliary cooling tower, as discussed in the Land Use and Aesthetics section. Makeup water, to compensate for drift, blowdown, and evaporation losses from the cooling towers, is supplied from the plant service water system by means of the radial wells. A new radial well will be installed to handle the increase in heat load associated with the EPU, as discussed in the Water Use section.

The circulating water system is designed to supply the main condenser with cooling water at temperatures ranging from 2.8 degrees Celsius (°C) (37 degrees Fahrenheit (°F)) to 36.1 °C (97 °F) when the mechanical draft auxiliary cooling tower is not in service, and less than 32.2 °C (90 °F) with the natural draft and auxiliary cooling towers both in service. The licensee states that the auxiliary cooling towers remain in service year round, with the exception of a short period (i.e., hours) when they are taken out of service for cleaning. Therefore, water being supplied to the condenser is anticipated to be less than 32.2 °C (90 °F) year round.

Thermal effluents associated with cooling tower blowdown are combined with other plant effluents and discharged into the Mississippi River. The conditions associated with thermal discharges as outlined in GGNS's MDEQ NPDES permit state that the receiving water shall not exceed a maximum water temperature change of 2.8 °C (5.0 °F) and that the maximum water temperature shall not exceed 32.2 °C (90 °F), except when ambient temperatures approach or exceed that number.

GGNS is required by the MDEQ NPDES Permit to conduct thermal monitoring during the winter and summer months preceding the submittal year of the permit renewal application and include those results in the submittal. Based on previous years of operational experience, GGNS has not violated the thermal conditions outlined in the permit.

Based on the above, the NRC staff concludes that although the heat load would increase as a result of the proposed EPU, the thermal discharge associated with GGNS operations would continue to remain at or slightly below current operating temperatures due to the additional cooling units being installed in the auxiliary cooling tower. As stated by the licensee, the auxiliary cooling towers operate in conjunction with the natural draft cooling tower year round. Consequently, the temperature of the cooling water being supplied to the condenser is not increasing, which ensures that the thermal conditions outlined in the GGNS MDEQ NPDES permit continue to be met. Therefore, the NRC staff concludes there would be no significant adverse impacts to aquatic biota from thermal discharges.

The plant service water system for GGNS is treated with sodium hypochlorite and biocides to control the pH in the coolant, to control scale, to control corrosion, and to clean and defoul the condenser. The liquid wastes produced from this process are combined with cooling water discharges in accordance with the site's MDEQ NPDES permit and discharged into the Mississippi River. Due to the additional cooling units being added to the auxiliary cooling tower, additional sodium hypochlorite injection will be needed to control biological fouling effectively. However, the liquid waste stream is dechlorinated with sodium bisulfite prior to being discharged to the Mississippi River. Consequently, effluent concentrations would be slightly higher but continue to be below the NPDES permit limits specified by MDEQ. The licensee has noted that it will maintain compliance with the MDEQ NPDES permit held currently by the plant as a function of the proposed EPU. Therefore, the NRC staff concludes there would be no significant adverse impacts to aquatic biota from chemical discharges.

As the delivery of transformers and other heavy equipment associated with the proposed EPU were made at the Claiborne County Port facility, no dredging activities were needed at the existing barge slip area.

Terrestrial Resources Impacts

The GGNS site is bisected by a prominent bluff line that runs parallel to the Mississippi River. Areas below the bluff line are seasonally flooded, except for two oxbow lakes which are permanently inundated and are considered wetland areas. Above the bluff line, the two prominent habitat types are upland field and upland forest with the vast majority upland forest. One small area of wetland has been defined on the north side of the plant as permanently flooded. Most of the previously developed areas are in upland habitat; however, approximately 400 acres of upland forest remains on-site.

The impacts that could potentially affect terrestrial resources include loss of habitat, construction and refurbishment-related noise and lighting, and sediment transport or erosion. Most of the activities associated with the EPU would occur on the developed portion of the site, would not directly affect any natural terrestrial habitats, and would not result in loss of habitat. As discussed in Land Use and Aesthetic Impacts section above, activities associated with installation of the new radial well would be managed in accordance with the Section 404 Permit and MDEQ's stormwater permitting program (Permit Number MSR15), as appropriate. Although there is no habitat present on the Heavy Haul Road, refurbishment activities associated with the road would be managed in accordance with the terms and conditions in State and Federal permits. Noise and lighting would not impact terrestrial species beyond what would be experienced during normal operations because refurbishment and construction activities would take place during outage periods, which are already periods of heightened activity. Based on the above, the NRC staff concludes that the proposed EPU would

have no significant effect on terrestrial resources.

Threatened and Endangered Species Impacts

The licensee corresponded with the U.S. Fish and Wildlife Service (USFWS) during the preparation of the Environmental Report for the EPU to ensure that the proposed EPU would not adversely affect any species protected under the Endangered Species Act. The following Table 1 identifies federally listed and candidate species that are in the vicinity of GGNS Unit 1.

TABLE 1—FEDERALLY LISTED SPECIES IN THE VICINITY OF GGNS UNIT 1

| Scientific | Name | Status [a] |
|---|---|---|
| Birds: | | |
| *Picoides borealis* | red-cockaded woodpecker | E |
| *Sterna antillarum* | least tern (interior pop.) | E |
| Clams: | | |
| *Potamilus capax* | fat pocketbook | E |
| *Quadrula cylindrica cylindrica* | rabbitsfoot | C |
| Fish: | | |
| *Etheostoma rubrum* | bayou darter | T |
| *Acipenser oxyrinchus desoto* | gulf sturgeon | T |
| *Scaphirhynchus albus* | pallid sturgeon | E |
| Mammals: | | |
| *Ursus americanus luteolus* | Louisiana black bear | T |

[a] C = candidate; E = endangered; T = threatened

Data source: [FWS] U.S. Fish and Wildlife Service. 2011. Find Endangered Species Database. Available at *http://www.fws.gov/endangered/* (accessed 13 December 2011).

As discussed in the Land Use and Aesthetic Impacts section, the only EPU activities involving land disturbance are the installation of a new radial well and Heavy Haul Road improvements. These activities would be handled in accordance with the terms and conditions in State and Federal permits.

The licensee states that procedures are in place at GGNS Unit 1 to ensure that threatened and endangered species would be adequately protected, if present, during the outage and during plant operations. Any traffic and worker activity on the plant site during its 2012 refueling outage would be on the developed portion of the site and would not affect any federally listed species.

As stated above, the licensee consulted with the USFWS regarding threatened and endangered species in the vicinity of GGNS Unit 1. No issues were identified that would impact any of the federally listed species as a result of the proposed EPU. Therefore, the NRC staff concludes that the proposed EPU would have no significant impacts on any Federally listed threatened or endangered species for the proposed action.

Historic and Archaeological Resources Impacts

The licensee states that at the recommendation of the Mississippi Department of Archives and History (MDAH), a Phase I archaeological survey was conducted in 2007 on two onsite study areas. Eleven archaeological sites and eight isolated finds/small artifact scatters were identified during this survey. One historic site within the study area and located south of the plant in a wooded area, was identified as having the potential to be eligible for the National Register of Historic Places (NRHP). The remaining sites were determined to be ineligible for listing on the NRHP. The MDAH required no further actions from GGNS provided that no construction activities occurred in this specific area.

As discussed in Land Use and Aesthetic Impacts section, the only EPU activities involving land disturbance is the installation of a new radial well and Heavy Haul Road improvements. Entergy has a procedure in place, applicable to all of its power plants, for management of cultural resources ahead of any future ground-disturbing activities. This procedure, which requires reviews, investigations, and consultations, as needed, ensures that existing or potentially existing cultural resources are adequately protected and assists Entergy in meeting State and Federal expectations.

As previously discussed, EPU-related plant modifications would take place within existing buildings and facilities at GGNS, except for the addition of the cooling units being added to the auxiliary cooling tower which will be installed on an existing foundation. Since ground disturbance or construction-related activities would not occur in any areas with the potential to be eligible for the NRHP, and that Entergy has procedures in place for management of cultural resources, the NRC staff concludes that there would be no significant impact from the proposed EPU on historic and archaeological resources in the vicinity of GGNS Unit 1.

Socioeconomic Impacts

Potential socioeconomic impacts from the proposed EPU include temporary increases in the size of the workforce at GGNS, and the associated increased demand for goods, public services, and housing in the region. The proposed EPU also could generate increased tax revenues for the State and surrounding counties.

Currently, approximately 690 full-time employees work at GGNS. During regularly scheduled refueling outages, the workforce is typically increased by additional 700–900 persons. Refueling outages usually last 25–30 days every 18 months, although GGNS plans to change to a 24-month refueling cycle in the future. Entergy estimates that operating at the proposed EPU power level would not affect the size of the regular workforce. The 2012 outage workforce will be larger than previous outages due to the EPU modifications but would be of short duration. Once EPU-related plant modifications have been completed, the size of the refueling outage workforce at GGNS would return to normal levels and would remain similar to pre-EPU levels, with no significant increases during future refueling outages. Entergy expects most of the temporary workers expected for the EPU related work will temporarily reside in Claiborne County. This will result in short-term increases in the local population along with increased demands for public services and housing. Because plant modification

work would be short term and temporary, most workers are expected to stay in available rental homes, apartments, mobile homes, and camper-trailers. The 2010 American Community Survey 1-year estimate for vacant housing units reported 783 vacant housing units in Claiborne County; that could potentially ease the demand for local rental housing. Therefore, the NRC expects that the temporary increase in plant employment for a short duration would have little or no noticeable effect on the availability of housing in the region.

The additional number of outage workers and material and equipment deliveries needed to support EPU-related plant modifications would cause short-term level of service impacts (restricted traffic flow and higher incident rates) on secondary roads in the immediate vicinity of GGNS. As EPU-related plant modifications would occur during a normal refueling outage, there could be noticeable short-term (during certain hours of the day), level-of-service traffic impacts beyond what is experienced during normal outages.

Nuclear power plants in Mississippi currently pay the Mississippi Department of Revenue a sum based on the assessed value of the plant. Based upon this assessment, nuclear power plants are then taxed 2 percent of its assessed value, or a maximum of $20,000,000. GGNS currently pays $20,000,000 annually to the Mississippi Department of Revenue. Tax revenue is distributed in proportion to the amount of electric energy consumed by the retail customers in each county, with no county receiving an excess of 20 percent of the funds. Ten percent of the remainder of the tax payment is then transferred from the Mississippi Department of Revenue to the General Fund of the State. The increased property value of GGNS as a result of the EPU and increased power generation could affect future tax payments by GGNS.

Due to the short duration of EPU-related plant modification activities, there would be little or no noticeable effect on tax revenues generated by temporary workers residing in Claiborne County. In addition, GGNS is currently paying the maximum tax on the assessed value of the plant. Therefore, the NRC expects no significant socioeconomic impacts from EPU-related plant modifications and operations under EPU conditions in the vicinity of GGNS.

Environmental Justice Impacts

The environmental justice impact analysis evaluates the potential for disproportionately high and adverse human health and environmental effects on minority and low-income populations that could result from activities associated with the proposed EPU at GGNS. Such effects may include human health, biological, cultural, economic, or social impacts. Minority and low-income populations are subsets of the general public residing around GGNS, and all are exposed to the same health and environmental effects generated from activities at GGNS.

NRC considered the demographic composition of the area within a 50-mile (mi) (80.5-kilometer (km)) radius of GGNS to determine whether minorities may be affected by the proposed action. The NRC examined the distribution of minority populations within 50 mi (80.5 km) of GGNS using the U.S. Census Bureau (USCB) data for 2010.

According to the 2010 Census data using the University of Missouri's Circular Area Profiling System, an estimated 316,387 people live within a 50-mi (80.5-km) radius of GGNS. Minority populations within 50 mi (80.5 km) comprise 53.2 percent (168,166 persons). The largest minority group was Black or African-American (approximately 157,707 persons or 49.8 percent), followed by Hispanic or Latino (of any race) (approximately 6,115 persons or 1.9 percent). Minority populations within Claiborne County comprise 85.2 percent of the total population with the largest minority group being Black or African-American at 84.6 percent.

NRC examined low-income populations within Claiborne County using the 2006–2010 American Community Survey 5-Year Estimates. According to census data, approximately 35 percent of the population (3,186 individuals) residing within Claiborne County was considered low-income, defined as living below the 2010 Federal poverty threshold. Approximately 27.6 percent of families were determined to be living below the Federal poverty threshold in Claiborne. The 2010 Federal poverty threshold was $22,314 for a family of four and $11,139 for an individual. The median household income for Claiborne County was approximately $24,150, which is 51 percent lower than the median household income (approximately $47,031) for Mississippi.

Potential impacts to minority and low-income populations would mostly consist of environmental and socioeconomic effects (e.g., noise, dust, traffic, employment, and housing impacts). Radiation doses from plant operations after the EPU are expected to continue to remain well below regulatory limits.

Noise and dust impacts would be temporary and limited to onsite activities. Minority and low-income populations residing along site access roads could experience increased commuter vehicle traffic during shift changes. Increased demand for inexpensive rental housing during the EPU-related plant modifications could disproportionately affect low-income populations; however, due to the short duration of the EPU-related work and the availability of housing properties, impacts to minority and low-income populations would be of short duration and limited. According to the 2010 census information, there were approximately 783 vacant housing units in Claiborne County.

Based on this information and the analysis of human health and environmental impacts presented in this EA, the proposed EPU would not have disproportionately high and adverse human health and environmental effects on minority and low-income populations residing in the GGNS vicinity.

Non-Radiological Cumulative Impacts

The NRC considered potential cumulative impacts on the environment resulting from the incremental impact of the proposed EPU when added to other past, present, and reasonably foreseeable future actions. For the purposes of this analysis, past actions include the construction and licensing of GGNS Unit 1. Present actions include operations and maintenance activities associated with operations under the current NRC operating license through the date of that license's expiration (November 1, 2024). Reasonably foreseeable future actions are discussed below.

Entergy submitted an application to the NRC for license renewal on October 28, 2011 (ADAMS Accession No. ML113080132). The NRC is currently in the process of reviewing this application and intends to publish a draft supplement to NUREG–1437, ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants,'' in December 2012. If the NRC grants Entergy a new license, that license would authorize Entergy to operate GGNS Unit 1 for an additional 20 years (through November 1, 2044). For purposes of this analysis, the proposed license renewal is considered a reasonably foreseeable future action. In its Environmental Report for the proposed license renewal, Entergy concludes that cumulative impacts during the proposed license renewal

term would be small to moderate for land use and ecological resources but that these impacts would be effectively mitigated. Cumulative impacts to air quality and socioeconomics would be beneficial and small to moderate in scale, and the impacts to the remaining resources areas would be small. However, the draft supplement to NUREG–1437 will document the NRC's independent National Environmental Policy Act (NEPA) analysis and consider potential cumulative impacts of the proposed license renewal.

Entergy submitted a combined license (COL) application to the NRC for an Economic Simplified Boiling Water Reactor (designated as ''Grand Gulf, Unit 3'') on February 27, 2008 (ADAMS Accession No. ML083570119). Entergy's COL application submission does not commit Entergy to build a new nuclear power unit; the application also does not constitute NRC's approval of the proposal. The NRC initiated a NEPA review as part of the review of Entergy's COL application. However, on January 9, 2009 (ADAMS Accession No. ML090130174), Entergy informed the NRC that it was considering alternate reactor design technologies and requested that the NRC stop its COL application review until further notice. The NRC suspended its review associated with the COL application (including the NEPA review) and, to date, has not resumed that review. The NRC was in the process of preparing an environmental impact statement (EIS) to evaluate the environmental impacts of the proposed Grand Gulf, Unit 3. However, because the review was suspended, the NRC did not publish the EIS. At this time, NRC does not consider licensing of Grand Gulf, Unit 3 to be a reasonably foreseeable future action because Entergy has not requested NRC to reinitiate its COL review to date. If in the future, Entergy submits a revised reactor design to the NRC for Grand Gulf, Unit 3, the NRC will evaluate the merits of that COL application and will decide whether to approve or deny the license after considering and evaluating the environmental and safety implications of the proposal. The environmental impacts of constructing and operating a new unit will depend on the unit's actual design characteristics, construction plans, and operations procedures. These impacts, including cumulative impacts, would be assessed by the NRC in a separate NEPA document.

Previous to the COL application, the NRC issued an Early Site Permit (ESP) for Grand Gulf on April 5, 2007 (ADAMS Accession No. ML070780457). Entergy submitted its ESP application for the Grand Gulf site to the NRC on October 16, 2003 (ADAMS Accession No. ML032960373). The NRC published NUREG–1817, ''Environmental Impact Statement for an Early Site Permit (ESP) at the Grand Gulf ESP Site, Final Report,'' in April 2006 (ADAMS Accession No. ML060900037), to document its NEPA analysis associated with the ESP application review. Chapter 7 of NUREG–1817 addresses cumulative impacts and concludes that impacts would range from small to moderate depending on the particular resource area, but that in several cases (land use, water use and water quality, terrestrial ecosystems, nonradiological health, radiological impacts of operation of non-light-water reactor designs, and decommissioning), information was not available to determine the level of impact. In these cases, the NRC noted that a future COL application would be required for the staff to determine the specific impacts based on proposed design characteristics, construction plans, and operations procedures. However, as discussed above, Entergy has requested that NRC suspend its COL application review, and thus, NRC does not have the information required to make determinations on the cumulative impacts that would result from a new reactor.

Non-Radiological Impacts Summary

As previously discussed, the proposed EPU would not result in any significant non-radiological impacts. Table 2 summarizes the non-radiological environmental impacts of the proposed EPU at GGNS.

TABLE 2—SUMMARY OF NON-RADIOLOGICAL ENVIRONMENTAL IMPACTS

| | |
|---|---|
| Land Use | The proposed EPU is not expected to cause a significant impact on land use conditions and aesthetic resources in the vicinity of the GGNS. |
| Air Quality | The proposed EPU is not expected to cause a significant impact to air quality. |
| Water Use | The proposed EPU is not expected to cause impacts significantly greater than current operations. No significant impact on groundwater or surface water resources. |
| Aquatic Resources | The proposed EPU is not expected to cause impacts significantly greater than current operations. No significant impact to aquatic resources due to additional chemical or thermal discharges. |
| Terrestrial Resources | The proposed EPU is not expected to cause impacts significantly greater than current operations. No significant impact to terrestrial resources. |
| Threatened and Endangered Species | The proposed EPU would have no effect on Federally threatened and endangered species. |
| Historic and Archaeological Resources | The proposed EPU would have no significant impact to historic and archaeological resources on site or in the vicinity of the GGNS. |
| Socioeconomics | The proposed EPU would have no significant socioeconomic impacts from EPU-related temporary increase in workforce. |
| Environmental Justice | The proposed EPU would have no disproportionately high and adverse human health and environmental effects on minority and low-income populations in the vicinity of the GGNS site. |
| Cumulative Impacts | The proposed EPU would not cause impacts significantly greater than current operations. |

*Radiological Impacts*

Radioactive Gaseous and Liquid Effluents and Solid Waste

GGNS Unit 1 uses waste treatment systems to collect, process, recycle, and dispose of gaseous, liquid, and solid wastes that contain radioactive material in a safe and controlled manner within NRC and EPA radiation safety standards. The licensee's evaluation of plant operation under the proposed EPU conditions shows that no physical changes would be needed to the radioactive gaseous, liquid, or solid waste systems.

Radioactive Gaseous Effluents

The gaseous waste management systems include the ventilation systems of normally and potentially radioactive components, building ventilation systems, the off-gas system, and the mechanical vacuum pump system. The licensee's evaluation concluded that the proposed EPU is expected to increase the production and activity of gaseous effluents approximately 13 percent; however, the increase would be below the design basis values the system is

designed to handle. The licensee's evaluation concluded that the proposed EPU would not change the radioactive gaseous waste system's design function and reliability to safely control and process the waste. The projected gaseous releases following implementation of the EPU would remain within the values analyzed in the FES for GGNS Unit 1. The existing equipment and plant procedures that control radioactive releases to the environment will continue to be used to maintain radioactive gaseous releases within the dose limits of 10 CFR 20.1302 and the as low as is reasonably achievable (ALARA) dose objectives in Appendix I to 10 CFR part 50.

Radioactive Liquid Effluents

The liquid waste management system collects, processes, and prepares radioactive liquid waste for disposal. Radioactive liquid wastes include liquids from various equipment drains, floor drains, chemical wastes, and miscellaneous plant equipment subsystems, and alternative liquid radioactive waste processing equipment. Entergy is installing a condensate full flow filter (CFFF)—iron control system upstream of the condensate demineralizers to reduce the corrosion product loading on the demineralizer resins. The addition of iron control to the CFFF would prevent iron from being deposited on the demineralization resin. The amount of liquid waste generated by the condensate demineralizer system is expected to remain unchanged or even decrease. The licensee's evaluation shows that the proposed EPU implementation would not significantly increase the inventory of liquid normally processed by the liquid waste management system. This is because the system functions are not changing, and the volume inputs remain the same. The proposed EPU would result in a 13 percent increase in the equilibrium radioactivity in the reactor coolant which in turn would impact the concentrations of radioactive nuclides in the liquid waste disposal systems.

Since the composition of the radioactive material in the waste and the volume of radioactive material processed through the system are not expected to significantly change, the current design and operation of the radioactive liquid waste system will accommodate the effects of the proposed EPU. The projected liquid effluent release following EPU implementation would remain within the values analyzed in the FES for GGNS Unit 1. The existing equipment and plant procedures that control radioactive releases to the environment will continue to be used to maintain radioactive liquid releases within the dose limits of 10 CFR 20.1302 and ALARA dose standards in Appendix I to 10 CFR part 50.

Radioactive Solid Wastes

The solid radwaste system is designed to provide solidification and packaging for radioactive wastes that are produced during shutdown, startup, and normal operation, and to store these wastes until they are shipped offsite for burial. Solid radwaste is processed on a batch basis and would increase slightly, resulting in an increase in batch processing. The licensee's evaluation concluded that the annual volume of solid waste is expected to increase from 152.83 cubic meters ($m^3$) at current licensed thermal power to 153.65 $m^3$ per year, or 0.82 $m^3$ per year. Although EPU implementation increases the amount of solid waste produced, the design capability of the solid radwaste system and the total volume capacity for handling solid waste are unaffected, and the system will be able to handle the additional waste without any modifications. The equipment is designed and operated to process the waste into a form that minimizes potential harm to the workers and the environment. Waste processing areas are monitored for radiation, and there are safety features to ensure worker doses are maintained within regulatory limits. The proposed EPU would not generate a new type of waste or create a new waste stream.

The licensee manages low level radioactive waste (LLRW) contractually with an offsite vendor and expects to continue to ship LLRW offsite for processing and disposal. Entergy currently transports radioactive waste to licensed processing facilities in Tennessee, including Duratek (owned by EnergySolutions) or Race (owned by Studsvik), where the wastes are processed prior to being sent for disposal at EnergySolutions in Clive, Utah.

Based on the above, the NRC staff concludes that the impact from the proposed EPU on the management of radioactive solid waste would not be significant.

Occupational Radiation Dose at EPU Power Levels

The licensee stated that the in-plant radiation sources are expected to increase approximately linearly with the proposed increase in core power level. To protect the workers, the licensee's radiation protection program monitors radiation levels throughout the plant to establish appropriate work controls, training, temporary shielding, and protective equipment requirements so that worker doses will remain within the dose limits of 10 CFR part 20 and ALARA.

The licensee states that GGNS Unit 1 has been designed using an extremely conservative basis for water and steam radionuclide concentrations such that changes in actual concentrations as a result of EPU are well within the original design limits. Inside containment, the radiation levels near the reactor vessel are assumed to increase by 13 percent. However, the reactor vessel is inaccessible during operation, and because of the margin in the shielding around the reactor vessel, an increase of 13 percent would not measurably increase occupational doses during power operation. The radiation levels due to spent fuel are anticipated to increase by 13 percent. Expected increases in these values would occur primarily in fuel handling operations during refueling outages. However, a review of existing radiation zoning design concluded that no changes in the radiation zone designations or shielding requirements would need to be made as a result of EPU, and operation under EPU conditions would have no significant effect on occupational and onsite radiation exposure.

Based on the above, the NRC staff concludes that the proposed EPU is not expected to significantly affect radiation levels within the plants and, therefore, there would not be a significant radiological impact to the workers.

Offsite Doses at EPU Power Levels

The licensee states that normal operational gaseous activity levels may increase slightly. The increase in activity levels is generally proportional to the percentage increase in core thermal power, which is approximately 13 percent. However, this slight increase does not affect the large margin to the offsite dose limits established by 10 CFR part 20, allowing GGNS to operate well below the regulatory limits even at the higher power level.

The sources of offsite dose to members of the public from GGNS Unit 1 are radioactive gaseous and liquid effluents and direct radiation. As previously discussed, operation at the proposed EPU conditions will not change the radioactive waste management systems' abilities to perform their intended functions. Also, there would be no change to the radiation monitoring system and procedures used to control the release of radioactive effluents in accordance with NRC radiation protection standards in

10 CFR part 20 and Appendix I to 10 CFR part 50.

Based on the above, the NRC staff concluded that the offsite radiation dose to members of the public from the proposed EPU would continue to be within the NRC and EPA regulatory limits.

Spent Nuclear Fuel

Spent fuel from GGNS Unit 1 is stored in the plant's spent fuel pool and in dry casks in the independent spent fuel storage installation. The current typical average enrichment of a batch of fuel at GGNS is approximately 4 percent by weight uranium-235. The additional energy requirements for the EPU are met by an increase in fuel enrichment, an increase in the reload fuel batch size, and/or changes in the fuel loading pattern to maintain the desired plant operating cycle length. The equilibrium core evaluated for the EPU has an average enrichment well below 4.5 percent uranium-235 by weight. Entergy's EPU evaluation also considered a possible future change to a 24-month refueling cycle; the combination of the EPU and the longer cycle length could result in an increase in fuel bundle assembly size from 312 to about 380 assemblies. The maximum average burnup level of any fuel rod would continue to be less than 62,000 megawatt-days per metric tonne (MWd/MTU), and reload design goals would maintain the GGNS Unit 1 fuel cycles within the burnup and enrichment limits bounded by the impacts analyzed in 10 CFR part 51, Table S–3—Table of Uranium Fuel Cycle Environmental Data, and Table S–4—Environmental Impact of Transportation of Fuel and Waste to and from One Light-Water-Cooled Nuclear Power Reactor, as supplemented by NUREG–1437, Volume 1, Addendum 1, ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Main Report. Section 6.3—Transportation Table 9.1, Summary of findings on NEPA issues for license renewal of nuclear power plants.'' Therefore, the NRC staff concludes that there would be no significant impacts resulting from spent nuclear fuel.

Postulated Design-Basis Accident Doses

Postulated design-basis accidents are evaluated by both the licensee and the NRC to ensure that GGNS Unit 1 can withstand normal and abnormal transients and a broad spectrum of postulated accidents without undue hazard to the health and safety of the public.

The NRC staff is reviewing the applicant's analyses to independently verify the applicant's calculated doses under accident conditions. The NRC staff's evaluation results will be contained in the safety evaluation that will be issued concurrently with the proposed EPU amendment, if so approved by the NRC staff. However, for the purpose of this EA, the NRC staff concludes that, based on the information provided by the licensee, the proposed EPU would not significantly increase the radiological consequences of postulated accidents.

Radiological Cumulative Impacts

The radiological dose limits for protection of the public and workers have been developed by the NRC and EPA to address the cumulative impact of acute and long-term exposure to radiation and radioactive material. These dose limits are codified in 10 CFR part 20 and 40 CFR part 190.

The cumulative radiation dose to the public and workers are required to be within the limits set forth in the regulations cited above. The public dose limit of 25 millirem (mrem) (0.25 millisievert (mSv)) in 40 CFR part 190 applies to all reactors that may be on a site and also includes any other nearby nuclear facilities. Currently, there is no other nuclear power reactor or uranium fuel cycle facility located near GGNS Unit 1. However, as previously discussed, Entergy is considering the construction of an additional nuclear power reactor at the GGNS site. The NRC staff reviewed several years of radiation dose data contained in the licensee's annual radioactive effluent release reports for GGNS Unit 1. The data demonstrate that the dose to members of the public from radioactive effluents is within the limits of 10 CFR part 20 and 40 CFR part 190. To evaluate the projected dose at EPU power levels for GGNS Unit 1, the NRC staff increased the actual dose data contained in the reports by 13 percent. The projected doses for GGNS Unit 1 at EPU power level remained within regulatory limits. The NRC staff expects continued compliance with NRC's and EPA's public dose limits during operation at the proposed EPU power level and at the proposed new reactor, if it is constructed and operated. Therefore, the NRC staff concludes that there would not be a significant cumulative radiological impact to members of the public from increased radioactive effluents from GGNS Unit 1 at the proposed EPU operation and the proposed new reactor.

As previously discussed, the licensee has a radiation protection program that maintains worker doses within the dose limits in 10 CFR part 20 during all phases of GGNS Unit 1 operations. The NRC staff expects continued compliance with NRC's occupational dose limits during operation at the proposed EPU power level and at the proposed new reactor, if it is constructed and operated.

Therefore, the NRC staff concludes that operation of GGNS Unit 1 at the proposed EPU power level and the proposed new reactor would not result in a significant impact to the worker's cumulative radiological dose.

Radiological Impacts Summary

As discussed above, the proposed EPU would not result in any significant radiological impacts. Table 3 summarizes the radiological environmental impacts of the proposed EPU at GGNS Unit 1.

TABLE 3—SUMMARY OF RADIOLOGICAL ENVIRONMENTAL IMPACTS

| | |
|---|---|
| Radioactive Gaseous Effluents | Amount of additional radioactive gaseous effluents generated would be handled by the existing system. |
| Radioactive Liquid Effluents | Amount of additional radioactive liquid effluents generated would be handled by the existing system. |
| Occupational Radiation Doses | Occupational doses would continue to be maintained within NRC limits. |
| Offsite Radiation Doses | Radiation doses to members of the public would remain below NRC and EPA radiation protection standards. |
| Radioactive Solid Waste | Amount of additional radioactive solid waste generated would be handled by the existing system. |
| Spent Nuclear Fuel | The spent fuel characteristics will remain within the bounding criteria used in the impact analysis in 10 CFR part 51, Table S–3, and Table S–4. |
| Postulated Design-Basis Accident Doses | Calculated doses for postulated design-basis accidents would remain within NRC limits. |

TABLE 3—SUMMARY OF RADIOLOGICAL ENVIRONMENTAL IMPACTS—Continued

| | |
|---|---|
| Cumulative Radiological | Radiation doses to the public and plant workers would remain below NRC and EPA radiation protection standards. |

*Alternatives to the Proposed Action*

As an alternative to the proposed action, the NRC staff considered denial of the proposed EPU (i.e., the ''no-action'' alternative). Denial of the application would result in no change in the current environmental impacts. However, if the EPU were not approved for GGNS Unit 1, other agencies and electric power organizations may be required to pursue other means, such as fossil fuel or alternative fuel power generation, to provide electric generation capacity to offset future demand. Construction and operation of such a fossil-fueled or alternative-fueled plant could result in impacts in air quality, land use, and waste management greater than those identified for the proposed EPU for GGNS Unit 1.

*Alternative Use of Resources*

The action does not involve the use of any different resources than those previously considered in the GGNS FES.

**III. Finding of No Significant Impact**

On the basis of the details provided in the EA, the NRC concludes that granting the proposed EPU license amendment is not expected to cause impacts significantly greater than current operations. Therefore, the proposed action of implementing the EPU for GGNS Unit 1 will not have a significant effect on the quality of the human environment because no significant permanent changes are involved, and the temporary impacts are within previously disturbed areas at the site and the capacity of the plant systems. As discussed in the EA, if any new land disturbances are required to support the proposed EPU, those activities will be conducted in accordance with State and Federal permits to ensure the potential impacts are not significant. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 9th day of July 2012.

**Michael T. Markley,**

*Chief, Plant Licensing Branch IV, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–67371; File No. SR–NYSEMKT–2012–04]**

## Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Deleting NYSE MKT LLC Rule 428(a), Which Addresses Telephone Solicitation, and Amending NYSE MKT LLC Rule 429, Which Addresses Telemarketing, To Adopt New Rule Text To Conform to FINRA's Telemarketing Rule

July 10, 2012.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the '' Exchange Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on June 25, 2012, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (the ''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 delete Rule 428(a), which addresses telephone solicitation, and amend Rule 429, which addresses telemarketing, to adopt new rule text that is substantially similar to FINRA Rule 3230. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.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 those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to delete Rule 428(a), which addresses telephone solicitation, and amend Rule 429, which addresses telemarketing, to adopt new rule text that is substantially similar to FINRA Rule 3230.[4]

Proposed Rule Change

The Exchange proposes to delete Rule 428(a), amend Rule 429, and adopt new rule text to Rule 429 to conform to the changes adopted by FINRA for telemarketing. FINRA adopted NASD Rule 2212 as FINRA Rule 3230, taking into account FINRA Incorporated New York Stock Exchange LLC (''NYSE'') Rule 440A and NYSE Interpretation 440A/01. FINRA Rule 3230 adds provisions that are substantially similar to Federal Trade Commission (''FTC'') rules that prohibit deceptive and other abusive telemarketing acts or practices.

NASD Rule 2212 and Rules 428 and 429 are similar rules that require members, among other things, to maintain do-not-call lists, limit the hours of telephone solicitations and prohibit members from using deceptive and abusive acts and practices in connection with telemarketing. The Commission directed FINRA and the Exchange to enact these telemarketing rules in accordance with the Telemarketing Consumer Fraud and Abuse Prevention Act of 1994 (''Prevention Act'').[5] The Prevention Act requires the Commission to promulgate, or direct any national securities exchange or registered securities association to promulgate, rules substantially similar to the FTC rules to prohibit deceptive and other abusive telemarketing acts or practices.[6]

In 2003, the FTC and the Federal Communications Commission (''FCC'')

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 66279 (January 30, 2012), 77 FR 5611 (February 3, 2012) (SR–FINRA–2011–059). FINRA's rule change will become effective on July 9, 2012. *See* FINRA Regulatory Notice 12–17.

[5] 15 U.S.C. 6101–6108.

[6] 15 U.S.C. 6102.

established requirements for sellers and telemarketers to participate in the national do-not-call registry.[7] Pursuant to the Prevention Act, the Commission requested that FINRA and the Exchange amend their telemarketing rules to include a requirement that their members participate in the national do-not-call registry. In 2004, the Commission approved amendments to NASD Rule 2212 requiring member firms to participate in the national do-not-call registry.[8] The following year, the Commission approved amendments to Rule 429, which were similar to the NASD rule amendments, but included additional provisions regarding the use of caller identification information, pre-recorded messages, telephone facsimiles and computer advertisements.[9]

As mentioned above, the Prevention Act requires the Commission to promulgate, or direct any national securities exchange or registered securities association to promulgate, rules substantially similar to the FTC rules to prohibit deceptive and other abusive telemarketing acts or practices.[10] In 2011, Commission staff directed all exchanges and FINRA to conduct a review of their telemarketing rules and propose rule amendments that provide protections that are at least as strong as those provided by the FTC's telemarketing rules. FINRA's adoption of FINRA Rule 3230 reflects amendments to NASD Rule 2212 and FINRA Incorporated NYSE Rule 440A that update those rules to meet the standards of the Prevention Act.[11]

The proposed rule change, as directed by the Commission staff, adopts provisions in proposed Rule 429 that are substantially similar to the FTC's current rules that prohibit deceptive and other abusive telemarketing acts or practices as described below.[12]

Telemarketing Requirements

Proposed Rule 429(a) provides that no member organization or person associated with a member organization shall initiate any outbound telephone call[13] to:

(1) Any residence of a person before the hour of 8 a.m. or after 9 p.m. (local time at the called party's location), unless the member organization has an established business relationship[14] with the person pursuant to paragraph 3230(m)(12)(A), the member organization has received that person's prior express invitation or permission, or the person called is a broker or dealer;

(2) Any person that previously has stated that he or she does not wish to receive an outbound telephone call made by or on behalf of the member organization;[15] or

(3) Any person who has registered his or her telephone number on the FTC's national do-not-call registry.

The proposed rule change is substantially similar to the FTC's provisions regarding abusive telemarketing acts or practices.[16] The FTC provided a discussion of the provision when it was adopted pursuant to the Prevention Act.[17]

National Do-Not-Call List Exceptions

Proposed Rule 429(b) provides that a member organization making outbound telephone calls will not be liable for initiating any outbound telephone call to any person who has registered his or her telephone number on the FTC's national do-not-call registry if:

(1) The member organization has an established business relationship with the recipient of the call;[18]

(2) The member organization has obtained the person's prior express invitation or permission;[19] or

(3) The associated person making the call has a personal relationship[20] with the recipient of the call.

The proposed rule change modifies the established business relationship exception in Rule 429 and the definition for ''established business relationships,'' which is substantially similar to the FTC's definition of that term.[21] In addition, the proposed rule change is substantially similar to the FTC's provision regarding an exception to the prohibition on making outbound telephone calls to persons on the FTC's

[7] *See* 68 FR 4580 (January 29, 2003); 68 FR 44144 (July 25, 2003); CG Docket No. 02–278, FCC 03–153, (adopted June 26, 2003; released July 3, 2003).

[8] *See* Securities Exchange Act Release No. 49055 (January 12, 2004), 69 FR 2801 (January 20, 2004) (Order Approving File No. SR–NASD–2003–131).

[9] *See* Securities Exchange Act Release No. 52844 (December 5, 2005), 70 FR 72477 (November 28, 2005) (Order Approving File No. SR–Amex–2005–064).

[10] 15 U.S.C. 6102.

[11] *See* Securities Exchange Act Release No. 65645 (October 27, 2011), 76 FR 67787 (November 2, 2011) (Order Approving File No. SR–FINRA–2011–059).

[12] The text of proposed Rule 429 would be the same as FINRA Rule 3230, except that the Exchange would substitute the term ''member organization'' for ''member.''

[13] An ''outbound telephone call'' is a telephone call initiated by a telemarketer to induce the purchase of goods or services or to solicit a charitable contribution from a donor. A ''customer'' is any person who is or may be required to pay for goods or services through telemarketing. A ''donor'' means any person solicited to make a charitable contribution. A ''person'' is any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity. ''Telemarketing'' means consisting of or relating to a plan, program, or campaign involving at least one outbound telephone call, for example cold-calling. The term does not include the solicitation of sales through the mailing of written marketing materials, when the person making the solicitation does not solicit customers by telephone but only receives calls initiated by customers in response to the marketing materials and during those calls takes orders only without further solicitation. For purposes of the previous sentence, the term ''further solicitation'' does not include providing the customer with information about, or attempting to sell, anything promoted in the same marketing materials that prompted the customer's call. *See* proposed Rule 429(m)(11), (14), (16), (17), and (20); *see also* FINRA Rule 3230(m)(11), (14), (16), (17), and (20); and 16 CFR 310.2(f), (l), (n), (v), (w), and (dd).

[14] An ''established business relationship'' is a relationship between a member organization and a person if (i) the person has made a financial transaction or has a security position, a money balance, or account activity with the member organization or at a clearing firm that provides clearing services to the member organization within the 18 months immediately preceding the date of an outbound telephone call; (b) the member organization is the broker-dealer of record for an account of the person within the 18 months immediately preceding the date of an outbound telephone call; or (c) the person has contacted the member organization to inquire about a product or service offered by the member organization within the three months immediately preceding the date of an outbound telephone call. A person's established business relationship with a member organization does not extend to the member organization's affiliated entities unless the person would reasonably expect them to be included. Similarly, a person's established business relationship with a member organization's affiliate does not extend to the member organization unless the person would reasonably expect the member organization to be included. The term ''account activity'' includes, but is not limited to, purchases, sales, interest credits or debits, charges or credits, dividend payments, transfer activity, securities receipts or deliveries, and/or journal entries relating to securities or funds in the possession or control of the member organization. The term ''broker-dealer of record'' refers to the broker or dealer identified on a customer's account application for accounts held directly at a mutual fund or variable insurance product issuer. *See* proposed Rule 429(m)(1), (4), and (12); *see also* 16 CFR 310.2(o) and FINRA Rule 3230(m)(1), (4), and (12).

[15] This restriction was previously included under Rule 429(a). *See* the discussion below under Procedures.

[16] *See* 16 CFR 310.4(b)(1)(iii)(A) and (B) and (c); *see also* FINRA Rule 3230(a).

[17] *See* Federal Trade Commission, *Telemarketing Sales Rule,* 68 FR 4580 (Jan. 29, 2003) at 4628; and Federal Trade Commission, *Telemarketing Sales Rule,* 60 FR 43842 (Aug. 23, 1995) at 43855.

[18] A person's request to be placed on the firm-specific do-not-call list terminates the established business relationship exception to that national do-not-call list provision for that member organization even if the person continues to do business with the member organization.

[19] Such permission must be evidenced by a signed, written agreement (which may be obtained electronically under the E-Sign Act (*See* 15 U.S.C. 7001 et seq.) between the person and member organization which states that the person agrees to be contacted by the member organization and includes the telephone number to which the calls may be placed.

[20] The term ''personal relationship'' means any family member, friend, or acquaintance of the person making an outbound telephone call. *See* proposed Rule 429(m)(18); *see also* FINRA Rule 3230(m)(18).

[21] *See supra* note14; *see also* FINRA Rule 3230(a).

do-not-call registry.[22] The FTC provided a discussion of the provision when it was adopted pursuant to the Prevention Act.[23]

Safe Harbor Provision

Proposed Rule 429(c) provides that a member organization or person associated with a member organization making outbound telephone calls will not be liable for initiating any outbound telephone call to any person who has registered his or her telephone number on the FTC's national do-not-call registry if the member organization or person associated with a member organization demonstrates that the violation is the result of an error and that as part of the member organization's routine business practice, it meets the following standards:

(1) The member organization has established and implemented written procedures to comply with the national do-not-call rules;

(2) The member organization has trained its personnel, and any entity assisting in its compliance, in procedures established pursuant to the national do-not-call rules;

(3) The member organization has maintained and recorded a list of telephone numbers that it may not contact; and

(4) The member organization uses a process to prevent outbound telephone calls to any telephone number on any list established pursuant to the do-not-call rules, employing a version of the national do-not-call registry obtained from the administrator of the registry no more than 31 days prior to the date any call is made, and maintains records documenting this process.

The proposed rule change is substantially similar to the FTC's safe harbor to the prohibition on making outbound telephone calls to persons on the FTC's national do-not-call registry.[24] The FTC provided a discussion of the provision when it was adopted pursuant to the Prevention Act.[25]

Procedures

Proposed Rule 429(d) adopts procedures that member organizations must institute to comply with Rule 429(a) prior to engaging in telemarketing. These procedures are substantially similar to the procedural requirements under Rule 429(d); however, the proposed rule change deletes the requirement that a member organization honor a firm-specific do-not-call request for five years from the time the request is made. Additionally, the proposed rule change clarifies that the request not to receive further calls would come from a person. The procedures must meet the following minimum standards:

(1) Member organizations must have a written policy for maintaining their do-not-call lists.

(2) Personnel engaged in any aspect of telemarketing must be informed and trained in the existence and use of the member organization's do-not-call list.

(3) If a member organization receives a request from a person not to receive calls from that member organization, the member organization must record the request and place the person's name, if provided, and telephone number on its do-not-call list at the time the request is made.[26]

(4) Member organizations or persons associated with a member organization making an outbound telephone call must make certain caller disclosures set forth in Rule 429(d)(4).

(5) In the absence of a specific request by the person to the contrary, a person's do-not-call request shall apply to the member organization making the call, and will not apply to affiliated entities unless the consumer reasonably would expect them to be included given the identification of the call and the product being advertised.

(6) A member organization making outbound telephone calls must maintain a record of a person's request not to receive further calls.

Inclusion of this requirement to adopt these procedures will not create any new obligations on member organizations, as they are already subject to identical provisions under FCC telemarketing regulations.[27]

Wireless Communications

Proposed Rule 429(e) states that the provisions set forth in the rule are applicable to member organizations telemarketing or making telephone solicitations calls to wireless telephone numbers. In addition, proposed Rule 429(e) clarifies that the application of the rule also applies to persons associated with a member organization making outbound telephone calls to wireless telephone numbers.[28]

Outsourcing Telemarketing

Rule 429(f) states that if a member organization uses another entity to perform telemarketing services on its behalf, the member organization remains responsible for ensuring compliance with all provisions contained in the rule. Proposed Rule 429(f) also clarifies that member organizations must consider whether the entity or person that a member organization uses for outsourcing, must be appropriately registered or licensed, where required.[29]

Caller Identification Information

Proposed Rule 429(g) provides that any member organization that engages in telemarketing must transmit or cause to be transmitted the telephone number, and, when made available by the member organization's telephone carrier, the name of the member organization, to any caller identification service in use by a recipient of an outbound telephone call. The telephone number so provided must permit any person to make a do-not-call request during regular business hours. In addition, any member organization that engages in telemarketing is prohibited from blocking the transmission of caller identification information.[30]

These provisions are similar to the caller identification provision in the FTC rules.[31] Inclusion of these caller identification provisions in this proposed rule change will not create any new obligations on member organizations, as they are already subject to identical provisions under FCC telemarketing regulations.[32]

Unencrypted Consumer Account Numbers

Proposed Rule 429(h) prohibits a member organization or person associated with a member organization from disclosing or receiving, for consideration, unencrypted consumer account numbers for use in telemarketing. The proposed rule

[22] *See* 16 CFR 3l0.4(b)(1)(iii)(B); *see also* FINRA Rule 3230(b).

[23] *See* Federal Trade Commission, *Telemarketing Sales Rule,* 68 FR 4580 (Jan. 29, 2003) at 4628; and Federal Trade Commission, *Telemarketing Sales Rule,* 60 FR 43842 (Aug. 23, 1995) at 43854.

[24] *See* 16 CFR 310.4(b)(1)(iii)(B); *see also* FINRA Rule 3230(c).

[25] *See* Federal Trade Commission, *Telemarketing Sales Rule,* 68 FR 4580 (Jan. 29, 2003) at 4628; and Federal Trade Commission, *Telemarketing Sales Rule,* 60 FR 43842 (Aug. 23, 1995) at 43855.

[26] Member organizations must honor a person's do-not-call request within a reasonable time from the date the request is made, which may not exceed 30 days from the date of the request. If these requests are recorded or maintained by a party other than the member organization on whose behalf the outbound telephone call is made, the member organization on whose behalf the outbound telephone call is made will still be liable for any failures to honor the do-not-call request.

[27] *See* 47 CFR 64.1200(d); *see also* FINRA Rule 3230(d).

[28] *See also* FINRA Rule 3230(e).

[29] *See also* FINRA Rule 3230(f).

[30] Caller identification information includes the telephone number and, when made available by the member organization's telephone carrier, the name of the member organization.

[31] *See* 16 CFR 310.4(a)(8); *see also* FINRA Rule 3230(g).

[32] *See* 47 CFR 64.1601(e).

change is substantially similar to the FTC's provision regarding unencrypted consumer account numbers.[33] The FTC provided a discussion of the provision when it was adopted pursuant to the Prevention Act.[34] Additionally, the proposed rule change defines ''unencrypted'' as not only complete, visible account numbers, whether provided in lists or singly, but also encrypted information with a key to its decryption. The proposed definition is substantially similar to the view taken by the FTC.[35]

Submission of Billing Information

The proposed rule change provides that, for any telemarketing transaction, no member organization or person associated with a member organization may submit billing information[36] for payment without the express informed consent of the customer. Proposed Rule 429(i) requires, for any telemarketing transaction, a member organization or person associated with a member organization to obtain the express informed consent of the person to be charged and to be charged using the identified account. If the telemarketing transaction involves preacquired account information[37] and a free-to-pay conversion[38] feature, the member organization or person associated with a member organization must:

(1) Obtain from the customer, at a minimum, the last four digits of the account number to be charged;

(2) Obtain from the customer an express agreement to be charged and to be charged using the identified account number; and

(3) Make and maintain an audio recording of the entire telemarketing transaction.

For any other telemarketing transaction involving preacquired account information, the member organization or person associated with a member organization must:

(1) Identify the account to be charged with sufficient specificity for the customer to understand what account will be charged; and

(2) Obtain from the customer an express agreement to be charged and to be charged using the identified account number.

The proposed rule change is substantially similar to the FTC's provision regarding the submission of billing information.[39] The FTC provided a discussion of the provision when it was adopted pursuant to the Prevention Act.[40]

Abandoned Calls

Proposed Rule 429(j) prohibits a member organization or person associated with a member organization from abandoning[41] any outbound telemarketing call. The abandoned calls prohibition is subject to a ''safe harbor'' under proposed subparagraph (j)(2) that requires:

(1) The member organization or person associated with a member organization to employ technology that ensures abandonment of no more than three percent of all calls answered by a person, measured over the duration of a single calling campaign, if less than 30 days, or separately over each successive 30-day period or portion thereof that the campaign continues;

(2) The member organization or person associated with a member organization, for each telemarketing call placed, allows the telephone to ring for at least 15 seconds or four rings before disconnecting an unanswered call;

(3) Whenever a person associated with a member organization is not available to speak with the person answering the telemarketing call within two seconds after the person's completed greeting, the member organization or person associated with a member organization promptly plays a recorded message stating the name and telephone number of the member organization or person associated with a member organization on whose behalf the call was placed; and

(4) The member organization to maintain records documenting compliance with the ''safe harbor.''

The proposed rule change is substantially similar to the FTC's provisions regarding abandoned calls.[42] The FTC provided a discussion of the provisions when they were adopted pursuant to the Prevention Act.[43]

Prerecorded Messages

Proposed Rule 429(k) prohibits a member organization or person associated with a member organization from initiating any outbound telemarketing call that delivers a prerecorded message without a person's express written agreement[44] to receive such calls. The proposed rule change also requires that all prerecorded telemarketing calls provide specified opt-out mechanisms so that a person can opt out of future calls. The prohibition does not apply to a prerecorded message permitted for compliance with the ''safe harbor'' for abandoned calls under proposed subparagraph (j)(2).

The proposed rule change is substantially similar to the FTC's provisions regarding prerecorded messages.[45] The FTC provided a discussion of the provisions when they were adopted pursuant to the Prevention Act.[46]

Credit Card Laundering

Proposed Rule 429(l) prohibits credit card laundering, the practice of depositing into the credit card system[47] a sales draft that is not the result of a credit card transaction between the

[33] *See* 16 CFR 310.4(a)(6); *see also* FINRA Rule 3230(h).

[34] *See* Federal Trade Commission, *Telemarketing Sales Rule,* 68 FR 4580 (January 29, 2003) at 4615.

[35] *See id.* at 4616.

[36] The term ''billing information'' means any data that enables any person to access a customer's or donor's account, such as a credit or debit card number, a brokerage, checking, or savings account number, or a mortgage loan account number. *See* proposed Rule 429(m)(3).

[37] The term ''preacquired account information'' means any information that enables a member organization or person associated with a member organization to cause a charge to be placed against a customer's or donor's account without obtaining the account number directly from the customer or donor during the telemarketing transaction pursuant to which the account will be charged. *See* proposed Rule 429(m)(19).

[38] The term ''free-to-pay conversion'' means, in an offer or agreement to sell or provide any goods or services, a provision under which a customer receives a product or service for free for an initial period and will incur an obligation to pay for the product or service if he or she does not take affirmative action to cancel before the end of that period. *See* proposed Rule 429(m)(13).

[39] *See* 16 CFR 310.4(a)(7); *see also* FINRA Rule 3230(i).

[40] *See* Federal Trade Commission, *Telemarketing Sales Rule,* 68 FR 4580 (January 29, 2003) at 4615.

[41] An outbound telephone call is ''abandoned'' if the called person answers it and the call is not connected to a member organization or person associated with a member organization within two seconds of the called person's completed greeting.

[42] *See* 16 CFR 310.4(b)(1)(iv); *see also* 16 CFR 310.4(b)(4).

[43] *See* Federal Trade Commission, *Telemarketing Sales Rule,* 68 FR 4580 (January 29, 2003) at 4641.

[44] The express written agreement must: (a) have been obtained only after a clear and conspicuous disclosure that the purpose of the agreement is to authorize the member organization to place prerecorded calls to such person; (b) have been obtained without requiring, directly or indirectly, that the agreement be executed as a condition of purchasing any good or service; (c) evidence the willingness of the called person to receive calls that deliver prerecorded messages by or on behalf of the member organization; and (d) include the person's telephone number and signature (which may be obtained electronically under the E-Sign Act).

[45] *See* 16 CFR 310.4(b)(1)(v); *see also* FINRA Rule 3230(k).

[46] *See* Federal Trade Commission, *Telemarketing Sales Rule,* 73 FR 51164 (August 29, 2008) at 51165.

[47] The term ''credit card system'' means any method or procedure used to process credit card transactions involving credit cards issued or licensed by the operator of that system. The term ''credit card'' means any card, plate, coupon book, or other credit device existing for the purpose of obtaining money, property, labor, or services on credit. The term ''credit'' means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment. *See* proposed Rule 429(m)(7), (8), and (10).

cardholder[48] and the member organization. Except as expressly permitted, the proposed rule change prohibits a member organization or person associated with a member organization from:

(1) Presenting to or depositing into, the credit card system for payment, a credit card sales draft[49] generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the member organization;

(2) Employing, soliciting, or otherwise causing a merchant,[50] or an employee, representative or agent of the merchant, to present to or to deposit into the credit card system for payment, a credit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the merchant; or

(3) Obtaining access to the credit card system through the use of a business relationship or an affiliation with a merchant, when such access is not authorized by the merchant agreement[51] or the applicable credit card system.

The proposed rule change is substantially similar to the FTC's provisions regarding credit card laundering.[52] The FTC provided a discussion of the provisions when they were adopted pursuant to the Prevention Act.[53]

Definitions

Proposed Rule 429(m) adopts the following definitions, which are substantially similar to the FTC's definitions of these terms: ''acquirer,'' ''billing information,'' ''caller identification service,'' ''cardholder,'' ''charitable contribution,'' ''credit,'' ''credit card,'' ''credit card sales draft,'' ''credit card system,'' ''customer,'' ''donor,'' ''established business relationship,'' ''free-to-pay conversion,'' ''merchant,'' ''merchant agreement,'' ''outbound telephone call,'' ''person,'' ''preacquired account information,'' and telemarketing''.[54] The FTC provided a discussion of each definition when they were adopted pursuant to the Prevention Act.

The Exchange proposes to make the new rule text to Rule 429 effective on the same date as FINRA makes FINRA Rule 3230 effective.[55]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Exchange Act[56] in general, and furthers the objectives of Section 6(b)(5)[57] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. Specifically, the Exchange believes that the proposed rule change supports the objectives of the Exchange Act by providing greater harmonization between Rules and FINRA Rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance. In particular, NYSE MKT member organizations that are also FINRA members are subject to Rules 428 and 429 and FINRA Rule 3230 and harmonizing these two rules would promote just and equitable principles of trade by requiring a single standard for telemarketing. In addition, adopting new rule text to Rule 429 will assure that the Exchange's rules governing telemarketing meet the standards set forth in the Prevention Act. To the extent the Exchange has proposed changes that differ from the FINRA version of the Rules, it believes such changes are technical in nature and do not change the substance of the proposed Rules. The Exchange also believes that the proposed rule change will update and clarify the requirements governing telemarketing, which will promote just and equitable principles of trade and help to protect investors.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received written comments with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Exchange Act[58] and Rule 19b–4(f)(6) thereunder.[59] 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 prior to 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 Exchange Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[60] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[61] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that

[48] The term ''cardholder'' means a person to whom a credit card is issued or who is authorized to use a credit card on behalf of or in addition to the person to whom the credit card is issued. *See* proposed Rule 429(m)(6).

[49] The term ''credit card sales draft'' means any record or evidence of a credit card transaction. *See* proposed Rule 429(m)(9).

[50] The term ''merchant'' means a person who is authorized under written contract with an acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services or a charitable contribution. The term ''acquirer'' means a business organization, financial institution, or an agent of a business organization or financial institution that has authority from an organization that operates or licenses a credit card system to authorize merchants to accept, transmit, or process payment by credit card through the credit card system for money, goods or services, or anything else of value. A ''charitable contribution'' means any donation or gift of money or any other thing of value, for example a transfer to a pooled income fund. *See* proposed Rule 429(m)(2) and (14).

[51] The term ''merchant agreement'' means a written contract between a merchant and an acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services or charitable contribution. *See* proposed Rule 429(m)(15).

[52] *See* 16 CFR 310.2; *see also* FINRA Rule 3230(l).

[53] *See* Federal Trade Commission, *Telemarketing Sales Rule,* 60 FR 43842 (August 23, 1995) at 43852.

[54] *See* proposed Rule 429(m)(2), (3), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14), (15), (16), (17), (19), and (20); and 16 CFR 310.2(a), (c), (d), (e), (f), (h), (i), (j), (k), (l), (n), (o), (p), (s), (t), (v), (w), (x), and (dd); *see also* FINRA Rule 3230(m)(2), (3), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14), (15), (16), (17), (19), and (20). The proposed rule change also adopts definitions of ''account activity,'' ''broker-dealer of record,'' and ''personal relationship'' that are substantially similar to FINRA's definitions of these terms. *See* proposed Rule 429(m)(1), (4), and (18) and FINRA Rule 3230(m)(1), (4), and (18); *see also* 47 CFR 64.1200(t)(14) (FCC's definition of ''personal relationship'').

[55] *See supra* note 4.

[56] 15 U.S.C. 78f(b).

[57] 15 U.S.C. 78f(b)(5).

[58] 15 U.S.C. 78s(b)(3)(A)(iii).

[59] 17 CFR 240.19b–4(f)(6).

[60] 17 CFR 240.19b–4(f)(6).

[61] 17 CFR 240.19b–4(f)(6)(iii).

the proposal may become operative immediately upon filing.

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 Exchange 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 Exchange Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEMKT–2012–04 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–NYSEMKT–2012–04. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 100 F Street NE., Washington, DC 20549–1090 on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at *www.nyse.com.* 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–NYSEMKT–2012–04 and should be submitted on or before August 6, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[62]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–17171 Filed 7–13–12; 8:45 am]

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[62] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–67381; File No. SR–BATS–2012–026]**

## Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1, To Adopt a New Market Maker Peg Order Available to Exchange Market Makers

July 10, 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 June 26, 2012, BATS Exchange, Inc. (''Exchange'' or ''BATS'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items II and III below, which Items have been prepared by the Exchange. On July 6, 2012, the Exchange submitted Amendment No. 1 to the proposed rule change. 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 adopt a new Market Maker Peg Order to provide similar functionality as the automated functionality provided to market makers under Rule 11.8(e).

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the 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

The Exchange is proposing to adopt a new Market Maker Peg Order to provide similar functionality presently available to Exchange market makers under Rule 11.8(e). The Exchange will continue to offer the present automated functionality provided to market makers under Rule 11.8(e) for a period of three months after the adoption of the proposed Market Maker Peg Order. The purpose of this transition period, during which both the present automated system functionality under Rule 11.8(e) and the Market Maker Peg Order will operate concurrently, is to afford market makers with the opportunity to gradually migrate away from the present automated system functionality under Rule11.8(e). Prior to the end of this three month period, the Exchange will submit a rule filing to retire the automated system functionality under Rule 11.8(e).

BATS adopted Rule 11.8(e) as part of an effort to address issues uncovered by the aberrant trading that occurred on May 6, 2010.[3] The market maker quoter functionality offered by this rule is designed to help Exchange market makers meet the enhanced market maker obligations adopted post May 6, 2010,[4] and avoid execution of market maker ''stub quotes'' in instances of aberrant trading.[5] As part of these

[3] Securities Exchange Act Release No. 63255 (November 5, 2010), 75 FR 69484 (November 12, 2010) (SR–BATS–2010–025).

[4] *Id.*

[5] For each issue in which a market maker is registered, the market maker quoter functionality optionally creates a quotation for display to comply with market making obligations. Compliant displayed quotations are thereafter allowed to rest and are not adjusted unless the relationship between the quotation and its related national best bid or national best offer, as appropriate, either: (a)

Continued

enhanced obligations, the Exchange requires market makers for each stock in which they are registered to continuously maintain a two-sided quotation within a designated percentage of the National Best Bid and National Best Offer,[6] as appropriate. Although the market maker quoter has been successful in allowing Exchange market makers to meet their enhanced obligations and in avoiding the deleterious effect on the markets caused by ''stub quote'' executions, the market maker quoter presents difficulties to market makers in meeting their obligations under Rule 15c3–5 under the Act (the ''Market Access Rule'') [7] and Regulation SHO.[8]

The Market Access Rule requires a broker-dealer with market access, or that provides a customer or any other person with access to an exchange or alternative trading system through use of its market participant identifier or otherwise, to establish, document, and maintain a system of risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory, and other risks of this business activity. These controls must be reasonably designed to ensure compliance with all regulatory requirements, which are defined as ''all federal securities laws, rules and regulations, and rules of self-regulatory organizations, that are applicable in connection with market access.'' [9]

In addition to the obligations of the Market Access Rule, broker-dealers have independent obligations that arise under Regulation SHO. Regulation SHO obligations generally include properly marking sell orders, obtaining a ''locate'' for short sale orders, closing out fail to deliver positions, and, where applicable, complying with the short sale price test.[10] While there are certain exceptions to some of the requirements of Regulation SHO where a market maker is engaged in bona-fide market making activities,[11] the availability of those exceptions is distinct and independent from whether a market maker submits an order that is a Market Maker Peg Order.

The current market maker quoter functionality offered to market makers reprices and ''refreshes'' a market maker's quote when it is executed against, without any action required by the market maker. When a market maker's quote is refreshed by the Exchange, however, the market maker has an obligation to ensure that the requirements of the Market Access Rule and Regulation SHO are met. To meet these obligations, a market maker must actively monitor the status of its quotes and ensure that the requirements of the Market Access Rule and Regulation SHO are being satisfied.

Market Maker Peg Order

In an effort to simplify market maker compliance with the requirements of the Market Access Rule and Regulation SHO, the Exchange is proposing to adopt a new order type available only to Exchange market makers, which offers functionality similar to the market maker quoter functionality, but also allows a market maker to comply with the regulatory requirements of the Market Access Rule and Regulation SHO. Specifically, the Exchange is proposing to replace the market maker quoter functionality with the Market Maker Peg Order. The Market Maker Peg Order would be a one-sided limit order and similar to other peg orders available to market participants in that the order is tied or ''pegged'' to a certain price,[12] but it would not be eligible for routing pursuant to Rule 11.13(a)(2) and would always be displayed. The Market Maker Peg Order would be limited to market makers and would have its price automatically set and adjusted, both upon entry and any time thereafter, in order to comply with the Exchange's rules regarding market maker quotation requirements and obligations.[13] It is expected that market makers will perform the necessary checks to comply with Regulation SHO, as discussed above, prior to entry of a Market Maker Peg Order. Upon entry and at any time the order exceeds either the Defined Limit, as described in Rule 11.8(d)(2)(E), or moves a specified number of percentage points away from the Designated Percentage toward the then current National Best Bid or National Best Offer, the Market Maker Peg Order would be priced by the Exchange at the Designated Percentage [14] away from the then current National Best Bid and National Best Offer. Where there is no National Best Bid or National Best Offer, the Market Maker Peg Order would, by default, be priced at the Designated Percentage away from the last reported sale from the responsible single plan processor, unless instructed by the market maker upon entry to cancel or reject where there is no NBB or NBO. In the absence of a National Best Bid or National Best Offer and last reported

Shrinks to a specified number of percentage points away from the Designated Percentage towards the then current national best bid or national best offer, which number of percentage points will be determined and published in a circular distributed to Members from time to time, or (b) expands to within 0.5% of the applicable percentage necessary to trigger an individual stock trading pause, whereupon such bid or offer will be cancelled and re-entered at the Designated Percentage away from the then current national best bid and national best offer, or if no national best bid or national best offer, at the Designated Percentage away from the last reported sale from the responsible single plan processor. Quotations independently entered by market makers are allowed to move freely towards the national best bid or national best offer, as appropriate, for potential execution. In the event of an execution against a quote generated pursuant to the market maker quoter functionality, the market maker's quote is refreshed on the executed side of the market at the applicable Designated Percentage away from the then national best bid (offer), or if no national best bid (offer), the last reported sale. *See* Rule 11.8(e).

[6] As defined by Regulation NMS Rule 600(b)(42). 17 CFR 242.600.

[7] 17 CFR 240.15c3–5.

[8] 17 CFR 242.200 through 204.

[9] 17 CFR 240.15c3–5.

[10] *Supra* note 8.

[11] *See* 17 CFR 242.203(b)(1). The Commission adopted a narrow exception to Regulation SHO's ''locate'' requirement for market makers that may need to facilitate customer orders in a fast moving market without possible delays associated with complying with such requirement. Only market makers engaged in bona fide market making in the security at the time they effect the short sale are excepted from the ''locate'' requirement. *See* Exchange Act Release No. 50103 (July 28, 2004), 69 FR 48008, 48015 (August 6, 2004) (providing guidance as to what does not constitute bona-fide market making for purposes of claiming the exception to Regulation SHO's ''locate'' requirement). *See also* Exchange Act Release No. 58775 (October 14, 2008), 73 FR 61690, 61698–9 (October 17, 2008) (providing guidance regarding what is bona-fide market making for purposes of complying with the market maker exception to Regulation SHO's ''locate'' requirement including without limitation whether the market maker incurs any economic or market risk with respect to the securities, continuous quotations that are at or near the market on both sides and that are communicated and represented in a way that makes them widely accessible to investors and other broker-dealers and a pattern of trading that includes both purchases and sales in roughly comparable amounts to provide liquidity to customers or other broker-dealers). Thus, market makers would not be able to rely solely on quotations priced in accordance with the Designated Percentages under proposed Rule 11.9(c)(14) [sic] or the market maker quoter functionality under Rule 11.8(e) for eligibility for the bona-fide market making exception to the ''locate'' requirement based on the criteria set forth by the Commission. It should also be noted that a determination of bona-fide market making is relevant for the purposes of a broker-dealer's close-out obligations under Rule 204 of Regulation SHO. *See* 17 CFR 242.204(a)(3).

[12] Rule 11.9(c)(8).

[13] The Market Maker Peg Order is one-sided so that a market maker seeking to use Market Maker Peg Orders to comply with the Exchange's rules regarding market maker quotation requirements would need to submit both a bid and an offer using the order type.

[14] The Designated Percentage is the individual stock pause trigger percentage listed in Interpretations and Policies .01 to Rule 11.8, less either: (i) two percentage points for securities that are included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products and for all other NMS stocks with a price equal to or greater than $1 per share; or (ii) twenty percentage points for all NMS stocks with a price less than $1 per share that are not included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products. *See* Rule 11.8(d)(2)(D).

sale, the order will be cancelled or rejected. Adjustment to the Designated Percentage is designed to avoid an execution against a Market Maker Peg Order that would initiate an individual stock trading pause. In the event of an execution against a Market Maker Peg Order that reduces the size of the Market Maker Peg Order below one round lot, the market maker would need to enter a new order, after performing the regulatory checks discussed above, to satisfy their obligations under Rule 11.8.[15] In the event that pricing the Market Maker Peg Order at the Designated Percentage away from the then current National Best Bid and National Best Offer, or, if no National Best Bid or National Best Offer, to the Designated Percentage away from the last reported sale from the responsible single plan processor would result in the order exceeding its limit price, the order will be cancelled or rejected.

The Exchange is also proposing to allow a market maker to designate an offset more aggressive (i.e. smaller) than the Designated Percentage for any given Market Maker Peg Order. This functionality will allow a market maker to quote at price levels that are closer to the National Best Bid and National Best Offer if it elects to do so. To use this functionality, upon entry, a market maker must designate the desired offset and a percentage away from the NBB or NBO at which the price of such bid or offer will be adjusted back to the desired offset (the ''Reprice Percentage'').[16] Thereafter,[17] a Market Maker Peg Order with a market maker-designated offset will have its price automatically adjusted to the market maker-designated offset from the National Best Bid or National Best Offer or last reported sale upon reaching the Reprice Percentage.[18] Identical to the behavior of Market Maker Peg Orders using the Defined Percentage and Defined Limit, in the absence of a National Best Bid or National Best Offer, Market Maker Peg Orders with a market maker-designated offset will, by default, have their price adjusted to the Market Maker-designated offset from the price of the last reported sale from the responsible single plan processor, or, if otherwise instructed by the Market Maker, will be cancelled or rejected. In the absence of a National Best Bid or National Best Offer and a last reported sale, a Market Maker Peg Order will be cancelled or rejected. In the event that pricing the Market Maker Peg Order at the market maker-designated offset away from the then current National Best Bid or National Best Offer or last reported sale would result in the order exceeding its limit price, the order will be cancelled or rejected.

The Market Maker Peg Order will be accepted during Regular Trading Hours and the Pre-Opening and After Hours Trading Sessions. By default, the Market Maker Peg Order will be priced at 9:30 a.m. and will only be executable during Regular Trading Hours, however, upon entry, a User may direct the Exchange to automatically price and execute a Market Maker Peg Order during the Pre-Opening Session [19] and After Hours Trading Session (''Extended Hours Market Maker Peg Orders'').[20] During the Pre-Opening Session and After Hours Trading Session, the wider Designated Percentage and Defined Limit associated with the 9:30 a.m.–9:45 a.m. and 3:35 p.m.–4 p.m. periods under Rule 11.8(e) will be applied to Extended Hours Market Maker Peg Orders for which the market maker has not designated an offset more aggressive than the Designated Percentage.

BATS believes that this order-based approach is superior in terms of the ease in complying with the requirements of the Market Access Rule and Regulation SHO while also providing similar quote adjusting functionality to its market makers. Market makers would have control of order origination, as required by the Market Access Rule, while also allowing market makers to make marking and locate determinations prior to order entry, as required by Regulation SHO. As such, market makers are fully able to comply with the requirements of the Market Access Rule and Regulation SHO, as they would when placing any order, while also meeting their Exchange market making obligations. In this regard, the Market Maker Peg Order, like the current market maker quoter functionality, does not ensure that the market maker is satisfying the requirements of Regulation SHO, including the satisfaction of the locate requirement of Rule 203(b)(1) or an exception thereto.

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act,[21] which requires the rules of an exchange to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed rule change also is designed to support the principles of Section 11A(a)(1) [22] of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the proposed rule meets these requirements in that it promotes transparency and uniformity across markets concerning minimum market maker quotation requirements and member obligations to comply with the regulatory requirements of the Market Access Rule and Regulation SHO. The Exchange also believes that providing Exchange market makers with a transition period, during which they may adequately test the new functionality, will serve to minimize the potential market impact caused by the implementation of the order type.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change imposes any burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has neither solicited nor received written comments on the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to

[15] Rule 11.8 generally sets forth the Exchange's market maker requirements, which include quotation and pricing obligations.

[16] If a market maker wishes, it can designate a more aggressive bid while using the Defined Percentage and Defined Limit for its offer, or vice versa.

[17] In the absence of an offset designation and/or Reprice Percentage, a Market Maker Peg Order will default to using the Defined Percentage and Defined Limit, and the repricing process whereby, upon reaching the Defined Limit, the price of a Market Maker Peg Order bid or offer will be adjusted by the System to the Designated Percentage away from the then current National Best Bid or National Best Offer, or, if no National Best Bid or National Best Offer, to the Designated Percentage away from the last reported sale from the responsible single plan processor.

[18] Market Maker Peg Orders with a market maker-designated offset may be able to qualify as bona-fide [sic] market making for purposes of Regulation SHO, depending on the facts and circumstances. A market maker entering such an order must consider the factors set forth by the Commission in determining whether reliance on the exceptions form the ''locate'' requirement of Rule 203 for bona-fide market making is appropriate with respect to the particular Market Maker Peg Order and its designated offset. *See supra* note 11.

[19] The Pre-Opening Session means the time between 8 a.m. and 9:30 a.m. Eastern Time.

[20] The After Hours Trading Session means the time between 4 p.m. and 5 p.m. Eastern Time.

[21] 15 U.S.C. 78f(b)(5).

[22] 15 U.S.C. 78k–1(a)(1).

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–BATS–2012–026 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–BATS–2012–026. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BATS–2012–026 and should be submitted on or before August 6, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–17199 Filed 7–13–12; 8:45 am]

**BILLING CODE 8011–01–P**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–67385; File No. SR–FINRA–2012–032]**

## Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Fees and Transaction Credits Applicable to Members That Use the FINRA/NYSE Trade Reporting Facility

July 10, 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 July 2, 2012, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as ''establishing or changing a due, fee or other charge'' under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend the FINRA Rule 7600B Series to modify fees and transaction credits applicable to members that use the FINRA/NYSE Trade Reporting Facility (the ''FINRA/NYSE TRF'').

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

Background

The FINRA/NYSE TRF is one of three FINRA facilities that FINRA members can use to report over-the-counter (''OTC'') trades in NMS stocks.[5] The FINRA/NYSE TRF is operated by The NYSE Market, Inc. (''NYSE''). In connection with the establishment of the FINRA/NYSE TRF, FINRA and NYSE entered into a limited liability company agreement (the ''LLC Agreement''). Under the LLC Agreement, FINRA, the ''SRO Member,'' has sole regulatory responsibility for the FINRA/NYSE TRF. NYSE, the ''Business Member,'' is primarily responsible for the management of the FINRA/NYSE TRF's business affairs to the extent those affairs are not inconsistent with the regulatory and oversight functions of FINRA. As such, the Business Member establishes pricing for use of the FINRA/NYSE TRF, and such pricing is implemented pursuant to FINRA rules that must be filed with the SEC and be consistent with the Act.[6] In addition, the Business Member is obligated to pay the cost of regulation and is entitled to the profits and losses, if any, derived from the operation of the FINRA/NYSE TRF.[7]

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[23] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] In addition to the FINRA/NYSE TRF, members have the option of reporting OTC trades in NMS stocks to the FINRA Alternative Display Facility (the ''ADF'') or the FINRA/Nasdaq Trade Reporting Facility (the ''FINRA/Nasdaq TRF'').

[6] Because there are two FINRA Trade Reporting Facilities operated by different exchange Business Members competing for market share (the FINRA/NYSE TRF and the FINRA/Nasdaq TRF), FINRA does not take a position on whether the pricing for one TRF is more favorable or competitive than the pricing for the other TRF.

[7] FINRA notes that the same contractual arrangement is in place for the FINRA/Nasdaq TRF,

As discussed in greater detail below, FINRA/NYSE TRF participants currently are not charged any fees, and the FINRA/NYSE TRF currently shares with its participants 100% of the market data revenue it earns. This fee and credit structure has applied since the FINRA/NYSE TRF commenced operation in April 2007, and since that time, the NYSE, as the Business Member, has funded all costs associated with operating the FINRA/NYSE TRF, including all regulatory costs, from NYSE general revenues. The NYSE has indicated that the cost of operating the FINRA/NYSE TRF has increased since 2007, in part because the FINRA/NYSE TRF's market share has grown and therefore regulatory costs have increased. Accordingly, the proposed fees and revisions to the market data revenue share [sic] program will provide revenue to help offset these increased operating costs, while allowing the FINRA/NYSE TRF to remain competitive. NYSE will continue to fund any costs associated with the FINRA/NYSE TRF that are not covered by the proposed fees and changes in the market data revenue sharing program from NYSE's general revenues.

Proposed Amendments to Rule 7610B

The FINRA/NYSE TRF receives revenue for transactions reported to the three tapes [8] from the Consolidated Tape Association and Nasdaq Securities Information Processor. Pursuant to Rule 7610B, the FINRA/NYSE TRF currently shares 100% of the market data revenue it earns with FINRA members reporting trades in Tape A, Tape B and Tape C securities to the FINRA/NYSE TRF.

FINRA is proposing to adopt a tiered schedule for market data revenue sharing for the FINRA/NYSE TRF that is comparable to the tiered schedule that currently is in place for the FINRA/Nasdaq TRF under FINRA Rule 7610A.[9] Specifically, FINRA is proposing to amend Rule 7610B to base the percentage of market data revenue shared with a FINRA member reporting trades to the FINRA/NYSE TRF on the member's ''Market Share.'' FINRA proposes to define ''Market Share'' in Rule 7610B as the percentage calculated by dividing the total number of shares represented by trades reported by a member to the FINRA/NYSE TRF [10] during a given calendar quarter by the total number of shares represented by all trades reported to the Consolidated Tape Association or the Nasdaq Securities Information Processor, as applicable, during that quarter. Market Share will be calculated separately for each tape. The proposed definition of ''Market Share'' is identical to the definition in Rule 7610A applicable to the FINRA/Nasdaq TRF.

Under the proposed rule change, a member with a Market Share of 0.9% or more in Tape A or Tape C, or 0.7% or more in Tape B, would receive 90% of the attributable market data revenue; a member with less than 0.9% but at least 0.5% in Tape A or Tape C, or less than 0.7% but at least 0.5% in Tape B, would receive 75%; a member with less than 0.5% but at least 0.4% in Tape A, Tape B or Tape C would receive 70%; a member with less than 0.4% but at least 0.075% in Tape A, Tape B or Tape C would receive 25%; and a member with less than 0.075% in Tape A, Tape B or Tape C would not be eligible for the market data revenue sharing program. Thus, as a general matter, market participants that make the most use of the FINRA/NYSE TRF will be eligible for the highest level of revenue sharing with others receiving progressively lower percentages. FINRA notes that the Market Share and revenue percentages for each tape are independent of each other and, as such, may subsequently be adjusted individually.[11]

According to the NYSE, as the Business Member, the different percentages required for different tapes reflect the current extent to which participants use the FINRA/NYSE TRF to report trades in different stocks, *i.e.,* comparatively higher volumes of trades in Tape A and Tape C stocks are reported through the FINRA/NYSE TRF than in Tape B stocks. Thus for Tapes A and C, the levels of revenue sharing are tied to higher market share levels. The NYSE has indicated that for competitive reasons and in light of the cost of operating the FINRA/NYSE TRF, it has determined to sunset the 100% revenue share program. However, NYSE believes that, particularly at the lower market share levels, the percentage of revenue shared is favorable to other revenue share programs.[12] For example, a member with a Market Share of 0.45% in Tape A or Tape C would share 70% of market data revenue and a member with a Market Share of 0.08% in Tape A or Tape C would share 25% of market data revenue under the proposed tiered schedule.

Proposed Amendments to Rule 7620B

Pursuant to Rule 7620B, FINRA members currently are not charged a fee for use of the FINRA/NYSE TRF. FINRA is proposing to amend Rule 7620B to begin charging members a monthly fee for use of the FINRA/NYSE TRF. Members will be charged either $500 or $1,000 per month beginning in the month of the member's first trade report on or after July 2, 2012, the proposed operative date of the proposed rule change. Specifically, members reporting an average of 100 trades or less per day during the calendar month will be charged $500, and members reporting an average of more than 100 trades per day during the calendar month will be charged $1,000. For purposes of meeting the 100 trade threshold, both tape and non-tape reports will be included; however, reversals and other modifications to previously reported trades will not be included. A member's fee could vary from month to month, depending on the number of trade reports the member submits. For example, if a member averages 90 trades per day in July, 120 trades per day in August, and 80 trades per day in September, the member will pay a monthly fee of $500, $1,000 and $500, respectively. In addition, once a member's fee begins, the member will be charged a fee each month unless and until the member cancels its access to the FINRA/NYSE TRF, even if the member reports no trades to the FINRA/NYSE TRF in a given month. In that instance, the member will be charged the lower fee of $500. The fee will be charged at the end of the calendar month; a member's trades will be counted and the appropriate fee will be assessed on the member's invoice after the month closes.

This fee includes full access to the FINRA/NYSE TRF and supporting functionality, *e.g.,* trade submission, reversal and cancellation, and unlimited use of the Client Management Tool. In addition to submitting, correcting, breaking, and reversing trades, the

with FINRA as the SRO Member and Nasdaq as the Business Member. The LLC agreements for the FINRA/NYSE TRF and the FINRA/Nasdaq TRF were submitted as part of the rule filings to establish the respective TRFs and can be found in the FINRA Manual.

[8] Market data is transmitted to three tapes based on the listing venue of the security: New York Stock Exchange securities (''Tape A''), American Stock Exchange and regional exchange securities (''Tape B''), and Nasdaq Stock Market securities (''Tape C''). Tape A and Tape B are generally referred to as the Consolidated Tape.

[9] FINRA notes, however, that the proposed tiers and percentages of revenue shared are not identical to the tiers and percentages for the FINRA/Nasdaq TRF.

[10] The calculation of ''Market Share'' is based only on a member's trades that are reported to the Consolidated Tape Association or the Nasdaq Securities Information Processor (''tape reports'') and will not include trades that are only reported for regulatory and/or clearing—and not dissemination—purposes (''non-tape reports'').

[11] Any change to one or more of these percentages would be subject to a proposed rule change by FINRA.

[12] *See, e.g.,* Rule 7610A.

Client Management Tool currently allows users to View/Query/Export trade reports, potential trade throughs and rejected trade submissions.

As noted above, members have the option of reporting OTC trades in NMS stocks to one of three FINRA facilities. The NYSE, as the Business Member, has determined that the FINRA/NYSE TRF would be more competitive with these other facilities if users are charged a flat fee for access to the complete range of functionality offered by the FINRA/NYSE TRF rather than a separate fee for each activity (*e.g.,* a per trade or per side fee for reporting a trade, a separate per trade fee for canceling a trade, a per terminal fee, etc.).[13] Rather than charging the same fee to all FINRA/NYSE TRF participants irrespective of usage, the fees are designed such that more frequent, higher volume users pay more for access to the FINRA/NYSE TRF, while less frequent, lower volume users pay less.

Proposed Rule 7630B

Proposed Rule 7630B would allow affiliated members to aggregate their activity for purposes of the fee and credit schedule applicable to the FINRA/NYSE TRF. For example, affiliated members that might not qualify by themselves for a certain Market Share percentage under the proposed changes to Rule 7610B may be able to qualify by aggregating their activity.

Under proposed Rule 7630B, a member may request that the FINRA/NYSE TRF aggregate its activity with the activity of its affiliates.[14] Paragraph (c) of the proposed rule defines an ''affiliate'' of the member as any wholly owned subsidiary, parent or sister (as those terms are defined under the rule) of the member that is also a member. Thus, the proposed rule requires that one affiliated member own 100% of the voting interests in the other, or that they both be under the common control of a parent that owns 100% of each.

Under paragraph (a) of proposed Rule 7630B, a member requesting aggregation of affiliate activity will be required to certify the affiliate status of entities whose activity it seeks to aggregate and immediately to provide notice of any event that causes an entity to cease to be an affiliate. A review of information regarding the entities will be conducted, and the member may be requested to provide additional information to verify the affiliate status of an entity. A request will be approved unless it is determined that the member's certification is not accurate.[15]

Paragraph (b) of the proposed rule expressly states that for purposes of applying any provision of the Rule 7600B Series that reflects a charge assessed, or credit provided, by the FINRA/NYSE Trade Reporting Facility, references to an entity (including references to a ''member,'' a ''participant,'' or a ''Trade Reporting Facility Participant'') shall be deemed to include the entity and its affiliates that have been approved for aggregation.

FINRA notes that proposed Rule 7630B is identical to current Rule 7630A relating to the FINRA/Nasdaq TRF, except that the proposed rule does not contain the stated policy with respect to the timing of recognition of aggregation requests that is contained in Rule 7630A(a)(2). For purposes of applying proposed Rule 7630B, if two or more members submit a request for aggregation before the end of the month in which they become affiliated, the request will be recognized as if it had been submitted on the first of the month and the members will be able to aggregate all activity during the entire month.

FINRA has filed the proposed rule change for immediate effectiveness and the effective date is July 2, 2012.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,[16] 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. FINRA believes that the proposed transaction credit schedule under Rule 7610B is reasonable and equitable in that it bases the percentage of revenue shared on members' respective contributions to the revenues of the FINRA/NYSE TRF, *i.e.,* market participants that make the most use of the FINRA/NYSE TRF will be eligible for the highest level of revenue sharing with others receiving progressively lower percentages.[17] In addition, FINRA believes that the proposed fees under Rule 7620B are reasonable and equitable in that FINRA members that are more frequent, higher volume users will pay more for access to the FINRA/NYSE TRF, while less frequent, lower volume users will pay less. NYSE, as the Business Member, has determined that the proposed fee and credit structure will help offset the increased cost of operating the FINRA/NYSE TRF, and as such, FINRA believes that the proposed rule change is equitable and reasonable. FINRA further believes that the proposed fee and credit structure is reasonable and equitable in that it will apply only to members that choose to use the FINRA/NYSE TRF. Access to the FINRA/NYSE TRF is offered on fair and non-discriminatory terms, and FINRA members will continue to have the option of using another FINRA facility for purposes of reporting OTC trades in NMS stocks if they determine that the fees and credits of another facility are more favorable. Finally, NYSE has indicated that it expects that the proposed changes will offset some—but not all—of the cost of operating the FINRA/NYSE TRF, and any costs, including regulatory costs, that are not funded out of market data revenue or trade reporting fees will continue to be funded by NYSE general revenues.

*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**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[18] and paragraph (f)(2) of Rule 19b–4 thereunder.[19] 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

[13] *See, e.g.,* Rules 7510(a) and 7520 (trade reporting fees and equipment-related charges for the ADF) and Rule 7620A (trade reporting fees for the FINRA/Nasdaq TRF).

[14] The proposed rule will be administered by NYSE, in its capacity as the ''Business Member'' and operator of the FINRA/NYSE TRF on behalf of FINRA. FINRA's oversight of this function performed by the Business Member is conducted through an annual assessment and review of TRF operations by an outside independent audit firm.

[15] In the event of an inaccurate certification, FINRA would investigate whether the member had violated FINRA rules and would take appropriate disciplinary action.

[16] 15 U.S.C. 78*o*–3(b)(5).

[17] The proposed tiered schedule is comparable in approach to the schedule that currently exists for the FINRA/Nasdaq TRF. *See* Rule 7610A.

[18] 15 U.S.C. 78s(b)(3)(A).

[19] 17 CFR 240.19b–4(f)(2).

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–FINRA–2012–032 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–FINRA–2012–032. 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 FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–FINRA–2012–032 and should be submitted on or before August 6, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–17219 Filed 7–13–12; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–67392; File No. SR–OCC–2012–10]**

## Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change To Amend OCC's By-Laws and Rules To Terminate OCC's Pledge Program

July 10, 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 June 28, 2012, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would terminate OCC's pledge program (''Program''). Since implementation of the Program, only a limited number of clearing members participated and those that did participate did so on a sporadic basis.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC 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*

The purpose of this proposed rule change is to terminate OCC's pledge program. Since implementation of the Program, only a limited number of clearing members participated and those that did participate did so on a sporadic basis. OCC now proposes to eliminate the Program in its entirety.

The Program was adopted by OCC in the early 1980s to facilitate the ability of an OCC clearing member to finance positions by permitting the clearing member to pledge unsegregated long positions in cleared securities (other than securities futures) for a loan of cash. The Program was initially designed for, and used by, firms clearing market maker business; however, use of the Program diminished as market making operations were acquired by larger wire houses. While OCC occasionally receives an inquiry regarding the Program, it has been essentially dormant for some time. OCC recently reviewed the Program and determined that any potential benefits that OCC may gain through updating the Program are greatly offset by the resources required for such modernization. Accordingly, OCC plans to terminate the Program in its entirety.

OCC proposes to eliminate Rule 614 in its entirety as well as references to the Program and Rule 614 in its Rules and in its By-Laws.

OCC believes that the proposed changes to OCC's Rules and By-Laws are consistent with the purposes and requirements of Section 17A of the Act[3] and the rules and regulations thereunder applicable to OCC because they will allow OCC to remove a rarely used operational function and focus its resources on core clearing operations. Moreover, OCC believes that elimination of the Program will not materially affect clearing members given its limited and infrequent use. The proposed rule change is not inconsistent with any rules of OCC, including any proposed to be amended.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

OCC does not believe that the proposed rule change would impose any burden on competition.

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[20] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78q–1.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments were not and are not intended to be solicited with respect to the proposed rule change and none have been received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http//www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–OCC–2012–10 on the subject line.

*Paper Comments*

- 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–OCC–2012–10. 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 20549–1090, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing will also be available for inspection and copying at the principal office of OCC and on OCC's Web site at *http://www.optionsclearing.com/components/docs/legal/rules_and_bylaws/sr_occ_12_10.pdf.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–OCC–2012–10 and should be submitted on or before August 6, 2012.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[4]

**Kevin O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–17208 Filed 7–13–12; 8:45 am]

**BILLING CODE 8011–01–P**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–67391; File No. SR–OCC–2012–09]**

## Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend OCC's Schedule of Fees to Eliminate Fees for Certain Educational Brochures

July 10, 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 June 28, 2012, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by OCC. OCC filed the proposed rule change pursuant to Section 19(b)(3)(A)[3] of the Act and Rule 19b–4(f)(2)[4] thereunder.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The proposed rule change would amend OCC's Schedule of Fees to eliminate fees for three brochures to reflect that these brochures are now provided to clearing members free of charge.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.[5]

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The purpose of this proposed rule change is to amend OCC's Schedule of Fees to eliminate fees for three brochures to reflect that these brochures are now provided to clearing members free of charge. In 2011, a decision was made to eliminate the nominal fee charged to clearing members for the following brochures: (i) Taxes & Investing: A Guide for the Individual Investor; (ii) LEAPS®; and (iii) Understanding Stock Options. Since that decision, clearing members have not been charged for ordering the brochures although the fees continued to be listed on OCC's fee schedule. OCC proposes to amend its Schedule of Fees to reflect that these brochures are offered free of charge.

OCC believes that the proposed rule change is consistent with Section 17A of the Act because it reflects the elimination of a nominal fee charged to clearing members for certain educational materials relating to listed options, thereby providing for the equitable allocation of reasonable dues, fees, and other charges among its participants. In addition, the proposed rule change aligns OCC's Schedule of Fees with current billing practices. OCC believes the proposed rule change is not inconsistent with any rules of OCC, including any other rules proposed to be amended.

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[4] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(2).

[5] The Commission has modified the text of the summaries prepared by OCC.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

OCC does not believe that the proposed rule change would impose any burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments were not and are not intended to be solicited with respect to the proposed rule change and none have been received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act and Rule 19b-4(f)(2) thereunder because it establishes or changes a due, fee, or other charge applicable only to a member. OCC will delay the implementation of the rule change until it is deemed certified under CFTC Regulation § 40.6. At any time within 60 days of the filing of such rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

- Electronic comments may be submitted by using the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or send an email to *rule-comments@sec.gov.* Please include File No. SR–OCC–2012–09 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–OCC–2012–09. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filings will also be available for inspection and copying at the principal office of OCC and on OCC's Web site at *http://www.optionsclearing.com/components/docs/legal/rules_and_bylaws/sr_occ_12_09.pdf.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–OCC–2012–09 and should be submitted on or before August 6, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

**Kevin O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–17207 Filed 7–13–12; 8:45 am]

BILLING CODE 8011–01–P

[6] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–67390; File No. SR–NSCC–2012–05]**

## Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Revise Its Fee Schedule

July 10, 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 June 28, 2012, National Securities Clearing Corporation (''NSCC'') 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 NSCC. NSCC filed the proposal pursuant to Section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2)[4] thereunder so that the proposal was effective upon filing with the Commission. 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**

The proposed rule change aligns the fees associated with NSCC's Mutual Fund Profile Service, Phases I and II, as set forth in NSCC's fee schedule (Addendum A of NSCC's Rules), with the cost of delivering this service. Details regarding the fee change are available in the revised Addendum A set forth in Exhibit 5 to NSCC's rule filing, which can be found on NSCC's Web site (*http://www.dtcc.com/downloads/legal/rule_filings/2012/nscc/SR-NSCC-2012-05.pdf*).

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[5]

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The purpose of the proposed rule change is to align the fees associated with NSCC's Mutual Fund Profile Service, Phases I and II, as set forth in NSCC's fee schedule (Addendum A of NSCC's Rules), with the cost of delivering this service.

The proposed rule change is consistent with the requirements of the Act, and the rules and regulations thereunder, because it updates the NSCC fee schedule and provides for the equitable allocation of fees among NSCC's members.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

NSCC does not believe that the proposed rule change will have any

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] The Commission has modified the text of the summaries prepared by ICC.

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*

NSCC has not solicited, and does not intend to solicit, comments regarding this proposed rule change. NSCC has not received any unsolicited written comments from interested parties.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) [6] of the Act and Rule 19b–4(f)(2) [7] thereunder because it establishes or changes a due, fee, or other charge applicable only to a member. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NSCC–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–NSCC–2012–05. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filings will also be available for inspection and copying at the principal office of NSCC and on NSCC's Web site at *http://www.dtcc.com/downloads/legal/rule_filings/2012/nscc/SR-NSCC-2012-05.pdf.*

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NSCC–2012–05 and should be submitted on or before August 6, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

**Kevin O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–17206 Filed 7–13–12; 8:45 am]

**BILLING CODE 8011–01–P**

[6] 15 U.S.C. 78s(b)(3)(A)(ii).

[7] 17 CFR 240.19b–4(f)(2).

[8] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–67387; File No. SR–Phlx–2012–87]**

## Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Phlx's Fee Schedule Governing Order Execution on Its NASDAQ OMX PSX Facility

July 10, 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 June 27, 2012, NASDAQ OMX PHLX LLC (''Phlx'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a 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**

Phlx proposes to modify Phlx's fee schedule governing order execution on its NASDAQ OMX PSX (''PSX'') facility. Phlx will implement the proposed change on July 2, 2012. The text of the proposed rule change is available at *http://nasdaqomxphlx.cchwallstreet.com/nasdaqomxphlx/phlx/,* at Phlx's principal office, at *http://www.sec.gov,* and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

Phlx is proposing to modify its fee schedule governing order execution on PSX. Currently, PSX has a fee schedule under which members are charged a relatively high fee of $0.0027 per share executed to access liquidity and receive a relatively high rebate when providing liquidity, with the level of the rebate varying based on whether the order providing the liquidity is displayed or non-displayed, whether liquidity is provided through a minimum life order, and the original size of the order providing the liquidity. In addition, the current fee schedule has special pricing with regard to securities listed on the New York Stock Exchange (''NYSE'').

Phlx is proposing to replace much of the current fee schedule with a new schedule under which market participants providing liquidity will be charged a low fee, and members accessing liquidity will either be

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

charged a low fee or not incur a fee, depending on their volume levels. Phlx believes that the change may encourage greater use of PSX.

For securities priced at $1 or more per share, an order that accesses liquidity through a market participant identifier (''MPID'') through which a market participant provides an average daily volume of 25,000 or more shares of liquidity or accesses an average daily volume of 3.5 million or more shares of liquidity during the month will pay no fee when accessing liquidity. Other orders that access liquidity will pay $0.0005 per share executed. By contrast, members now pay $0.0019 per share for accessing liquidity in securities listed on NYSE, and $0.0027 per share executed for other securities. For securities priced at less than $1, Phlx is lowering the fee from 0.20% of the total transaction cost to $0.10% of the total transaction cost.

For securities priced at $1 or more per share, Phlx will charge $0.0002 per share executed for an order that provides liquidity through an MPID through which a market participant provides an average daily volume of 10 million or more shares of liquidity during the month, and will charge $0.0005 per share executed for other orders that provide liquidity. By contrast, members now receive a rebate ranging from $0.0005 to $0.0026 per share executed when providing liquidity. For securities priced below $1, Phlx will continue neither to charge a fee nor to pay a rebate with respect to orders that provide liquidity.

2. Statutory Basis

Phlx believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[3] in general, and with Sections 6(b)(4) and (5) of the Act,[4] 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. Phlx believes that the change to the fees for orders that access liquidity is reasonable, because it will result in a substantial reduction in the cost of accessing liquidity on PSX. Similarly, Phlx believes that although the proposal will replace rebates for providing liquidity on PSX with fees, the change is reasonable because the level of the fees is very low compared with fees charged by other trading venues that charge liquidity providers. For example, NASDAQ OMX BX charges liquidity providers fees that range from $0.0015 to $0.0018 per share executed, while PSX proposes to charge fees ranging from $0.0002 to $0.0005 per share executed. Phlx further believes that the proposed changes are consistent with an equitable allocation of fees. The changes will result in a move away from a maker-taker pricing model, in which one side of a trade pays a fee and the other receives a credit, to a model in which both sides are charged very low rates, or one side is charged a low rate and the other is not charged. While Phlx believes that for many exchanges, the emphasis of the maker-taker pricing model on encouraging deep and liquid markets provides market structure benefits, it also believes that market participants may benefit from an alternative pricing model that offers consistently low cost on all trades. Phlx also believes that the proposal is not unfairly discriminatory, in that the basic rate of $0.0005 per share executed is the same for both accessing and providing liquidity, while more favorable pricing tiers are offered to market participants that contribute to the success and market quality of PSX through active use of its trading services.

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 PSX's trading services.

*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 PSX's trading services.

*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.[5] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2012–87 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2012–87. 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

[3] 15 U.S.C. 78f.

[4] 15 U.S.C. 78f(b)(4) and (5).

[5] 15 U.S.C. 78s(b)(3)(A)(ii).

proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2012–87 and should be submitted on or before August 6, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–17205 Filed 7–13–12; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–67386; File No. SR–BX–2012–044]**

## Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify BX's Fee Schedule Governing Order Routing

July 10, 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 June 28, 2012, NASDAQ OMX BX, Inc. (''BX'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a 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

BX proposes to modify BX's fee schedule governing order routing. BX will implement the proposed change on July 2, 2012. The text of the proposed rule change is available at *http://nasdaqomxbx.cchwallstreet.com/,* at BX's principal office, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item III 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

BX is making a minor modification to the schedule governing fees for use of its routing services. Effective July 2, 2012, the NASDAQ OMX PSX (''PSX'') facility of NASDAQ OMX PHLX LLC (''Phlx'') has reduced the fees that it charges for accessing liquidity.[3] Accordingly, BX is making a conforming change to the fee that it charges for routing orders to PSX. In making this change, BX is reducing current charges that range as high as $0.0035 per share executed to a uniform rate of $0.0005 per share executed in all instances.

2. Statutory Basis

BX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[4] in general, and with Sections 6(b)(4) and (5) of the Act,[5] 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 BX 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 BX is offered on fair and non-discriminatory terms. The change is reasonable because the proposed fee for routing orders to PSX reflects the reduction in the fee that will be charged by PSX to BX with respect to such orders.[6] The change is consistent with an equitable allocation of fees because it will bring the economic attributes of routing orders to PSX in line with the cost of executing orders there. Finally, the change is not unfairly discriminatory because it solely applies to members that opt to route orders to PSX.

Finally, BX 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, BX 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. BX believes that the proposed rule change reflects this competitive environment because it is designed to ensure that the charges for use of the BX routing facility to route to PSX reflect a reduction in the cost of such routing.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

BX 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 BX's routing services if they believe that alternatives offer them better value. The proposed change is designed to ensure that the charges for use of the BX routing facility to route to PSX reflect a reduction in the cost of such routing, thereby allowing it to remain competitive.

*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.

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* SR–Phlx–2012–87 (June 27, 2012).

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(4) and (5).

[6] Depending on volume of routed orders in a month, BX will be charged either $0.0005 or $0 per share executed. In a circumstance where the charge was $0, BX believes that it is nevertheless appropriate to charge a markup above this cost to reflect the additional costs of offering routing services and the value of such services.

### 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 Number SR–BX–2012–044 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–BX–2012–044. 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 offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–BX–2012–044, and should be submitted on or before August 6, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–17203 Filed 7–13–12; 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).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–67383; File No. SR–CBOE–2012–063]**

## Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees Schedule

July 10, 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 June 27, 2012, the Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Fees Schedule. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

Currently, when stock-option strategy orders are sent to the Exchange, the stock portions are processed and routed manually by brokers to a stock exchange for execution. However, CBOE will soon begin rollout of new functionality to automate the handling of complex orders containing a stock leg through the use of the Complex Order Auction (''COA''), Complex Order Book (''COB''), Automated Improvement Mechanism (''AIM''), Solicitation Auction Mechanism (''SAM''), and the splitting mechanism which is used for certain market orders pursuant to Interpretation .06(d) of CBOE Rule 6.53C (through which, if at the conclusion of COA an eligible market order cannot be filled in whole or in a permissible ratio, then any remaining balance of the option leg(s) will route to the Hybrid System for processing as a simple market order(s) and any remaining balance of the stock leg will route to a designated dealer for processing as a market order). Through this new functionality, the stock portions of stock-option strategy orders will be electronically communicated by the Exchange to a designated broker-dealer, who will then manage the execution of such stock portions.[3] As such, the Exchange proposes to adopt a fee of $0.0010 per share for the processing and routing by the Exchange of the stock portion of stock-option strategy orders executed through those mechanisms. The purpose of the proposed fee is to cover the fees being assessed to the Exchange by the designated broker that will be managing

[1] 15 U.S.C.78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 66769 (April 6, 2012), 77 FR 22027 (April 12, 2012) (SR–CBOE–2012–005).

the execution of these stock portions of stock-option strategy orders, as well as to cover the costs of developing and maintaining the Exchange systems that allow for the processing and routing of such stock portions to the designated broker.

The Exchange proposes to waive this fee for customer orders until August 31, 2012 in order to encourage the sending of customer stock-option strategy orders to CBOE via this new system.

The proposed fee applies in addition to the fees assessed by the outside venue to which the stock portion of the order is routed if an exchange destination is specified on the original order (with such fees to be passed on to the market participant). A maximum of $50.00 per order will be assessed under this fee in order to assure that market participants do not pay extremely large fees for the processing and routing by the Exchange of the stock portions of stock-option orders. Moreover, this maximum fee amount is in line with the maximum fee that will be assessed by the designated broker that the Exchange intends to use.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[4] Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[5] which provides that Exchange rules may provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities. The amount of the proposed fee is reasonable because it is intended to cover the fees being assessed to the Exchange by the designated broker that will be managing the execution of these stock portions of stock-option strategy orders, as well as to help cover the costs of developing and maintaining the Exchange systems that allow for the processing and routing of such stock portions to the designated broker. The proposed fee is equitable and not unfairly discriminatory because it will be applied to all market participants equally.

Waiving the fee for the processing and routing of the stock portion of customer stock-option strategy orders through August 31, 2012 is equitable and not unfairly discriminatory because this waiver is intended to encourage the sending of customer orders to the Exchange, and the resulting increased volume and liquidity will benefit all market participants. Finally, capping the fee at $50.00 per order is reasonable because it will limit the amount a market participant will be assessed for the routing and processing by the Exchange of the stock portion of stock-option strategy orders, and is equitable and not unfairly discriminatory because this maximum will apply to all market participants.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

CBOE does not believe that the proposed rule change will impose any burden on competition 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*

The Exchange neither solicited nor received comments on the proposed rule change.

**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)[6] of the Act and paragraph (f)(2) of Rule 19b–4[7] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2012–063 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–CBOE–2012–063. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–CBOE–2012–063 and should be submitted on or before August 6, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–17202 Filed 7–13–12; 8:45 am]

**BILLING CODE 8011–01–P**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–67382; File No. SR–BYX–2012–012]**

## Self-Regulatory Organizations; BATS Y–Exchange, Inc.; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1, To Adopt a New Market Maker Peg Order Available to Exchange Market Makers

July 10, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(2).

[8] 17 CFR 200.30–3(a)(12).

(''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 26, 2012, BATS Y–Exchange, Inc. (''Exchange'' or ''BYX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items II and III below, which Items have been prepared by the Exchange. On July 6, 2012, the Exchange submitted Amendment No. 1 to the proposed rule change. 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 adopt a new Market Maker Peg Order to provide similar functionality as the automated functionality provided to market makers under Rule 11.8(e).

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.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

The Exchange is proposing to adopt a new Market Maker Peg Order to provide similar functionality presently available to Exchange market makers under Rule 11.8(e). The Exchange will continue to offer the present automated functionality provided to market makers under Rule 11.8(e) for a period of three months after the adoption of the proposed Market Maker Peg Order. The purpose of this transition period, during which both the present automated system functionality under Rule 11.8(e) and the Market Maker Peg Order will operate concurrently, is to afford market makers with the opportunity to gradually migrate away from the present automated system functionality under Rule 11.8(e). Prior to the end of this three month period, the Exchange will submit a rule filing to retire the automated system functionality under Rule 11.8(e).

BYX adopted Rule 11.8(e) as part of an effort to address issues uncovered by the aberrant trading that occurred on May 6, 2010.[3] The market maker quoter functionality offered by this rule is designed to help Exchange market makers meet the enhanced market maker obligations adopted post May 6, 2010,[4] and avoid execution of market maker ''stub quotes'' in instances of aberrant trading.[5] As part of these enhanced obligations, the Exchange requires market makers for each stock in which they are registered to continuously maintain a two-sided quotation within a designated percentage of the National Best Bid and National Best Offer,[6] as appropriate. Although the market maker quoter has been successful in allowing Exchange market makers to meet their enhanced obligations and in avoiding the deleterious effect on the markets caused by ''stub quote'' executions, the market maker quoter presents difficulties to market makers in meeting their obligations under Rule 15c3–5 under the Act (the ''Market Access Rule'')[7] and Regulation SHO.[8]

The Market Access Rule requires a broker-dealer with market access, or that provides a customer or any other person with access to an exchange or alternative trading system through use of its market participant identifier or otherwise, to establish, document, and maintain a system of risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory, and other risks of this business activity. These controls must be reasonably designed to ensure compliance with all regulatory requirements, which are defined as ''all federal securities laws, rules and regulations, and rules of self-regulatory organizations, that are applicable in connection with market access.''[9]

In addition to the obligations of the Market Access Rule, broker-dealers have independent obligations that arise under Regulation SHO. Regulation SHO obligations generally include properly marking sell orders, obtaining a ''locate'' for short sale orders, closing out fail to deliver positions, and, where applicable, complying with the short sale price test.[10] While there are certain exceptions to some of the requirements of Regulation SHO where a market maker is engaged in bona-fide market making activities,[11] the availability of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 63342 (November 18, 2010), 75 FR 71768 (November 24, 2010) (SR–BYX–2010–001).

[4] *Id.*

[5] For each issue in which a market maker is registered, the market maker quoter functionality optionally creates a quotation for display to comply with market making obligations. Compliant displayed quotations are thereafter allowed to rest and are not adjusted unless the relationship between the quotation and its related national best bid or national best offer, as appropriate, either: (a) Shrinks to a specified number of percentage points away from the Designated Percentage toward the then current national best bid or national best offer, which number of percentage points will be determined and published in a circular distributed to Members from time to time, or (b) expands to within 0.5% of the applicable percentage necessary to trigger an individual stock trading pause, whereupon such bid or offer will be cancelled and re-entered at the Designated Percentage away from the then current national best bid and national best offer, or if no national best bid or national best offer, at the Designated Percentage away from the last reported sale from the responsible single plan processor. Quotations independently entered by market makers are allowed to move freely toward the national best bid or national best offer, as appropriate, for potential execution. In the event of an execution against a quote generated pursuant to the market maker quoter functionality, the market maker's quote is refreshed on the executed side of the market at the applicable Designated Percentage away from the then national best bid (offer), or if no national best bid (offer), the last reported sale. *See* Rule 11.8(e).

[6] As defined by Regulation NMS Rule 600(b)(42). 17 CFR 242.600.

[7] 17 CFR 240.15c3–5.

[8] 17 CFR 242.200 through 204.

[9] 17 CFR 240.15c3–5.

[10] *Supra* note 8.

[11] *See* 17 CFR 242.203(b)(1). The Commission adopted a narrow exception to Regulation SHO's ''locate'' requirement for market makers that may need to facilitate customer orders in a fast moving market without possible delays associated with complying with such requirement. Only market makers engaged in bona fide market making in the security at the time they effect the short sale are excepted from the ''locate'' requirement. *See* Exchange Act Release No. 50103 (July 28, 2004), 69 FR 48008, 48015 (August 6, 2004) (providing guidance as to what does not constitute bona-fide market making for purposes of claiming the exception to Regulation SHO's ''locate'' requirement). *See also* Exchange Act Release No. 58775 (October 14, 2008), 73 FR 61690, 61698–9 (October 17, 2008) (providing guidance regarding what is bona-fide market making for purposes of complying with the market maker exception to Regulation SHO's ''locate'' requirement including without limitation whether the market maker incurs any economic or market risk with respect to the securities, continuous quotations that are at or near the market on both sides and that are communicated and represented in a way that makes them widely accessible to investors and other broker-dealers and a pattern of trading that includes both purchases and sales in roughly comparable amounts to provide liquidity to customers or other broker-dealers). Thus, market makers would not be able to rely solely on quotations priced in accordance with the Designated Percentages under proposed Rule 11.9(c)(14) [sic] or the market maker quoter functionality under Rule 11.8(e) for eligibility for the bona-fide market making

Continued

those exceptions is distinct and independent from whether a market maker submits an order that is a Market Maker Peg Order.

The current market maker quoter functionality offered to market makers reprices and ''refreshes'' a market maker's quote when it is executed against, without any action required by the market maker. When a market maker's quote is refreshed by the Exchange, however, the market maker has an obligation to ensure that the requirements of the Market Access Rule and Regulation SHO are met. To meet these obligations, a market maker must actively monitor the status of its quotes and ensure that the requirements of the Market Access Rule and Regulation SHO are being satisfied.

Market Maker Peg Order

In an effort to simplify market maker compliance with the requirements of the Market Access Rule and Regulation SHO, the Exchange is proposing to adopt a new order type available only to Exchange market makers, which offers functionality similar to the market maker quoter functionality, but also allows a market maker to comply with the regulatory requirements of the Market Access Rule and Regulation SHO. Specifically, the Exchange is proposing to replace the market maker quoter functionality with the Market Maker Peg Order. The Market Maker Peg Order would be a one-sided limit order and similar to other peg orders available to market participants in that the order is tied or ''pegged'' to a certain price,[12] but it would not be eligible for routing pursuant to Rule 11.13(a)(2) and would always be displayed. The Market Maker Peg Order would be limited to market makers and would have its price automatically set and adjusted, both upon entry and any time thereafter, in order to comply with the Exchange's rules regarding market maker quotation requirements and obligations.[13] It is expected that market makers will perform the necessary checks to comply with Regulation SHO, as discussed above, prior to entry of a Market Maker Peg Order. Upon entry and at any time the order exceeds either the Defined Limit, as described in Rule 11.8(d)(2)(E), or moves a specified number of percentage points away from the Designated Percentage toward the then current National Best Bid or National Best Offer, the Market Maker Peg Order would be priced by the Exchange at the Designated Percentage[14] away from the then current National Best Bid and National Best Offer. Where there is no National Best Bid or National Best Offer, the Market Maker Peg Order would, by default, be priced at the Designated Percentage away from the last reported sale from the responsible single plan processor, unless instructed by the market maker upon entry to cancel or reject where there is no NBB or NBO. In the absence of a National Best Bid or National Best Offer and last reported sale, the order will be cancelled or rejected. Adjustment to the Designated Percentage is designed to avoid an execution against a Market Maker Peg Order that would initiate an individual stock trading pause. In the event of an execution against a Market Maker Peg Order that reduces the size of the Market Maker Peg Order below one round lot, the market maker would need to enter a new order, after performing the regulatory checks discussed above, to satisfy their obligations under Rule 11.8.[15] In the event that pricing the Market Maker Peg Order at the Designated Percentage away from the then current National Best Bid and National Best Offer, or, if no National Best Bid or National Best Offer, to the Designated Percentage away from the last reported sale from the responsible single plan processor would result in the order exceeding its limit price, the order will be cancelled or rejected.

The Exchange is also proposing to allow a market maker to designate an offset more aggressive (i.e., smaller) than the Designated Percentage for any given Market Maker Peg Order. This functionality will allow a market maker to quote at price levels that are closer to the National Best Bid and National Best Offer if it elects to do so. To use this functionality, upon entry, a market maker must designate the desired offset and a percentage away from the NBB or NBO at which the price of such bid or offer will be adjusted back to the desired offset (the ''Reprice Percentage'').[16] Thereafter,[17] a Market Maker Peg Order with a market maker-designated offset will have its price automatically adjusted to the market maker-designated offset from the National Best Bid or National Best Offer or last reported sale upon reaching the Reprice Percentage.[18] Identical to the behavior of Market Maker Peg Orders using the Defined Percentage and Defined Limit, in the absence of a National Best Bid or National Best Offer, Market Maker Peg Orders with a market maker-designated offset will, by default, have their price adjusted to the Market Maker-designated offset from the price of the last reported sale from the responsible single plan processor, or, if otherwise instructed by the Market Maker, will be cancelled or rejected. In the absence of a National Best Bid or National Best Offer and a last reported sale, a Market Maker Peg Order will be cancelled or rejected. In the event that pricing the Market Maker Peg Order at the market maker-designated offset away from the then current National Best Bid or National Best Offer or last reported sale would result in the order exceeding its limit price, the order will be cancelled or rejected.

The Market Maker Peg Order will be accepted during Regular Trading Hours and the Pre-Opening and After Hours Trading Sessions. By default, the Market Maker Peg Order will be priced at 9:30 a.m. and will only be executable during Regular Trading Hours, however, upon entry, a User may direct the Exchange to automatically price and execute a Market Maker Peg Order during the Pre-

exception to the ''locate'' requirement based on the criteria set forth by the Commission. It should also be noted that a determination of bona-fide market making is relevant for the purposes of a broker-dealer's close-out obligations under Rule 204 of Regulation SHO. *See* 17 CFR 242.204(a)(3).

[12] Rule 11.9(c)(8).

[13] The Market Maker Peg Order is one-sided so that a market maker seeking to use Market Maker Peg Orders to comply with the Exchange's rules regarding market maker quotation requirements would need to submit both a bid and an offer using the order type.

[14] The Designated Percentage is the individual stock pause trigger percentage listed in Interpretations and Policies .01 to Rule 11.8, less either: (i) two percentage points for securities that are included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products and for all other NMS stocks with a price equal to or greater than $1 per share; or (ii) twenty percentage points for all NMS stocks with a price less than $1 per share that are not included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products. *See* Rule 11.8(d)(2)(D).

[15] Rule 11.8 generally sets forth the Exchange's market maker requirements, which include quotation and pricing obligations.

[16] If a market maker wishes, it can designate a more aggressive bid while using the Defined Percentage and Defined Limit for its offer, or vice versa.

[17] In the absence of an offset designation and/or Reprice Percentage, a Market Maker Peg Order will default to using the Defined Percentage and Defined Limit, and the repricing process whereby, upon reaching the Defined Limit, the price of a Market Maker Peg Order bid or offer will be adjusted by the System to the Designated Percentage away from the then current National Best Bid or National Best Offer, or, if no National Best Bid or National Best Offer, to the Designated Percentage away from the last reported sale from the responsible single plan processor.

[18] Market Maker Peg Orders with a market maker-designated offset may be able to qualify as bon-fide [sic] market making for purposes of Regulation SHO, depending on the facts and circumstances. A market maker entering such an order must consider the factors set forth by the Commission in determining whether reliance on the exceptions from the ''locate'' requirement of Rule 203 for bona-fide market making is appropriate with respect to the particular Market Maker Peg Order and its designated offset. *See supra* note 11.

Opening Session [19] and After Hours Trading Session (''Extended Hours Market Maker Peg Orders'').[20] During the Pre-Opening Session and After Hours Trading Session, the wider Designated Percentage and Defined Limit associated with the 9:30 a.m.–9:45 a.m. and 3:35 p.m.–4 p.m. periods under Rule 11.8(e) will be applied to Extended Hours Market Maker Peg Orders for which the market maker has not designated an offset more aggressive than the Designated Percentage.

BYX believes that this order-based approach is superior in terms of the ease in complying with the requirements of the Market Access Rule and Regulation SHO while also providing similar quote adjusting functionality to its market makers. Market makers would have control of order origination, as required by the Market Access Rule, while also allowing market makers to make marking and locate determinations prior to order entry, as required by Regulation SHO. As such, market makers are fully able to comply with the requirements of the Market Access Rule and Regulation SHO, as they would when placing any order, while also meeting their Exchange market making obligations. In this regard, the Market Maker Peg Order, like the current market maker quoter functionality, does not ensure that the market maker is satisfying the requirements of Regulation SHO, including the satisfaction of the locate requirement of Rule 203(b)(1) or an exception thereto.

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act,[21] which requires the rules of an exchange to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed rule change also is designed to support the principles of Section 11A(a)(1) [22] of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the proposed rule meets these requirements in that it promotes transparency and uniformity across markets concerning minimum market maker quotation requirements and member obligations to comply with the regulatory requirements of the Market Access Rule and Regulation SHO. The Exchange also believes that providing Exchange market makers with a transition period, during which they may adequately test the new functionality, will serve to minimize the potential market impact caused by the implementation of the order type.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change imposes any burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has neither solicited nor received written comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve or disapprove such proposed rule change; or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the 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–BYX–2012–012 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–BYX–2012–012. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BYX–2012–012 and should be submitted on or before August 6, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–17200 Filed 7–13–12; 8:45 am]

BILLING CODE 8011–01–P

[19] The Pre-Opening Session means the time between 8 a.m. and 9:30 a.m. Eastern Time.

[20] The After Hours Trading Session means the time between 4 p.m. and 5 p.m. Eastern Time.

[21] 15 U.S.C. 78f(b)(5).

[22] 15 U.S.C. 78k–1(a)(1).

[23] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–67389; File No. SR–NASDAQ–2012–81]**

## Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Delay the Implementation Date for Non-Display of Primary Pegged Orders With an Offset Amount

July 10, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1], and Rule 19b–4[2] thereunder, notice is hereby given that, on June 28, 2012, The NASDAQ Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 a rule change to delay the implementation date for its rule change that provides for non-display of Primary Pegged Orders with an offset amount. The text of the proposed rule change is available at *http://nasdaq.cchwallstreet.com,* at the Exchange's principal office, and at the Commission's Public Reference Room.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

NASDAQ recently submitted a proposed rule change to provide that Primary Pegged Orders with an offset amount will not be displayed,[3] a change that will improve system and inter-market price stability. In order to implement this change contemporaneous with the proposed adoption of a new Market Maker Peg order type,[4] NASDAQ is delaying the implementation date of this rule change until the third quarter of 2012. The new Market Maker Peg order with custom offset will allow market makers currently using the primary peg with offset for attributable orders to smoothly migrate to use of that order type. Some market makers use the primary peg with offset for compliance purposes, so tying the change to the MMPO release allows for them to continue to have a pegging option to meet this requirement. While the exact implementation date is uncertain, NASDAQ will announce the exact date through a publicly disseminated alert.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[5] in general, and with Section 6(b)(5) of the Act,[6] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Specifically, NASDAQ believes that delaying the implementation date of non-display of primary pegged orders with an offset amount until adoption and implementation of the proposed new Market Maker pegged order will allow market participants to adjust their systems for both changes at the same time, providing efficiencies that will benefit investors and the public interest and encourage more efficient order entry practices by all market participants.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. NASDAQ believes that the proposed delay in the implementation of the change will not have any effect on competition.

### *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)(i) 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 Number SR–NASDAQ–2012–81 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2012–81. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and

[3] Securities Exchange Act Release No. 66699 (March 31, 2012), 77 FR 20658 (April 5 15, 2012) [sic] (SR–NASDAQ–2012–041).

[4] Securities Exchange Act Release No. 67203 (June 14, 2012) 77 FR 37086 (June 20, 2012) (SR–NASDAQ–2012–066).

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A)(i).

copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2012–81 and should be submitted on or before August 6, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–17274 Filed 7–13–12; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–67380; File No. SR–EDGA–2012–29]**

## Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the EDGA Exchange, Inc. Fee Schedule

July 10, 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 June 29, 2012, EDGA Exchange, Inc. (the ''Exchange'' or ''EDGA'') 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 the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its fees and rebates applicable to Members [3] of the Exchange pursuant to EDGA Rule 15.1(a) and (c). All of the changes described herein are applicable to EDGA Members. The text of the proposed rule change is available on the Exchange's Internet Web site at *http://www.directedge.com*, at the Exchange's principal office, and at the Public Reference Room of the Commission.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

Flag DM is yielded where non-displayed orders add or remove liquidity using the Mid-Point Discretionary order type.[4] In order to provide additional transparency to Members and for the reasons discussed below, Flag DM is proposed to be bifurcated into two flags: Flag DM (adds liquidity in the discretionary range) and Flag DT (removes liquidity in the discretionary range). The Exchange proposes to continue to charge a fee of $0.0005 per share for Flags DM and DT.[5]

In addition, the Exchange proposes to delete Footnote 18 that is appended to Flag DM in the fee schedule because the proposed Flags DM and DT will count towards volume tiers as the Exchange can now differentiate between non-displayed liquidity that adds liquidity in the discretionary range from non-displayed liquidity that removes liquidity in the discretionary range.[6]

The Exchange also proposes to amend Flag K to only apply to Members' orders routed to NASDAQ OMX PSX (''PSX'') using the ROUC or ROUE routing strategy as defined in Rule 11.9(b)(3). The Exchange proposes to reduce the rate from $0.0025 per share to $0.0005 per share, which represents a pass-through of the Exchange's rate for routing orders to PSX, in response to the proposed pricing changes in PSX's pending filing with the Commission.[7] Accordingly, where Members' orders are routed to the BATS BZX Exchange (''BATS BZX'') using the ROBA routing strategy (EDGA + BATS), the Exchange proposes to apply Flag X, which is yielded when Members route orders through EDGA and the Exchange assesses a charge of $0.0029 per share.

Similarly, the Exchange also proposes to amend the rate for Flag RS, which is yielded when Members route orders to PSX that add liquidity. The Exchange proposes to amend the pricing for Flag RS from a rebate of $0.0024 per share to a charge of $0.0005 per share in response to PSX's pending filing, which represents a pass-through of the Exchange's rate for routing orders to PSX.

The Exchange proposes to implement these amendments to its fee schedule on July 1, 2012.

2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with the objectives of Section 6 of the Act,[8] in general, and furthers the objectives of Section 6(b)(4),[9] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities.

The Exchange believes that the proposed technical amendment to bifurcate Flag DM into Flags DM and DT promotes market transparency and improves investor protection by adding additional transparency to its fee schedule by more precisely delineating for Members whether they are ''adders of liquidity'' or ''removers of liquidity'' for purposes of Members' non-displayed orders using the Mid-Point Discretionary order type. In addition, the Exchange believes that counting Flags DM and DT towards volume tiers is reasonable and equitable as the Exchange can now differentiate between non-displayed liquidity that adds liquidity in the discretionary range from non-displayed liquidity that removes liquidity in the discretionary range, as explained above. Including Flags DM and DT in volume tiers allows their associated volume to be tracked by the Exchange in the appropriate tier(s), which may incent Members to increase use of the volume tiers in the fee

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A Member is any registered broker or dealer, or any person associated with a registered broker or dealer, that has been admitted to membership in the Exchange.

[4] *See* Securities Exchange Act Release No. 67226 (June 20, 2012), 77 FR 38113 (June 26, 2012) (SR–EDGA–2012–22).

[5] *See* SR–EDGA–2012–24 (June 19, 2012) (describing the Exchange's proposal to amend its fee schedule pursuant to Rule 15.1(a) and (c) regarding Flag DM).

[6] *See* SR–EDGA–2012–24 (June 19, 2012) (where the Exchange excluded the volume generated from Flag DM from counting towards the volume tiers because a Member could potentially receive Flag DM if the Member either added or removed liquidity using the Midpoint Discretionary Order).

[7] *See* PSX's Equity Trader Alert #2012–28 at *http://www.nasdaqtrader.com/TraderNews.aspx?id=ETA2012–28* (discussing PSX's pending fee changes effective July 2, 2012).

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(4).

schedule. Such volume will increase potential revenue to the Exchange, and would allow the Exchange to spread its administrative and infrastructure costs over a greater number of shares, leading to lower per share costs. These lower per share costs would allow the Exchange to pass on the savings to Members in the form of higher rebates/lower costs. The increased liquidity also benefits all investors by deepening EDGA's liquidity pool, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency and improving investor protection. The Exchange also believes that proposed change is non-discriminatory because it applies uniformly to all Members.

The rates and rebates associated with routing orders to PSX on the Exchange's fee schedule are pass-through rates. Currently, PSX charges the Exchange $0.0025 per share for Members' orders that are routed to PSX using the ROUC or ROUE routing strategy and the Exchange charges its Members $0.0025 per share as a pass-through. Therefore, the Exchange believes that the proposed reduction from $0.0025 per share to $0.0005 per share is equitable and reasonable because PSX is reducing the rate it charges the Exchange for routing to PSX to $0.0005. Currently, PSX provides the Exchange a rebate of $0.0024 per share for Members' orders that are routed to PSX and add liquidity and the Exchange rebates Members $0.0024 per share as a pass-through (Flag RS). Therefore, the Exchange believes that the proposed reduction from a rebate of $0.0024 per share to a charge of $0.0005 per share is equitable and reasonable because PSX is increasing the rate it charges the Exchange for routing to PSX to $0.0005 per share. In addition, the Exchange also believes that the proposed pass-through of this rate is non-discriminatory because it applies uniformly to all Members.

The Exchange believes that increasing the charge assessed for Members' orders that are routed to BATS BZX using the ROBA routing strategy (EDGA + BATS) from $0.0025 per share to $0.0029 per share (yielding Flag X) is equitable and reasonable because the Exchange is removing the $0.0004 per share incentive it previously associated with this routing strategy and replacing it with a straight pass-through of the charge BATS BZX assesses the Exchange for removing liquidity from the BZX Exchange order book.[10] Accordingly, the Exchange will assess a charge of $0.0029 per share for Members' orders that route to BATS BZX using the ROBA routing strategy as well as other routed orders that yield Flag X. In addition, the Exchange also believes that the proposed pass-through of this rate is non-discriminatory because it applies uniformly to all Members.

The Exchange also notes that it operates in a highly-competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The proposed rule change reflects a competitive pricing structure designed to incent market participants to direct their order flow to the Exchange. The Exchange believes that the proposed rates are equitable and non-discriminatory in that they apply uniformly to all Members. The Exchange believes the fees and credits remain competitive with those charged by other venues and therefore continue to be reasonable and equitably allocated to Members.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

## 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) of the Act[11] and Rule 19b–4(f)(2)[12] thereunder. 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–EDGA–2012–29 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–EDGA–2012–29. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EDGA–2012–29 and should be submitted on or before August 6, 2012.

[10] *See* BATS BZX fee schedule at *http://batstrading.com/FeeSchedule/*.

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–17198 Filed 7–13–12; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–67372; File No. SR–NYSEARCA–2012–54]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Deleting the Rule Text of NYSE Arca Rule 9.20(b), Which Addresses Telemarketing, and Adopting New Rule Text to NYSE Arca Rule 9.20(b) To Conform to FINRA's Telemarketing Rule

July 10, 2012.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Exchange Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on June 25, 2012, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, 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 delete the rule text of NYSE Arca Rule 9.20(b), which addresses telemarketing, and adopt new rule text that is substantially similar to FINRA Rule 3230. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.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 those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to delete the rule text of NYSE Arca Rule 9.20(b), which addresses telemarketing, and adopt new rule text that is substantially similar to FINRA Rule 3230.[4]

Proposed Rule Change

The Exchange proposes to delete the rule text of NYSE Arca Rule 9.20(b) and adopt new rule text to NYSE Arca Rule 9.20(b) to conform to the changes adopted by FINRA for telemarketing. FINRA adopted NASD Rule 2212 as FINRA Rule 3230, taking into account FINRA Incorporated New York Stock Exchange LLC (''NYSE'') Rule 440A and NYSE Interpretation 440A/01. FINRA Rule 3230 adds provisions that are substantially similar to Federal Trade Commission (''FTC'') rules that prohibit deceptive and other abusive telemarketing acts or practices.

NYSE Arca Rule 9.20(b) and NASD Rule 2212 are similar rules that require members to maintain do-not-call lists, limit the hours of telephone solicitations and prohibit members from using deceptive and abusive acts and practices in connection with telemarketing. The Commission directed FINRA and the Exchange to enact these telemarketing rules in accordance with the Telemarketing Consumer Fraud and Abuse Prevention Act of 1994 (''Prevention Act'').[5] The Prevention Act requires the Commission to promulgate, or direct any national securities exchange or registered securities association to promulgate, rules substantially similar to the FTC rules to prohibit deceptive and other abusive telemarketing acts or practices.[6]

In 2003, the FTC and the Federal Communications Commission (''FCC'') established requirements for sellers and telemarketers to participate in the national do-not-call registry.[7] Pursuant to the Prevention Act, the Commission requested that FINRA and the Exchange amend their telemarketing rules to include a requirement that their members participate in the national do-not-call registry. In 2004, the Commission approved amendments to NASD Rule 2212 requiring member firms to participate in the national do-not-call registry.[8] The following year, the Commission approved amendments to NYSE Arca Rule 9.20(b), which were similar to the NASD rule amendments, but included additional provisions regarding the use of caller identification information, pre-recorded messages, telephone facsimiles and computer advertisements.[9]

As mentioned above, the Prevention Act requires the Commission to promulgate, or direct any national securities exchange or registered securities association to promulgate, rules substantially similar to the FTC rules to prohibit deceptive and other abusive telemarketing acts or practices.[10] In 2011, Commission staff directed all exchanges and FINRA to conduct a review of their telemarketing rules and propose rule amendments that provide protections that are at least as strong as those provided by the FTC's telemarketing rules. FINRA's adoption of FINRA Rule 3230 reflects amendments to NASD Rule 2212 and FINRA Incorporated NYSE Rule 440A that update those rules to meet the standards of the Prevention Act.[11]

The proposed rule change, as directed by the Commission staff, adopts provisions in proposed NYSE Arca Rule 9.20(b) that are substantially similar to the FTC's current rules that prohibit deceptive and other abusive telemarketing acts or practices as described below.[12]

Telemarketing Requirements

Proposed NYSE Arca Rule 9.20(b)(1) provides that no OTP Firm, OTP Holder,

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 66279 (January 30, 2012), 77 FR 5611 (February 3, 2012) (SR–FINRA–2011–059). FINRA's rule change will become effective on July 9, 2012. *See* FINRA Regulatory Notice 12–17.

[5] 15 U.S.C. 6101–6108.

[6] 15 U.S.C. 6102.

[7] *See* 68 FR 4580 (January 29, 2003); 68 FR 44144 (July 25, 2003); CG Docket No. 02–278, FCC 03–153, (adopted June 26, 2003; released July 3, 2003).

[8] *See* Securities Exchange Act Release No. 49055 (January 12, 2004), 69 FR 2801 (January 20, 2004) (Order Approving File No. SR–NASD–2003–131).

[9] *See* Securities Exchange Act Release No. 54282 (August 8, 2006), 71 FR 46534 (August 14, 2006) (Order Approving File No. SR–PCX–2005–54).

[10] 15 U.S.C. 6102.

[11] *See* Securities Exchange Act Release No. 65645 (October 27, 2011), 76 FR 67787 (November 2, 2011) (Order Approving File No. SR–FINRA–2011–059).

[12] The text of proposed NYSE Arca Rule 9.20(b) would be the same as FINRA Rule 3230, except that (i) the Exchange would substitute the terms ''OTP Firm'' and ''OTP Holder'' for ''member;'' and (ii) the Exchange would substitute the term ''Associated Person'' for ''person associated with a member.''

or Associated Person shall initiate any outbound telephone call [13] to:

(1) Any residence of a person before the hour of 8 a.m. or after 9 p.m. (local time at the called party's location), unless the OTP Firm or OTP Holder has an established business relationship [14] with the person pursuant to paragraph 9.20(b)(13)(L)(i), the OTP Firm or OTP Holder has received that person's prior express invitation or permission, or the person called is a broker or dealer;

(2) Any person that previously has stated that he or she does not wish to receive an outbound telephone call made by or on behalf of the OTP Firm or OTP Holder; [15] or

(3) Any person who has registered his or her telephone number on the FTC's national do-not-call registry.

The proposed rule change is substantially similar to the FTC's provisions regarding abusive telemarketing acts or practices.[16] The FTC provided a discussion of the provision when it was adopted pursuant to the Prevention Act.[17]

National Do-Not-Call List Exceptions

Proposed NYSE Arca Rule 9.20(b)(2) provides that an OTP Firm or OTP Holder making outbound telephone calls will not be liable for initiating any outbound telephone call to any person who has registered his or her telephone number on the FTC's national do-not-call registry if:

(1) The OTP Firm or OTP Holder has an established business relationship with the recipient of the call; [18]

(2) The OTP Firm or OTP Holder has obtained the person's prior express invitation or permission; [19] or

(3) The Associated Person making the call has a personal relationship [20] with the recipient of the call.

The proposed rule change modifies the established business relationship exception in NYSE Arca Rule 9.20(b) and the definition for ''established business relationships,'' which is substantially similar to the FTC's definition of that term.[21] In addition, the proposed rule change is substantially similar to the FTC's provision regarding an exception to the prohibition on making outbound telephone calls to persons on the FTC's do-not-call registry.[22] The FTC provided a discussion of the provision when it was adopted pursuant to the Prevention Act.[23]

Safe Harbor Provision

Proposed NYSE Arca Rule 9.20(b)(3) provides that an OTP Firm, OTP Holder, or Associated Person making outbound telephone calls will not be liable for initiating any outbound telephone call to any person who has registered his or her telephone number on the FTC's national do-not-call registry if the OTP Firm, OTP Holder, or Associated Person demonstrates that the violation is the result of an error and that as part of the OTP Firm or OTP Holder's routine business practice, it meets the following standards:

(1) The OTP Firm or OTP Holder has established and implemented written procedures to comply with the national do-not-call rules;

(2) The OTP Firm or OTP Holder has trained its personnel, and any entity assisting in its compliance, in procedures established pursuant to the national do-not-call rules;

(3) The OTP Firm or OTP Holder has maintained and recorded a list of telephone numbers that it may not contact; and

(4) The OTP Firm or OTP Holder uses a process to prevent outbound telephone calls to any telephone number on any list established pursuant to the do-not-call rules, employing a version of the national do-not-call registry obtained from the administrator of the registry no more than 31 days prior to the date any call is made, and maintains records documenting this process.

The proposed rule change is substantially similar to the FTC's safe harbor to the prohibition on making outbound telephone calls to persons on the FTC's national do-not-call registry.[24] The FTC provided a discussion of the provision when it was adopted pursuant to the Prevention Act.[25]

Procedures

Proposed NYSE Arca Rule 9.20(b)(4) adopts procedures that OTP Firms and OTP Holders must institute to comply

[13] An ''outbound telephone call'' is a telephone call initiated by a telemarketer to induce the purchase of goods or services or to solicit a charitable contribution from a donor. A ''customer'' is any person who is or may be required to pay for goods or services through telemarketing. A ''donor'' means any person solicited to make a charitable contribution. A ''person'' is any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity. ''Telemarketing'' means consisting of or relating to a plan, program, or campaign involving at least one outbound telephone call, for example cold-calling. The term does not include the solicitation of sales through the mailing of written marketing materials, when the person making the solicitation does not solicit customers by telephone but only receives calls initiated by customers in response to the marketing materials and during those calls takes orders only without further solicitation. For purposes of the previous sentence, the term ''further solicitation'' does not include providing the customer with information about, or attempting to sell, anything promoted in the same marketing materials that prompted the customer's call. *See* proposed NYSE Arca Rule 9.20(b)(13)(K), (N), (P), (Q), and (T); *see also* FINRA Rule 3230(m)(11), (14), (16), (17), and (20); and 16 CFR 310.2(f), (l), (n), (v), (w), and (dd).

[14] An ''established business relationship'' is a relationship between an OTP Firm or OTP Holder and a person if (i) the person has made a financial transaction or has a security position, a money balance, or account activity with the OTP Firm or OTP Holder or at a clearing firm that provides clearing services to the OTP Firm or OTP Holder within the 18 months immediately preceding the date of an outbound telephone call; (b) the OTP Firm or OTP Holder is the broker-dealer of record for an account of the person within the 18 months immediately preceding the date of an outbound telephone call; or (c) the person has contacted the OTP Firm or OTP Holder to inquire about a product or service offered by the OTP Firm or OTP Holder within the three months immediately preceding the date of an outbound telephone call. A person's established business relationship with an OTP Holder does not extend to the OTP Firm or OTP Holder's affiliated entities unless the person would reasonably expect them to be included. Similarly, a person's established business relationship with an OTP Firm or OTP Holder's affiliate does not extend to the OTP Firm or OTP Holder unless the person would reasonably expect the OTP Firm or OTP Holder to be included. The term ''account activity'' includes, but is not limited to, purchases, sales, interest credits or debits, charges or credits, dividend payments, transfer activity, securities receipts or deliveries, and/or journal entries relating to securities or funds in the possession or control of the OTP Firm or OTP Holder. The term ''broker-dealer of record'' refers to the broker or dealer identified on a customer's account application for accounts held directly at a mutual fund or variable insurance product issuer. *See* proposed NYSE Arca Rule 9.20(b)(13)(A), (D), and (L); *see also* 16 CFR 310.2(o) and FINRA Rule 3230(m)(1), (4), and (12).

[15] This restriction was previously included under NYSE Arca Rule 9.20(b)(1). *See* the discussion below under Procedures.

[16] *See* 16 CFR 310.4(b)(1)(iii)(A) and (B) and (c); *see also* FINRA Rule 3230(a).

[17] *See* Federal Trade Commission, *Telemarketing Sales Rule,* 68 FR 4580 (Jan. 29, 2003) at 4628; and Federal Trade Commission, *Telemarketing Sales Rule,* 60 FR 43842 (Aug. 23, 1995) at 43855.

[18] A person's request to be placed on the firm-specific do-not-call list terminates the established business relationship exception to that national do-not-call list provision for that OTP Firm or OTP Holder even if the person continues to do business with the OTP Firm or OTP Holder.

[19] Such permission must be evidenced by a signed, written agreement (which may be obtained electronically under the E-Sign Act (*See* 15 U.S.C. 7001 et seq.) between the person and OTP Firm or OTP Holder which states that the person agrees to be contacted by the OTP Firm or OTP Holder and includes the telephone number to which the calls may be placed.

[20] The term ''personal relationship'' means any family member, friend, or acquaintance of the person making an outbound telephone call. *See* proposed NYSE Arca Rule 9.20(b)(13)(R); *see also* FINRA Rule 3230(m)(18).

[21] *See supra* note 14; *see also* FINRA Rule 3230(a).

[22] *See* 16 CFR 310.4(b)(1)(iii)(B); *see also* FINRA Rule 3230(b).

[23] *See* Federal Trade Commission, *Telemarketing Sales Rule,* 68 FR 4580 (Jan. 29, 2003) at 4628; and Federal Trade Commission, *Telemarketing Sales Rule,* 60 FR 43842 (Aug. 23, 1995) at 43854.

[24] *See* 16 CFR 310.4(b)(1)(iii)(B); *see also* FINRA Rule 3230(c).

[25] *See* Federal Trade Commission, *Telemarketing Sales Rule,* 68 FR 4580 (Jan. 29, 2003) at 4628; and Federal Trade Commission, *Telemarketing Sales Rule,* 60 FR 43842 (Aug. 23, 1995) at 43855.

with NYSE Arca Rule 9.20(b)(1) prior to engaging in telemarketing. These procedures are substantially similar to the procedural requirements under NYSE Arca Rule 9.20(b)(4); however, the proposed rule change deletes the requirement that an OTP Holder honor a firm-specific do-not-call request for five years from the time the request is made. Additionally, the proposed rule change clarifies that the request not to receive further calls would come from a person. The procedures must meet the following minimum standards:

(1) OTP Firms and OTP Holders must have a written policy for maintaining their do-not-call lists.

(2) Personnel engaged in any aspect of telemarketing must be informed and trained in the existence and use of the OTP Firm or OTP Holder's do-not-call list.

(3) If an OTP Firm or OTP Holder receives a request from a person not to receive calls from that OTP Firm or OTP Holder, the OTP Firm or OTP Holder must record the request and place the person's name, if provided, and telephone number on its do-not-call list at the time the request is made.[26]

(4) OTP Firms, OTP Holders, or Associated Persons making an outbound telephone call must make certain caller disclosures set forth in NYSE Arca Rule 9.20(b)(4)(D).

(5) In the absence of a specific request by the person to the contrary, a person's do-not-call request shall apply to the OTP Firm or OTP Holder making the call, and will not apply to affiliated entities unless the consumer reasonably would expect them to be included given the identification of the call and the product being advertised.

(6) An OTP Firm or OTP Holder making outbound telephone calls must maintain a record of a person's request not to receive further calls.

Inclusion of this requirement to adopt these procedures will not create any new obligations on OTP Firms or OTP Holders, as they are already subject to identical provisions under FCC telemarketing regulations.[27]

Wireless Communications

Proposed NYSE Arca Rule 9.20(b)(5) states that the provisions set forth in the rule are applicable to OTP Firms and OTP Holders telemarketing or making telephone solicitations calls to wireless telephone numbers. In addition, proposed NYSE Arca Rule 9.20(b)(5) clarifies that the application of the rule also applies to Associated Persons making outbound telephone calls to wireless telephone numbers.[28]

Outsourcing Telemarketing

NYSE Arca Rule 9.20(b)(6) states that if an OTP Firm or OTP Holder uses another entity to perform telemarketing services on its behalf, the OTP Firm or OTP Holder remains responsible for ensuring compliance with all provisions contained in the rule. Proposed NYSE Arca Rule 9.20(b)(6) also clarifies that OTP Firms and OTP Holders must consider whether the entity or person that an OTP Firm or OTP Holder uses for outsourcing, must be appropriately registered or licensed, where required.[29]

Caller Identification Information

Proposed NYSE Arca Rule 9.20(b)(7) provides that any OTP Firm or OTP Holder that engages in telemarketing must transmit or cause to be transmitted the telephone number, and, when made available by the OTP Firm or OTP Holder's telephone carrier, the name of the OTP Firm or OTP Holder, to any caller identification service in use by a recipient of an outbound telephone call. The telephone number so provided must permit any person to make a do-not-call request during regular business hours. In addition, any OTP Firm or OTP Holder that engages in telemarketing is prohibited from blocking the transmission of caller identification information.[30]

These provisions are similar to the caller identification provision in the FTC rules.[31] Inclusion of these caller identification provisions in this proposed rule change will not create any new obligations on OTP Firms or OTP Holders, as they are already subject to identical provisions under FCC telemarketing regulations.[32]

Unencrypted Consumer Account Numbers

Proposed NYSE Arca Rule 9.20(b)(8) prohibits an OTP Firm, OTP Holder, or Associated Person from disclosing or receiving, for consideration, unencrypted consumer account numbers for use in telemarketing. The proposed rule change is substantially similar to the FTC's provision regarding unencrypted consumer account numbers.[33] The FTC provided a discussion of the provision when it was adopted pursuant to the Prevention Act.[34] Additionally, the proposed rule change defines ''unencrypted'' as not only complete, visible account numbers, whether provided in lists or singly, but also encrypted information with a key to its decryption. The proposed definition is substantially similar to the view taken by the FTC.[35]

Submission of Billing Information

The proposed rule change provides that, for any telemarketing transaction, no OTP Firm, OTP Holder, or Associated Person may submit billing information[36] for payment without the express informed consent of the customer. Proposed NYSE Arca Rule 9.20(b)(9) requires, for any telemarketing transaction, an OTP Firm, OTP Holder, or Associated Person to obtain the express informed consent of the person to be charged and to be charged using the identified account. If the telemarketing transaction involves preacquired account information[37] and a free-to-pay conversion[38] feature, the OTP Firm, OTP Holder, or Associated Person must:

(1) Obtain from the customer, at a minimum, the last four digits of the account number to be charged;

(2) Obtain from the customer an express agreement to be charged and to be charged using the identified account number; and

[26] OTP Firms and OTP Holders must honor a person's do-not-call request within a reasonable time from the date the request is made, which may not exceed 30 days from the date of the request. If these requests are recorded or maintained by a party other than the OTP Firm or OTP Holder on whose behalf the outbound telephone call is made, the OTP Firm or OTP Holder on whose behalf the outbound telephone call is made will still be liable for any failures to honor the do-not-call request.

[27] *See* 47 CFR 64.1200(d); *see also* FINRA Rule 3230(d).

[28] *See also* FINRA Rule 3230(e).

[29] *See also* FINRA Rule 3230(f).

[30] Caller identification information includes the telephone number and, when made available by the OTP Firm or OTP Holder's telephone carrier, the name of the OTP Firm or OTP Holder.

[31] *See* 16 CFR 310.4(a)(8); *see also* FINRA Rule 3230(g).

[32] *See* 47 CFR 64.1601(e).

[33] *See* 16 CFR 310.4(a)(6); *see also* FINRA Rule 3230(h).

[34] *See* Federal Trade Commission, *Telemarketing Sales Rule,* 68 FR 4580 (January 29, 2003) at 4615.

[35] *See id.* at 4616.

[36] The term ''billing information'' means any data that enables any person to access a customer's or donor's account, such as a credit or debit card number, a brokerage, checking, or savings account number, or a mortgage loan account number. *See* proposed NYSE Arca Rule 9.20(b)(13)(C).

[37] The term ''preacquired account information'' means any information that enables an OTP Firm, OTP Holder, or Associated Person to cause a charge to be placed against a customer's or donor's account without obtaining the account number directly from the customer or donor during the telemarketing transaction pursuant to which the account will be charged. *See* proposed NYSE Arca Rule 9.20(b)(13)(S).

[38] The term ''free-to-pay conversion'' means, in an offer or agreement to sell or provide any goods or services, a provision under which a customer receives a product or service for free for an initial period and will incur an obligation to pay for the product or service if he or she does not take affirmative action to cancel before the end of that period. *See* proposed NYSE Arca Rule 9.20(b)(13)(M).

(3) Make and maintain an audio recording of the entire telemarketing transaction.

For any other telemarketing transaction involving preacquired account information, the OTP Firm, OTP Holder, or Associated Person must:

(1) Identify the account to be charged with sufficient specificity for the customer to understand what account will be charged; and

(2) Obtain from the customer an express agreement to be charged and to be charged using the identified account number.

The proposed rule change is substantially similar to the FTC's provision regarding the submission of billing information.[39] The FTC provided a discussion of the provision when it was adopted pursuant to the Prevention Act.[40]

Abandoned Calls

Proposed NYSE Arca Rule 9.20(b)(10) prohibits an OTP Firm, OTP Holder, or Associated Person from abandoning[41] any outbound telemarketing call. The abandoned calls prohibition is subject to a ''safe harbor'' under proposed subparagraph (10)(B) that requires:

(1) The OTP Firm, OTP Holder, or Associated Person to employ technology that ensures abandonment of no more than three percent of all calls answered by a person, measured over the duration of a single calling campaign, if less than 30 days, or separately over each successive 30-day period or portion thereof that the campaign continues;

(2) The OTP Firm, OTP Holder, or Associated Person, for each telemarketing call placed, allows the telephone to ring for at least 15 seconds or four rings before disconnecting an unanswered call;

(3) Whenever an Associated Person is not available to speak with the person answering the telemarketing call within two seconds after the person's completed greeting, the OTP Firm, OTP Holder, or Associated Person promptly plays a recorded message stating the name and telephone number of the OTP Firm, OTP Holder, or Associated Person on whose behalf the call was placed; and

(4) The OTP Firm or OTP Holder to maintain records documenting compliance with the ''safe harbor.''

The proposed rule change is substantially similar to the FTC's provisions regarding abandoned calls.[42] The FTC provided a discussion of the provisions when they were adopted pursuant to the Prevention Act.[43]

Prerecorded Messages

Proposed NYSE Arca Rule 9.20(b)(11) prohibits an OTP Firm, OTP Holder, or Associated Person from initiating any outbound telemarketing call that delivers a prerecorded message without a person's express written agreement[44] to receive such calls. The proposed rule change also requires that all prerecorded telemarketing calls provide specified opt-out mechanisms so that a person can opt out of future calls. The prohibition does not apply to a prerecorded message permitted for compliance with the ''safe harbor'' for abandoned calls under proposed subparagraph (10)(B).

The proposed rule change is substantially similar to the FTC's provisions regarding prerecorded messages.[45] The FTC provided a discussion of the provisions when they were adopted pursuant to the Prevention Act.[46]

Credit Card Laundering

Proposed NYSE Arca Rule 9.20(b)(12) prohibits credit card laundering, the practice of depositing into the credit card system[47] a sales draft that is not the result of a credit card transaction between the cardholder[48] and the OTP Firm or OTP Holder. Except as expressly permitted, the proposed rule change prohibits an OTP Firm, OTP Holder, or Associated Person from:

(1) Presenting to or depositing into, the credit card system for payment, a credit card sales draft[49] generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the OTP Firm or OTP Holder;

(2) Employing, soliciting, or otherwise causing a merchant,[50] or an employee, representative or agent of the merchant, to present to or to deposit into the credit card system for payment, a credit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the merchant; or

(3) Obtaining access to the credit card system through the use of a business relationship or an affiliation with a merchant, when such access is not authorized by the merchant agreement[51] or the applicable credit card system.

The proposed rule change is substantially similar to the FTC's provisions regarding credit card laundering.[52] The FTC provided a discussion of the provisions when they were adopted pursuant to the Prevention Act.[53]

Definitions

Proposed NYSE Arca Rule 9.20(b)(13) adopts the following definitions, which are substantially similar to the FTC's definitions of these terms: ''acquirer,''

[39] *See* 16 CFR 310.4(a)(7); *see also* FINRA Rule 3230(i).

[40] *See* Federal Trade Commission, *Telemarketing Sales Rule,* 68 FR 4580 (January 29, 2003) at 4615.

[41] An outbound telephone call is ''abandoned'' if the called person answers it and the call is not connected to an OTP Firm, OTP Holder, or Associated Person within two seconds of the called person's completed greeting.

[42] *See* 16 CFR 310.4(b)(1)(iv); *see also* 16 CFR 310.4(b)(4).

[43] *See* Federal Trade Commission, *Telemarketing Sales Rule,* 68 FR 4580 (January 29, 2003) at 4641.

[44] The express written agreement must: (a) Have been obtained only after a clear and conspicuous disclosure that the purpose of the agreement is to authorize the OTP Firm or OTP Holder to place prerecorded calls to such person; (b) have been obtained without requiring, directly or indirectly, that the agreement be executed as a condition of purchasing any good or service; (c) evidence the willingness of the called person to receive calls that deliver prerecorded messages by or on behalf of the OTP Firm or OTP Holder; and (d) include the person's telephone number and signature (which may be obtained electronically under the E-Sign Act).

[45] *See* 16 CFR 310.4(b)(1)(v); *see also* FINRA Rule 3230(k).

[46] *See* Federal Trade Commission, *Telemarketing Sales Rule,* 73 FR 51164 (August 29, 2008) at 51165.

[47] The term ''credit card system'' means any method or procedure used to process credit card transactions involving credit cards issued or licensed by the operator of that system. The term ''credit card'' means any card, plate, coupon book, or other credit device existing for the purpose of obtaining money, property, labor, or services on credit. The term ''credit'' means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment. *See* proposed NYSE Arca Rule 9.20(b)(13)(G), (H), and (J).

[48] The term ''cardholder'' means a person to whom a credit card is issued or who is authorized to use a credit card on behalf of or in addition to the person to whom the credit card is issued. *See* proposed NYSE Arca Rule 9.20(b)(13)(F).

[49] The term ''credit card sales draft'' means any record or evidence of a credit card transaction. *See* proposed NYSE Arca Rule 9.20(b)(13)(I).

[50] The term ''merchant'' means a person who is authorized under written contract with an acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services or a charitable contribution. The term ''acquirer'' means a business organization, financial institution, or an agent of a business organization or financial institution that has authority from an organization that operates or licenses a credit card system to authorize merchants to accept, transmit, or process payment by credit card through the credit card system for money, goods or services, or anything else of value. A ''charitable contribution'' means any donation or gift of money or any other thing of value, for example a transfer to a pooled income fund. *See* proposed NYSE Arca Rule 9.20(b)(13)(B) and (N).

[51] The term ''merchant agreement'' means a written contract between a merchant and an acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services or charitable contribution. *See* proposed NYSE Arca Rule 9.20(b)(13)(O).

[52] *See* 16 CFR 310.2; *see also* FINRA Rule 3230(l).

[53] *See* Federal Trade Commission, *Telemarketing Sales Rule,* 60 FR 43842 (August 23, 1995) at 43852.

''billing information,'' ''caller identification service,'' ''cardholder,'' ''charitable contribution,'' ''credit,'' ''credit card,'' ''credit card sales draft,'' ''credit card system,'' ''customer,'' ''donor,'' ''established business relationship,'' ''free-to-pay conversion,'' ''merchant,'' ''merchant agreement,'' ''outbound telephone call,'' ''person,'' ''preacquired account information,'' and ''telemarketing''.[54] The FTC provided a discussion of each definition when they were adopted pursuant to the Prevention Act.

The Exchange proposes make the new rule text to NYSE Arca Rule 9.20(b) effective on the same date as FINRA makes FINRA Rule 3230 effective.[55]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Exchange Act [56] in general, and furthers the objectives of Section 6(b)(5) [57] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. Specifically, the Exchange believes that the proposed rule change supports the objectives of the Exchange Act by providing greater harmonization between NYSE Arca Rules and FINRA Rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance. In particular, NYSE Arca OTP Holders that are also FINRA members are subject to both NYSE Arca Rule 9.20(b) and FINRA Rule 3230 and harmonizing these two rules would promote just and equitable principles of trade by requiring a single standard for telemarketing. In addition, adopting new rule text to NYSE Arca Rule 9.20(b) will assure that the Exchange's rules governing telemarketing meet the standards set forth in the Prevention Act. To the extent the Exchange has proposed changes that differ from the FINRA version of the NYSE Arca Rules, it believes such changes are technical in nature and do not change the substance of the proposed NYSE Arca Rule. The Exchange also believes that the proposed rule change will update and clarify the requirements governing telemarketing, which will promote just and equitable principles of trade and help to protect investors.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received written comments with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Exchange Act [58] and Rule 19b–4(f)(6) thereunder.[59] 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 prior to 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 Exchange Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [60] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[61] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing.

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 Exchange 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 Exchange Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form. (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEARCA–2012–54 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEARCA–2012–54. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 100 F Street NE., Washington, DC 20549–1090 on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at *www.nyse.com*. 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.

[54] *See* proposed NYSE Arca Rule 9.20(b)(13)(B), (C), (E), (F), (G), (H), (I), (J), (K), (L), (M), (N), (O), (P), (Q), (S), and (T); and 16 CFR 310.2(a), (c), (d), (e), (f), (h), (i), (j), (k), (l), (n), (o), (p), (s), (t), (v), (w), (x), and (dd); *see also* FINRA Rule 3230(m)(2), (3), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14), (15), (16), (17), (19), and (20). The proposed rule change also adopts definitions of ''account activity,'' ''broker-dealer of record,'' and ''personal relationship'' that are substantially similar to FINRA's definitions of these terms. *See* proposed NYSE Arca Rule 9.20(b)(13)(A), (D), and (R) and FINRA Rule 3230(m)(1), (4), and (18); *see also* 47 CFR 64.1200(t)(14) (FCC's definition of ''personal relationship'').

[55] *See supra* note 4.

[56] 15 U.S.C. 78f(b).

[57] 15 U.S.C. 78f(b)(5).

[58] 15 U.S.C. 78s(b)(3)(A)(iii).

[59] 17 CFR 240.19b–4(f)(6).

[60] 17 CFR 240.19b–4(f)(6).

[61] 17 CFR 240.19b–4(f)(6)(iii).

All submissions should refer to File Number SR–NYSEARCA–2012–54 and should be submitted on or before August 6, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[62]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–17173 Filed 7–13–12; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–67373; File No. SR–NYSEARCA–2012–53]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Deleting the Rule Text of NYSE Arca Equities Rule 9.20(b), Which Addresses Telemarketing, and Adopting New Rule Text to NYSE Arca Equities Rule 9.20(b) to Conform to FINRA's Telemarketing Rule

July 10, 2012.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Exchange Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on June 25, 2012, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, 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 delete the rule text of NYSE Arca Equities Rule 9.20(b), which addresses telemarketing, and adopt new rule text that is substantially similar to FINRA Rule 3230. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.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 those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to delete the rule text of NYSE Arca Equities Rule 9.20(b), which addresses telemarketing, and adopt new rule text that is substantially similar to FINRA Rule 3230.[4]

Proposed Rule Change

The Exchange proposes to delete the rule text of NYSE Arca Equities Rule 9.20(b) and adopt new rule text to NYSE Arca Equities Rule 9.20(b) to conform to the changes adopted by FINRA for telemarketing. FINRA adopted NASD Rule 2212 as FINRA Rule 3230, taking into account FINRA Incorporated New York Stock Exchange LLC (''NYSE'') Rule 440A and NYSE Interpretation 440A/01. FINRA Rule 3230 adds provisions that are substantially similar to Federal Trade Commission (''FTC'') rules that prohibit deceptive and other abusive telemarketing acts or practices.

NYSE Arca Equities Rule 9.20(b) and NASD Rule 2212 are similar rules that require members to maintain do-not-call lists, limit the hours of telephone solicitations and prohibit members from using deceptive and abusive acts and practices in connection with telemarketing. The Commission directed FINRA and the Exchange to enact these telemarketing rules in accordance with the Telemarketing Consumer Fraud and Abuse Prevention Act of 1994 (''Prevention Act'').[5] The Prevention Act requires the Commission to promulgate, or direct any national securities exchange or registered securities association to promulgate, rules substantially similar to the FTC rules to prohibit deceptive and other abusive telemarketing acts or practices.[6]

In 2003, the FTC and the Federal Communications Commission (''FCC'') established requirements for sellers and telemarketers to participate in the national do-not-call registry.[7] Pursuant to the Prevention Act, the Commission requested that FINRA and the Exchange amend their telemarketing rules to include a requirement that their members participate in the national do-not-call registry. In 2004, the Commission approved amendments to NASD Rule 2212 requiring member firms to participate in the national do-not-call registry.[8] The following year, the Commission approved amendments to NYSE Arca Rule 9.20(b), which were similar to the NASD rule amendments, but included additional provisions regarding the use of caller identification information, pre-recorded messages, telephone facsimiles and computer advertisements.[9]

As mentioned above, the Prevention Act requires the Commission to promulgate, or direct any national securities exchange or registered securities association to promulgate, rules substantially similar to the FTC rules to prohibit deceptive and other abusive telemarketing acts or practices.[10] In 2011, Commission staff directed all exchanges and FINRA to conduct a review of their telemarketing rules and propose rule amendments that provide protections that are at least as strong as those provided by the FTC's telemarketing rules. FINRA's adoption of FINRA Rule 3230 reflects amendments to NASD Rule 2212 and FINRA Incorporated NYSE Rule 440A that update those rules to meet the standards of the Prevention Act.[11]

The proposed rule change, as directed by the Commission staff, adopts provisions in proposed NYSE Arca Equities Rule 9.20(b) that are substantially similar to the FTC's current rules that prohibit deceptive and other abusive telemarketing acts or practices as described below.[12]

[62] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 66279 (January 30, 2012), 77 FR 5611 (February 3, 2012) (SR–FINRA–2011–059). FINRA's rule change will become effective on July 9, 2012. *See* FINRA Regulatory Notice 12–17.

[5] 15 U.S.C. 6101–6108.

[6] 15 U.S.C. 6102.

[7] *See* 68 FR 4580 (January 29, 2003); 68 FR 44144 (July 25, 2003); CG Docket No. 02–278, FCC 03–153, (adopted June 26, 2003; released July 3, 2003).

[8] *See* Securities Exchange Act Release No. 49055 (January 12, 2004), 69 FR 2801 (January 20, 2004) (Order Approving File No. SR–NASD–2003–131).

[9] *See* Securities Exchange Act Release No. 54283 (August 8, 2006), 71 FR 46534 (August 14, 2006) (Order Approving File No. SR–PCX–2005–97).

[10] 15 U.S.C. 6102.

[11] *See* Securities Exchange Act Release No. 65645 (October 27, 2011), 76 FR 67787 (November 2, 2011) (Order Approving File No. SR–FINRA–2011–059).

[12] The text of proposed NYSE Arca Equities Rule 9.20(b) would be the same as FINRA Rule 3230,

Telemarketing Requirements

Proposed NYSE Arca Equities Rule 9.20(b)(1) provides that no ETP Holder or Associated Person shall initiate any outbound telephone call [13] to:

(1) Any residence of a person before the hour of 8 a.m. or after 9 p.m. (local time at the called party's location), unless the ETP Holder has an established business relationship [14] with the person pursuant to paragraph 9.20(b)(13)(L)(i), the ETP Holder has received that person's prior express invitation or permission, or the person called is a broker or dealer;

(2) Any person that previously has stated that he or she does not wish to receive an outbound telephone call made by or on behalf of the ETP Holder; [15] or

(3) Any person who has registered his or her telephone number on the FTC's national do-not-call registry.

The proposed rule change is substantially similar to the FTC's provisions regarding abusive telemarketing acts or practices.[16] The FTC provided a discussion of the provision when it was adopted pursuant to the Prevention Act.[17]

National Do-Not-Call List Exceptions

Proposed NYSE Arca Equities Rule 9.20(b)(2) provides that an ETP Holder making outbound telephone calls will not be liable for initiating any outbound telephone call to any person who has registered his or her telephone number on the FTC's national do-not-call registry if:

(1) The ETP Holder has an established business relationship with the recipient of the call; [18]

(2) The ETP Holder has obtained the person's prior express invitation or permission; [19] or

(3) The Associated Person making the call has a personal relationship [20] with the recipient of the call.

The proposed rule change modifies the established business relationship exception in NYSE Arca Equities Rule 9.20(b) and the definition for ''established business relationships,'' which is substantially similar to the FTC's definition of that term.[21] In addition, the proposed rule change is substantially similar to the FTC's provision regarding an exception to the prohibition on making outbound telephone calls to persons on the FTC's do-not-call registry.[22] The FTC provided a discussion of the provision when it was adopted pursuant to the Prevention Act.[23]

Safe Harbor Provision

Proposed NYSE Arca Equities Rule 9.20(b)(3) provides that an ETP Holder or Associated Person making outbound telephone calls will not be liable for initiating any outbound telephone call to any person who has registered his or her telephone number on the FTC's national do-not-call registry if the ETP Holder or Associated Person demonstrates that the violation is the result of an error and that as part of the ETP Holder's routine business practice, it meets the following standards:

(1) The ETP Holder has established and implemented written procedures to comply with the national do-not-call rules;

(2) The ETP Holder has trained its personnel, and any entity assisting in its compliance, in procedures established pursuant to the national do-not-call rules;

(3) The ETP Holder has maintained and recorded a list of telephone numbers that it may not contact; and

(4) The ETP Holder uses a process to prevent outbound telephone calls to any telephone number on any list established pursuant to the do-not-call rules, employing a version of the national do-not-call registry obtained from the administrator of the registry no more than 31 days prior to the date any call is made, and maintains records documenting this process.

The proposed rule change is substantially similar to the FTC's safe harbor to the prohibition on making outbound telephone calls to persons on the FTC's national do-not-call registry.[24] The FTC provided a discussion of the provision when it was adopted pursuant to the Prevention Act.[25]

Procedures

Proposed NYSE Arca Equities Rule 9.20(b)(4) adopts procedures that ETP Holders must institute to comply with

except that (i) the Exchange would substitute the term ''ETP Holder'' for ''member;'' and (ii) the Exchange would substitute the term ''Associated Person'' for ''person associated with a member.''

[13] An ''outbound telephone call'' is a telephone call initiated by a telemarketer to induce the purchase of goods or services or to solicit a charitable contribution from a donor. A ''customer'' is any person who is or may be required to pay for goods or services through telemarketing. A ''donor'' means any person solicited to make a charitable contribution. A ''person'' is any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity. ''Telemarketing'' means consisting of or relating to a plan, program, or campaign involving at least one outbound telephone call, for example cold-calling. The term does not include the solicitation of sales through the mailing of written marketing materials, when the person making the solicitation does not solicit customers by telephone but only receives calls initiated by customers in response to the marketing materials and during those calls takes orders only without further solicitation. For purposes of the previous sentence, the term ''further solicitation'' does not include providing the customer with information about, or attempting to sell, anything promoted in the same marketing materials that prompted the customer's call. *See* proposed NYSE Arca Equities Rule 9.20(b)(13)(K), (N), (P), (Q), and (T); *see also* FINRA Rule 3230(m)(11), (14), (16), (17), and (20); and 16 CFR 310.2(f), (l), (n), (v), (w), and (dd).

[14] An ''established business relationship'' is a relationship between an ETP Holder and a person if (i) the person has made a financial transaction or has a security position, a money balance, or account activity with the ETP Holder or at a clearing firm that provides clearing services to the ETP Holder within the 18 months immediately preceding the date of an outbound telephone call; (b) the ETP Holder is the broker-dealer of record for an account of the person within the 18 months immediately preceding the date of an outbound telephone call; or (c) the person has contacted the ETP Holder to inquire about a product or service offered by the ETP Holder within the three months immediately preceding the date of an outbound telephone call. A person's established business relationship with an ETP Holder does not extend to the ETP Holder's affiliated entities unless the person would reasonably expect them to be included. Similarly, a person's established business relationship with an ETP Holder's affiliate does not extend to the ETP Holder unless the person would reasonably expect the ETP Holder to be included. The term ''account activity'' includes, but is not limited to, purchases, sales, interest credits or debits, charges or credits, dividend payments, transfer activity, securities receipts or deliveries, and/or journal entries relating to securities or funds in the possession or control of the ETP Holder. The term ''broker-dealer of record'' refers to the broker or dealer identified on a customer's account application for accounts held directly at a mutual fund or variable insurance product issuer. *See* proposed NYSE Arca Equities Rule 9.20(b)(13)(A), (D), and (L); *see also* 16 CFR 310.2(o) and FINRA Rule 3230(m)(1), (4), and (12).

[15] This restriction was previously included under NYSE Arca Equities Rule 9.20(b)(1). *See* the discussion below under Procedures.

[16] *See* 16 CFR 310.4(b)(1)(iii)(A) and (B) and (c); *see also* FINRA Rule 3230(a).

[17] *See* Federal Trade Commission, *Telemarketing Sales Rule,* 68 FR 4580 (Jan. 29, 2003) at 4628; and Federal Trade Commission, *Telemarketing Sales Rule,* 60 FR 43842 (Aug. 23, 1995) at 43855.

[18] A person's request to be placed on the firm-specific do-not-call list terminates the established business relationship exception to that national do-not-call list provision for that ETP Holder even if the person continues to do business with the ETP Holder.

[19] Such permission must be evidenced by a signed, written agreement (which may be obtained electronically under the E-Sign Act (*See* 15 U.S.C. 7001 *et seq.*) between the person and ETP Holder which states that the person agrees to be contacted by the ETP Holder and includes the telephone number to which the calls may be placed.

[20] The term ''personal relationship'' means any family member, friend, or acquaintance of the person making an outbound telephone call. *See* proposed NYSE Arca Equities Rule 9.20(b)(13)(R); *see also* FINRA Rule 3230(m)(18).

[21] *See supra* note 14; *see also* FINRA Rule 3230(a).

[22] *See* 16 CFR 310.4(b)(1)(iii)(B); *see also* FINRA Rule 3230(b).

[23] *See* Federal Trade Commission, *Telemarketing Sales Rule,* 68 FR 4580 (Jan. 29, 2003) at 4628; and Federal Trade Commission, *Telemarketing Sales Rule,* 60 FR 43842 (Aug. 23, 1995) at 43854.

[24] *See* 16 CFR 310.4(b)(1)(iii)(B); *see also* FINRA Rule 3230(c).

[25] *See* Federal Trade Commission, *Telemarketing Sales Rule,* 68 FR 4580 (Jan. 29, 2003) at 4628; and Federal Trade Commission, *Telemarketing Sales Rule,* 60 FR 43842 (Aug. 23, 1995) at 43855.

NYSE Arca Equities Rule 9.20(b)(1) prior to engaging in telemarketing. These procedures are substantially similar to the procedural requirements under NYSE Arca Equities Rule 9.20(b)(4); however, the proposed rule change deletes the requirement that an ETP Holder honor a firm-specific do-not-call request for five years from the time the request is made. Additionally, the proposed rule change clarifies that the request not to receive further calls would come from a person. The procedures must meet the following minimum standards:

(1) ETP Holders must have a written policy for maintaining their do-not-call lists.

(2) Personnel engaged in any aspect of telemarketing must be informed and trained in the existence and use of the ETP Holder's do-not-call list.

(3) If an ETP Holder receives a request from a person not to receive calls from that ETP Holder, the ETP Holder must record the request and place the person's name, if provided, and telephone number on its do-not-call list at the time the request is made.[26]

(4) ETP Holders or Associated Persons making an outbound telephone call must make certain caller disclosures set forth in NYSE Arca Equities Rule 9.20(b)(4)(D).

(5) In the absence of a specific request by the person to the contrary, a person's do-not-call request shall apply to the ETP Holder making the call, and will not apply to affiliated entities unless the consumer reasonably would expect them to be included given the identification of the call and the product being advertised.

(6) An ETP Holder making outbound telephone calls must maintain a record of a person's request not to receive further calls.

Inclusion of this requirement to adopt these procedures will not create any new obligations on ETP Holders, as they are already subject to identical provisions under FCC telemarketing regulations.[27]

Wireless Communications

Proposed NYSE Arca Equities Rule 9.20(b)(5) states that the provisions set forth in the rule are applicable to ETP Holders telemarketing or making telephone solicitations calls to wireless telephone numbers. In addition, proposed NYSE Arca Equities Rule 9.20(b)(5) clarifies that the application of the rule also applies to Associated Persons making outbound telephone calls to wireless telephone numbers.[28]

Outsourcing Telemarketing

NYSE Arca Equities Rule 9.20(b)(6) states that if an ETP Holder uses another entity to perform telemarketing services on its behalf, the ETP Holder remains responsible for ensuring compliance with all provisions contained in the rule. Proposed NYSE Arca Equities Rule 9.20(b)(6) also clarifies that ETP Holders must consider whether the entity or person that an ETP Holder uses for outsourcing, must be appropriately registered or licensed, where required.[29]

Caller Identification Information

Proposed NYSE Arca Equities Rule 9.20(b)(7) provides that any ETP Holder that engages in telemarketing must transmit or cause to be transmitted the telephone number, and, when made available by the ETP Holder's telephone carrier, the name of the ETP Holder, to any caller identification service in use by a recipient of an outbound telephone call. The telephone number so provided must permit any person to make a do-not-call request during regular business hours. In addition, any ETP Holder that engages in telemarketing is prohibited from blocking the transmission of caller identification information.[30]

These provisions are similar to the caller identification provision in the FTC rules.[31] Inclusion of these caller identification provisions in this proposed rule change will not create any new obligations on ETP Holders, as they are already subject to identical provisions under FCC telemarketing regulations.[32]

Unencrypted Consumer Account Numbers

Proposed NYSE Arca Equities Rule 9.20(b)(8) prohibits an ETP Holder or Associated Person from disclosing or receiving, for consideration, unencrypted consumer account numbers for use in telemarketing. The proposed rule change is substantially similar to the FTC's provision regarding unencrypted consumer account numbers.[33] The FTC provided a discussion of the provision when it was adopted pursuant to the Prevention Act.[34] Additionally, the proposed rule change defines ''unencrypted'' as not only complete, visible account numbers, whether provided in lists or singly, but also encrypted information with a key to its decryption. The proposed definition is substantially similar to the view taken by the FTC.[35]

Submission of Billing Information

The proposed rule change provides that, for any telemarketing transaction, no ETP Holder or Associated Person may submit billing information[36] for payment without the express informed consent of the customer. Proposed NYSE Arca Equities Rule 9.20(b)(9) requires, for any telemarketing transaction, an ETP Holder or Associated Person to obtain the express informed consent of the person to be charged and to be charged using the identified account. If the telemarketing transaction involves preacquired account information[37] and a free-to-pay conversion[38] feature, the ETP Holder or Associated Person must:

(1) Obtain from the customer, at a minimum, the last four digits of the account number to be charged;

(2) Obtain from the customer an express agreement to be charged and to be charged using the identified account number; and

(3) Make and maintain an audio recording of the entire telemarketing transaction.

For any other telemarketing transaction involving preacquired

[26] ETP Holders must honor a person's do-not-call request within a reasonable time from the date the request is made, which may not exceed 30 days from the date of the request. If these requests are recorded or maintained by a party other than the ETP Holder on whose behalf the outbound telephone call is made, the ETP Holder on whose behalf the outbound telephone call is made will still be liable for any failures to honor the do-not-call request.

[27] *See* 47 CFR 64.1200(d); *see also* FINRA Rule 3230(d).

[28] *See also* FINRA Rule 3230(e).

[29] *See also* FINRA Rule 3230(f).

[30] Caller identification information includes the telephone number and, when made available by the ETP Holder's telephone carrier, the name of the ETP Holder.

[31] *See* 16 CFR 310.4(a)(8); *see also* FINRA Rule 3230(g).

[32] *See* 47 CFR 64.1601(e).

[33] *See* 16 CFR 310.4(a)(6); *see also* FINRA Rule 3230(h).

[34] *See* Federal Trade Commission, *Telemarketing Sales Rule,* 68 FR 4580 (January 29, 2003) at 4615.

[35] *See id.* at 4616.

[36] The term ''billing information'' means any data that enables any person to access a customer's or donor's account, such as a credit or debit card number, a brokerage, checking, or savings account number, or a mortgage loan account number. *See* proposed NYSE Arca Equities Rule 9.20(b)(13)(C).

[37] The term ''preacquired account information'' means any information that enables an ETP Holder or Associated Person to cause a charge to be placed against a customer's or donor's account without obtaining the account number directly from the customer or donor during the telemarketing transaction pursuant to which the account will be charged. *See* proposed NYSE Arca Equities Rule 9.20(b)(13)(S).

[38] The term ''free-to-pay conversion'' means, in an offer or agreement to sell or provide any goods or services, a provision under which a customer receives a product or service for free for an initial period and will incur an obligation to pay for the product or service if he or she does not take affirmative action to cancel before the end of that period. *See* proposed NYSE Arca Equities Rule 9.20(b)(13)(M).

account information, the ETP Holder or Associated Person must:

(1) Identify the account to be charged with sufficient specificity for the customer to understand what account will be charged; and

(2) Obtain from the customer an express agreement to be charged and to be charged using the identified account number.

The proposed rule change is substantially similar to the FTC's provision regarding the submission of billing information.[39] The FTC provided a discussion of the provision when it was adopted pursuant to the Prevention Act.[40]

Abandoned Calls

Proposed NYSE Arca Equities Rule 9.20(b)(10) prohibits an ETP Holder or Associated Person from abandoning[41] any outbound telemarketing call. The abandoned calls prohibition is subject to a ''safe harbor'' under proposed subparagraph (10)(B) that requires:

(1) The ETP Holder or Associated Person to employ technology that ensures abandonment of no more than three percent of all calls answered by a person, measured over the duration of a single calling campaign, if less than 30 days, or separately over each successive 30-day period or portion thereof that the campaign continues;

(2) The ETP Holder or Associated Person, for each telemarketing call placed, allows the telephone to ring for at least 15 seconds or four rings before disconnecting an unanswered call;

(3) Whenever an Associated Person is not available to speak with the person answering the telemarketing call within two seconds after the person's completed greeting, the ETP Holder or Associated Person promptly plays a recorded message stating the name and telephone number of the ETP Holder or Associated Person on whose behalf the call was placed; and

(4) The ETP Holder to maintain records documenting compliance with the ''safe harbor.''

The proposed rule change is substantially similar to the FTC's provisions regarding abandoned calls.[42] The FTC provided a discussion of the provisions when they were adopted pursuant to the Prevention Act.[43]

Prerecorded Messages

Proposed NYSE Arca Equities Rule 9.20(b)(11) prohibits an ETP Holder or Associated Person from initiating any outbound telemarketing call that delivers a prerecorded message without a person's express written agreement[44] to receive such calls. The proposed rule change also requires that all prerecorded telemarketing calls provide specified opt-out mechanisms so that a person can opt out of future calls. The prohibition does not apply to a prerecorded message permitted for compliance with the ''safe harbor'' for abandoned calls under proposed subparagraph (10)(B).

The proposed rule change is substantially similar to the FTC's provisions regarding prerecorded messages.[45] The FTC provided a discussion of the provisions when they were adopted pursuant to the Prevention Act.[46]

Credit Card Laundering

Proposed NYSE Arca Equities Rule 9.20(b)(12) prohibits credit card laundering, the practice of depositing into the credit card system[47] a sales draft that is not the result of a credit card transaction between the cardholder[48] and the ETP Holder. Except as expressly permitted, the proposed rule change prohibits an ETP Holder or Associated Person from:

(1) Presenting to or depositing into, the credit card system for payment, a credit card sales draft[49] generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the ETP Holder;

(2) Employing, soliciting, or otherwise causing a merchant,[50] or an employee, representative or agent of the merchant, to present to or to deposit into the credit card system for payment, a credit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the merchant; or

(3) Obtaining access to the credit card system through the use of a business relationship or an affiliation with a merchant, when such access is not authorized by the merchant agreement[51] or the applicable credit card system.

The proposed rule change is substantially similar to the FTC's provisions regarding credit card laundering.[52] The FTC provided a discussion of the provisions when they were adopted pursuant to the Prevention Act.[53]

Definitions

Proposed NYSE Arca Equities Rule 9.20(b)(13) adopts the following definitions, which are substantially similar to the FTC's definitions of these terms: ''acquirer,'' ''billing information,'' ''caller identification service,'' ''cardholder,'' ''charitable contribution,''

[39] *See* 16 CFR 310.4(a)(7); *see also* FINRA Rule 3230(i).

[40] *See* Federal Trade Commission, *Telemarketing Sales Rule,* 68 FR 4580 (January 29, 2003) at 4615.

[41] An outbound telephone call is ''abandoned'' if the called person answers it and the call is not connected to an ETP Holder or Associated Person within two seconds of the called person's completed greeting.

[42] *See* 16 CFR 310.4(b)(1)(iv); *see also* 16 CFR 310.4(b)(4).

[43] *See* Federal Trade Commission, *Telemarketing Sales Rule,* 68 FR 4580 (January 29, 2003) at 4641.

[44] The express written agreement must: (a) Have been obtained only after a clear and conspicuous disclosure that the purpose of the agreement is to authorize the ETP Holder to place prerecorded calls to such person; (b) have been obtained without requiring, directly or indirectly, that the agreement be executed as a condition of purchasing any good or service; (c) evidence the willingness of the called person to receive calls that deliver prerecorded messages by or on behalf of the ETP Holder; and (d) include the person's telephone number and signature (which may be obtained electronically under the E-Sign Act).

[45] *See* 16 CFR 310.4(b)(1)(v); *see also* FINRA Rule 3230(k).

[46] *See* Federal Trade Commission, *Telemarketing Sales Rule,* 73 FR 51164 (August 29, 2008) at 51165.

[47] The term ''credit card system'' means any method or procedure used to process credit card transactions involving credit cards issued or licensed by the operator of that system. The term ''credit card'' means any card, plate, coupon book, or other credit device existing for the purpose of obtaining money, property, labor, or services on credit. The term ''credit'' means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment. *See* proposed NYSE Arca Equities Rule 9.20(b)(13)(G), (H), and (J).

[48] The term ''cardholder'' means a person to whom a credit card is issued or who is authorized to use a credit card on behalf of or in addition to the person to whom the credit card is issued. *See* proposed NYSE Arca Equities Rule 9.20(b)(13)(F).

[49] The term ''credit card sales draft'' means any record or evidence of a credit card transaction. *See* proposed NYSE Arca Equities Rule 9.20(b)(13)(I).

[50] The term ''merchant'' means a person who is authorized under written contract with an acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services or a charitable contribution. The term ''acquirer'' means a business organization, financial institution, or an agent of a business organization or financial institution that has authority from an organization that operates or licenses a credit card system to authorize merchants to accept, transmit, or process payment by credit card through the credit card system for money, goods or services, or anything else of value. A ''charitable contribution'' means any donation or gift of money or any other thing of value, for example a transfer to a pooled income fund. *See* proposed NYSE Arca Equities Rule 9.20(b)(13)(B) and (N).

[51] The term ''merchant agreement'' means a written contract between a merchant and an acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services or charitable contribution. *See* proposed NYSE Arca Equities Rule 9.20(b)(13)(O).

[52] *See* 16 CFR 310.2; *see also* FINRA Rule 3230(l).

[53] *See* Federal Trade Commission, *Telemarketing Sales Rule,* 60 FR 43842 (August 23, 1995) at 43852.

''credit,'' ''credit card,''''credit card sales draft,'' ''credit card system,'' ''customer,'' ''donor,'' ''established business relationship,'' ''free-to-pay conversion,'' ''merchant,'' ''merchant agreement,'' ''outbound telephone call,'' ''person,'' ''preacquired account information,'' and telemarketing''.[54] The FTC provided a discussion of each definition when they were adopted pursuant to the Prevention Act.

The Exchange proposes to make the new rule text to NYSE Arca Equities Rule 9.20(b) effective on the same date as FINRA makes FINRA Rule 3230 effective.[55]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Exchange Act[56] in general, and furthers the objectives of Section 6(b)(5)[57] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. Specifically, the Exchange believes that the proposed rule change supports the objectives of the Exchange Act by providing greater harmonization between NYSE Arca Equities Rules and FINRA Rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance. In particular, NYSE Arca ETP Holders that are also FINRA members are subject to both NYSE Arca Equities Rule 9.20(b) and FINRA Rule 3230 and harmonizing these two rules would promote just and equitable principles of trade by requiring a single standard for telemarketing. In addition, adopting new rule text to NYSE Arca Equities Rule 9.20(b) will assure that the Exchange's rules governing telemarketing meet the standards set forth in the Prevention Act. To the extent the Exchange has proposed changes that differ from the FINRA version of the NYSE Arca Equities Rules, it believes such changes are technical in nature and do not change the substance of the proposed NYSE Arca Equities Rule. The Exchange also believes that the proposed rule change will update and clarify the requirements governing telemarketing, which will promote just and equitable principles of trade and help to protect investors.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received written comments with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Exchange Act[58] and Rule 19b–4(f)(6) thereunder.[59] 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 prior to 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 Exchange Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[60] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[61] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing.

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 Exchange 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 Exchange Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEARCA–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 Number SR–NYSEARCA–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 Section, 100 F Street NE., Washington, DC 20549–1090 on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at *www.nyse.com*. 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.

[54] *See* proposed NYSE Arca Equities Rule 9.20(b)(13)(B), (C), (E), (F), (G), (H), (I), (J), (K), (L), (M), (N), (O), (P), (Q), (S), and (T); and 16 CFR 310.2(a), (c), (d), (e), (f), (h), (i), (j), (k), (l), (n), (o), (p), (s), (t), (v), (w), (x), and (dd); *see also* FINRA Rule 3230(m)(2), (3), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14), (15), (16), (17), (19), and (20). The proposed rule change also adopts definitions of ''account activity,'' ''broker-dealer of record,'' and ''personal relationship'' that are substantially similar to FINRA's definitions of these terms. *See* proposed NYSE Arca Equities Rule 9.20(b)(13)(A), (D), and (R) and FINRA Rule 3230(m)(1), (4), and (18); *see also* 47 CFR 64.1200(t)(14) (FCC's definition of ''personal relationship'').

[55] *See supra* note 4.

[56] 15 U.S.C. 78f(b).

[57] 15 U.S.C. 78f(b)(5).

[58] 15 U.S.C. 78s(b)(3)(A)(iii).

[59] 17 CFR 240.19b–4(f)(6).

[60] 17 CFR 240.19b–4(f)(6).

[61] 17 CFR 240.19b–4(f)(6)(iii).

All submissions should refer to File Number SR–NYSEARCA–2012–53 and should be submitted on or before August 6, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[62]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–17174 Filed 7–13–12; 8:45 am]

**BILLING CODE 8011–01–P**

[62] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–67375; File No. SR–NYSEMKT–2012–03]**

## Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Deleting NYSE MKT LLC Rule 440A—Equities, Which Addresses Telemarketing, and Adopting New NYSE MKT LLC Rule 3230—Equities, To Conform to FINRA's Telemarketing Rule

July 10, 2012.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Exchange Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on June 25, 2012, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (the ''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 delete Rule 440A—Equities, which addresses telemarketing, and adopt new rule text that is substantially similar to FINRA Rule 3230. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to delete Rule 440A—Equities, which addresses telemarketing, and adopt new rule text that is substantially similar to FINRA Rule 3230.[4]

Background

On July 30, 2007, FINRA's predecessor, the National Association of Securities Dealers, Inc. (''NASD''), and NYSE Regulation, Inc. (''NYSER'') consolidated their member firm regulation operations into a combined organization, FINRA. Pursuant to Rule 17d–2 under the Exchange Act, New York Stock Exchange LLC (''NYSE''), NYSER and FINRA entered into an agreement (the ''Agreement'') to reduce regulatory duplication for their members by allocating to FINRA certain regulatory responsibilities for certain NYSE rules and rule interpretations (''FINRA Incorporated NYSE Rules''). NYSE MKT became a party to the Agreement effective December 15, 2008.[5]

As part of its effort to reduce regulatory duplication and relieve firms that are members of FINRA, NYSE and NYSE MKT of conflicting or unnecessary regulatory burdens, FINRA is now engaged in the process of reviewing and amending the NASD and FINRA Incorporated NYSE Rules in order to create a consolidated FINRA rulebook.[6]

Proposed Rule Change

The Exchange proposes to delete Rule 440A—Equities and adopt new Rule 3230—Equities to conform to the changes adopted by FINRA for telemarketing. FINRA adopted NASD Rule 2212 as FINRA Rule 3230, taking into account FINRA Incorporated NYSE Rule 440A[7] and NYSE Interpretation 440A/01. FINRA Rule 3230 adds provisions that are substantially similar to Federal Trade Commission (''FTC'') rules that prohibit deceptive and other abusive telemarketing acts or practices.

NASD Rule 2212 and Rule 440A—Equities are similar rules that require members, among other things, to maintain do-not-call lists, limit the hours of telephone solicitations and prohibit members from using deceptive and abusive acts and practices in connection with telemarketing. The Commission directed FINRA and the Exchange to enact these telemarketing rules in accordance with the Telemarketing Consumer Fraud and Abuse Prevention Act of 1994 (''Prevention Act'').[8] The Prevention Act requires the Commission to promulgate, or direct any national securities exchange or registered securities association to promulgate, rules substantially similar to the FTC rules to prohibit deceptive and other abusive telemarketing acts or practices.[9]

In 2003, the FTC and the Federal Communications Commission (''FCC'') established requirements for sellers and telemarketers to participate in the national do-not-call registry.[10] Pursuant to the Prevention Act, the Commission requested that FINRA and the Exchange amend their telemarketing rules to include a requirement that their members participate in the national do-not-call registry. In 2004, the Commission approved amendments to

[4] *See* Securities Exchange Act Release No. 66279 (January 30, 2012), 77 FR 5611 (February 3, 2012) (SR–FINRA–2011–059). FINRA's rule change will become effective on July 9, 2012. *See* FINRA Regulatory Notice 12–17.

[5] *See* Securities Exchange Act Release No. 56148 (July 26, 2007), 72 FR 42146 (August 1, 2007) (order approving the Agreement); Securities Exchange Act 56147 (July 26, 2007), 72 FR 42166 (August 1, 2007) (SR–NASD–2007–054) (order approving the incorporation of certain NYSE Rules as ''Common Rules''); and Securities Exchange Act 60409 (July 30, 2009), 74 FR 39353 (August 6, 2009) (order approving the amended and restated Agreement, adding NYSE MKT LLC as a party). Paragraph 2(b) of the Agreement sets forth procedures regarding proposed changes by FINRA, NYSE or NYSE MKT to the substance of any of the Common Rules.

[6] FINRA's rulebook currently has three sets of rules: (1) NASD Rules, (2) FINRA Incorporated NYSE Rules, and (3) consolidated FINRA Rules. The FINRA Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (''Dual Members''), while the consolidated FINRA Rules apply to all FINRA members. For more information about the FINRA rulebook consolidation process, *see* FINRA Information Notice, March 12, 2008.

[7] NYSE Rule 440A is identical to Rule 440A—Equities.

[8] 15 U.S.C. 6101–6108.

[9] 15 U.S.C. 6102.

[10] *See* 68 FR 4580 (January 29, 2003); 68 FR 44144 (July 25, 2003); CG Docket No. 02–278, FCC 03–153, (adopted June 26, 2003; released July 3, 2003).

NASD Rule 2212 requiring member firms to participate in the national do-not-call registry.[11] The following year, the Commission approved amendments to NYSE Rule 440A, which were similar to the NASD rule amendments, but included additional provisions regarding the use of caller identification information, pre-recorded messages, telephone facsimiles and computer advertisements.[12]

As mentioned above, the Prevention Act requires the Commission to promulgate, or direct any national securities exchange or registered securities association to promulgate, rules substantially similar to the FTC rules to prohibit deceptive and other abusive telemarketing acts or practices.[13] In 2011, Commission staff directed all exchanges and FINRA to conduct a review of their telemarketing rules and propose rule amendments that provide protections that are at least as strong as those provided by the FTC's telemarketing rules. FINRA's adoption of FINRA Rule 3230 reflects amendments to NASD Rule 2212 and FINRA Incorporated NYSE Rule 440A that update those rules to meet the standards of the Prevention Act.[14]

The proposed rule change, as directed by the Commission staff, adopts provisions in proposed Rule 3230—Equities that are substantially similar to the FTC's current rules that prohibit deceptive and other abusive telemarketing acts or practices as described below.[15]

Telemarketing Requirements

Proposed Rule 3230(a)—Equities provides that no member organization or person associated with a member organization shall initiate any outbound telephone call[16] to:

(1) Any residence of a person before the hour of 8 a.m. or after 9 p.m. (local time at the called party's location), unless the member organization has an established business relationship[17] with the person pursuant to paragraph 3230(m)(12)(A), the member organization has received that person's prior express invitation or permission, or the person called is a broker or dealer;

(2) Any person that previously has stated that he or she does not wish to receive an outbound telephone call made by or on behalf of the member organization;[18] or

(3) Any person who has registered his or her telephone number on the FTC's national do-not-call registry.

The proposed rule change is substantially similar to the FTC's provisions regarding abusive telemarketing acts or practices.[19] The FTC provided a discussion of the provision when it was adopted pursuant to the Prevention Act.[20]

National Do-Not-Call List Exceptions

Proposed Rule 3230(b)—Equities provides that a member organization making outbound telephone calls will not be liable for initiating any outbound telephone call to any person who has registered his or her telephone number on the FTC's national do-not-call registry if:

(1) The member organization has an established business relationship with the recipient of the call;[21]

(2) The member organization has obtained the person's prior express invitation or permission;[22] or

(3) The associated person making the call has a personal relationship[23] with the recipient of the call.

The proposed rule change modifies the established business relationship exception in Rule 440A—Equities and the definition for ''established business relationships,'' which is substantially similar to the FTC's definition of that term.[24] In addition, the proposed rule change is substantially similar to the FTC's provision regarding an exception to the prohibition on making outbound telephone calls to persons on the FTC's do-not-call registry.[25] The FTC provided a discussion of the provision when it

[11] *See* Securities Exchange Act Release No. 49055 (January 12, 2004), 69 FR 2801 (January 20, 2004) (Order Approving File No. SR–NASD–2003–131).

[12] *See* Securities Exchange Act Release No. 52579 (October 7, 2005), 70 FR 60119 (October 14, 2005) (Order Approving File No. SR–NYSE–2004–73).

[13] 15 U.S.C. 6102.

[14] *See* Securities Exchange Act Release No. 65645 (October 27, 2011), 76 FR 67787 (November 2, 2011) (Order Approving File No. SR–FINRA–2011–059).

[15] The text of proposed Rule 3230—Equities would also be the same as FINRA Rule 3230, except that (i) the Exchange would substitute the term ''member organization'' for ''member;'' and (ii) the Exchange would add supplementary material to define the term ''person associated with a member organization'' to have the same meaning as the terms ''person associated with a member'' or ''associated person of a member'' as defined in Article I(rr) of the FINRA By-Laws.

[16] An ''outbound telephone call'' is a telephone call initiated by a telemarketer to induce the purchase of goods or services or to solicit a charitable contribution from a donor. A ''customer'' is any person who is or may be required to pay for goods or services through telemarketing. A ''donor'' means any person solicited to make a charitable contribution. A ''person'' is any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity. ''Telemarketing'' means consisting of or relating to a plan, program, or campaign involving at least one outbound telephone call, for example cold-calling. The term does not include the solicitation of sales through the mailing of written marketing materials, when the person making the solicitation does not solicit customers by telephone but only receives calls initiated by customers in response to the marketing materials and during those calls takes orders only without further solicitation. For purposes of the previous sentence, the term ''further solicitation'' does not include providing the customer with information about, or attempting to sell, anything promoted in the same marketing materials that prompted the customer's call. *See* proposed Rule 3230(m)(11), (14), (16), (17), and (20)—Equities; *see also* FINRA Rule 3230(m)(11), (14), (16), (17), and (20); and 16 CFR 310.2(f), (l), (n), (v), (w), and (dd).

[17] An ''established business relationship'' is a relationship between a member organization and a person if (i) the person has made a financial transaction or has a security position, a money balance, or account activity with the member organization or at a clearing firm that provides clearing services to the member organization within the 18 months immediately preceding the date of an outbound telephone call; (b) the member organization is the broker-dealer of record for an account of the person within the 18 months immediately preceding the date of an outbound telephone call; or (c) the person has contacted the member organization to inquire about a product or service offered by the member organization within the three months immediately preceding the date of an outbound telephone call. A person's established business relationship with a member organization does not extend to the member organization's affiliated entities unless the person would reasonably expect them to be included. Similarly, a person's established business relationship with a member organization's affiliate does not extend to the member organization unless the person would reasonably expect the member organization to be included. The term ''account activity'' includes, but is not limited to, purchases, sales, interest credits or debits, charges or credits, dividend payments, transfer activity, securities receipts or deliveries, and/or journal entries relating to securities or funds in the possession or control of the member organization. The term ''broker-dealer of record'' refers to the broker or dealer identified on a customer's account application for accounts held directly at a mutual fund or variable insurance product issuer. *See* proposed Rule 3230(m)(1), (4), and (12)—Equities; *see also* 16 CFR 310.2(o) and FINRA Rule 3230(m)(1), (4), and (12).

[18] This restriction was previously included under Rule 440A(a)—Equities. *See* the discussion below under Procedures.

[19] *See* 16 CFR 310.4(b)(1)(iii)(A) and (B) and (c); *see also* FINRA Rule 3230(a).

[20] *See* Federal Trade Commission, *Telemarketing Sales Rule,* 68 FR 4580 (Jan. 29, 2003) at 4628; and Federal Trade Commission, *Telemarketing Sales Rule,* 60 FR 43842 (Aug. 23, 1995) at 43855.

[21] A person's request to be placed on the firm-specific do-not-call list terminates the established business relationship exception to that national do-not-call list provision for that member organization even if the person continues to do business with the member organization.

[22] Such permission must be evidenced by a signed, written agreement (which may be obtained electronically under the E–Sign Act (*See* 15 U.S.C. 7001 *et seq.*) between the person and member organization which states that the person agrees to be contacted by the member organization and includes the telephone number to which the calls may be placed.

[23] The term ''personal relationship'' means any family member, friend, or acquaintance of the person making an outbound telephone call. *See* proposed Rule 3230(m)(18)—Equities; *see also* FINRA Rule 3230(m)(18).

[24] *See supra* note 17; *see also* FINRA Rule 3230(a).

[25] *See* 16 CFR 310.4(b)(1)(iii)(B); *see also* FINRA Rule 3230(b).

was adopted pursuant to the Prevention Act.[26]

Safe Harbor Provision

Proposed Rule 3230(c)—Equities provides that a member organization or person associated with a member organization making outbound telephone calls will not be liable for initiating any outbound telephone call to any person who has registered his or her telephone number on the FTC's national do-not-call registry if the member organization or person associated with a member organization demonstrates that the violation is the result of an error and that as part of the member organization's routine business practice, it meets the following standards:

(1) The member organization has established and implemented written procedures to comply with the national do-not-call rules;

(2) The member organization has trained its personnel, and any entity assisting in its compliance, in procedures established pursuant to the national do-not-call rules;

(3) The member organization has maintained and recorded a list of telephone numbers that it may not contact; and

(4) The member organization uses a process to prevent outbound telephone calls to any telephone number on any list established pursuant to the do-not-call rules, employing a version of the national do-not-call registry obtained from the administrator of the registry no more than 31 days prior to the date any call is made, and maintains records documenting this process.

The proposed rule change is substantially similar to the FTC's safe harbor to the prohibition on making outbound telephone calls to persons on the FTC's national do-not-call registry.[27] The FTC provided a discussion of the provision when it was adopted pursuant to the Prevention Act.[28]

Procedures

Proposed Rule 3230(d)—Equities adopts procedures that member organizations must institute to comply with Rule 3230(a)—Equities prior to engaging in telemarketing. These procedures are substantially similar to the procedural requirements under Rule 440A(b)—Equities; however, the proposed rule change deletes the requirement that a member organization honor a firm-specific do-not-call request for five years from the time the request is made. Additionally, the proposed rule change clarifies that the request not to receive further calls would come from a person. The procedures must meet the following minimum standards:

(1) Member organizations must have a written policy for maintaining their do-not-call lists.

(2) Personnel engaged in any aspect of telemarketing must be informed and trained in the existence and use of the member organization's do-not-call list.

(3) If a member organization receives a request from a person not to receive calls from that member organization, the member organization must record the request and place the person's name, if provided, and telephone number on its do-not-call list at the time the request is made.[29]

(4) Member organizations or persons associated with a member organization making an outbound telephone call must make certain caller disclosures set forth in Rule 3230(d)(4)—Equities.

(5) In the absence of a specific request by the person to the contrary, a person's do-not-call request shall apply to the member organization making the call, and will not apply to affiliated entities unless the consumer reasonably would expect them to be included given the identification of the call and the product being advertised.

A member organization making outbound telephone calls must maintain a record of a person's request not to receive further calls.

Inclusion of this requirement to adopt these procedures will not create any new obligations on member organizations, as they are already subject to identical provisions under FCC telemarketing regulations.[30]

Wireless Communications

Proposed Rule 3230(e)—Equities states that the provisions set forth in the rule are applicable to member organizations telemarketing or making telephone solicitations calls to wireless telephone numbers. In addition, proposed Rule 3230(e)—Equities clarifies that the application of the rule also applies to persons associated with a member organization making outbound telephone calls to wireless telephone numbers.[31]

Outsourcing Telemarketing

Rule 3230(f)—Equities states that if a member organization uses another entity to perform telemarketing services on its behalf, the member organization remains responsible for ensuring compliance with all provisions contained in the rule. Proposed Rule 3230(f)—Equities also clarifies that member organizations must consider whether the entity or person that a member organization uses for outsourcing, must be appropriately registered or licensed, where required.[32]

Caller Identification Information

Proposed Rule 3230(g)—Equities provides that any member organization that engages in telemarketing must transmit or cause to be transmitted the telephone number, and, when made available by the member organization's telephone carrier, the name of the member organization, to any caller identification service in use by a recipient of an outbound telephone call. The telephone number so provided must permit any person to make a do-not-call request during regular business hours. In addition, any member organization that engages in telemarketing is prohibited from blocking the transmission of caller identification information.[33]

These provisions are similar to the caller identification provision in the FTC rules.[34] Inclusion of these caller identification provisions in this proposed rule change will not create any new obligations on member organizations, as they are already subject to identical provisions under FCC telemarketing regulations.[35]

Unencrypted Consumer Account Numbers

Proposed Rule 3230(h)—Equities prohibits a member organization or person associated with a member organization from disclosing or receiving, for consideration, unencrypted consumer account numbers for use in telemarketing. The proposed rule change is substantially

[26] *See* Federal Trade Commission, *Telemarketing Sales Rule,* 68 FR 4580 (Jan. 29, 2003) at 4628; and Federal Trade Commission, *Telemarketing Sales Rule,* 60 FR 43842 (Aug. 23, 1995) at 43854.

[27] *See* 16 CFR 310.4(b)(1)(iii)(B); *see also* FINRA Rule 3230(c).

[28] *See* Federal Trade Commission, *Telemarketing Sales Rule,* 68 FR 4580 (Jan. 29, 2003) at 4628; and Federal Trade Commission, *Telemarketing Sales Rule,* 60 FR 43842 (Aug. 23, 1995) at 43855.

[29] Member organizations must honor a person's do-not-call request within a reasonable time from the date the request is made, which may not exceed 30 days from the date of the request. If these requests are recorded or maintained by a party other than the member organization on whose behalf the outbound telephone call is made, the member organization on whose behalf the outbound telephone call is made will still be liable for any failures to honor the do-not-call request.

[30] *See* 47 CFR 64.1200(d); *see also* FINRA Rule 3230(d).

[31] *See also* FINRA Rule 3230(e).

[32] *See also* FINRA Rule 3230(f).

[33] Caller identification information includes the telephone number and, when made available by the member organization's telephone carrier, the name of the member organization.

[34] *See* 16 CFR 310.4(a)(8); *see also* FINRA Rule 3230(g).

[35] *See* 47 CFR 64.1601(e).

similar to the FTC's provision regarding unencrypted consumer account numbers.[36] The FTC provided a discussion of the provision when it was adopted pursuant to the Prevention Act.[37] Additionally, the proposed rule change defines ''unencrypted'' as not only complete, visible account numbers, whether provided in lists or singly, but also encrypted information with a key to its decryption. The proposed definition is substantially similar to the view taken by the FTC.[38]

Submission of Billing Information

The proposed rule change provides that, for any telemarketing transaction, no member organization or person associated with a member organization may submit billing information [39] for payment without the express informed consent of the customer. Proposed Rule 3230(i)—Equities requires, for any telemarketing transaction, a member organization or person associated with a member organization to obtain the express informed consent of the person to be charged and to be charged using the identified account. If the telemarketing transaction involves preacquired account information [40] and a free-to-pay conversion [41] feature, the member organization or person associated with a member organization must:

(1) Obtain from the customer, at a minimum, the last four digits of the account number to be charged;

(2) Obtain from the customer an express agreement to be charged and to be charged using the identified account number; and

(3) Make and maintain an audio recording of the entire telemarketing transaction.

For any other telemarketing transaction involving preacquired account information, the member organization or person associated with a member organization must:

(1) Identify the account to be charged with sufficient specificity for the customer to understand what account will be charged; and

(2) Obtain from the customer an express agreement to be charged and to be charged using the identified account number.

The proposed rule change is substantially similar to the FTC's provision regarding the submission of billing information.[42] The FTC provided a discussion of the provision when it was adopted pursuant to the Prevention Act.[43]

Abandoned Calls

Proposed Rule 3230(j)—Equities prohibits a member organization or person associated with a member organization from abandoning [44] any outbound telemarketing call. The abandoned calls prohibition is subject to a ''safe harbor'' under proposed subparagraph (j)(2) that requires:

(1) The member organization or person associated with a member organization to employ technology that ensures abandonment of no more than three percent of all calls answered by a person, measured over the duration of a single calling campaign, if less than 30 days, or separately over each successive 30-day period or portion thereof that the campaign continues;

(2) The member organization or person associated with a member organization, for each telemarketing call placed, allows the telephone to ring for at least 15 seconds or four rings before disconnecting an unanswered call;

(3) Whenever a person associated with a member organization is not available to speak with the person answering the telemarketing call within two seconds after the person's completed greeting, the member organization or person associated with a member organization promptly plays a recorded message stating the name and telephone number of the member organization or person associated with a member organization on whose behalf the call was placed; and

(4) The member organization to maintain records documenting compliance with the ''safe harbor.''

The proposed rule change is substantially similar to the FTC's provisions regarding abandoned calls.[45] The FTC provided a discussion of the provisions when they were adopted pursuant to the Prevention Act.[46]

Prerecorded Messages

Proposed Rule 3230(k)—Equities prohibits a member organization or person associated with a member organization from initiating any outbound telemarketing call that delivers a prerecorded message without a person's express written agreement [47] to receive such calls. The proposed rule change also requires that all prerecorded telemarketing calls provide specified opt-out mechanisms so that a person can opt out of future calls. The prohibition does not apply to a prerecorded message permitted for compliance with the ''safe harbor'' for abandoned calls under proposed subparagraph (j)(2).

The proposed rule change is substantially similar to the FTC's provisions regarding prerecorded messages.[48] The FTC provided a discussion of the provisions when they were adopted pursuant to the Prevention Act.[49]

Credit Card Laundering

Proposed Rule 3230(l)—Equities prohibits credit card laundering, the practice of depositing into the credit card system [50] a sales draft that is not the result of a credit card transaction

[36] *See* 16 CFR 310.4(a)(6); *see also* FINRA Rule 3230(h).

[37] *See* Federal Trade Commission, *Telemarketing Sales Rule,* 68 FR 4580 (January 29, 2003) at 4615.

[38] *See id.* at 4616.

[39] The term ''billing information'' means any data that enables any person to access a customer's or donor's account, such as a credit or debit card number, a brokerage, checking, or savings account number, or a mortgage loan account number. *See* proposed Rule 3230(m)(3)—Equities.

[40] The term ''preacquired account information'' means any information that enables a member organization or person associated with a member organization to cause a charge to be placed against a customer's or donor's account without obtaining the account number directly from the customer or donor during the telemarketing transaction pursuant to which the account will be charged. *See* proposed Rule 3230(m)(19)—Equities.

[41] The term ''free-to-pay conversion'' means, in an offer or agreement to sell or provide any goods or services, a provision under which a customer receives a product or service for free for an initial period and will incur an obligation to pay for the product or service if he or she does not take affirmative action to cancel before the end of that period. *See* proposed Rule 3230(m)(13)—Equities.

[42] *See* 16 CFR 310.4(a)(7); *see also* FINRA Rule 3230(i).

[43] *See* Federal Trade Commission, *Telemarketing Sales Rule,* 68 FR 4580 (January 29, 2003) at 4615.

[44] An outbound telephone call is ''abandoned'' if the called person answers it and the call is not connected to a member organization or person associated with a member organization within two seconds of the called person's completed greeting.

[45] *See* 16 CFR 310.4(b)(1)(iv); *see also* 16 CFR 310.4(b)(4).

[46] *See* Federal Trade Commission, *Telemarketing Sales Rule,* 68 FR 4580 (January 29, 2003) at 4641.

[47] The express written agreement must: (a) Have been obtained only after a clear and conspicuous disclosure that the purpose of the agreement is to authorize the member organization to place prerecorded calls to such person; (b) have been obtained without requiring, directly or indirectly, that the agreement be executed as a condition of purchasing any good or service; (c) evidence the willingness of the called person to receive calls that deliver prerecorded messages by or on behalf of the member organization; and (d) include the person's telephone number and signature (which may be obtained electronically under the E-Sign Act).

[48] *See* 16 CFR 310.4(b)(1)(v); *see also* FINRA Rule 3230(k).

[49] *See* Federal Trade Commission, *Telemarketing Sales Rule,* 73 FR 51164 (August 29, 2008) at 51165.

[50] The term ''credit card system'' means any method or procedure used to process credit card transactions involving credit cards issued or licensed by the operator of that system. The term ''credit card'' means any card, plate, coupon book, or other credit device existing for the purpose of obtaining money, property, labor, or services on credit. The term ''credit'' means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment. *See* proposed Rule 3230(m)(7), (8), and (10)—Equities.

between the cardholder[51] and the member organization. Except as expressly permitted, the proposed rule change prohibits a member organization or person associated with a member organization from:

(1) Presenting to or depositing into, the credit card system for payment, a credit card sales draft[52] generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the member organization;

(2) Employing, soliciting, or otherwise causing a merchant,[53] or an employee, representative or agent of the merchant, to present to or to deposit into the credit card system for payment, a credit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the merchant; or

(3) Obtaining access to the credit card system through the use of a business relationship or an affiliation with a merchant, when such access is not authorized by the merchant agreement[54] or the applicable credit card system.

The proposed rule change is substantially similar to the FTC's provisions regarding credit card laundering.[55] The FTC provided a discussion of the provisions when they were adopted pursuant to the Prevention Act.[56]

Definitions

Proposed Rule 3230(m)—Equities adopts the following definitions, which are substantially similar to the FTC's definitions of these terms: ''acquirer,'' ''billing information,'' ''caller identification service,'' ''cardholder,'' ''charitable contribution,'' ''credit,'' ''credit card,'' ''credit card sales draft,'' ''credit card system,'' ''customer,'' ''donor,'' ''established business relationship,'' ''free-to-pay conversion,'' ''merchant,'' ''merchant agreement,'' ''outbound telephone call,'' ''person,'' ''preacquired account information,'' and telemarketing''.[57] The FTC provided a discussion of each definition when they were adopted pursuant to the Prevention Act.

The Exchange proposes make Rule 3230—Equities effective on the same date as FINRA makes FINRA Rule 3230 effective.[58]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Exchange Act[59] in general, and furthers the objectives of Section 6(b)(5)[60] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. Specifically, the Exchange believes that the proposed rule change supports the objectives of the Exchange Act by providing greater harmonization between NYSE MKT Equities Rules and FINRA Rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance. In particular, NYSE MKT member organizations that are also FINRA members are subject to both Rule 440A—Equities and FINRA Rule 3230 and harmonizing these two rules would promote just and equitable principles of trade by requiring a single standard for telemarketing. In addition, adopting Rule 3230—Equities will assure that the Exchange's rules governing telemarketing meet the standards set forth in the Prevention Act. To the extent the Exchange has proposed changes that differ from the FINRA version of the NYSE MKT Equities Rules, it believes such changes are technical in nature and do not change the substance of the proposed NYSE MKT Equities Rules. The Exchange also believes that the proposed rule change will update and clarify the requirements governing telemarketing, which will promote just and equitable principles of trade and help to protect investors.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received written comments with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Exchange Act[61] and Rule 19b–4(f)(6) thereunder.[62] 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 prior to 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 Exchange Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[63] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[64] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public

[51] The term ''cardholder'' means a person to whom a credit card is issued or who is authorized to use a credit card on behalf of or in addition to the person to whom the credit card is issued. *See* proposed Rule 3230(m)(6)—Equities.

[52] The term ''credit card sales draft'' means any record or evidence of a credit card transaction. *See* proposed Rule 3230(m)(9)—Equities.

[53] The term ''merchant'' means a person who is authorized under written contract with an acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services or a charitable contribution. The term ''acquirer'' means a business organization, financial institution, or an agent of a business organization or financial institution that has authority from an organization that operates or licenses a credit card system to authorize merchants to accept, transmit, or process payment by credit card through the credit card system for money, goods or services, or anything else of value. A ''charitable contribution'' means any donation or gift of money or any other thing of value, for example a transfer to a pooled income fund. *See* proposed Rule 3230(m)(2) and (14)—Equities.

[54] The term ''merchant agreement'' means a written contract between a merchant and an acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services or charitable contribution. *See* proposed Rule 3230(m)(15)—Equities.

[55] *See* 16 CFR 310.2; *see also* FINRA Rule 3230(l).

[56] *See* Federal Trade Commission, *Telemarketing Sales Rule,* 60 FR 43842 (August 23, 1995) at 43852.

[57] *See* proposed Rule 3230(m)(2), (3), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14), (15), (16), (17), (19), and (20)—Equities; and 16 CFR 310.2(a), (c), (d), (e), (f), (h), (i), (j), (k), (l), (n), (o), (p), (s), (t), (v), (w), (x), and (dd); *see also* FINRA Rule 3230(m)(2), (3), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14), (15), (16), (17), (19), and (20). The proposed rule change also adopts definitions of ''account activity,'' ''broker-dealer of record,'' and ''personal relationship'' that are substantially similar to FINRA's definitions of these terms. *See* proposed Rule 3230(m)(1), (4), and (18)—Equities and FINRA Rule 3230(m)(1), (4), and (18); *see also* 47 CFR 64.1200(t)(14) (FCC's definition of ''personal relationship'').

[58] *See supra* note 4.

[59] 15 U.S.C. 78f(b).

[60] 15 U.S.C. 78f(b)(5).

[61] 15 U.S.C. 78s(b)(3)(A)(iii).

[62] 17 CFR 240.19b–4(f)(6).

[63] 17 CFR 240.19b–4(f)(6).

[64] 17 CFR 240.19b–4(f)(6)(iii).

interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing.

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 Exchange 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 Exchange Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEMKT–2012–03 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–NYSEMKT–2012–03. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 100 F Street NE., Washington, DC 20549–1090 on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at *www.nyse.com.* 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–NYSEMKT–2012–03 and should be submitted on or before August 6, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[65]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–17176 Filed 7–13–12; 8:45 am]

**BILLING CODE 8011–01–P**

[65] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–67379; File No. SR–EDGX–2012–26]**

## Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the EDGX Exchange, Inc. Fee Schedule

July 10, 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 June 29, 2012, EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') 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 the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its fees and rebates applicable to Members[3] of the Exchange pursuant to EDGX Rule 15.1(a) and (c). All of the changes described herein are applicable to EDGX Members. The text of the proposed rule change is available on the Exchange's Internet Web site at *http://www.directedge.com*, at the Exchange's principal office, and at the Public Reference Room of the Commission.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to add Flag PR to its fee schedule. Flag PR will be yielded when a Member removes liquidity from the EDGX book using the ROUQ[4] routing strategy. The Exchange proposes to assess a charge of $0.0027 per share. In addition, a technical amendment is proposed to be made to Footnote 13 to include it as an additional removal flag in clause (ii) of that footnote.

In order to provide additional transparency to Members on the Exchange's fee schedule by distinguishing between orders that are routed using the ROUQ strategy and orders that are routed using the ROUC[5] routing strategy, the Exchange proposes to add Flag RQ to the Exchange's fee schedule. Flag RQ will be yielded when a Member routes an order using the ROUQ routing strategy. The Exchange proposes to assess a charge of $0.0027 per share instead of the current charge of $0.0020 per share. In addition, the Exchange proposes to make conforming changes to Flag Q to delete the reference to the ROUQ routing strategy.

The Exchange proposes to amend Footnote 1 of the fee schedule to state that Members can qualify for the Market Depth tier and receive a rebate of $0.0033 per share for displayed liquidity added on EDGX if they post greater than or equal to 0.50% of the Total Consolidated Volume in Average Daily Volume on EDGX in total, where at least 2 million shares are Non-Displayed Orders that yield Flag HA.

The Exchange also proposes to amend Flag K to only apply to Members' orders

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A Member is any registered broker or dealer, or any person associated with a registered broker or dealer, that has been admitted to membership in the Exchange.

[4] *See* Exchange Rule 11.9(b)(3)(c)(iv).

[5] *See* Exchange Rule 11.9(b)(3)(a).

routed to NASDAQ OMX PSX (''PSX'') using the ROUC or ROUE routing strategy as defined in Rule 11.9(b)(3). The Exchange proposes to reduce the rate from $0.0025 per share to $0.0005 per share, which represents a pass-through of the Exchange's rate for routing orders to PSX, in response to the proposed pricing changes in PSX's pending filing with the Commission.[6] Accordingly, where Members' orders are routed to the BATS BZX Exchange (''BATS BZX'') using the ROBA routing strategy (EDGX + BATS), the Exchange proposes to apply Flag X, which is yielded when Members route orders through EDGX and the Exchange assesses a charge of $0.0029 per share.

Similarly, the Exchange also proposes to amend the rate for Flag RS, which is yielded when Members route orders to PSX that add liquidity. The Exchange proposes to amend the pricing for Flag RS from a rebate of $0.0024 per share to a charge of $0.0005 per share (in response to PSX's pending filing), which represents a pass-through of the Exchange's rate for routing orders to PSX.

The Exchange proposes to implement these amendments to its fee schedule on July 1, 2012.

2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with the objectives of Section 6 of the Act,[7] in general, and furthers the objectives of Section 6(b)(4),[8] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

Exchange Rule 11.9(b)(3) defines the ''System routing table'' as the proprietary process for determining the specific trading venues to which the System[9] routes orders and the order in which the System routes them. Specifically, the Exchange reserves the right to maintain a different System routing table for different routing options and to modify the System routing table at any time without notice. ROUQ is one of the routing strategies that checks the System for available shares before sending the order to other destinations on the System routing table, and if shares remain unexecuted after routing, then the shares are posted on the EDGX book unless the Member instructs otherwise. The Exchange proposes to reduce the number of destinations in the System routing table for the ROUQ routing strategy, and the Exchange proposes to make conforming changes to the fee schedule to reflect this change.

The Exchange believes that the proposed rate of $0.0027 per share for Flag PR for orders that remove liquidity from the EDGX book using the ROUQ routing strategy is an equitable allocation of reasonable dues, fees, and other charges in comparison to the standard removal rate of $0.0029 per share because the Exchange is able to pass back the savings it receives from routing to other destinations on the Systems routing table to the Exchange's Members. The more destinations that an order is routed to can lead to a potentially lower average rate for Direct Edge ECN LLC d/b/a DE Route (''DE Route''), the Exchange's affiliated routing broker/dealer, as there is more of a likelihood of an execution at a ''low'' cost destination with higher rebates/lower fees. Conversely, the less destinations that an order is routed to can lead to a potentially higher average rate for DE Route as there is a greater chance that it is executed at a higher cost destination with lower rebates/higher fees. This rate is also consistent with the processing of similar routing strategies by BATS where BATS takes into account the rates that it is charged or rebated when routing to other destinations.[10] In addition, the reduced fee of $0.0027 per share is designed to incentivize Members to route through EDGX first before going to other destinations on the System routing table, and thereby potentially increases volume on EDGX to the extent the order executes on EDGX. The Exchange also believes that the proposed rate is non-discriminatory in that it applies uniformly to all Members.

Currently, the Exchange assesses a rate of $0.0020 per share for Flag Q for routing strategies ROUQ or ROUC. As discussed above, the Exchange modified its System routing table so that routing strategy ROUQ will route to a lower number of destinations than routing strategy ROUC. Therefore, the Exchange proposes adding Flag RQ to reflect orders routed using ROUQ and amending Flag Q to apply only for orders routed using the ROUC routing strategy. The Exchange believes increasing the rate charged for routing strategy ROUQ from $0.0020 per share to $0.0027 (Flag RQ) per share represents an equitable allocation of reasonable dues, fees, and other charges. The more destinations that an order is routed to can lead to a potentially lower average rate for DE Route as there is more of a likelihood of an execution at a ''low'' cost destination with higher rebates/lower fees. Conversely, the less destinations that an order is routed to can lead to a potentially higher average rate for DE Route as there is a greater chance that it is executed at a higher cost destination with lower rebates/higher fees. Accordingly, the lower number of destinations associated with the ROUQ routing strategy on the revised System routing table affords the Member less likelihood of execution at an away destination because there are fewer available liquidity venues.

Currently, the standard rate for routing on EDGX is $0.0029 per share and yields Flag X. The Exchange believes that assessing a rate of $0.0027 for Flag RQ for orders that route to destinations using the routing strategy ROUQ represents an equitable allocation of reasonable dues, fees, and other charges because the Exchange can pass back the savings it receives from routing to other destinations to its Members, as described in more detail above.[11] In addition, the Exchange believes that the proposed rate is non-discriminatory because the rate applies uniformly to all Members.

The Exchange believes that adding the Market Depth Tier to achieve a rebate of $0.0033 per share represents an equitable allocation of reasonable dues, fees, and other charges since it encourages Members to add displayed liquidity to EDGX book each month as only the displayed liquidity in this tier is awarded the rebate of $0.0033 per share.[12] This tier also recognizes the contribution that non-displayed liquidity provides to the marketplace, including: (i) Adding needed depth to the EDGX market; (ii) providing price support/depth of liquidity; and (iii) increasing diversity of liquidity to EDGX. Furthermore, such increased displayed volume increases potential

[6] *See* PSX's Equity Trader Alert #2012–28 at *http://www.nasdaqtrader.com/TraderNews.aspx?id=ETA2012-28* (discussing PSX's pending fee changes effective July 2, 2012).

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(4).

[9] *See* Exchange Rule 1.5(cc).

[10] *See* Securities Exchange Act Release No. 66335 (February 6, 2012), 77 FR 7225 (February 10, 2012) (SR–EDGA–2012–03) (citing to the proposition that Members of the EDGA Exchange, Inc. (''EDGA'') are able to share in cost savings realized by EDGA when routing orders to other destinations). The concept is also seen generally in the BATS BZX fee schedule, describing Discounted Destination Specific Routing (''One Under'') to NYSE, NYSE ARCA and NASDAQ. *See* Securities Exchange Act Release No. 62858 (September 7, 2010), 75 FR 55838 (September 14, 2010) (SR–BATS–2010–023) (modifying the BATS fee schedule in order to amend the fees for its BATS + NYSE Arca destination specific routing option to continue to offer a ''one under'' pricing model).

[11] *Id.*

[12] The Exchange notes that there is no change to the rebate of $0.0015 per share for adding non-displayed liquidity.

revenue to the Exchange, and would allow the Exchange to spread its administrative and infrastructure costs over a greater number of shares, leading to lower per share costs. These lower per share costs would allow the Exchange to pass on the savings to Members in the form of higher rebates. The increased liquidity also benefits all investors by deepening EDGX's liquidity pool, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency and improving investor protection. Volume-based rebates such as the one proposed herein have been widely adopted in the cash equities markets, and are equitable because they are open to all Members on an equal basis and provide discounts that are reasonably related to the value to an exchange's market quality associated with higher levels of market activity, such as higher levels of liquidity provision and introduction of higher volumes of orders into the price and volume discovery processes. The Exchange believes that such Market Depth Tier is reasonable based on examples from the Nasdaq OMX's fee schedule, which offers rebates that are tied to achieving tiers by posting non-displayed liquidity.[13] In addition, the Exchange also believes that the proposed Market Depth tier is non-discriminatory because it applies uniformly to all Members.

The Exchange believes that the rebate of $0.0033 per share also represent an equitable allocation of reasonable dues, fees, and other charges since higher rebates are directly correlated with more stringent criteria.

Currently, the Mega Tier rebates of $0.0034/$0.0032 per share have the most stringent criteria associated with them, and are $0.0003/$0.0001 greater than the Ultra Tier rebate ($0.0031 per share) and $0.0006/$0.0004 greater than the Super Tier rebate ($0.0028 per share).

For example, in order for a Member to qualify for the Mega Tier rebate of $0.0034, the Member would have to add or route at least 4 million shares of ADV during pre- and post-trading hours and add a minimum of 20 million shares of ADV on EDGX in total, including during both market hours and pre- and post-trading hours. The criteria for this tier is the most stringent as fewer Members generally trade during pre- and post-trading hours because of the limited time parameters associated with these trading sessions. The Exchange believes that this higher rebate awarded to Members would incent liquidity during these trading sessions.

In order to qualify for an equivalent rebate of $0.0034 per share (Mega Tape B tier), a Member would have to (i) post greater than or equal to .10% of the TCV in ADV more than their January 2012 ADV added to EDGX; and (ii) post greater than or equal to .10% of the TCV in ADV in Tape B securities more than their January 2012 ADV (baseline) added to EDGX. Assuming a TCV for June 2012 of 8.0 billion and a January 2012 ADV of 1 million shares, the Member would have to post greater than or equal to 9 million shares (8 million shares more than their January 2012 baseline of 1 million shares in ADV added to EDGX), and post greater than or equal to 9 million shares in Tape B securities to EDGX).

In order to qualify for the new Market Depth tier, a Member would receive a rebate of $0.0033 per share for displayed liquidity added on EDGX if they post greater than or equal to 0.50% of the TCV in ADV on EDGX, at least 2 million shares of which are Non-Displayed Orders that yield Flag HA on EDGX in total. Assuming a TCV of 8.0 billion shares for June 2012, this would amount to 40 million shares, at least 2 million shares of which are Non-Displayed Orders. The criteria for the Market Depth Tier, which includes the requirement to post 2 million shares of Non-Displayed Orders, is more stringent than criteria for the Mega Tier of posting 0.75% of TCV, as described below, because Non-Displayed Orders do not have the same ability to attract contra-side orders to the marketplace because they are hidden on the EDGX book, are less commonplace than displayed liquidity, and Members are not eligible for the same rebates that displayed liquidity qualify for.[14] In addition, because of the hierarchy of priority in Rule 11.8(a)(2), for equally priced trading interest, Non-Displayed Orders always have a lower priority than displayed orders. As a result, a Member has a priority disadvantage when using such order type and therefore, the criteria to satisfy this tier are more restrictive than those outlined in other tiers, below.

Non-Displayed Orders also represent valuable liquidity to the Exchange as they add needed depth to the EDGX market and provide price support/depth of liquidity and diversity of liquidity to EDGX. In addition, Non-Displayed Orders are included in the Market Depth Tier to incentivize Members to add displayed liquidity. Because of the higher margin that the Exchange earns on Non-Displayed Orders vs. displayed orders (non-displayed orders are charged $0.0029 per share and earn a $0.0015 per share rebate, as provided in Flag HA, which is a margin of $0.0014 per share),[15] the Exchange is able to provide a higher rebate to displayed orders. The Exchange believes the higher rebate will attract increased liquidity to EDGX.

In addition, increased volume from the use of this tier increases potential revenue to the Exchange, and would allow the Exchange to spread its administrative and infrastructure costs over a greater number of shares, leading to lower per share costs. These lower per share costs would allow the Exchange to pass on the savings to Members in the form of higher rebates. The increased liquidity also benefits all investors by deepening EDGX's liquidity pool, offering additional flexibility for all investors to enjoy cost savings, supporting, in part, the qualities of price discovery and market transparency, and improving investor protection. Volume-based rebates such as the one proposed herein have been widely adopted in the cash equities markets, and are equitable because they are open to all Members on an equal basis and provide discounts that are reasonably related to the value to an exchange's market quality associated with higher levels of market activity, such as higher levels of liquidity provision and introduction of higher volumes of orders into the price and volume discovery processes.

Another way a Member can qualify for the Mega Tier (with a rebate of $0.0032 per share) would be to post 0.75% of TCV. Assuming an average TCV for June 2012 (8.0 billion), this would be 60 million shares on EDGX. A second method to qualify for the rebate of $0.0032 per share would be to post 0.12% of the TCV (9.6 million shares) more than the Member's February 2011 or December 2011 ADV added to EDGX. Assuming the Member's February 2011/December 2011 ADVs are 1 million shares, the Exchange believes that requiring Members to post 10.6 million more shares than a February or December 2011 baseline ADV encourages Members to add increasing

[13] *http://www.nasdaqtrader.com/Trader.aspx?id=PriceListTrading2* (where Nasdaq offers rebates to add non-displayed midpoint liquidity, supplemental liquidity, non-displayed liquidity).

[14] Non-Displayed Orders that add liquidity (Flag HA) are eligible for a $0.0015 per share rebate instead of the default rebate rate for displayed liquidity of $0.0023 per share.

[15] By contrast, displayed liquidity only allows the Exchange to earn a margin of as much as $0.0006 per share assuming no volume tiers are met (charged $0.0029 per share – $0.0023 per share rebate).

amounts of liquidity to EDGX each month.

A Member can also qualify for the Mega Tier rebate of $0.0032 per share by adding or routing at least 4,000,000 shares of ADV prior to 9:30 a.m. or after 4:00 p.m. (includes all flags except 6) and adding a minimum of .20% of the TCV on a daily basis measured monthly, including during both market hours and/or pre- and post-trading hours. Based on an average TCV for June 2012 (8.0 billion shares), a Member would qualify by adding 16 million shares during both market hours and/or pre- and post-trading hours and adding or routing at least 4,000,000 shares of ADV during pre- and post trading hours. The Exchange notes that fewer Members generally trade during pre- and post-trading hours because of the limited time parameters associated with these trading sessions. Therefore, the amount of shares that the Exchange requires to be added or routed to satisfy this tier is less than for the Ultra Tier, for example, which is based on posting liquidity to EDGX during regular trading hours.

In order to qualify for the Ultra Tier, which has less stringent criteria than the Mega Tier and Mega Tape B Tier, and be provided a rebate of $0.0031 per share, the Member would have to post 0.50% of TCV. Based on average TCV for June 2012 (8.0 billion shares), this would be 40 million shares on EDGX.

Members can qualify for the Mini Tape B Tier and be provided a $0.0030 rebate per share for liquidity added on EDGX if the Member on a daily basis, measured monthly: (i) posts greater than or equal to .05% of the TCV in ADV more than their January 2012 ADV added to EDGX; and (ii) posts greater than or equal to .05% of the TCV in ADV in Tape B securities more than their January 2012 ADV added to EDGX. Based on a TCV of 8.0 billion shares for June 2012 and a Member's ADV for January 2012 of 1 million shares (baseline), this would amount to (i) posting greater than or equal to 5 million shares to EDGX; and (ii) posting greater than or equal to 5 million shares in Tape B securities to EDGX.

The Super Tier has the least stringent criteria of the tiers mentioned above. In order for a Member to qualify for this rebate, the Member would have to post at least 10 million shares on EDGX and would qualify for a rebate of $0.0028 per share.

Another way a Member can qualify for a rebate of $0.0028 per share is to post 0.065% of the TCV in ADV more than their February 2011 ADV added to EDGX. This tier allows Members even greater flexibility with respect to achieving an additional rebate and rewards growth patterns in volume by Members as this rebate's conditions encourage Members to add increasing amounts of liquidity to EDGX each month. Based on an ADV in February 2011 (baseline) of 1,000,000 shares, the Member would have to add 6.2 million shares total to qualify for such rebate.

The rates and rebates associated with routing orders to PSX on the Exchange's fee schedule are pass-through rates. Currently, PSX charges the Exchange $0.0025 per share for Members' orders that are routed to PSX using the ROUC or ROUE routing strategy and the Exchange charges its Members $0.0025 per share as a pass-through. Therefore, the Exchange believes that the proposed reduction from $0.0025 per share to $0.0005 per share is equitable and reasonable because PSX is reducing the rate it charges the Exchange for routing to PSX to $0.0005. Currently, PSX provides the Exchange a rebate of $0.0024 per share for Members' orders that are routed to PSX and add liquidity and the Exchange rebates Members $0.0024 per share as a pass-through (Flag RS). Therefore, the Exchange believes that the proposed reduction from a rebate of $0.0024 per share to a charge of $0.0005 per share is equitable and reasonable because PSX is increasing the rate it charges the Exchange for routing to PSX to $0.0005 per share. In addition, the Exchange also believes that the proposed pass-through of this rate is non-discriminatory because it applies uniformly to all Members.

The Exchange believes that increasing the charge assessed for Members' orders that are routed to BATS BZX using the ROBA routing strategy (EDGX + BATS) from $0.0025 per share to $0.0029 per share (yielding Flag X) is equitable and reasonable because the Exchange is removing the $0.0004 per share incentive it previously associated with this routing strategy and replacing it with a straight pass-through of the charge BATS BZX assesses the Exchange for removing liquidity from the BZX Exchange order book.[16] Accordingly, the Exchange will assess a charge of $0.0029 per share for Members' orders that route to BATS BZX using the ROBA routing strategy as well as other routed orders that yield Flag X. In addition, the Exchange also believes that the proposed pass-through of this rate is non-discriminatory because it applies uniformly to all Members.

The Exchange also notes that it operates in a highly-competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The proposed rule change reflects a competitive pricing structure designed to incent market participants to direct their order flow to the Exchange. The Exchange believes that the proposed rates are equitable and non-discriminatory in that they apply uniformly to all Members. The Exchange believes the fees and credits remain competitive with those charged by other venues and therefore continue to be reasonable and equitably allocated to Members.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

## 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) of the Act [17] and Rule 19b–4(f)(2) [18] thereunder. 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

[16] *See* BATS BZX fee schedule at *http://batstrading.com/FeeSchedule/*.

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f)(2).

Number SR–EDGX–2012–26 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–EDGX–2012–26. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EDGX–2012–26 and should be submitted on or before August 6, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–17197 Filed 7–13–12; 8:45 am]

**BILLING CODE 8011–01–P**

[19] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–67374; File No. SR–NYSE–2012–15]**

## Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Deleting NYSE Rule 440A and Interpretation 440A/01, Which Address Telemarketing, and Adopting New NYSE Rule 3230 To Conform to FINRA's Telemarketing Rule

July 10, 2012.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Exchange Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that June 25, 2012, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, 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 delete NYSE Rule 440A and Interpretation 440A/01, which address telemarketing, and adopt new rule text that is substantially similar to FINRA Rule 3230. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.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 those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to delete NYSE Rule 440A and Interpretation 440A/01, which address telemarketing, and adopt new rule text that is substantially similar to FINRA Rule 3230.[4]

Background

On July 30, 2007, FINRA's predecessor, the National Association of Securities Dealers, Inc. (''NASD''), and NYSE Regulation, Inc. (''NYSER'') consolidated their member firm regulation operations into a combined organization, FINRA. Pursuant to Rule 17d–2 under the Exchange Act, NYSE, NYSER and FINRA entered into an agreement (the ''Agreement'') to reduce regulatory duplication for their members by allocating to FINRA certain regulatory responsibilities for certain NYSE rules and rule interpretations (''FINRA Incorporated NYSE Rules''). NYSE MKT LLC (''NYSE MKT'') became a party to the Agreement effective December 15, 2008.[5]

As part of its effort to reduce regulatory duplication and relieve firms that are members of FINRA, NYSE and NYSE MKT of conflicting or unnecessary regulatory burdens, FINRA is now engaged in the process of reviewing and amending the NASD and FINRA Incorporated NYSE Rules in order to create a consolidated FINRA rulebook.[6]

Proposed Rule Change

The Exchange proposes to delete NYSE Rule 440A and Interpretation

[4] *See* Securities Exchange Act Release No. 66279 (January 30, 2012), 77 FR 5611 (February 3, 2012) (SR–FINRA–2011–059). FINRA's rule change will become effective on July 9, 2012. *See* FINRA Regulatory Notice 12–17.

[5] *See* Securities Exchange Act Release No. 56148 (July 26, 2007), 72 FR 42146 (August 1, 2007) (order approving the Agreement); Securities Exchange Act 56147 (July 26, 2007), 72 FR 42166 (August 1, 2007) (SR–NASD–2007–054) (order approving the incorporation of certain NYSE Rules as ''Common Rules''); and Securities Exchange Act 60409 (July 30, 2009), 74 FR 39353 (August 6, 2009) (order approving the amended and restated Agreement, adding NYSE MKT LLC as a party). Paragraph 2(b) of the Agreement sets forth procedures regarding proposed changes by FINRA, NYSE or NYSE MKT to the substance of any of the Common Rules.

[6] FINRA's rulebook currently has three sets of rules: (1) NASD Rules, (2) FINRA Incorporated NYSE Rules, and (3) consolidated FINRA Rules. The FINRA Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (''Dual Members''), while the consolidated FINRA Rules apply to all FINRA members. For more information about the FINRA rulebook consolidation process, *see* FINRA Information Notice, March 12, 2008.

440A/01 and adopt new NYSE Rule 3230 to conform to the changes adopted by FINRA for telemarketing. FINRA adopted NASD Rule 2212 as FINRA Rule 3230, taking into account FINRA Incorporated NYSE Rule 440A and Interpretation 440A/01. FINRA Rule 3230 adds provisions that are substantially similar to Federal Trade Commission (''FTC'') rules that prohibit deceptive and other abusive telemarketing acts or practices.

NASD Rule 2212 and NYSE Rule 440A are similar rules that require members, among other things, to maintain do-not-call lists, limit the hours of telephone solicitations, and prohibit members from using deceptive and abusive acts and practices in connection with telemarketing. The Commission directed FINRA and the Exchange to enact these telemarketing rules in accordance with the Telemarketing Consumer Fraud and Abuse Prevention Act of 1994 (''Prevention Act'').[7] The Prevention Act requires the Commission to promulgate, or direct any national securities exchange or registered securities association to promulgate, rules substantially similar to the FTC rules to prohibit deceptive and other abusive telemarketing acts or practices.[8]

In 2003, the FTC and the Federal Communications Commission (''FCC'') established requirements for sellers and telemarketers to participate in the national do-not-call registry.[9] Pursuant to the Prevention Act, the Commission requested that FINRA and the Exchange amend their telemarketing rules to include a requirement that their members participate in the national do-not-call registry. In 2004, the Commission approved amendments to NASD Rule 2212 requiring member firms to participate in the national do-not-call registry.[10] The following year, the Commission approved amendments to NYSE Rule 440A, which were similar to the NASD rule amendments, but included additional provisions regarding the use of caller identification information, pre-recorded messages, telephone facsimiles, and computer advertisements.[11]

As mentioned above, the Prevention Act requires the Commission to promulgate, or direct any national securities exchange or registered securities association to promulgate, rules substantially similar to the FTC rules to prohibit deceptive and other abusive telemarketing acts or practices.[12] In 2011, Commission staff directed all exchanges and FINRA to conduct a review of their telemarketing rules and propose rule amendments that provide protections that are at least as strong as those provided by the FTC's telemarketing rules. FINRA's adoption of FINRA Rule 3230 reflects amendments to NASD Rule 2212 and FINRA Incorporated NYSE Rule 440A that update those rules to meet the standards of the Prevention Act.[13]

The proposed rule change, as directed by the Commission staff, adopts provisions in proposed NYSE Rule 3230 that are substantially similar to the FTC's current rules that prohibit deceptive and other abusive telemarketing acts or practices as described below.[14]

Telemarketing Requirements

Proposed NYSE Rule 3230(a) provides that no member organization or person associated with a member organization shall initiate any outbound telephone call[15] to:

(1) Any residence of a person before the hour of 8 a.m. or after 9 p.m. (local time at the called party's location), unless the member organization has an established business relationship[16] with the person pursuant to paragraph 3230(m)(12)(A), the member organization has received that person's prior express invitation or permission, or the person called is a broker or dealer;

(2) Any person that previously has stated that he or she does not wish to receive an outbound telephone call made by or on behalf of the member organization;[17] or

(3) Any person who has registered his or her telephone number on the FTC's national do-not-call registry.

The proposed rule change is substantially similar to the FTC's provisions regarding abusive telemarketing acts or practices.[18] The FTC provided a discussion of the provision when it was adopted pursuant to the Prevention Act.[19]

National Do-Not-Call List Exceptions

Proposed NYSE Rule 3230(b) provides that a member organization making

[7] 15 U.S.C. 6101–6108.

[8] 15 U.S.C. 6102.

[9] *See* 68 FR 4580 (January 29, 2003); 68 FR 44144 (July 25, 2003); CG Docket No. 02–278, FCC 03–153, (adopted June 26, 2003; released July 3, 2003).

[10] *See* Securities Exchange Act Release No. 49055 (January 12, 2004), 69 FR 2801 (January 20, 2004) (Order Approving File No. SR–NASD–2003–131).

[11] *See* Securities Exchange Act Release No. 52579 (October 7, 2005), 70 FR 60119 (October 14, 2005) (Order Approving File No. SR–NYSE–2004–73).

[12] 15 U.S.C. 6102.

[13] *See* Securities Exchange Act Release No. 65645 (October 27, 2011), 76 FR 67787 (November 2, 2011) (Order Approving File No. SR–FINRA–2011–059).

[14] The text of proposed NYSE Rule 3230 would also be the same as FINRA Rule 3230, except that (i) the Exchange would substitute the term ''member organization'' for ''member;'' and (ii) the Exchange would add supplementary material to define the term ''person associated with a member organization'' to have the same meaning as the terms ''person associated with a member'' or ''associated person of a member'' as defined in Article I(rr) of the FINRA By-Laws.

[15] An ''outbound telephone call'' is a telephone call initiated by a telemarketer to induce the purchase of goods or services or to solicit a charitable contribution from a donor. A ''customer'' is any person who is or may be required to pay for goods or services through telemarketing. A ''donor'' means any person solicited to make a charitable contribution. A ''person'' is any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity. ''Telemarketing'' means consisting of or relating to a plan, program, or campaign involving at least one outbound telephone call, for example cold-calling. The term does not include the solicitation of sales through the mailing of written marketing materials, when the person making the solicitation does not solicit customers by telephone but only receives calls initiated by customers in response to the marketing materials and during those calls takes orders only without further solicitation. For purposes of the previous sentence, the term ''further solicitation'' does not include providing the customer with information about, or attempting to sell, anything promoted in the same marketing materials that prompted the customer's call. *See* proposed NYSE Rule 3230(m)(11), (14), (16), (17), and (20); *see also* FINRA Rule 3230(m)(11), (14), (16), (17), and (20); and 16 CFR 310.2(f), (l), (n), (v), (w), and (dd).

[16] An ''established business relationship'' is a relationship between a member organization and a person if (i) the person has made a financial transaction or has a security position, a money balance, or account activity with the member organization or at a clearing firm that provides clearing services to the member organization within the 18 months immediately preceding the date of an outbound telephone call; (b) the member organization is the broker-dealer of record for an account of the person within the 18 months immediately preceding the date of an outbound telephone call; or (c) the person has contacted the member organization to inquire about a product or service offered by the member organization within the three months immediately preceding the date of an outbound telephone call. A person's established business relationship with a member organization does not extend to the member organization's affiliated entities unless the person would reasonably expect them to be included. Similarly, a person's established business relationship with a member organization's affiliate does not extend to the member organization unless the person would reasonably expect the member organization to be included. The term ''account activity'' includes, but is not limited to, purchases, sales, interest credits or debits, charges or credits, dividend payments, transfer activity, securities receipts or deliveries, and/or journal entries relating to securities or funds in the possession or control of the member organization. The term ''broker-dealer of record'' refers to the broker or dealer identified on a customer's account application for accounts held directly at a mutual fund or variable insurance product issuer. *See* proposed NYSE Rule 3230(m)(1), (4), and (12); *see also* 16 CFR 310.2(o) and FINRA Rule 3230(m)(1), (4), and (12).

[17] This restriction was previously included under NYSE Rule 440A(a). *See* the discussion below under Procedures.

[18] *See* 16 CFR 310.4(b)(1)(iii)(A) and (B) and (c); *see also* FINRA Rule 3230(a).

[19] *See* Federal Trade Commission, *Telemarketing Sales Rule,* 68 FR 4580 (Jan. 29, 2003) at 4628; and Federal Trade Commission, *Telemarketing Sales Rule,* 60 FR 43842 (Aug. 23, 1995) at 43855.

outbound telephone calls will not be liable for initiating any outbound telephone call to any person who has registered his or her telephone number on the FTC's national do-not-call registry if:

(1) The member organization has an established business relationship with the recipient of the call; [20]

(2) The member organization has obtained the person's prior express invitation or permission; [21] or

(3) The associated person making the call has a personal relationship [22] with the recipient of the call.

The proposed rule change modifies the established business relationship exception in NYSE Rule 440A and the definition for ''established business relationships,'' which is substantially similar to the FTC's definition of that term.[23] In addition, the proposed rule change is substantially similar to the FTC's provision regarding an exception to the prohibition on making outbound telephone calls to persons on the FTC's do-not-call registry.[24] The FTC provided a discussion of the provision when it was adopted pursuant to the Prevention Act.[25]

Safe Harbor Provision

Proposed NYSE Rule 3230(c) provides that a member organization or person associated with a member organization making outbound telephone calls will not be liable for initiating any outbound telephone call to any person who has registered his or her telephone number on the FTC's national do-not-call registry if the member organization or person associated with a member organization demonstrates that the violation is the result of an error and that as part of the member organization's routine business practice, it meets the following standards:

(1) The member organization has established and implemented written procedures to comply with the national do-not-call rules;

(2) The member organization has trained its personnel, and any entity assisting in its compliance, in procedures established pursuant to the national do-not-call rules;

(3) The member organization has maintained and recorded a list of telephone numbers that it may not contact; and

(4) The member organization uses a process to prevent outbound telephone calls to any telephone number on any list established pursuant to the do-not-call rules, employing a version of the national do-not-call registry obtained from the administrator of the registry no more than 31 days prior to the date any call is made, and maintains records documenting this process.

The proposed rule change is substantially similar to the FTC's safe harbor to the prohibition on making outbound telephone calls to persons on the FTC's national do-not-call registry.[26] The FTC provided a discussion of the provision when it was adopted pursuant to the Prevention Act.[27]

Procedures

Proposed NYSE Rule 3230(d) adopts procedures that member organizations must institute to comply with NYSE Rule 3230(a) prior to engaging in telemarketing. These procedures are substantially similar to the procedural requirements under NYSE Rule 440A(b); however, the proposed rule change deletes the requirement that a member organization honor a firm-specific do-not-call request for five years from the time the request is made. Additionally, the proposed rule change clarifies that the request not to receive further calls would come from a person. The procedures must meet the following minimum standards:

(1) Member organizations must have a written policy for maintaining their do-not-call lists.

(2) Personnel engaged in any aspect of telemarketing must be informed and trained in the existence and use of the member organization's do-not-call list.

(3) If a member organization receives a request from a person not to receive calls from that member organization, the member organization must record the request and place the person's name, if provided, and telephone number on its do-not-call list at the time the request is made.[28]

(4) Member organizations or persons associated with a member organization making an outbound telephone call must make certain caller disclosures set forth in NYSE Rule 3230(d)(4).

(5) In the absence of a specific request by the person to the contrary, a person's do-not-call request shall apply to the member organization making the call, and will not apply to affiliated entities unless the consumer reasonably would expect them to be included given the identification of the call and the product being advertised.

(6) A member organization making outbound telephone calls must maintain a record of a person's request not to receive further calls.

Inclusion of this requirement to adopt these procedures will not create any new obligations on member organizations, as they are already subject to identical provisions under FCC telemarketing regulations.[29]

Wireless Communications

Proposed NYSE Rule 3230(e) states that the provisions set forth in the rule are applicable to member organizations telemarketing or making telephone solicitations calls to wireless telephone numbers. In addition, proposed NYSE Rule 3230(e) clarifies that the application of the rule also applies to persons associated with a member organization making outbound telephone calls to wireless telephone numbers.[30]

Outsourcing Telemarketing

NYSE Rule 3230(f) states that if a member organization uses another entity to perform telemarketing services on its behalf, the member organization remains responsible for ensuring compliance with all provisions contained in the rule. Proposed NYSE Rule 3230(f) also clarifies that member organizations must consider whether the entity or person that a member organization uses for outsourcing, must be appropriately registered or licensed, where required.[31]

[20] A person's request to be placed on the firm-specific do-not-call list terminates the established business relationship exception to that national do-not-call list provision for that member organization even if the person continues to do business with the member organization.

[21] Such permission must be evidenced by a signed, written agreement (which may be obtained electronically under the E-Sign Act (*See* 15 U.S.C. 7001 *et seq.*) between the person and member organization which states that the person agrees to be contacted by the member organization and includes the telephone number to which the calls may be placed.

[22] The term ''personal relationship'' means any family member, friend, or acquaintance of the person making an outbound telephone call. *See* proposed NYSE Rule 3230(m)(18); *see also* FINRA Rule 3230(m)(18).

[23] *See supra* note 16; *see also* FINRA Rule 3230(a).

[24] *See* 16 CFR 310.4(b)(1)(iii)(B); *see also* FINRA Rule 3230(b).

[25] *See* Federal Trade Commission, *Telemarketing Sales Rule,* 68 FR 4580 (Jan. 29, 2003) at 4628; and Federal Trade Commission, *Telemarketing Sales Rule,* 60 FR 43842 (Aug. 23, 1995) at 43854.

[26] *See* 16 CFR 310.4(b)(1)(iii)(B); *see also* FINRA Rule 3230(c).

[27] *See* Federal Trade Commission, *Telemarketing Sales Rule,* 68 FR 4580 (Jan. 29, 2003) at 4628; and Federal Trade Commission, *Telemarketing Sales Rule,* 60 FR 43842 (Aug. 23, 1995) at 43855.

[28] Member organizations must honor a person's do-not-call request within a reasonable time from the date the request is made, which may not exceed 30 days from the date of the request. If these requests are recorded or maintained by a party other than the member organization on whose behalf the outbound telephone call is made, the member organization on whose behalf the outbound telephone call is made will still be liable for any failures to honor the do-not-call request.

[29] *See* 47 CFR 64.1200(d); *see also* FINRA Rule 3230(d).

[30] *See also* FINRA Rule 3230(e).

[31] *See also* FINRA Rule 3230(f).

Caller Identification Information

Proposed NYSE Rule 3230(g) provides that any member organization that engages in telemarketing must transmit or cause to be transmitted the telephone number, and, when made available by the member organization's telephone carrier, the name of the member organization, to any caller identification service in use by a recipient of an outbound telephone call. The telephone number so provided must permit any person to make a do-not-call request during regular business hours. In addition, any member organization that engages in telemarketing is prohibited from blocking the transmission of caller identification information.[32]

These provisions are similar to the caller identification provision in the FTC rules.[33] Inclusion of these caller identification provisions in this proposed rule change will not create any new obligations on member organizations, as they are already subject to identical provisions under FCC telemarketing regulations.[34]

Unencrypted Consumer Account Numbers

Proposed NYSE Rule 3230(h) prohibits a member organization or person associated with a member organization from disclosing or receiving, for consideration, unencrypted consumer account numbers for use in telemarketing. The proposed rule change is substantially similar to the FTC's provision regarding unencrypted consumer account numbers.[35] The FTC provided a discussion of the provision when it was adopted pursuant to the Prevention Act.[36] Additionally, the proposed rule change defines ''unencrypted'' as not only complete, visible account numbers, whether provided in lists or singly, but also encrypted information with a key to its decryption. The proposed definition is substantially similar to the view taken by the FTC.[37]

Submission of Billing Information

The proposed rule change provides that, for any telemarketing transaction, no member organization or person associated with a member organization may submit billing information[38] for payment without the express informed consent of the customer. Proposed NYSE Rule 3230(i) requires, for any telemarketing transaction, a member organization or person associated with a member organization to obtain the express informed consent of the person to be charged and to be charged using the identified account. If the telemarketing transaction involves preacquired account information[39] and a free-to-pay conversion[40] feature, the member organization or person associated with a member organization must:

(1) Obtain from the customer, at a minimum, the last four digits of the account number to be charged;

(2) Obtain from the customer an express agreement to be charged and to be charged using the identified account number; and

(3) Make and maintain an audio recording of the entire telemarketing transaction.

For any other telemarketing transaction involving preacquired account information, the member organization or person associated with a member organization must:

(1) Identify the account to be charged with sufficient specificity for the customer to understand what account will be charged; and

(2) Obtain from the customer an express agreement to be charged and to be charged using the identified account number.

The proposed rule change is substantially similar to the FTC's provision regarding the submission of billing information.[41] The FTC provided a discussion of the provision when it was adopted pursuant to the Prevention Act.[42]

Abandoned Calls

Proposed NYSE Rule 3230(j) prohibits a member organization or person associated with a member organization from abandoning[43] any outbound telemarketing call. The abandoned calls prohibition is subject to a ''safe harbor'' under proposed subparagraph (j)(2) that requires:

(1) The member organization or person associated with a member organization to employ technology that ensures abandonment of no more than three percent of all calls answered by a person, measured over the duration of a single calling campaign, if less than 30 days, or separately over each successive 30-day period or portion thereof that the campaign continues;

(2) The member organization or person associated with a member organization, for each telemarketing call placed, allows the telephone to ring for at least 15 seconds or four rings before disconnecting an unanswered call;

(3) Whenever a person associated with a member organization is not available to speak with the person answering the telemarketing call within two seconds after the person's completed greeting, the member organization or person associated with a member organization promptly plays a recorded message stating the name and telephone number of the member organization or person associated with a member organization on whose behalf the call was placed; and

(4) The member organization to maintain records documenting compliance with the ''safe harbor.''

The proposed rule change is substantially similar to the FTC's provisions regarding abandoned calls.[44] The FTC provided a discussion of the provisions when they were adopted pursuant to the Prevention Act.[45]

Prerecorded Messages

Proposed NYSE Rule 3230(k) prohibits a member organization or person associated with a member organization from initiating any outbound telemarketing call that delivers a prerecorded message without a person's express written agreement[46]

[32] Caller identification information includes the telephone number and, when made available by the member organization's telephone carrier, the name of the member organization.

[33] *See* 16 CFR 310.4(a)(8); *see also* FINRA Rule 3230(g).

[34] *See* 47 CFR 64.1601(e).

[35] *See* 16 CFR 310.4(a)(6); *see also* FINRA Rule 3230(h).

[36] *See* Federal Trade Commission, *Telemarketing Sales Rule,* 68 FR 4580 (January 29, 2003) at 4615.

[37] *See id.* at 4616.

[38] The term ''billing information'' means any data that enables any person to access a customer's or donor's account, such as a credit or debit card number, a brokerage, checking, or savings account number, or a mortgage loan account number. *See* proposed NYSE Rule 3230(m)(3).

[39] The term ''preacquired account information'' means any information that enables a member organization or person associated with a member organization to cause a charge to be placed against a customer's or donor's account without obtaining the account number directly from the customer or donor during the telemarketing transaction pursuant to which the account will be charged. *See* proposed NYSE Rule 3230(m)(19).

[40] The term ''free-to-pay conversion'' means, in an offer or agreement to sell or provide any goods or services, a provision under which a customer receives a product or service for free for an initial period and will incur an obligation to pay for the product or service if he or she does not take affirmative action to cancel before the end of that period. *See* proposed NYSE Rule 3230(m)(13).

[41] *See* 16 CFR 310.4(a)(7); *see also* FINRA Rule 3230(i).

[42] *See* Federal Trade Commission, *Telemarketing Sales Rule,* 68 FR 4580 (January 29, 2003) at 4615.

[43] An outbound telephone call is ''abandoned'' if the called person answers it and the call is not connected to a member organization or person associated with a member organization within two seconds of the called person's completed greeting.

[44] *See* 16 CFR 310.4(b)(1)(iv); *see also* 16 CFR 310.4(b)(4).

[45] *See* Federal Trade Commission, *Telemarketing Sales Rule,* 68 FR 4580 (January 29, 2003) at 4641.

[46] The express written agreement must: (a) Have been obtained only after a clear and conspicuous disclosure that the purpose of the agreement is to authorize the member organization to place

Continued

to receive such calls. The proposed rule change also requires that all prerecorded telemarketing calls provide specified opt-out mechanisms so that a person can opt out of future calls. The prohibition does not apply to a prerecorded message permitted for compliance with the ''safe harbor'' for abandoned calls under proposed subparagraph (j)(2).

The proposed rule change is substantially similar to the FTC's provisions regarding prerecorded messages.[47] The FTC provided a discussion of the provisions when they were adopted pursuant to the Prevention Act.[48]

Credit Card Laundering

Proposed NYSE Rule 3230(l) prohibits credit card laundering, the practice of depositing into the credit card system[49] a sales draft that is not the result of a credit card transaction between the cardholder[50] and the member organization. Except as expressly permitted, the proposed rule change prohibits a member organization or person associated with a member organization from:

(1) Presenting to or depositing into, the credit card system for payment, a credit card sales draft[51] generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the member organization;

(2) Employing, soliciting, or otherwise causing a merchant,[52] or an employee, representative or agent of the merchant, to present to or to deposit into the credit card system for payment, a credit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the merchant; or

(3) Obtaining access to the credit card system through the use of a business relationship or an affiliation with a merchant, when such access is not authorized by the merchant agreement[53] or the applicable credit card system.

The proposed rule change is substantially similar to the FTC's provisions regarding credit card laundering.[54] The FTC provided a discussion of the provisions when they were adopted pursuant to the Prevention Act.[55]

Definitions

Proposed NYSE Rule 3230(m) adopts the following definitions, which are substantially similar to the FTC's definitions of these terms: ''acquirer,'' ''billing information,'' ''caller identification service,'' ''cardholder,'' ''charitable contribution,'' ''credit,'' ''credit card,''''credit card sales draft,'' ''credit card system,'' ''customer,'' ''donor,'' ''established business relationship,'' ''free-to-pay conversion,'' ''merchant,'' ''merchant agreement,'' ''outbound telephone call,'' ''person,'' ''preacquired account information,'' and telemarketing''.[56] The FTC provided a discussion of each definition when they were adopted pursuant to the Prevention Act.

The Exchange proposes make NYSE Rule 3230 effective on the same date as FINRA makes FINRA Rule 3230 effective.[57]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Exchange Act[58] in general, and furthers the objectives of Section 6(b)(5)[59] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. Specifically, the Exchange believes that the proposed rule change supports the objectives of the Exchange Act by providing greater harmonization between NYSE Rules and FINRA Rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance. In particular, NYSE member organizations that are also FINRA members are subject to both NYSE Rule 440A and FINRA Rule 3230 and harmonizing these two rules would promote just and equitable principles of trade by requiring a single standard for telemarketing. In addition, adopting Rule 3230 will assure that the Exchange's rules governing telemarketing meet the standards set forth in the Prevention Act. To the extent the Exchange has proposed changes that differ from the FINRA version of the NYSE Rules, it believes such changes are technical in nature and do not change the substance of the proposed NYSE Rules. The Exchange also believes that the proposed rule change will update and clarify the requirements governing telemarketing, which will promote just and equitable principles of trade and help to protect investors.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

prerecorded calls to such person; (b) have been obtained without requiring, directly or indirectly, that the agreement be executed as a condition of purchasing any good or service; (c) evidence the willingness of the called person to receive calls that deliver prerecorded messages by or on behalf of the member organization; and (d) include the person's telephone number and signature (which may be obtained electronically under the E–Sign Act).

[47] *See* 16 CFR 310.4(b)(1)(v); *see also* FINRA Rule 3230(k).

[48] *See* Federal Trade Commission, *Telemarketing Sales Rule,* 73 FR 51164 (August 29, 2008) at 51165.

[49] The term ''credit card system'' means any method or procedure used to process credit card transactions involving credit cards issued or licensed by the operator of that system. The term ''credit card'' means any card, plate, coupon book, or other credit device existing for the purpose of obtaining money, property, labor, or services on credit. The term ''credit'' means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment. *See* proposed NYSE Rule 3230(m)(7), (8), and (10).

[50] The term ''cardholder'' means a person to whom a credit card is issued or who is authorized to use a credit card on behalf of or in addition to the person to whom the credit card is issued. *See* proposed NYSE Rule 3230(m)(6).

[51] The term ''credit card sales draft'' means any record or evidence of a credit card transaction. *See* proposed NYSE Rule 3230(m)(9).

[52] The term ''merchant'' means a person who is authorized under written contract with an acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services or a charitable contribution. The term ''acquirer'' means a business organization, financial institution, or an agent of a business organization or financial institution that has authority from an organization that operates or licenses a credit card system to authorize merchants to accept, transmit, or process payment by credit card through the credit card system for money, goods or services, or anything else of value. A ''charitable contribution'' means any donation or gift of money or any other thing of value, for example a transfer to a pooled income fund. *See* proposed NYSE Rule 3230(m)(2) and (14).

[53] The term ''merchant agreement'' means a written contract between a merchant and an acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services or charitable contribution. *See* proposed NYSE Rule 3230(m)(15).

[54] *See* 16 CFR 310.2; *see also* FINRA Rule 3230(l).

[55] *See* Federal Trade Commission, *Telemarketing Sales Rule,* 60 FR 43842 (August 23, 1995) at 43852.

[56] *See* proposed NYSE Rule 3230(m)(2), (3), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14), (15), (16), (17), (19), and (20); and 16 CFR 310.2(a), (c), (d), (e), (f), (h), (i), (j), (k), (l), (n), (o), (p), (s), (t), (v), (w), (x), and (dd); *see also* FINRA Rule 3230(m)(2), (3), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14), (15), (16), (17), (19), and (20). The proposed rule change also adopts definitions of ''account activity,'' ''broker-dealer of record,'' and ''personal relationship'' that are substantially similar to FINRA's definitions of these terms. *See* proposed NYSE Rule 3230(m)(1), (4), and (18) and FINRA Rule 3230(m)(1), (4), and (18); *see also* 47 CFR 64.1200(t)(14) (FCC's definition of ''personal relationship'').

[57] *See supra* note 4.

[58] 15 U.S.C. 78f(b).

[59] 15 U.S.C. 78f(b)(5).

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received written comments with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Exchange Act [60] and Rule 19b–4(f)(6) thereunder.[61] 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 prior to 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 Exchange Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [62] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[63] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing.

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 Exchange 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 Exchange Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2012–15 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2012–15. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 100 F Street NE., Washington, DC 20549–1090 on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at *www.nyse.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–NYSE–2012–15 and should be submitted on or before August 6, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[64]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–17175 Filed 7–13–12; 8:45 am]

**BILLING CODE 8011–01–P**

[60] 15 U.S.C. 78s(b)(3)(A)(iii).

[61] 17 CFR 240.19b–4(f)(6).

[62] 17 CFR 240.19b–4(f)(6).

[63] 17 CFR 240.19b–4(f)(6)(iii).

[64] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[File No. 500–1]**

### In the Matter of Alternative Energy Sources, Inc., Arlington Hospitality, Inc., Consolidated Oil & Gas, Inc., CSMG Technologies, Inc., Dakotah, Incorporated, and DelSite, Inc.; Order of Suspension of Trading

July 12, 2012.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Alternative Energy Sources, 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 Arlington Hospitality, Inc. because it has not filed any periodic reports since the period ended March 31, 2005.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Consolidated Oil & Gas, Inc. because it has not filed any periodic reports since the period ended September 30, 2007.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of CSMG Technologies, 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 Dakotah, Incorporated because it has not filed any periodic reports since the period ended September 30, 1998.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of DelSite, Inc. because it has not filed any periodic reports since the period ended September 30, 2008.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies. Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EDT on July 12, 2012, through 11:59 p.m. EDT on July 25, 2012.

By the Commission.

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 2012–17344 Filed 7–12–12; 11:15 am]

**BILLING CODE 8011–01–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #13105 and #13106]**

### New Mexico Disaster #NM–00025

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a notice of an Administrative declaration of a disaster for the State of New Mexico dated 07/09/2012.

*Incident:* Little Bear Fire.

*Incident Period:* 06/04/2012 and continuing.

*Effective Date:* 07/09/2012.

*Physical Loan Application Deadline Date:* 09/07/2012.

*Economic Injury (EIDL) Loan Application Deadline Date:* 04/09/2013.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

*Primary Counties:* Lincoln.

*Contiguous Counties:*

New Mexico: Chaves, De Baca, Guadalupe, Otero, Sierra, Socorro, Torrance.

The Interest Rates are:

| | Percent |
|---|---|
| For Physical Damage: | |
| Homeowners With Credit Available Elsewhere | 3.875 |
| Homeowners Without Credit Available Elsewhere | 1.938 |
| Businesses With Credit Available Elsewhere | 6.000 |
| Businesses Without Credit Available Elsewhere | 4.000 |
| Non-Profit Organizations With Credit Available Elsewhere | 3.125 |
| Non-Profit Organizations Without Credit Available Elsewhere | 3.000 |
| *For Economic Injury:* | |
| Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere | 4.000 |
| Non-Profit Organizations Without Credit Available Elsewhere | 3.000 |

The number assigned to this disaster for physical damage is 13105 5 and for economic injury is 13106 0.

The State which received an EIDL Declaration # is New Mexico.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: July 9, 2012.

**Karen G. Mills,**

*Administrator.*

[FR Doc. 2012–17240 Filed 7–13–12; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #13103 and #13104]**

### Florida Disaster #FL–00071

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a Notice of the Presidential declaration of a major disaster for the State of Florida (FEMA–4068–DR), dated 07/03/2012.

*Incident:* Tropical Storm Debby.

*Incident Period:* 06/23/2012 and continuing.

*Effective Date:* 07/03/2012.

*Physical Loan Application Deadline Date:* 09/04/2012.

*Economic Injury (EIDL) Loan Application Deadline Date:* 04/03/2013.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the President's major disaster declaration on 07/03/2012, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

*Primary Counties (Physical Damage and Economic Injury Loans):* Baker, Bradford, Columbia, Pasco, Wakulla.

*Contiguous Counties (Economic Injury Loans Only):*

Florida: Alachua, Baker, Clay, Duval, Franklin, Gilchrist, Hamilton, Hernando, Hillsborough, Jefferson, Leon, Liberty, Nassau, Pinellas, Polk, Putnam, Sumter, Suwannee, Union.

Georgia: Charlton, Clinch, Echols, Ware.

The Interest Rates are:

| | Percent |
|---|---|
| *For Physical Damage:* | |
| Homeowners With Credit Available Elsewhere | 3.875 |
| Homeowners Without Credit Available Elsewhere | 1.938 |
| Businesses With Credit Available Elsewhere | 6.000 |
| Businesses Without Credit Available Elsewhere | 4.000 |
| Non-Profit Organizations With Credit Available Elsewhere | 3.125 |
| Non-Profit Organizations Without Credit Available Elsewhere | 3.000 |
| *For Economic Injury:* | |
| Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere | 4.000 |
| Non-Profit Organizations Without Credit Available Elsewhere | 3.000 |

The number assigned to this disaster for physical damage is 13103B and for economic injury is 131040.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

**Joseph P. Loddo,**

*Acting Associate Administrator for Disaster Assistance.*

[FR Doc. 2012–17242 Filed 7–13–12; 8:45 am]

**BILLING CODE 8025–01–P**

## SOCIAL SECURITY ADMINISTRATION

### Agency Information Collection Activities: Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes revisions of OMB-approved information collections and one new information collection.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents,

including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB)

Office of Management and Budget, Attn: Desk Officer for SSA, *Fax:* 202–395–6974, *Email address: OIRA_Submission@omb.eop.gov.*

(SSA)

Social Security Administration, DCRDP, Attn: Reports Clearance Director, 107 Altmeyer Building, 6401 Security Blvd., Baltimore, MD 21235, *Fax:* 410–966–2830, *Email address: OPLM.RCO@ssa.gov.*

SSA submitted the information collections below to OMB for clearance. Your comments regarding the information collections would be most useful if OMB and SSA receive them 30 days from the date of this publication. To be sure we consider your comments, we must receive them no later than August 15, 2012. Individuals can obtain copies of the OMB clearance packages by writing to *OPLM.RCO@ssa.gov.*

1. *Health IT Partner Program Assessment—Partnering Facilities and Available Content Form—24 CFR 495.300–495.370—0960–NEW.* The Health Information Technology for Economic and Clinical Health (HITECH) Act promotes the adoption and meaningful use of health information technology (IT), particularly in the context of working with government agencies. Similarly, section 3004 of the Public Health Service Act requires health care providers or health insurance issuers with government contracts to implement, acquire, or upgrade their health IT systems and products to meet adopted standards and implementation specifications.

To support expansion of SSA's health IT initiative as defined under HITECH, SSA developed Form SSA–680, the Health IT Partner Program Assessment—Participating Facilities and Available Content Form. The SSA–680 allows healthcare providers to provide the information SSA needs to determine their ability to exchange health information with us electronically. We intend to evaluate potential partners (*i.e.,* healthcare providers and organizations) on (1) the accessibility of health information they possess, and (2) the content value of their electronic health records' systems for our disability adjudication processes. SSA reviews the completeness of organizations' SSA–680 responses as one part of our careful analysis of their readiness to enter into a health IT partnership with us. The respondents are healthcare providers and organizations exchanging information with the agency.

**Note:** This is a correction notice. SSA published this information collection notice with a different form title on January 31, 2012 at 77 FR 4854. We are publishing this notice with the revised, corrected form title here.

*Type of Request:* This is a new information collection request.

| Collection instrument | Number of responses | Frequency of response | Average burden per response (hours) | Estimated total annual burden (hours) |
|---|---|---|---|---|
| SSA–680 | 30 | 1 | 5 | 150 |

2. *Statement of Self-Employment Income—20 CFR 404.101, 404.110, 404.1096(a)–(d)—0960–0046.* To qualify for insured status and thus collect Social Security benefits, self-employed individuals must demonstrate they earned the minimum amount of self-employment income (SEI) in a current year. SSA uses Form SSA–766, Statement of Self-Employment Income, to collect the information we need to determine if the individual will have at least the minimum amount of SEI needed for one or more quarters of coverage in the current year. Based on the information we obtain, we may credit additional quarters of coverage to give the individual insured status thus expediting benefit payments. Respondents are self-employed individuals who may be eligible for Social Security benefits.

*Type of Request:* Revision of an OMB-approved information collection.

| Collection instrument | Number of respondents | Frequency of response | Average burden per response (minutes) | Estimated total annual burden (hours) |
|---|---|---|---|---|
| SSA–766 | 2,500 | 1 | 5 | 208 |

3. *Certification by Religious Group–20 CFR 404.1075–0960–0093.* SSA is responsible for determining whether religious groups meet the qualifications exempting certain members and sects from payment of Self-Employment Contribution Act taxes under the Internal Revenue Code, section 1402(g). SSA sends Form SSA–1458, Certification by Religious Group, to a group's authorized spokesperson to complete and verify organizational members meet or continue to meet the criteria for exemption. The respondents are spokespersons for religious groups or sects.

*Type of Request:* Revision of an OMB-approved information collection.

| Collection instrument | Number of respondents | Frequency of response | Average burden per response (minutes) | Estimated total annual burden (hours) |
|---|---|---|---|---|
| SSA–1458 | 180 | 1 | 15 | 45 |

4. *Claim for Amounts Due in the Case of a Deceased Beneficiary—20 CFR 404.503(b)–0960–0101.* SSA requests applicants complete Form SSA–1724 when there is insufficient information in the file to identify the person(s) entitled to the underpayment, or the person's address. SSA collects the information when a surviving widow(er) is not already entitled to a monthly benefit on the same earnings record, or is not filing for a lump-sum death payment as a former spouse. SSA uses the information Form SSA–1724 provides to ensure proper payment of an underpayment due a deceased beneficiary. The respondents are applicants for underpayments owed to deceased beneficiaries.

*Type of Request:* Revision of an OMB-approved information collection.

| Collection instrument | Number of respondents | Frequency of response | Average burden per response (minutes) | Estimated total annual burden (hours) |
|---|---|---|---|---|
| SSA–1724 | 250,000 | 1 | 10 | 41,667 |

5. *Certificate of Election for Reduced Spouse's Benefits—20 CFR 404.421–0960–0398.* Reduced benefits are not payable to an already entitled spouse, at least age 62 but under full retirement age, who no longer has a child in their care unless the spouse elects to receive reduced benefits. If spouses decide to elect reduced benefits, they complete Form SSA–25. SSA uses the information to pay qualified spouses who elect to receive reduced benefits. Respondents are entitled spouses seeking reduced benefits.

*Type of Request:* Revision of an OMB approved information collection.

| Collection instrument | Number of respondents | Frequency of response | Average burden per response (minutes) | Estimated total annual burden (hours) |
|---|---|---|---|---|
| SSA–25 | 30,000 | 1 | 2 | 1,000 |

6. *Surveys in Accordance with E.O. 12862 for the Social Security Administration—0960–0526.* Under the auspices of Executive Order 12862, Setting Customer Service Standards, SSA conducts multiple customer satisfaction surveys each year. These voluntary customer satisfaction assessments include paper, Internet, and telephone surveys; mailed questionnaires; and customer comment cards. The purpose of these questionnaires is to assess customer satisfaction with the timeliness, appropriateness, access, and overall quality of existing SSA services and proposed modifications or new versions of services. The respondents are recipients of SSA services (including most members of the public), professionals, and individuals who work on behalf of SSA beneficiaries.

*Type of Request:* Revision of an OMB-approved information collection.

| | Number of respondents (burden for all activities within that year) | Frequency of response | Range of response times (minutes) | Burden (burden for all activities within that year; reported in hours) |
|---|---|---|---|---|
| Year 1 (September 2012–August 2013) | 4,481,566 | 1 | 3–90 | 290,741 |
| Year 2 (September 2013–August 2014) | 1,559,566 | 1 | 3–90 | 144,991 |
| Year 3 (September 2014–September 2015) | 1,484,566 | 1 | 3–90 | 141,741 |
| Totals | 7,525,698 | | | 577,473 |

7. *Request for Business Entity Taxpayer Information—0960–0731.* Law firms or other business entities must complete Form SSA–1694, Request for Business Entity Taxpayer Information, if they wish to serve as appointed representatives and receive direct payment of fees from SSA. SSA uses the information to issue a Form 1099–MISC. SSA also uses the information to allow business entities to designate individuals to serve as entity administrators authorized to perform certain administrative duties on their behalf, such as providing bank account information, maintaining entity information, and updating individual affiliations. Respondents are law firms or other business entities which have attorneys or other qualified individuals as partners or employees who represent claimants before SSA.

*Type of Request:* Revision of an OMB-approved information collection.

| Collection instrument | Number of respondents | Frequency of response | Average burden per response (minutes) | Estimated total annual burden (hours) |
|---|---|---|---|---|
| SSA–1694 | 2,000 | 1 | 10 | 334 |

Dated: July 11, 2012.

**Faye Lipsky,**

*Reports Clearance Director, Office of Regulations and Reports Clearance, Social Security Administration.*

[FR Doc. 2012–17244 Filed 7–13–12; 8:45 am]

**BILLING CODE 4191–02–P**

## DEPARTMENT OF STATE

**[Public Notice 7955]**

### Advisory Committee on International Postal and Delivery Services

**AGENCY:** Department of State.

**ACTION:** Notice, FACA Committee meeting announcement.

**SUMMARY:** As required by the Federal Advisory Committee Act, Public Law 92–463, the Department of State gives notice of a meeting of the Advisory Committee on International Postal and Delivery Services (the Advisory Committee). This Committee has been formed in fulfillment of the provisions of the 2006 Postal Accountability and Enhancement Act (Pub. L. 109–435) and in accordance with the Federal Advisory Committee Act.

*Date and Time:* The meeting will be held on Thursday, August 2, 2012, from 10 a.m. to 1 p.m., and is open to the public.

*Location:* The American Institute of Architects, 1735 New York Ave. NW., Washington, DC 20006.

*Purpose and Summary of Agenda:* The meeting will discuss the U.S. government's participation for the 25th Congress of the Universal Postal Union which will be held in Doha, Qatar beginning September 24, 2012. The public and members of the Advisory Committee will be briefed on preparations for the Congress, including the official U.S. delegation, and on policy initiatives. The Committee members, and subsequently members of the public, will be invited to provide additional input regarding policy issues related to the Doha Congress and to other international postal and delivery matters.

*Public input:* Any member of the public interested in providing public input to the meeting should contact Ms. Helen Grove, whose contact information is listed under **FOR FURTHER INFORMATION CONTACT** section of this notice. Each individual providing oral input is requested to limit his or her comments to five minutes. Requests to be added to the speaker list must be received in writing (letter, email or fax) prior to the close of business on July 27, 2012; written comments from members of the public for distribution at this meeting must reach Ms. Grove by letter, email or fax by this same date. A member of the public requesting reasonable accommodation should make the request to Ms. Grove by that same date.

**FOR FURTHER INFORMATION CONTACT:** Please contact Helen Grove, Office of Global Systems (IO/GS), Bureau of International Organization Affairs, U.S. Department of State, at (202) 647–1044, *GroveHA@State.gov*.

Dated: July 9, 2012.

**Robert Richard Downes,**

*Designated Federal Officer, Advisory Committee on International Postal and Delivery Services, Bureau of International Organization Affairs, Department of State.*

[FR Doc. 2012–17259 Filed 7–13–12; 8:45 am]

**BILLING CODE 4710–19–P**

## DEPARTMENT OF STATE

**[Public Notice 7956]**

### International Joint Commission; International Joint Commission To Hold Public Hearings on Lake Osoyoos

The International Joint Commission (IJC) is inviting the public to comment on recommendations for the renewal of its Lake Osoyoos order. The order provides for the regulation of water levels of Lake Osoyoos for the benefit of agriculture, tourism, municipal interests, and fisheries protection.

Water levels of Lake Osooyos have been regulated by the IJC since 1946, when it approved alterations to an existing dam downstream from the lake. Under orders of the IJC, a new structure was constructed in 1987 to replace the dam. The orders set maximum and minimum lake elevations of 911.5 and 909 feet during normal years. During a drought year, water may be stored to lake elevations as high as 913.0 feet.

The current Orders of Approval for Lake Osoyoos are set to expire on February 22, 2013, unless renewed. The IJC asked its International Osoyoos Lake Board of Control (the Board) to present a *report of recommendations* for renewing the Osoyoos Lake Orders. Drawing on the results of eight studies commissioned by IJC, the Board recommends that the scope of a renewed Order remain limited to the management of lake levels with only minor modifications that are primarily related to a revised lake-level rule curve (i.e. prescribed lake water level elevation limits over time per an IJC Order). The Board also recommends that the Commission should encourage the continued cooperation between British Columbia and the State of Washington to balance flow needs across the International Border and downstream of the dam, while respecting goals for Osoyoos Lake elevations and limits on releases that are possible from Okanagan Lake.

The Board recommends a public review of the proposed rule curve. The proposed rule curve would provide additional seasonal flexibility in achieving targeted lake levels, and would accommodate multiple uses and users of the lake. The proposed rule curve would also eliminate drought/non-drought declarations and would limit the maximum lake levels to 912.5 ft in the summer. More detailed discussion of the proposed rule curve and the Board's recommendations on renewal of the Order are contained in the Board's Report entitled Recommendations for Renewal of the International Joint Commission's Osoyoos Lake Order now posted on the IJC Web site at *www.ijc.org*.

Commissioners invite the public to comment on the report at the following times and locations:

July 24, 2012—7 p.m.

Oroville High School Commons, 1008 Ironwood St., Oroville, WA.

July 25, 2012—7 p.m.

Best Western Plus Sunrise Inn, 5506 Main Street, Osoyoos, BC.

Comments may also be submitted at the hearings, by mail or by email at either address below:

U.S. Section Secretary, International Joint Commission, 2000 L Street NW., Suite #615, Washington, DC 20036, Fax: 202–632–2007. Email: *Commission@washington.ijc.org.*

Canadian Section Secretary, International Joint Commission, 234 Laurier Avenue West, 22nd Floor, Ottawa, ON K1P 6K6, Fax: 613–993–5583, Email: *Commission@ottawa.ijc.org.*

The IJC will receive comments until August 31, 2012. The IJC will then consider public comments and review the report before making a decision on renewing the order.

The IJC prevents and resolves disputes between Canada and the United States under the 1909 Boundary Waters Treaty and pursues the common good of both countries as an independent and objective advisor to the two governments.

Contacts:

Washington, *Frank Bevacqua*, 202–736–9024.

Ottawa, *Bernard Beckhoff*, 613–947–1420.

Dated: July 10, 2012.

**Charles A. Lawson,**

*Secretary, U.S. Section, International Joint Commission, Department of State.*

[FR Doc. 2012–17260 Filed 7–13–12; 8:45 am]

**BILLING CODE 4710–14–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Record of Decision on the Final Environmental Impact Statement that Evaluated the Proposed Airfield Improvement Project at Palm Beach International Airport, Palm Beach County, FL

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

**ACTION:** Notice of Availability of Record of Decision.

**SUMMARY:** The FAA is issuing this notice of availability to advise the public and interested parties that it has issued a Record of Decision (ROD) for the Final Environmental Impact Statement (FEIS) for the Airfield Improvement Project (AIP) at Palm Beach International Airport (PBIA). The ROD contains the FAA's Findings, Conditions of Approval, and Final Decision and Order with regard to the unconditional Airport Layout Plan (ALP) approval of the Near-Term AIP. This unconditional ALP approval will allow Palm Beach County—the Airport Sponsor—to proceed with the development of the Near-Term AIP pending the receipt of all State of Florida and local government approvals and funding. The ROD also discloses that the FAA has determined that the Long-Term AIP (the Runway 10R/28L airfield capacity enhancement project and its connected actions) are not ripe for decision at this time. The ROD grants only conditional ALP approval of the Long-Term AIP. This conditional ALP approval of the Long-Term AIP does not grant the Airport Sponsor the Federal approvals needed to construct the Long-Term AIP at this time.

**FOR FURTHER INFORMATION CONTACT:** Mr. Allan Nagy, Environmental Program Specialist, Federal Aviation Administration, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, Florida 32822, Telephone (407) 812–6331.

**SUPPLEMENTARY INFORMATION:** The FAA published a **Federal Register** Notice of Availability of the FEIS on February 4, 2011 (77 FR 6510). The FEIS was prepared in compliance with the National Environmental Policy Act of 1969 (NEPA) [42 U.S.C. 4321, *et seq.*], the implementing regulations of the Council on Environmental Quality (CEQ) [40 CFR parts 1500–1508], and FAA directives [Order 1050.1E and Order 5050.4B].

During the EIS process, the FAA coordinated extensively with Federal, state, and local agencies; Native American Nations/Tribes; local municipalities; and the public. This coordination included, but was not limited to: the United States (U.S.) Environmental Protection Agency (EPA), the U.S. Fish and Wildlife Service (USFWS), the National Marine Fisheries Service (NMFS), the Poarch Band of Creek Indians, the Muscogee (Creek) Nation, the Seminole Nation of Oklahoma, the Seminole Tribe of Florida, the Miccosukee Tribe of Indians of Florida, the Florida Department of Transportation (FDOT), the Florida Department of Environmental Protection (FDEP), Palm Beach County, the City of West Palm Beach, the Town of Palm Beach, and other local municipalities. The FAA undertook and completed Section 106 consultation in accordance with the National Historic Preservation Act (NHPA) and the provisions at 36 CFR part 800, subpart B, Protection of Historic Properties. This consultation was conducted between the FAA, the Florida Division of Historic Resources (Florida State Historic Preservation Officer (SHPO)) and the Keeper of the National Register of Historic Places (NRHP). The FAA also coordinated extensively with other stakeholders, including representatives of local homeowner associations (HOAs) and the general public to facilitate the understanding and consideration of key issues, the Agency's policies and procedures, and the proposed actions being undertaken by both the Airport Sponsor and the FAA. The FAA actively solicited comments on the FEIS for an extended period of 45-days after its publication. Public and agency comments on the FEIS, as well as the FAA's responses to substantive comments on the FEIS, are included in Appendix A of the ROD.

In the ROD, the FAA has identified the Near-Term AIP as the Agency's Selected Alternative. The FAA's decision on the Selected Alternative was based on a comparative analysis and examination of the potential environmental, social, and economic impacts for each of the alternatives evaluated in detail in the FEIS. The FAA has determined that the Near-Term AIP is safe and efficient; that it would not result in significant environmental impacts and that it is justified for implementation by the Airport Sponsor at this time. The Near-Term AIP consists of following projects: (1) General Aviation (GA) facility development in the northwest quadrant of the airfield, (2) widening Taxiway ''L'' from 50 feet to 75 feet along the full length of Runway 10L/28R, and (3) acquisition of 13.2 acres of property on the east side of Military Trail, between the roadway right of-way and the airports' existing western property line. With respect to the Long-Term AIP, which consists of the Runway 10R/28L expansion project and its connected actions, the FAA has determined that the Long-Term AIP is not ripe for final approval at this time and, therefore, this component of the AIP was granted only conditional ALP approval in the ROD. This conditional ALP approval of the Long-Term AIP does not grant the Airport Sponsor the Federal approvals needed to construct the Long-Term AIP at this time.

*Availability of ROD:* Copies of the ROD and FEIS are available at the following locations during normal business hours:

- Palm Beach County Library Greenacres Branch, 3750 Jog Road, Greenacres, FL 33467.
- Palm Beach County Library Okeechobee Boulevard Branch, 5689 West Okeechobee Boulevard, West Palm Beach, FL 33417.
- West Palm Beach Public Library, 411 Clematis Street, West Palm Beach, FL 33401.
- Federal Aviation Administration, Orlando Airports District Office, 5950 Hazeltine National Drive Citadel International Building, Suite 400, Orlando, Florida. Contact Allan Nagy at (407) 812–6331.
- Palm Beach International Airport, Palm Beach County Department of Airports, 846 Palm Beach International Airport, West Palm Beach, Florida. Contact Gary Sypek at (561) 471–7412.

An electronic copy of the ROD (and FEIS) will be available for download from the EIS Web site (*www.pbia-eis.com*) beginning on July 13, 2012.

Issued in Orlando, Florida on July 2, 2012.

**Martin Polomski,**

*Acting Manager, Orlando Airports District Office, Federal Aviation Administration.*

[FR Doc. 2012–17280 Filed 7–13–12; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2012–0161]**

### Qualification of Drivers; Exemption Applications; Vision

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of applications for exemptions; request for comments.

**SUMMARY:** FMCSA announces receipt of applications from 13 individuals for exemption from the vision requirement in the Federal Motor Carrier Safety Regulations. They are unable to meet the vision requirement in one eye for various reasons. The exemptions will enable these individuals to operate commercial motor vehicles (CMVs) in interstate commerce without meeting the prescribed vision requirement in one eye. If granted, the exemptions would enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce.

**DATES:** Comments must be received on or before August 15, 2012.

**ADDRESSES:** You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2012–0161 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* 1–202–493–2251.

*Instructions:* Each submission must include the Agency name and the docket numbers for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below for further information.

*Docket:* For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

*Privacy Act:* Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf.*

**FOR FURTHER INFORMATION CONTACT:** Elaine M. Papp, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

### Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal Motor Carrier Safety Regulations for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' FMCSA can renew exemptions at the end of each 2-year period. The 13 individuals listed in this notice have each requested such an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting an exemption will achieve the required level of safety mandated by statute.

### Qualifications of Applicants

*Joseph E. Brunette*

Mr. Brunette, age 43, has had a retinal detachment in his right eye since 1999. The visual acuity in his right eye is light perception only, and in his left eye, 20/20. Following an examination in 2012, his optometrist noted, ''In my medical opinion, Mr. Joseph Brunette has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Brunette reported that he has driven tractor-trailer combinations for 7 years, accumulating 560,000 miles. He holds a Class A Commercial Driver's License (CDL) from California. His driving record for the last 3 years shows one crash, which he was not cited for, and one conviction for speeding in a CMV; he exceeded the speed limit by 5 mph.

*William C. Christy*

Mr. Christy, 68, has had acute zonal occult outer retinopathy and a central scotoma in his right eye since 2007. The best corrected visual acuity in his right eye is 20/100, and in his left eye, 20/20. Following an examination in 2012, his ophthalmologist noted, ''It is my opinion based on my exam of Mr. Christy, his visual field testing and his driving history that he is safe to drive a commercial vehicle without restriction.'' Mr. Christy reported that he has driven straight trucks for 46 years, accumulating 46,000 miles, and tractor-trailer combinations for 46 years, accumulating 552,000 miles. He holds a Class A CDL from Florida. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Anthony A. Gibson, Jr.*

Mr. Gibson, 51, has had an enucleation of his left eye since 1992. The best corrected visual acuity in his right eye is 20/15. Following an examination in 2012, his optometrist noted, ''I believe Tony has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Gibson reported that he has driven straight trucks for 11 years, accumulating 330,000 miles, and tractor-trailer combinations for 20 years, accumulating 500,000 miles. He holds a Class A CDL from Illinois. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Rickey W. Goins*

Mr. Goins, 52, has had amblyopia in his left eye since childhood. The best corrected visual acuity in his right eye is 20/20, and in his left eye, 20/70. Following an examination in 2012, his optometrist noted, ''It is my professional opinion that Mr. Goins has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Goins reported that he has driven straight trucks for 5 years, accumulating 260,000 miles, and tractor-trailer combinations for 11 years, accumulating 1.4 million miles. He holds a Class A CDL from Tennessee. His driving record for the last 3 years

shows no crashes and no convictions for moving violations in a CMV.

*Michael J. Hoffarth*

Mr. Hoffarth, 37, has had atrophic scarring in the macula of his right eye since 2000. The best corrected visual acuity in his right eye is 20/70, and in his left eye, 20/20. Following an examination in 2012, his optometrist noted, ''In my medical opinion, I certify that Michael has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Hoffarth reported that he has driven straight trucks for 1 year, accumulating 30,000 miles, and tractor-trailer combinations for 11 years, accumulating 1 million miles. He holds a Class A CDL from Washington. His driving record for the last 3 years shows no crashes but one conviction for speeding in a CMV; he exceeded the speed limit by 11 mph.

*Boyd M. Kinzer, Jr.*

Mr. Kinzer, 62, has had macular scarring in his right eye due to a traumatic injury sustained in 1994. The best corrected visual acuity in his right eye is 20/60, and in his left eye, 20/20. Following an examination in 2011, his optometrist noted, ''In my opinion, Mr. Kinzer has the visual ability necessary to operate a commercial vehicle.'' Mr. Kinzer reported that he has driven straight trucks for 3 years, accumulating 27,000 miles, and buses for 1 year, accumulating 9,000 miles. He holds a Class D operator's license from Tennessee. His driving record for the last 3 years shows two crashes, which he was not cited for, and no convictions for moving violations in a CMV.

*Jason N. Moore*

Mr. Moore, 34, has had amblyopia and strabismus in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/80. Following an examination in 2012, his optometrist noted, ''In my opinion, he is visually capable of safely operating a commercial motor vehicle.'' Mr. Moore reported that he has driven straight trucks for 8 years, accumulating 328,000 miles. He holds a Class A CDL from Virginia. His driving record for the last 3 years shows no crashes but one conviction for speeding in a CMV; he exceeded the speed limit by 15 mph.

*Dennis M. Rubeck*

Mr. Rubeck, 65, has complete loss of vision in his left eye due to a traumatic accident sustained during childhood. The best corrected visual acuity in his right eye is 20/15. Following an examination in 2012, his optometrist noted, ''In my medical opinion Dennis Mark Rubeck has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Rubeck reported that he has driven straight trucks for 12 years, accumulating 720,000 miles, and tractor-trailer combinations for 18 years, accumulating 1.4 million miles. He holds a Class A CDL from Wyoming. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Leon F. Stephens*

Mr. Stephens, 61, has had macular scarring in his left eye since 1984. The best corrected visual acuity in his right eye is 20/15, and in his left eye, 20/400. Following an examination in 2012, his optometrist noted, ''In my opinion, Mr. Stephens has adequate vision to safely perform the task of driving and operating a commercial vehicle.'' Mr. Stephens reported that he has driven straight trucks for 6 years, accumulating 60,000 miles, and tractor-trailer combinations for 42 years, accumulating 2.5 million miles. He holds a Class A CDL from Colorado. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Clayton L. Schroeder*

Mr. Schroeder, 62, has had amblyopia in his left eye since birth. The best corrected visual acuity in his right eye is 20/20, and in his left eye, light perception only. Following an examination in 2011, his optometrist noted, ''I believe, in my professional opinion, that Mr. Schroeder has adequate vision to operate a commercial vehicle.'' Mr. Schroeder reported that he has driven tractor-trailer combinations for 12 years, accumulating 900,000 miles. He holds a Class A CDL from Minnesota. His driving record for the last 3 years shows no crashes but one conviction for a moving violation in a CMV; he failed to obey a traffic sign.

*James C. Sharp*

Mr. Sharp, 51, has had corneal scarring in his left eye since 1990. The visual acuity in his right eye is 20/25, and in his left eye, 20/400. Following an examination in 2012, his ophthalmologist noted, ''I, Thomas A. Armstrong, M.D., certify that in my medical opinion, Mr. James C. Sharp does have sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Sharp reported that he has driven straight trucks for 5 years, accumulating 5,000 miles. He holds a Class C operator's license from Pennsylvania. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Ronald J. VanHoof*

Mr. VanHoof, 60, has loss of vision in his left eye due to a central retinal vein occlusion that occurred in 2001. The best corrected visual acuity in his right eye is 20/20, and in his left eye, count fingers vision. Following an examination in 2012, his optometrist noted, ''His visual condition is stable, and in my medical opinion has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. VanHoof reported that he has driven tractor-trailer combinations for 43 years, accumulating 3.2 million miles. He holds a Class A CDL from Washington. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Scott C. Westphal*

Mr. Westphal, 31, has macular scarring in his right eye due to a traumatic accident sustained in childhood. The visual acuity in his right eye is hand motion vision, and in his left eye, 20/20. Following an examination in 2011, his optometrist noted, ''In summary, it is my medical opinion that Scott is able to perform the driving tasks required to operate a commercial vehicle based on the visual requirements.'' Mr. Westphal reported that he has driven tractor-trailer combinations for 12 years, accumulating 960,000 miles. He holds a Class A CDL from Minnesota. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

**Request for Comments**

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. The Agency will consider all comments received before the close of business August 15, 2012. Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. The Agency will file comments received after the comment closing date in the public docket, and will consider them to the extent practicable.

In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should monitor the public docket for new material.

Issued on: July 9, 2012.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2012–17267 Filed 7–13–12; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

### Safety Advisory 2012–03; Buckling-Prone Conditions in Continuous Welded Rail Track

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

**ACTION:** Notice of Safety Advisory.

**SUMMARY:** FRA is issuing Safety Advisory 2012–03 to remind track owners, railroads, and their employees of the importance of complying with their continuous welded rail (CWR) plan procedures and reviewing their current internal engineering instructions that address inspecting CWR track to identify buckling-prone conditions. In an effort to heighten awareness of the potential consequences of an unexpected track buckle, particularly considering the unusually high, and prolonged, record-breaking temperatures that have affected much of the United States in recent weeks, this notice highlights a series of recent train accidents involving derailments that were preliminarily determined by the respective railroads to be caused by the rail buckling under extreme heat conditions (commonly referred to as ''sun kinks'' in the rail). This notice contains recommendations to track owners and railroads to ensure their employees comply with the requirements of their CWR plan procedures that address inspecting track to identify buckling-prone conditions in CWR track, particularly if the track is located on or near railroad bridges. It also recommends that track owners and railroads review current internal engineering instructions to ensure that the instructions properly identify the necessary track maintenance instructions to prevent track buckling during extreme heat conditions.

**FOR FURTHER INFORMATION CONTACT:** Carlo M. Patrick, Staff Director, Rail and Infrastructure Integrity Division, Office of Railroad Safety, FRA, 1200 New Jersey Avenue SE., Washington, DC 20590, telephone (202) 493–6399; Kenneth Rusk, Staff Director, Track Division, Office of Railroad Safety, FRA, 1200 New Jersey Avenue SE., Washington, DC 20590, telephone (202) 493–6236; or Anna Nassif Winkle, Trial Attorney, Office of Chief Counsel, FRA, 1200 New Jersey Avenue SE., Washington, DC 20590, telephone (202) 493–6166.

**SUPPLEMENTARY INFORMATION:**

### Background

The overall safety of railroad operations has improved in recent years. However, a series of recent accidents has highlighted the need for track owners, railroads, and their respective employees to review, reemphasize, and adhere to the requirements of a track owner's CWR plan procedures and current internal engineering instructions that address inspecting track to identify buckling-prone conditions in CWR track, particularly if the track is located on or near railroad bridges.

FRA requires that a track owner comply with the contents of a CWR plan that is approved or conditionally approved under Title 49 Code of Federal Regulations (CFR) Section 213.118.[1] *See* § 213.119. The plan must include procedures that prescribe when physical track inspections are to be performed. *See* § 213.119(g). At a minimum, these procedures are required to address inspecting track to identify buckling-prone conditions in CWR track, locations where tight or kinky rail conditions are likely to occur, locations where track work (disturbing the roadbed or ballast section and reducing the lateral or longitudinal resistance of the track) has recently been performed, and pull-apart prone conditions in CWR track, including locations where pull-apart or stripped-joint rail conditions are likely to occur. *See* § 213.119(g)(1). In formulating such procedures, the track owner is required to specify when the inspections will be conducted, as well as the appropriate remedial actions to be taken when either buckling-prone or pull-apart prone conditions are found. *See* § 213.119(g)(2).

CWR can produce peculiar maintenance issues for the railroad industry due to the constant temperature changes that rails experience because they are exposed to the open air and radiant heat from the sun. These temperature changes in CWR can create longitudinal stresses in the rail due to the constraints along the rail in conjunction with the thermal expansion or contraction of the rail steel. During long-term exposure to extremely high temperatures, the longitudinal stress in the rail can result in an unexpected track buckle (or kink). In addition, if the track buckle occurs on track that is located on or near a railroad bridge, the consequences of any subsequent derailment at that location can be compounded, often resulting in more severe damage and sometimes death.

During the course of the last few weeks, the railroad industry has experienced four derailments that resulted in two fatalities and more than $5,000,000 in FRA-reportable railroad property damage. Based on preliminary investigations by the involved railroads, it appears that these four incidents may have occurred because of extremely high compressive forces that were present in the rail, which resulted from the record-setting excessive heat wave that has recently affected most of the United States.

### Recent Incidents

The following is a brief summary of the circumstances surrounding each of the recent train derailments that appear to have been heat-related incidents. Information regarding these incidents is based on FRA's and the respective railroad's preliminary investigations and findings to date. The probable causes and contributing factors, if any, have not yet been established. Therefore, nothing in this safety advisory is intended to attribute a cause to these incidents, or place responsibility for these incidents on the acts or omissions of any person or entity.

1. On July 4, 2012, at approximately 5:30 p.m., a BNSF Railway Company (BNSF) train crew noticed a sun kink (buckled track) in the rail ahead, and attempted to stop, but were unable to do so, which caused 43 loaded coal cars to derail in Pendleton, TX. BNSF preliminarily determined the cause of the derailment to be buckled track.

2. On July 4, 2012, at approximately 1:30 p.m., a northbound Union Pacific Railroad Company (UP) coal train with 137 cars, traveling at 39 mph, derailed 31 loaded coal cars in Northbrook, IL. The derailment occurred in a populated area on a steel trestle spanning a four-lane street. The bridge was destroyed, and the derailed cars fell on the roadway below, resulting in two fatalities. UP preliminarily determined the cause of the derailment to be buckled track adjacent to the bridge span.

3. On July 2, 2012, at approximately 6:30 p.m., a westbound BNSF unit coal train derailed 31 loaded cars of coal next to a public grade crossing in Mesa, WA. The train crew had reported feeling rough track going through the grade crossing, and then placed the train into

[1] All references in this notice to a section or other provision of a regulation are to a section, part, or other provision in 49 CFR, unless otherwise specified.

emergency braking. BNSF preliminarily determined the cause of the derailment to be buckled track.

4. On June 23, 2012, at approximately 6:40 p.m., an eastbound UP coal train derailed 22 cars in the Powder River coal fields in Bill, WY. UP preliminarily determined the cause of the derailment to be buckled track.

*Recommended Action:* In light of the above discussion, FRA recommends that track owners and railroads:

1. Review with their employees the circumstances of the four track-buckling-related derailments identified above.

2. Discuss the requirements of CWR plans with employees responsible for inspecting CWR, with a focus on inspecting CWR track to identify buckling-prone conditions, and conditions that can lead to buckled track, such as recently-disturbed track, locations where rail was repaired or replaced, and locations that experience excessive load dynamics.

3. Evaluate and ensure that employees responsible for the inspection and repair of CWR track have been adequately trained and are capable of performing proper inspection and repair procedures.

4. Reinforce with employees responsible for inspecting track the importance of maintaining sufficient anchoring and ballast to maintain track lateral resistance, especially around fixed track structures (such as grade crossings, turnouts, and bridges), where the rail conditions are considerably tighter and are therefore more susceptible to the development of track buckles.

5. Review recent track maintenance records to identify previous buckling incidents, and their locations, for future inspection focus.

6. Apply heat-restriction slow orders at necessary locations, with consideration of populated areas, in order to significantly decrease the likelihood of a derailment and reduce the severity and consequences of any derailments that may occur.

7. Apply appropriate slow orders at speeds that will permit the passage of sufficient time and tonnage to restore track stabilization at disturbed track locations.

8. Review current internal engineering instructions to ensure that the instructions properly identify the necessary track maintenance instructions to prevent track buckling during extreme heat conditions.

FRA encourages railroad industry members to take actions that are consistent with the preceding recommendations and to take other actions to help ensure the safety of the Nation's railroad employees and the public. FRA may modify this Safety Advisory 2012–03, issue additional safety advisories, or take other appropriate actions it deems necessary to ensure the highest level of safety on the Nation's railroads, including pursuing other corrective measures under its rail safety authority.

Issued in Washington, DC, on July 11, 2012.

**Robert C. Lauby,**

*Deputy Associate Administrator for Regulatory and Legislative Operations.*

[FR Doc. 2012–17343 Filed 7–13–12; 8:45 am]

**BILLING CODE 4910–06–P**

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## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

**[Docket No. MARAD 2012 0078]**

### Requested Administrative Waiver of the Coastwise Trade Laws: Vessel STARDUST; Invitation for Public Comments

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Notice.

**SUMMARY:** As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

**DATES:** Submit comments on or before August 15, 2012.

**ADDRESSES:** Comments should refer to docket number MARAD–2012–0078. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Linda Williams, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–0903, Email *Linda.Williams@dot.gov.*

**SUPPLEMENTARY INFORMATION:**

As described by the applicant the intended service of the vessel STARDUST is:

*Intended Commercial Use of Vessel:* ''Carry passengers only, not more than 6 passengers.''

*Geographic Region:* ''Massachusetts.''

The complete application is given in DOT docket MARAD–2012–0078 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

### Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: July 5, 2012.

**Julie P. Agarwal,**

*Secretary, Maritime Administration.*

[FR Doc. 2012–17281 Filed 7–13–12; 8:45 am]

**BILLING CODE 4910–81–P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

**[Docket No. MARAD 2012 0077]**

### Requested Administrative Waiver of the Coastwise Trade Laws: Vessel SIX STRING; Invitation for Public Comments

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Notice.

**SUMMARY:** As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

**DATES:** Submit comments on or before August 15, 2012.

**ADDRESSES:** Comments should refer to docket number MARAD–2012–0077. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Linda Williams, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–0903, Email *Linda.Williams@dot.gov.*

**SUPPLEMENTARY INFORMATION:** As described by the applicant the intended service of the vessel SIX STRING is:

*Intended Commercial Use of Vessel:* ''Offshore passages and related sailing lessons.''

*Geographic Region:* ''Washington, California, Hawaii, Texas, Florida.''

The complete application is given in DOT docket MARAD–2012–0077 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

**Privacy Act**

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: July 5, 2012.

**Julie P. Agarwal,**

*Secretary, Maritime Administration.*

[FR Doc. 2012–17285 Filed 7–13–12; 8:45 am]

BILLING CODE 4910–81–P

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

July 11, 2012.

The Department of the Treasury will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

**DATES:** Comments should be received on or before August 15, 2012 to be assured of consideration.

**ADDRESSES:** Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestion for reducing the burden, to the (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.GOV* and to the (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8140, Washington, DC 20220, or email at *PRA@treasury.gov.*

**FOR FURTHER INFORMATION CONTACT:** Copies of the submission(s) may be obtained by calling (202) 927–5331, email at *PRA@treasury.gov,* or the entire information collection request maybe found at *www.reginfo.gov.*

**Financial Crimes Enforcement Network (FinCEN)**

*OMB Number:* 1506–0014.

*Type of Review:* Extension without change of a currently approved collection.

*Title:* Report of International Transportation of Currency or Monetary Instruments.

*Form:* FinCEN Form 105.

*Abstract:* FinCEN, and the Department of Homeland Security (DHS) and the DHS Bureaus, are required under 31 U.S.C. 5316(a) to collect information regarding mailing, shipment, or transportation of currency or monetary instruments of more than $10,000 in value into or out of the United States.

*Affected Public:* Individuals or Households.

*Estimated Total Burden Hours:* 140,000.

*OMB Number:* 1506–0026.

*Type of Review:* Extension without change of a currently approved collection.

*Title:* Customer Identification Programs for Banks, Savings Associations, Credit Unions, and Certain Non-federally Regulated Banks.

*Abstract:* Banks, savings associations, credit unions, and certain non-federally regulated banks are required to develop and maintain customer identification programs. *See 31 CFR 1020.100.*

*Affected Public:* Private Sector: Businesses or other for-profits.

*Estimated Total Burden Hours:* 242,660.

*OMB Number:* 1506–0030.

*Type of Review:* Extension without change of a currently approved collection.

*Title:* Anti-Money Laundering Programs for Dealers in Precious Metals, Precious Stones, or Jewels.

*Abstract:* Desires in precious metals, stones, or jewels are required to establish and maintain a written anti-money laundering program. A copy of the written program must be maintained for five years. *See 31 CFR 1027.100.*

*Affected Public:* Private Sector: Businesses or other for-profits.

*Estimated Total Burden Hours:* 20,000.

*OMB Number:* 1506–0033.

*Type of Review:* Extension without change of a currently approved collection.

*Title:* Customer Identification Programs for Mutual Funds.

*Abstract:* Mutual Funds are required to establish and maintain customer identification programs. A copy of the written program must be maintained for five years. *See 31 CFR 1024.220.*

*Affected Public:* Private Sector: Businesses or other for-profits.

*Estimated Total Burden Hours:* 266,700.

*OMB Number:* 1506–0034.

*Type of Review:* Extension without change of a currently approved collection.

*Title:* Customer Identification Programs for Broker-Dealers.

*Abstract:* Broker-dealers are required to establish and maintain a customer identification program. A copy of the program must be maintained for five years. *See 31 CFR 1023.220.*

*Affected Public:* Private Sector: Businesses or other for-profits.

*Estimated Total Burden Hours:* 630,896.

**Dawn D. Wolfgang,**

*Treasury PRA Clearance Officer.*

[FR Doc. 2012–17256 Filed 7–13–12; 8:45 am]

**BILLING CODE 4810–02–P**

# Reader Aids

**Federal Register**

Vol. 77, No. 136

Monday, July 16, 2012

## CUSTOMER SERVICE AND INFORMATION

| | |
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